

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 KA 0734

STATE OF LOUISIANA

VERSUS

DERRICK WAYNE BELTON

Judgment rendered NOV 07 2014



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Appealed from the  
19<sup>th</sup> Judicial District Court  
in and for the Parish of East Baton Rouge, Louisiana  
Trial Court No. 10-11-0635  
Honorable Donald Johnson, Judge



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ATTORNEY FOR  
DEFENDANT-APPELLANT  
DERRICK WAYNE BELTON

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**BEFORE: KUHN, PETTIGREW, AND WELCH, JJ.**

**PETTIGREW, J.**

Defendant, Derrick Wayne Belton, was charged by amended bill of information with felony theft greater than \$1500, a violation of La. R.S. 14:67(B)(1) (prior to 2014 amendment). Defendant pled not guilty and waived his right to a jury trial.<sup>1</sup> Following a bench trial, defendant was found guilty as charged. After defendant's conviction, the state filed a habitual offender bill of information, alleging that defendant was a fourth-or-subsequent-felony offender.<sup>2</sup> Following a hearing, the trial court adjudicated defendant a fourth-felony habitual offender and sentenced him to twenty years at hard labor, without the benefit of probation or suspension of sentence. For the following reasons, we affirm defendant's conviction, habitual offender adjudication, and sentence. We also grant defense counsel's motion to withdraw.

**FACTS**

Beginning around March 30, 2011, and ending on September 3, 2011, three Baton Rouge car dealerships – All-Star Nissan, All-Star Toyota, and Royal Nissan – collectively experienced approximately fourteen separate incidents wherein tires and rims were stolen from vehicles parked on their lots. Throughout the course of its investigation, the Baton Rouge Police Department ("BRPD") had developed as a suspect an unknown black male believed to be driving either a dark-colored, four-door Chevy Malibu or a minivan. In each instance, the value of the theft totaled thousands of dollars.

In the early morning hours of September 3, 2011, Corporal Brian Watson and Corporal Brett Magee, both of the BRPD, were dispatched to Royal Nissan on Airline

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<sup>1</sup> See discussion of defendant's plea in the "Review for Error" section.

<sup>2</sup> The following were alleged as defendant's previous felony convictions: 1) a March 23, 1999 conviction for unauthorized use of a motor vehicle under 19th JDC docket number 06-98-0494; 2) a February 18, 1997 conviction for contraband in a correctional institution under 9th JDC docket number 244-625; 3) an April 12, 1995 conviction for unauthorized use of a movable valued greater than \$1000 under 19th JDC docket number 12-94-1330; 4) a January 14, 1994 conviction for felony theft greater than \$1500 under 19th JDC docket number 01-94-0667; and 5) September 15, 1993 convictions for unauthorized use of a movable (19th JDC docket number 03-93-0075) and illegal possession of stolen things (19th JDC docket number 07-93-0033).

Highway by a security monitoring company. The security company reported to the officers that it had seen a subject enter the Royal Nissan property through a hole in the rear fence. Corporal Watson drove his vehicle onto the dealership's property; several seconds later Corporal Magee followed. Corporal Magee witnessed a black male in black clothing, identified at trial as defendant, watching Corporal Watson's vehicle as it drove around the lot. Corporal Magee stopped his car, drew his weapon, and ordered defendant to the ground. Defendant ran away, leading a foot pursuit across Airline Highway. Corporals Watson and Magee were eventually successful at apprehending defendant in the parking lot of another car dealership.

Having been informed of his **Miranda**<sup>3</sup> rights, and after telling a series of different stories, defendant admitted to stealing tires and rims from a vehicle at Royal Nissan on at least one earlier occasion. He also independently stated that he had previously cut a hole in Royal Nissan's rear fence. Corporal Magee later discovered a dark-colored, four-door Chevy Malibu parked near the Royal Nissan dealership; the car was discovered to belong to defendant's girlfriend.

Several days after his arrest, defendant spoke with Detective Troy Lawrence, BRPD's lead detective on the series of tire thefts. After being again informed of his **Miranda** rights, defendant gave a written statement in which he admitted to three tire and rim thefts from Royal Nissan over a series of months. He disclaimed responsibility for the other offenses but did indicate that he had told others about the car lot.

The trial court found defendant guilty as charged. Subsequently, the trial court adjudicated defendant a fourth-felony habitual offender and sentenced him to twenty years at hard labor, without the benefit of probation or suspension of sentence. This sentence was the minimum possible sentence under the applicable habitual offender provision. See La. R.S. 14:67(B)(1) (prior to 2014 amendment), 15:529.1(A)(4)(a), and 15:529.1(G).

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<sup>3</sup> **Miranda v. Arizona**, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

## REVIEW FOR ERROR

Initially, we note that our review for error is pursuant to La. Code Crim. P. art. 920, which provides that the only matters to be considered on appeal are errors designated in the assignments of error and "error that is discoverable by a mere inspection of the pleadings and proceedings and without inspection of the evidence." La. Code Crim. P. art. 920(2).

The trial court minutes fail to reflect that defendant was arraigned, or that he entered a plea to the charge in the amended bill of information. Under La. Code Crim. P. art. 551(A), the arraignment and the defendant's plea shall be entered in the minutes of the court and shall constitute a part of the record. Still, a failure to arraign the defendant, or the fact that he did not plead, is waived if the defendant enters upon the trial without objecting thereto, and it shall be considered as if he had pleaded not guilty. See La. Code Crim. P. art. 555.

In the instant case, we find it likely that the absence of the minute entry reflecting defendant's arraignment and pleading is a mere clerical error. However, even if defendant was not arraigned and did not plead to the charges against him, these deficiencies were waived when defendant proceeded to trial without objection. In that event, it would have been considered as if defendant had pleaded not guilty. We also note that for the notable pretrial proceedings of his preliminary hearing and his waiver of trial by jury, defendant was clearly represented by counsel.

This error does not require correction.

## ISSUES PRESENTED

The defense brief contains no assignments of error and sets forth that it is filed to conform with **State v. Jyles**, 96-2669 (La. 12/12/97), 704 So.2d 241 (per curiam), wherein the Louisiana Supreme Court approved the procedures outlined in **State v. Benjamin**, 573 So.2d 528 (La. App. 4 Cir. 1990). **Benjamin** set forth a procedure to comply with **Anders v. California**, 386 U.S. 738, 744, 87 S.Ct. 1396, 1400, 18 L.Ed.2d 493 (1967), in which the United States Supreme Court discussed how appellate counsel should proceed when, upon conscientious review of a case, counsel finds an appeal

would be wholly frivolous. **Benjamin** has repeatedly been cited with approval by the Louisiana Supreme Court. See **Jyles**, 96-2669 at 1, 704 So.2d at 241; **State v. Mouton**, 95-0981, p. 2 (La. 4/28/95), 653 So.2d 1176, 1177 (per curiam); **State v. Royals**, 600 So.2d 653 (La. 1992).

In the instant case, defense counsel reviewed the procedural history of the case in his brief. He set forth that, after a review of the record in this case, he has found no non-frivolous issues to present on appeal. Defense counsel specifically noted that he considered the trial court's rulings at the preliminary hearing, the facts presented at defendant's trial, and the facts and arguments presented at defendant's habitual offender hearing and sentencing. Accordingly, defense counsel requested that he be relieved from further briefing, and he has filed a motion to withdraw.

This court has performed an independent, thorough review of the pleadings, minute entries, bill of information, and transcript in the appeal record. Our independent review reveals no non-frivolous issues or trial court rulings that arguably support defendant's appeal. Accordingly, defendant's conviction, habitual offender adjudication, and sentence are affirmed. Defense counsel's motion to withdraw, which has been held in abeyance pending disposition of this matter, is granted.

**CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED; MOTION TO WITHDRAW GRANTED.**