NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 KA 1017

STATE OF LOUISIANA

VERSUS

TERRANCE TY'RELL CARVIN

Judgment Rendered: JAN 15 2015

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APPEALED FROM THE THIRTY-SECOND JUDICIAL DISTRICT COURT
PARISH OF TERREBONNE
STATE OF LOUISIANA
DOCKET NUMBER 629824, DIVISION "D"

HONORABLE DAVID W. ARCENEAUX, JUDGE

* * * * * * *

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BEFORE: McDONALD, CRAIN, AND HOLDRIDGE[1], JJ.

[1] Holdridge, J., serving as Supernumerary Judge pro tempore of the Court of Appeal, First Circuit, by special appointment of the Louisiana Supreme Court.

Crain, J. concurs

McDONALD, J.

Defendant, Terrance Ty'rell Carvin, was charged by bill of information with second degree kidnapping, a violation of La. R.S. 14:44.1 (count one), and armed robbery, a violation of La. R.S. 14:64 (count two). He pled not guilty and, following a jury trial, was found guilty as charged. Defendant filed motions for new trial and postverdict judgment of acquittal, which the trial court denied. Subsequently, the state filed a habitual offender bill of information, and the trial court adjudicated defendant a second-felony habitual offender on each of his instant underlying convictions.[2] Subsequently, the trial court sentenced defendant to twenty years at hard labor, without benefit of probation or suspension of sentence on count one, and to forty-nine-and-one-half years at hard labor, without benefit of probation or suspension of sentence on count two. These sentences were imposed to run concurrently. Defendant filed a motion to reconsider these sentences, but the trial court denied that motion. He now appeals, alleging eight assignments of error. For the following reasons, we affirm defendant's convictions, habitual offender adjudications, and sentences, and we remand for correction of the minutes and the commitment order.

FACTS

Shortly after 2:00 a.m. on December 2, 2011, Lacie Deroche was leaving Rickochet Billiards in Houma after working an eight-hour shift. She climbed into her two-door Honda Civic and began to drive toward a friend's house. As she initially drove away, Deroche telephoned her friend to let him know that she was on her way to his home.

As Deroche ended her call, she turned her vehicle onto Frank Street. At that time, she noticed something move in her back seat. When Deroche attempted to turn around, a male jumped up from the floorboard area and placed a handgun to

[2] Defendant's habitual offender bill of information alleged his predicate offense to be a felony conviction for simple criminal damage to property on June 11, 2009, under Terrebonne Parish docket number 532,657.

the back of her head. The male asked Deroche if she wanted to live or die, and he instructed her to drive to a bank. As Deroche drove, she noticed that the male was wearing a black ski mask and a black hoodie.

Deroche first drove to South Louisiana Bank on Grand Caillou Road. However, she was unable to withdraw any money from the ATM at that bank. The male told Deroche to drive to another bank, so she drove to Synergy Bank. Deroche was again unable to withdraw cash from the ATM. The male instructed Deroche to try yet another bank.

As Deroche drove her vehicle looking for a third bank, she passed a car occupied by a sheriff's deputy. The male told Deroche that if she brought any attention to herself, he would shoot her. As Deroche drove down Grand Caillou Road, the male hopped over the vehicle's center console and positioned himself in the front passenger seat. At that point, he also removed his ski mask. During this time, Deroche was able to get a view of the male's face.

Deroche eventually drove to a Capital One Bank on Tunnel Boulevard. There, unlike at the two previous banks, Deroche had to exit her vehicle in order to access the ATM. Deroche withdrew twenty dollars from the Capital One ATM, returned to her vehicle, and gave the money to the perpetrator. The perpetrator asked Deroche if she could get any more money. When she told him no, he instructed her to drive back to the bar and to get someone back over there. In compliance, Deroche began to drive back to Rickochet Billiards, and she called her boss to say that she needed to get back inside the building.

Deroche and the perpetrator arrived at the bar, and Deroche's boss arrived soon thereafter. Deroche asked the perpetrator what he wanted her to do, and he instructed her to get out of the car. Deroche exited her vehicle and walked straight to her boss, who was unlocking the back door to the bar. As Deroche and her boss entered the bar, she told him to lock the door because someone in her vehicle was

trying to rob them. Deroche's boss locked the door, and he immediately called the police. However, the perpetrator had fled the scene by the time the police arrived.

Several days after the incident, Deroche went to the police station to view a photographic lineup that was based upon her description of the perpetrator. Upon viewing a lineup created by the investigating detective, Deroche was unable to identify any of the photographs as the offender.[3] Deroche did identify one person in the lineup as having a resemblance to the perpetrator, but this statement did not rise to the level of a positive identification.

Just over a month after the incident, in January 2012, Deroche received a Facebook communication from Pearl Stoufflet. Deroche never met Stoufflet. In the message, Stoufflet wrote that she had found a job application with Deroche's name on it in her boyfriend's (defendant's) wallet. Deroche recognized the job application as one that had previously been located in the glove compartment of her vehicle. When she checked her vehicle for the job application, she was unable to locate it. Deroche wrote back to Stoufflet, asking for her boyfriend's name and telling her that she had been robbed approximately one month earlier. Based on the information she received from Stoufflet, Deroche found defendant's Facebook profile and recognized him as the person who had robbed her. Deroche subsequently informed the police of defendant's identity. Deroche then viewed a new photographic lineup. From that lineup, she positively identified defendant as the perpetrator.

SUFFICIENCY OF THE EVIDENCE

In three related assignments of error, defendant contends that the evidence presented at his trial was insufficient to support his convictions for second degree kidnapping and armed robbery. He argues that the trial court erred in denying his motions for new trial and postverdict judgment of acquittal because the state did

[3] Defendant's picture was not included in this initial photographic lineup.

not present sufficient evidence to establish defendant's identity as the perpetrator of these offenses.

A conviction based on insufficient evidence cannot stand, as it violates due process. See U.S. Const. amend. XIV; La. Const. art. I, § 2. In reviewing claims challenging the sufficiency of the evidence, this court must consider whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). See also La. Code Crim. P. art. 821(B); **State v. Ordodi**, 2006-0207 (La. 11/29/06), 946 So.2d 654, 660; **State v. Mussall**, 523 So.2d 1305, 1308-09 (La. 1988). The **Jackson** standard of review, incorporated in Article 821(B), is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, La. R.S. 15:438 provides that the factfinder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. **State v. Patorno**, 2001-2585 (La. App. 1st Cir. 6/21/02), 822 So.2d 141, 144.

When the key issue is the defendant's identity as the perpetrator, rather than whether the crime was committed, the state is required to negate any reasonable probability of misidentification. Positive identification by only one witness is sufficient to support a conviction. It is the fact finder who weighs the respective credibility of each witness, and this court will generally not second-guess those determinations. **State v. Hughes**, 2005-0992 (La. 11/29/06), 943 So.2d 1047, 1051; **State v. Davis**, 2001-3033 (La. App. 1st Cir. 6/21/02), 822 So.2d 161, 163-64.

In the instant case, defendant does not dispute that Deroche was the victim of a second degree kidnapping and an armed robbery. Rather, defendant asserts only that the state failed to present evidence sufficient to implicate him as the

perpetrator of those offenses. Therefore, we need only determine whether the evidence presented at trial was sufficient to identify defendant as the person who committed those offenses.[4]

At trial, the victim testified unequivocally that defendant was the person in her vehicle on the night of the offenses. Although the perpetrator initially wore a black ski mask, he removed it once he hopped into the front seat of Deroche's vehicle. Deroche testified that she was able to glance over the perpetrator at least five times after he removed the mask. She also looked directly at him as she reentered her vehicle in the Capital One parking lot.

Defendant did not testify at trial, but he argues that the state failed to prove his identity as the perpetrator beyond a reasonable doubt because Deroche "tentatively identified" a Mark Shepard as the perpetrator in the initial lineup. Defendant further contends that a photograph of an individual named Jujuan Wilkerson should have been included in any lineup because of the possibility that Wilkerson and Stoufflet were attempting to frame defendant for the offenses.

In contrast to defendant's characterization of Deroche's tentative identification of Mark Shepard in the initial lineup, Deroche explicitly testified that she did not believe Shepard to be the perpetrator when she saw his photograph. Instead, she merely pointed out several facial features that Shepard shared with the perpetrator. Similarly, defendant's contention that Wilkerson and Stoufflet were framing him lacks any particular evidence, and this allegation does nothing to refute the victim's clear identification of defendant as the perpetrator.

Here, the jury clearly believed Deroche's testimony identifying defendant as the person who committed the offenses against her. The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. The trier of

[4] We note that part of defendant's arguments with respect to these assignments of error addresses what he alleges to be a suggestive identification procedure. Those arguments are more fully addressed below where we discuss defendant's assignment of error related directly to this contention.

fact's determination of the weight to be given evidence is not subject to appellate review. An appellate court will not reweigh evidence to overturn a fact finder's determination of guilt. **State v. Taylor**, 97-2261 (La. App. 1st Cir. 9/25/98), 721 So.2d 929, 932. We are constitutionally precluded from acting as a "thirteenth juror" in assessing what weight to give evidence in criminal cases. See **State v. Mitchell**, 99-3342 (La. 10/17/00), 772 So.2d 78, 83. After a thorough review of the record, we cannot say that the jury's determination of defendant's guilt was irrational under the facts and circumstances presented to them. See **Ordodi**, 946 So.2d at 662.

These assignments of error are without merit.

DENIAL OF RIGHT TO PRESENT A DEFENSE

In his fourth assignment of error, defendant contends that the trial court erred in allowing a prospective defense witness, Jujuan Wilkerson, to make a blanket invocation of his right against self-incrimination rather than asserting the right on a question-by-question basis. Defendant argues that Wilkerson's failure to testify violated his right to present a defense.

During the state's case-in-chief, Pearl Stoufflet testified about a shooting incident involving Jujuan Wilkerson wherein she and defendant were the victims. She stated that on January 23, 2012, Wilkerson shot into a car in which she and defendant were riding. Defendant was struck by a bullet and went to the hospital. That evening, Stoufflet found Deroche's job application as she went through defendant's belongings. Stoufflet dated Wilkerson before she dated defendant, and she apparently dated Wilkerson again after the shooting.

At trial, defendant sought to call Wilkerson to testify in an effort to establish that he and Stoufflet conspired to frame him for the kidnapping and robbery of Deroche. Additionally, defendant sought to introduce recorded jailhouse conversations between Wilkerson and Stoufflet in hopes of showing that they

colluded to convict defendant, via Stoufflet's testimony, so that his testimony might be discredited at Wilkerson's own trial.

Prior to trial, the trial court heard arguments regarding defendant's desire to call Wilkerson and the likelihood that Wilkerson would invoke the Fifth Amendment if called to testify. The court also considered whether, because of hearsay rules, the jailhouse conversations could be admitted without Wilkerson's testimony. Ultimately, the trial court did not make a determination at that time about whether Wilkerson could be called to the stand or whether the jailhouse conversations could be introduced. Instead, the trial court simply advised defense counsel to avoid mentioning Wilkerson in her opening statement because her decision about whether she would actually seek to introduce any of this evidence was unsettled.

Prior to hearing testimony on the third day of trial, the trial court brought up the issue of Wilkerson's potential testimony. The trial judge noted that Wilkerson had been charged with the attempted second degree murder of defendant and that his attorney had advised him to assert his Fifth Amendment privilege against self-incrimination and not to answer any questions that might be posed to him in the case against defendant. At that time, the trial judge had Wilkerson brought into the courtroom and informed him that defendant intended to call him as a witness in the instant case. He then asked Wilkerson whether it was his intention to assert his Fifth Amendment privilege against self-incrimination; Wilkerson responded affirmatively. Finally, the trial judge asked defense counsel whether she had any questions for Wilkerson that she believed would not expose him to criminal liability if he answered them the way she expected. She replied that all of her questions would tend to expose Wilkerson to criminal liability. On this basis, the trial judge granted Wilkerson's blanket invocation of his Fifth Amendment privilege against self-incrimination. Defense counsel did not object, and she

consented to the trial court's proposed instruction to the jury regarding Wilkerson's absence and the lack of any inference that should be drawn because of it. Defense counsel did not attempt at trial to introduce any of the jailhouse conversations.

Initially, we note that defendant failed to preserve the above issue for review. Although the issues of Wilkerson's testimony and the introduction of the jailhouse conversations were argued prior to trial, the trial court ultimately did not make a ruling on either issue. To the extent that the trial court's acceptance of Wilkerson's blanket invocation of the Fifth Amendment is a "ruling," defense counsel did not object, and she consented to the court's proposed instruction to the jury. Therefore, defendant failed to object or otherwise preserve this issue for appellate review by means of a contemporaneous objection. See La. Code Crim. P. art. 841(A); La. Code Evid. art. 103(A)(1); **State v. Trahan**, 93-1116 (La. App. 1st Cir. 5/20/94), 637 So.2d 694, 704 ("[t]he grounds for objection must be sufficiently brought to the court's attention to allow it the opportunity to make the proper ruling and prevent or cure any error."). Further, defendant failed to make a proffer of the evidence that he intended to introduce. See La. Code Evid. art. 103(A)(2); **State v. Lynch**, 94-0543 (La. App. 1st Cir. 5/5/95), 655 So.2d 470, 480, writ denied, 95-1441 (La. 11/13/95), 662 So.2d 466.

Moreover, even if defendant were not barred from raising this issue on appeal, we find no error in the district court's ruling. When balancing the tension between a witness's Fifth Amendment privilege against self-incrimination and a defendant's Sixth Amendment right to present a defense, the Louisiana Supreme Court has consistently recognized the witness's right not to incriminate himself. **State v. Haddad**, 99-1272 (La. 2/29/00), 767 So.2d 682, 686, cert. denied, 531 U.S. 1070, 121 S.Ct. 757, 148 L.Ed.2d 660 (2001) (citing **State v. Brown**, 514 So.2d 99 (La. 1987), cert. denied, 486 U.S. 1017, 108 S.Ct. 1754, 100 L.Ed.2d 216 (1988)). A blanket Fifth Amendment privilege is permissible when the witness is

charged with participating in the same crime or crimes for which the defendant is being tried, and when it is apparent that the inquiry will be devoted to subject matter that would raise in the witness reasonable cause to apprehend danger from a direct answer or an explanation as to why one cannot be given. **Brown**, 514 So.2d at 110; **State v. Lewis**, 2001-1084 (La. App. 5th Cir. 3/13/02), 815 So.2d 166, 174-75, writ denied, 2002-1053 (La. 11/15/02), 829 So.2d 424. Under certain circumstances, a defense witness is properly permitted to invoke a blanket Fifth Amendment privilege, even when he is not charged with any crimes arising out of the events forming the basis of the defendant's charged offense. **Lewis**, 815 So.2d at 176.

In the instant case, Wilkerson was not charged with crimes related to the instant offenses, but defense counsel admitted that she sought to ask him about matters that would expose him to criminal liability. In his brief, defendant argues that multiple relevant questions could have been asked of Wilkerson that would not have exposed him to criminal liability. Nonetheless, defense counsel expressly stated at trial that all of her questions would involve this potential exposure. For that reason, we find that the trial court did not err or abuse its discretion in granting Wilkerson a blanket Fifth Amendment privilege where all of defense counsel's anticipated questions risked exposure to criminal liability.

This assignment of error has no merit.

MOTION TO SUPPRESS IDENTIFICATION

In his fifth assignment of error, defendant argues that the trial court erred in denying his motion to suppress the second-lineup identification by Deroche. He contends that the investigating detective used a suggestive procedure by showing Deroche an isolated picture of defendant prior to showing her the six-person lineup.

An identification procedure is suggestive if, during the procedure, the witness's attention is unduly focused on the defendant. **State v. Thibodeaux**, 98-1673 (La. 9/8/99), 750 So.2d 916, 932, cert. denied, 529 U.S. 1112, 120 S.Ct. 1969, 146 L.Ed.2d 800 (2000). Strict identity of physical characteristics among the persons depicted in a photographic array is not required; however, there must be sufficient resemblance to reasonably test the identification. **State v. Johnson**, 2000-0680 (La. App. 1st Cir. 12/22/00), 775 So.2d 670, 677, writ denied, 2002-1368 (La. 5/30/03), 845 So.2d 1066. Even if the identification could be considered to be suggestive, that alone does not indicate a violation of the accused's right to due process. It is the likelihood of misidentification that violates due process, not merely the suggestive identification procedure. **Johnson**, 775 So.2d at 677; **State v. Reed**, 97-0812 (La. App. 1st Cir. 4/8/98), 712 So.2d 572, 576, writ denied, 98-1266 (La. 11/25/98), 729 So.2d 572. The question for the reviewing court is to determine whether the procedure is so conducive to irreparable misidentification that due process was denied. **State v. Bright**, 98-0398 (La. 4/11/00), 776 So.2d 1134, 1145.

At defendant's suppression hearing, the only issue addressed by the trial court was whether Deroche's identification of defendant from the second lineup should be suppressed. Houma Police Department Detective Jarrod Matherne was the sole witness at the suppression hearing. Detective Matherne testified that, with respect to the second lineup, he spoke to Deroche in January 2012 after she had spoken with Stoufflet and found defendant's picture on Facebook. Detective Matherne stated that neither he nor any other law enforcement officer had any involvement in Deroche's viewing of defendant's Facebook photograph. Further, Detective Matherne testified that in Deroche's written statement, she wrote that she was "100 percent sure" of defendant's identity as the perpetrator once she saw his

Facebook page. Finally, he stated that he did not pull a Facebook page and show it to Deroche in order to get her to make an identification.

At trial, Detective Matherne again testified with respect to the lineup procedure he used when Deroche identified defendant as the perpetrator.[5] In this instance, Detective Matherne testified that he "pulled up a Facebook page, the home page, where it has Terrance's picture and I print[ed] that up and showed her and asked her if she was sure that that was the guy." (R. p. 839). Detective Matherne testified that Deroche was positive. It was after that identification, Detective Matherne testified, that he presented Deroche with the second photographic lineup. (R. p. 839). Defendant takes issue with this procedure whereby Detective Matherne apparently showed Deroche a screenshot of defendant's Facebook page immediately prior to the second photographic lineup, characterizing it as unduly suggestive.

The trial court expressly addressed this discrepancy in Detective Matherne's testimony when it ruled on defendant's motion for new trial. In rejecting this argument, the trial court reasoned that no one in law enforcement suggested to Deroche that defendant was the perpetrator. Instead, Deroche was contacted by Stoufflet, who pointed her to defendant's Facebook profile. The trial court also rejected the argument that Detective Matherne's showing Deroche a screenshot of defendant's Facebook page created a substantial likelihood that she would misidentify defendant. Finally, with respect to the apparent change in Detective Matherne's testimony, the trial court noted that it had reviewed the testimony from the motion to suppress hearing and from the trial. The court found that, in context, Detective Matherne's statement was in response to a line of questioning from the state about whether the police had done anything prior to Deroche's arrival at the

[5] In determining whether the ruling on the motion to suppress was correct, we are not limited to the evidence adduced at the hearing on the motion. We may also consider all pertinent evidence given at the trial of the case. **State v. Chopin**, 372 So.2d 1222, 1223, n.2 (La. 1979).

police station to point her to defendant's Facebook page. The trial court did not believe that Detective Matherne thought he was responding to a question about his procedure once Deroche had arrived at the police station.

Considering the record as a whole, we find that the trial court did not err or abuse its discretion in denying defendant's motion to suppress his identification. The overall facts indicate that Deroche unequivocally identified defendant as soon as she saw his Facebook page at the direction of Stoufflet. The following day, Deroche informed the police that she had identified the perpetrator, and she identified defendant in a six-person lineup without hesitation. Detective Matherne's action in showing Deroche a screenshot of defendant's Facebook page prior to the second lineup was not so conducive to irreparable misidentification that due process was denied. Deroche had accessed this same page herself, absent the direction of law enforcement, before Detective Matherne ever presented it to her.

This assignment of error is without merit.

HABITUAL OFFENDER ADJUDICATIONS

In his eighth assignment of error, defendant asserts that the trial court erred in adjudicating defendant a habitual offender. He argues that the **Boykin**[6] colloquy from his predicate conviction was insufficient for that offense to serve as a basis for the enhancement of his instant offenses.

In his brief, defendant argues that his **Boykin** colloquy for his predicate conviction was insufficient to serve as a basis for the enhancement of his instant offenses because it failed to show that defendant executed a waiver of his privilege against self incrimination and of his right to a jury trial. However, defendant's trial counsel did not raise these issues in her motion to quash the habitual offender bill of information. In fact, defense counsel even admitted that she viewed the

[6] **Boykin v. Alabama**, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

transcript of defendant's **Boykin** colloquy as "adequate in that it shows a right to judge or jury, that was stated. A right to confrontation to confront his witnesses, and a right to remain silent. All that is shown on page [five] and [six] of the transcript." Rather, before the trial court, defense counsel raised what she described as "a procedural irregularity," where the predicate-offense trial court failed to state a factual basis for defendant's plea. Defense counsel also argued that defendant was not told that his earlier plea could be used to enhance a later felony conviction. The trial court rejected both of these arguments as grounds to quash the habitual offender bill of information, but defendant has not raised them on appeal.

Thus, defendant raises on appeal two issues that were not presented to the trial court. A defendant is limited on appeal to grounds for objection articulated to the trial court. A new basis for objection cannot be raised for the first time on appeal. See **State v. Coates**, 509 So.2d 438, 440 (La. App. 1st Cir. 1987). Similarly, because defendant did not brief to this Court the issues that he actually raised before the trial court, those issues are not reviewable.

This assignment of error is unreviewable on appeal.

EXCESSIVE SENTENCES

In his sixth and seventh assignments of error, defendant contends that his habitual offender sentences are illegal and excessive and that the trial court should have granted his motion to reconsider sentence.

Prior to addressing defendant's contentions that his sentences are illegal and excessive, we note sentencing errors as part of our review for error under La. Code Crim. P. art. 920(2). In the instant case, defendant's sentences fail to impose the required parole restrictions from the underlying statutes.

Whoever commits the crime of second degree kidnapping shall be imprisoned at hard labor for not less than five nor more than forty years. At least

two years of the sentence imposed shall be without benefit of parole, probation, or suspension of sentence. La. R.S. 14:44.1(C). Whoever commits the crime of armed robbery shall be imprisoned at hard labor for not less than ten years and for not more than ninety-nine years, without benefit of parole, probation, or suspension of sentence. La. R.S. 14:64(B). Upon proof that a defendant is a second-felony habitual offender, if the second felony is such that upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life, then the sentence to imprisonment shall be for a determinate term not less than one-half the longest term and not more than twice the longest term prescribed for a first conviction. See La. R.S. 15:529.1(A)(1). A sentence enhanced under the habitual offender law is computed by referring to the underlying offense. See **State v. Douglas**, 2010-2039 (La. App. 1st Cir. 7/26/11), 72 So.3d 392, 398, writs denied, 2011-2307 (La. 5/25/12), 90 So.3d 406 & 2012-2508 (La. 5/3/13), 115 So.3d 474. Therefore, defendant's enhanced sentences were required to contain the appropriate restrictions of parole from their underlying provisions.

When a criminal statute requires that all or a portion of a sentence imposed for a violation of that statute be served without benefit of probation, parole, or suspension of sentence, each sentence which is imposed under the provisions of that statute shall be deemed to contain the provisions relating to the service of that sentence without benefit of probation, parole, or suspension of sentence. The failure of a sentencing court to specifically state that all or a portion of the sentence is to be served without benefit of probation, parole, or suspension of sentence shall not in any way affect the statutory requirement that all or a portion of the sentence be served without benefit of probation, parole, or suspension of sentence. La. R.S. 15:301.1(A). Therefore, under this self-activating provision, defendant's habitual offender sentence on count one is deemed to be twenty years at hard labor, all

without benefit of probation or suspension of sentence, and the first two years without benefit of parole. See La. R.S. 14:44.1(C) & 15:529.1(A)(1). His habitual offender sentence on count two is deemed to be forty-nine and one-half years at hard labor, all without benefit of parole, probation, or suspension of sentence. See La. R.S. 14:64(B) & 15:529.1(A)(1).

One of defendant's contentions with respect to his habitual offender sentences is that the trial court erred in enhancing both of his underlying convictions. However, the Habitual Offender Law contains no prohibition against enhancing multiple convictions obtained on the same date arising out of a single criminal act or episode. See **State v. Shaw**, 2006-2467 (La. 11/27/07), 969 So.2d 1233, 1245.

Defendant also alleges that his two enhanced sentences are excessive. However, he does not specifically state why these sentences are excessive, other than to state that they are "unduly harsh" as they are pursuant to La. R.S. 15:529.1. Having already found that defendant's habitual offender adjudications were valid, we are not compelled by this simplistic argument to conclude that defendant's instant sentences are excessive.

Moreover, we note that defendant's habitual offender sentences are the minimum possible sentences for each underlying offense. Defendant cites no reason why a downward departure from the presumptively constitutional, mandatory minimum sentences was required in this case. See **State v. Henderson**, 99-1945 (La. App. 1st Cir. 6/23/00), 762 So.2d 747, 760-61, writ denied, 2000-2223 (La. 6/15/01), 793 So.2d 1235. The imposition of the minimum sentences allowed by the applicable statutes in this case is not clearly excessive or cruel punishment.

These assignments of error are without merit.

CONVICTIONS, HABITUAL OFFENDER ADJUDICATIONS, AND SENTENCES AFFIRMED; REMANDED FOR CORRECTION OF THE MINUTES AND COMMITMENT ORDER.