

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2012 KA 1533

STATE OF LOUISIANA

VERSUS

JERMAINE CHRISTOPHER BROWN

Judgment Rendered: MAR 22 2013



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On Appeal from the
21st Judicial District Court,
In and for the Parish of Tangipahoa,
State of Louisiana
Trial Court No. 803778

The Honorable M. Douglas Hughes, Judge Presiding

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Attorney for Defendant/Appellant,
Jermaine Christopher Brown

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Attorneys for Plaintiff/Appellee,
State of Louisiana

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BEFORE: GUIDRY, CRAIN, AND THERIOT, JJ.

CRAIN, J.

The defendant, Jermaine Christopher Brown, was charged by bill of information with armed robbery in violation of Louisiana Revised Statute 14:64 (count one) and aggravated flight from an officer in violation of Louisiana Revised Statute 14:108.1(C) (count two). He pled not guilty on both counts. After trial by jury, the defendant was found guilty of the lesser responsive offenses of first degree robbery, a violation of Louisiana Revised Statute 14:64.1, and flight from an officer, a violation of Louisiana Revised Statute 14:108.1(A). The defendant was sentenced to forty years at hard labor, without benefit of parole, probation, or suspension of sentence for the first degree robbery conviction and six months in the parish jail for the flight from an officer conviction. The sentences were ordered to run concurrently with each other. This court previously affirmed the defendant's convictions and sentences. *See, State v. Brown*, 11-1425 (La. App. 1 Cir. 3/23/12) (unpublished).

The State filed a habitual offender bill of information alleging that the defendant was a second-felony offender and seeking to enhance the first degree robbery sentence. Following a hearing, the trial court adjudicated the defendant a second-felony offender, vacated the previous first degree robbery sentence, and imposed a habitual offender sentence of forty-eight years imprisonment at hard labor.¹ The defendant appeals arguing that the State failed to prove his habitual offender status beyond a reasonable doubt. For the following reasons, we affirm.

FACTS

¹ At the time of the imposition of the habitual offender sentence, the trial court did not state that it would be served without the benefit of parole, probation, or suspension of sentence, as is required by Louisiana Revised Statute 14:64.1(B), the reference statute. *See, State v. Bruins*, 407 So. 2d 685, 687 (La. 1981). Similarly, the minute entry does not mention the restriction of these benefits. Nonetheless, these sentencing restrictions are automatic pursuant to Louisiana Revised Statute 15:301.1(A). *See also, State v. Williams*, 2000-1725 (La. 11/28/01), 800 So. 2d 790, 799.

On April 26, 2008, the defendant entered a Circle K convenience store in Ponchatoula brandishing what appeared to the cashier to be a handgun and directed the cashier to give him cash and cigarettes. After the defendant left the store, a police officer noticed him driving at a high rate of speed. A short pursuit ensued before the defendant abandoned his vehicle and fled on foot. Detectives later identified and arrested the defendant using evidence found in the abandoned vehicle.

ASSIGNMENT OF ERROR

The defendant contends that the evidence introduced by the State to prove his prior conviction was insufficient and that he was not properly identified at the hearing due to the presence of another Jermaine Brown in court earlier that day. The defendant's arguments are without merit.

In a habitual offender proceeding, the State has the burden of proving that the defendant was convicted of a prior felony. Prima facie proof of a prior conviction may be established by compliance with Louisiana Revised Statute 15:529.1(F), but that is not the exclusive method; any competent evidence may be used to establish such proof. *State v. Payton*, 00-2899 (La. 3/15/02), 810 So. 2d 1127, 1130. *State v. Moten*, 510 So. 2d 55, 63 (La. App. 1 Cir. 1987), writ denied, 514 So.2d 126 (La. 1987). Such evidence may include: (1) testimony from witnesses; (2) expert opinion regarding the fingerprints of the defendant when compared with those in the prior record; (3) photographs in the duly authenticated record; or (4) evidence of identical driver's license number, sex, race, and date of birth. *Payton*, 810 So. 2d at 1130.

The predicate conviction relied upon by the State was an October 13, 1998 *nolo contendere* plea to armed robbery by Jermaine Brown under docket number 85398 in the Twenty-First Judicial District Court, Tangipahoa Parish, Louisiana (1998 armed robbery conviction). At the habitual offender hearing, Vicki Poche, a

criminal records analyst for the Louisiana State Police, was accepted as an expert in the field of fingerprint analysis. Through Ms. Poche, the State introduced a certified copy of fingerprints obtained from the Automated Fingerprint Identification System (AFIS) generated in connection with Jermaine C. Brown's arrest for armed robbery on January 8, 1998, and a certified copy of fingerprints from an ink-and-roll card taken at the time of the October 13, 1998 plea. Ms. Poche testified that those two sets of fingerprints matched.

Ms. Poche then obtained fingerprints from the defendant by performing an ink-and-roll fingerprinting of the defendant at the habitual offender hearing. These fingerprints were compared to the fingerprints from the 1998 armed robbery arrest and conviction. Ms. Poche testified they were made by the same individual. The State also introduced certified copies of the grand jury indictment of Jermaine Brown and minutes of the 1998 armed robbery conviction.

Defense counsel elicited testimony from Deputy Ross Biandolillo, a courtroom bailiff for the trial court. He testified that two prisoners named Jermaine Brown were present in the courtroom at one point during the day of the habitual offender hearing. Deputy Biandolillo acknowledged that he is not a fingerprint expert. He then testified that he did not know which Jermaine Brown made the fingerprints set forth in the State's fingerprint exhibits.

The trial court found that the State met its burden of proving that the defendant was a second-felony offender. The trial court was correct. The fingerprint and documentary evidence established the prior felony conviction and that the defendant was the person convicted of that felony. The mere presence in court of another prisoner with a similar name did not raise a reasonable doubt about the defendant's identity. This assignment of error is without merit.

**HABITUAL OFFENDER ADJUDICATION AND SENTENCE
AFFIRMED.**