

STATE OF LOUISIANA  
COURT OF APPEAL  
FIRST CIRCUIT

NUMBER 2012 KA 1389

STATE OF LOUISIANA

VERSUS

JEREMY C. BROOKS

Judgment Rendered: MAR 26 2013

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Appealed from the  
22<sup>nd</sup> Judicial District Court  
In and for the Parish of St. Tammany, Louisiana  
Trial Court Number 514,506 "F"

Honorable Martin E. Coady, Judge

\* \* \* \* \*

Walter P. Reed  
District Attorney  
Covington, LA  
and

Kathryn W. Landry  
Baton Rouge, LA

Frank Sloan  
Mandeville, LA

Attorneys for Appellee  
Plaintiff – State of Louisiana

Attorney for Appellant  
Defendant – Jeremy C. Brooks

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**BEFORE: PARRO, WELCH, AND KLINE<sup>1</sup>, JJ.**

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<sup>1</sup> Hon. William F. Kline, Jr., retired, is serving as judge *pro tempore* by special appointment of the Louisiana Supreme Court.

**WELCH, J.**

The defendant, Jeremy C. Brooks, was charged by bill of information with possession of a Schedule II controlled dangerous substance, cocaine, in violation of La. R.S. 40:967(C). See La. R.S. 40:964, Schedule II(A)(4). The defendant entered a plea of not guilty and was found guilty as charged after a trial by jury. The trial court originally imposed a sentence of five years imprisonment at hard labor. After the defendant was adjudicated a fourth-felony habitual offender, the trial court vacated the original sentence and imposed an enhanced sentence of twenty years imprisonment at hard labor.<sup>2</sup> The defendant now appeals, assigning error to the trial court's acceptance of his stipulation to his fourth-felony habitual offender status. For the following reasons, we affirm the conviction, habitual offender adjudication, and sentence.

**STATEMENT OF FACTS**

On October 22, 2011, the defendant was arrested in the parking lot of Pat's Grocery in Covington as a part of a St. Tammany Parish Sheriff's Office investigation regarding a stolen vehicle and cellular telephone. Police officers approached the defendant in marked patrol units as he was walking near the car wash area. The uniformed officers exited their units and, with weapons drawn, verbally commanded the defendant to get to the ground. The defendant failed to comply with the officers' commands, threw a cellular telephone on the ground, and turned and began reaching toward his waistband. As Deputy Dave Levy stood guard with his weapon, Corporal Mark Liberto holstered his weapon, and tackled and handcuffed the defendant. During a search incident to the arrest, a plastic bag

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<sup>2</sup> The defendant's habitual offender adjudication is based on the following St. Tammany Parish predicate guilty pleas: on August 13, 2007, to possession of cocaine and possession of marijuana, second offense; on April 28, 2008, to possession of cocaine and simple escape; and on November 13, 2009, to distribution of marijuana.

containing a hard, rock-like substance, later determined to consist of crack cocaine, was removed from the defendant's left jacket pocket.

### ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues that he was never advised, at his April 4, 2012 arraignment on the multiple offender bill of information or at his April 26, 2012 sentencing proceedings after his adjudication as a fourth-felony habitual offender, of his right to remain silent or of his right to be tried as to the truth of the allegations contained in the habitual offender bill of information. The defendant argues that the habitual offender adjudication and sentence must be vacated. The defendant contends that the record is unclear as to whether there was a plea bargain and argues that, if there was a plea bargain, then he should have been afforded the opportunity to decide whether to go forward with the plea bargain or have a habitual offender hearing.

A trial court's failure to properly advise a defendant of his rights under the Habitual Offender Law, La. R.S. 15:529.1, requires that the habitual offender adjudication and sentence be vacated. **State v. Fox**, 98-1547 (La. App. 1<sup>st</sup> Cir. 6/25/99), 740 So.2d 758, 760-61. After a habitual offender bill of information is filed, the trial court in which the instant conviction was had shall cause the defendant to be brought before it, shall inform him of the allegations contained in the information, shall inform the defendant of his right to be tried as to the truth thereof according to law, and shall require the defendant to say whether the allegations are true. See **State v. Martin**, 427 So.2d 1182, 1185 (La. 1983). Furthermore, the language of the Habitual Offender Law must be strictly construed. In this regard, an implicit and integral aspect of the requirements of La. R.S. 15:529.1 is the court's duty to inform the defendant of his right to remain silent. See **State v. Gonsoulin**, 2003-2473 (La. App. 1<sup>st</sup> Cir. 6/25/04), 886 So.2d 499, 501-02 (*en banc*), writ denied, 2004-1917 (La. 12/10/04), 888 So.2d 835; see

also La. R.S. 15:529.1(D)(1)(a) and (3).

At the defendant's initial sentencing hearing herein on April 4, 2012, after imposing the original sentence, the trial court informed the defendant of the multiple offender bill of information filed by the State. The trial court read the allegations in the habitual offender bill of information, including the prior offenses, the alleged fourth-offender or subsequent status, and the minimum applicable sentence. The trial court then stated the following, "Sir, you have the right to admit this, deny[,] this or remain silent." At that point, the defendant specifically denied the allegations in the bill and the multiple offender bill hearing date was set for April 26, 2012. The State noted its opinion that justice would be served by the imposition of the minimum sentence under the Habitual Offender Law. At the subsequent hearing on April 26, 2012, the State stipulated to a twenty-year agreement and also indicated that the defendant would not be multiple billed on another charge to which he subsequently pled guilty. The defense attorney then stated, "After the bench conference, Your Honor, and speaking with my client, Mr. Brooks is going to stipulate he is in fact a fourth offender per the multiple offender bill filed by the State." The trial court accepted the stipulation, withdrew the original sentence, and imposed the twenty-year sentence.

In **State v. Harris**, 95-0900 (La. 5/19/95), 654 So.2d 680 (*per curiam*), the Louisiana Supreme Court reinstated the petitioner's adjudication and sentence as a habitual offender, reversing the court of appeal's ruling that the trial court failed to advise the petitioner of his rights at the habitual offender hearing before the defense counsel stipulated to the petitioner's identity. The supreme court recognized that in the absence of any allegation or showing that the admission was involuntary, the availability of post-conviction relief turns on whether the proceedings as a whole accorded the petitioner fundamental fairness and due process of law. While acknowledging that admissions of identity at a multiple

offender hearing implicate the defendant's Fifth Amendment privilege against self-incrimination, the supreme court noted that multiple offender proceedings simply should not be equated (at least for purposes of determining the validity of an admission) to trials of guilt or innocence. The supreme court further recognized that it had declined to adopt, as a constitutional prerequisite to a valid admission of identity at a multiple offender proceeding, a procedure analogous to the **Boykin** colloquy, which must accompany a valid guilty plea. See also Martin, 427 So.2d at 1185.

We note that the defendant herein was represented by counsel at the April 26, 2012 hearing and there have been no allegations or showing that the admission was involuntary. At the time of the stipulation, the defense counsel informed the court that he conferred with the defendant and that the defendant would stipulate to his habitual offender status. The trial court had the right to rely on this assertion made in the defendant's presence as an accurate reflection of his intentions. **State v. Cook**, 2011-2223 (La. 3/23/12), 82 So.3d 1239, 1240 (*per curiam*). At the previous arraignment on April 4, 2012, the trial court fully informed the defendant of the allegations in the habitual offender bill of information and advised the defendant of his right to admit or deny the allegations, or to remain silent. Furthermore, the defendant's admission was clearly part of a plea agreement and the defendant was fully apprised of the sentence he was to receive. The minimum sentence allowed under the Habitual Offender Law was imposed as agreed. The defendant's interests were fully protected and any technical non-compliance with the statutory directives in La. R.S. 15:529.1(D)(1)(a) was harmless. See Cook, 82 So.3d at 1240-41; see also State v. Payne, 94-1628 (La. App. 3<sup>rd</sup> Cir. 5/22/96), 677 So.2d 527, 528-30. Accordingly, we find no merit in the defendant's sole assignment of error.

For the foregoing reasons, the defendant's conviction and sentence are affirmed.

**CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.**