NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2017 KA 0338

STATE OF LOUISIANA

VERSUS

DARRYL ANDREW GRIMMER

Judgment rendered September 21, 2018.

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Appealed from the
21st Judicial District Court
In and for the Parish of Livingston, State of Louisiana
Trial Court No. 32110
Honorable M. Douglas Hughes, Judge

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SCOTT M. PERRILLOUX
DISTRICT ATTORNEY
PATRICIA AMOS
ASSISTANT DISTRICT ATTORNEY
AMITE, LA

ATTORNEYS FOR
STATE OF LOUISIANA

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ATTORNEY FOR
DEFENDANT-APPELLANT
DARRYL GRIMMER

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BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

Welch J. concurs without reasons.

PETTIGREW, J.

The defendant, Darryl Andrew Grimmer, was charged by bill of information with resisting an officer with force or violence, a violation of La. R.S. 14:108.2. He pled not guilty and, following a jury trial, was found guilty as charged. The defendant was sentenced to one year imprisonment at hard labor. The State filed a habitual offender bill of information. The trial court vacated the one-year sentence and resentenced the defendant to twenty-five years imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence.[1] The defendant now appeals, designating two assignments of error. We affirm the conviction, vacate the habitual offender adjudication and enhanced sentence, reinstate the original sentence, and remand to the trial court.

FACTS

The defendant was wanted by the U.S. Marshall Fugitive Task Force. The Task Force enlisted the assistance of the Livingston Parish Sheriff's Office to arrest the defendant at his house. On April 11, 2015, officers surrounded the defendant's house near Amite Baptist Church Road in Denham Springs. Several officers entered the house, including a Livingston Parish Sheriff's Office detective with a K-9 unit. The officers found the defendant in the bathroom inside the bathtub. The defendant had a knife handle in one hand and the knife blade in the other hand. The defendant had cut himself and was bleeding. Several officers struggled with the defendant to remove the knife handle and blade from his hands. When they could not wrestle the blade from the defendant, officers used first, a taser, and second, an expandable baton to strike him on the radial nerves of his arm. These strikes caused the defendant to drop the knife blade. The defendant was detained and treated by Acadian Ambulance personnel. The defendant did not testify at trial.

[1] The defendant has prior convictions for obscenity and two counts of indecent behavior with juveniles.

ASSIGNMENT OF ERROR NO. 1

In his first assignment of error, the defendant argues that the evidence was insufficient to support the conviction. Specifically, the defendant contends the State did not prove that he had the intent to resist an officer with force or violence.

A conviction based on insufficient evidence cannot stand as it violates Due Process. See U.S. Const. amend. XIV; La. Const. art. I, § 2. The standard of review for the sufficiency of the evidence to uphold a conviction is whether, 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. **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). See 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, 1308-1309 (La. 1988). The **Jackson** standard of review, incorporated in Article 821, 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, in order to convict, the fact finder must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. See **State v. Patorno**, 2001-2585 (La. App. 1 Cir. 6/21/02), 822 So.2d 141, 144.

Louisiana Revised Statutes 14:108.2 provides, in pertinent part:

> A. Resisting a police officer with force or violence is any of the following when the offender has reasonable grounds to believe the victim is a police officer who is arresting, detaining, seizing property, serving process, or is otherwise acting in the performance of his official duty:
>
> . . . .
>
> (3) Injuring or attempting to injure a police officer engaged in the performance of his duties as a police officer.
>
> (4) Using or threatening force or violence toward a police officer performing any official duty.

Specific criminal intent is not an element of La. R.S. 14:108.2. **State v. Cretian**, 2017-0777 (La. App. 4 Cir. 1/24/18), 238 So.3d 473, 481. See **State v. Williams**, 2011-427 (La. App. 5 Cir. 2/28/12), 88 So.3d 1102, 1111. Resisting a police officer with force or violence is therefore a general intent crime. See La. R.S. 14:10. In general intent crimes, the criminal intent necessary to sustain a conviction is shown by the very doing of the acts that have been declared criminal. **State v. Holmes**, 388 So.2d 722, 727 (La.

1980). Stated another way, once the defendant voluntarily commits the proscribed act, general criminal intent may be presumed. **State v. Taylor**, 580 So.2d 1102, 1104 (La. App. 4 Cir. 1991).

Detective Carl Childers and Sergeant Nick Locicero, both with the Livingston Parish Sheriff's Office, and who went inside the bathroom to detain the defendant, were wearing sheriff's office apparel that identified them as police officers. Moreover, when they entered the defendant's house and before they entered the bathroom, Detective Childers repeatedly announced the presence of the police officers. The defendant both locked and blocked the bathroom door. That the defendant blocked the door so the officers could not obtain access to him clearly indicated he knew the police officers were there to arrest or detain him. Accordingly, the trial testimony clearly established the defendant knew it was the police officers who were trying to detain him.

The defendant suggests in brief that he could not have formed the general criminal intent to resist a police officer with force or violence because of the emotional state he was in at the time of arrest. In brief, the defendant suggests it was clear he was "near death" from his suicide attempt when the police officers arrived at his house. According to the defendant, he clearly wanted to die and was not in the mental state to know right from wrong or to form criminal intent. His actions toward the police officers, he avers, was in such a manner so that he could die as planned.

Detective Childers testified that he brought a K-9 unit in the house with him. When the dog alerted on the bathroom door, and Detective Childers discovered the door was locked, he announced it was the sheriff's office and that the defendant needed to come out. When the defendant refused to open the door, Detective Childers kicked in the door. The door still blocked their entry because a bathroom drawer had been pulled out to prevent the door from opening all the way. At this point, a ram (a large rubber mallet) was used on the door to create an open space for full entry. The shower curtain was drawn closed. Detective Childers unleashed the K-9, and the dog jumped in the tub. Detective Childers pulled the curtain back, revealing the defendant in the bathtub. The defendant had already cut his throat and both wrists, and there was a large amount of

blood. The defendant was flailing his left hand around with what Detective Childers believed was a sharp weapon. The dog seized the defendant's left arm. The defendant repeatedly made slashing movements with his other closed fist in attempts to resist the police officer. Detective Childers then saw a knife handle in the defendant's secured hand and repetitively told the defendant to drop the weapon, to no avail. Detective Childers then grabbed the defendant's hand and struggled with him to remove the weapon. After further struggle, Detective Childers managed to remove what was only a knife handle from the defendant's hand; he threw the handle in the sink. Apparently, at some point the knife broke, and the defendant still had the blade. The detective testified that it "took everything I had to pry his hand free from the handle of the knife." Even at this point, the defendant was still not complying. Accordingly, Detective Childers and his dog left the bathroom to allow another police officer in to assist.

As he left, Detective Childers informed Sergeant Locicero that the defendant still had a knife blade. Sergeant Locicero then entered the bathroom and put on gloves. These were protective gloves, known as Wiley X Protective Gloves, with a hard portion on the top. The defendant had the knife blade in his closed fist. When Sergeant Locicero grabbed the defendant, the defendant began thrashing about with the knife blade and throwing punches. Sergeant Locicero made clear that the defendant's thrashing was purposeful and that he did not want the police to take him into custody. When he grabbed the defendant's arm at one point, the defendant resisted with force, and the knife blade went across the sergeant's hand. Sergeant Locicero testified that if he had not been wearing his protective gloves, the blade "would have absolutely" cut his hand. Sergeant Locicero also testified that he had had a few cases where an individual had been charged with resisting, but the instant case exceeded them all. When asked if the defendant was trying to injure him, Sergeant Locicero replied, "Absolutely." He reiterated the defendant was swinging a knife blade and throwing punches.

While still struggling, the defendant began throwing blood and feces at Sergeant Locicero's face. The blood and feces got in his eyes, and he had to back up to clear his face. According to Sergeant Locicero, Deputy Thomasine then took the lead and went in.

Making the decision to use other methods, the officers tasered the defendant, but he still did not drop the blade. The officers then used an expandable baton on the defendant, which made him release the blade.

Based on the foregoing, a rational juror could have reasonably concluded the defendant had the general criminal intent to resist a police officer with force or violence. See La. R.S. 14:108.2(A)(3); **State v. Turner**, 51,228 (La. App. 2 Cir. 4/5/17), 217 So.3d 601, 607-610; **State v. Johnson**, 47,632 (La. App. 2 Cir. 1/16/13), 109 So.3d 407, 410-413; **State v. Cartagena**, 2011-774 (La. App. 5 Cir. 3/13/12), 90 So.3d 1170, 1174. Further, actual injury to an officer was not required since the crime is completed when the offender attempts to injure a police officer engaged in the performance of his duties. See **Turner**, 217 So.3d at 608. The defendant's locking himself in his bathroom; hiding in the bathtub, refusing to come out; and throwing punches and slashing a knife blade at police officers, were all actions that were particularly relevant regarding general intent and clearly indicated the defendant knew what he was doing insofar as his plan to not go quietly with the police officers, but rather to resist them with force and/or violence.

The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. Moreover, when there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. The trier of fact's determination of the weight to be given evidence is not subject to appellate review. An appellate court will not reweigh the evidence to overturn a fact finder's determination of guilt. **State v. Taylor**, 97-2261 (La. App. 1 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. The fact that the record contains evidence that conflicts with the testimony accepted by a trier of fact does not render the evidence accepted by the trier of fact insufficient. **State v. Quinn**, 479 So.2d 592, 596 (La. App. 1 Cir. 1985). In the absence of internal contradiction or irreconcilable conflict with the physical evidence, one witness's testimony, if believed by the trier of fact, is sufficient to support a factual conclusion.

State v. Higgins, 2003-1980 (La. 4/1/05), 898 So.2d 1219, 1226, cert. denied, 546 U.S. 883, 126 S.Ct. 182, 163 L.Ed.2d 187 (2005). Further, the testimony of the victim alone is sufficient to prove the elements of the offense. **State v. Orgeron**, 512 So.2d 467, 469 (La. App. 1 Cir. 1987), writ denied, 519 So.2d 113 (La. 1988). See **Cretian**, 238 So.3d at 480-481.

When a case involves circumstantial evidence and the trier of fact reasonably rejects the hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another hypothesis that raises a reasonable doubt. **State v. Moten**, 510 So.2d 55, 61 (La. App. 1 Cir.), writ denied, 514 So.2d 126 (La. 1987). The jury's guilty verdict reflected the reasonable conclusion that based on the defendant's actions, he sought to vigorously resist any and all efforts by the police officers to detain him. In finding the defendant guilty, the jury clearly rejected the defense's theory of innocence that he was unable to form the general criminal intent to resist the police officers. See **Moten**, 510 So.2d at 61.

After a thorough review of the record, we find that the evidence supports the guilty verdict. We are convinced that viewing the evidence in the light most favorable to the State, any rational trier of fact could have found beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, that the defendant was guilty of resisting an officer with force or violence. See **State v. Calloway**, 2007-2306 (La. 1/21/09), 1 So.3d 417, 418 (per curiam).

This assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 2

In his second assignment of error, the defendant argues the trial court erred in allowing defense counsel to withdraw the motion for a sanity commission after the sanity commission was invoked.

The defendant argues in brief that at the time of arrest, he was "trying to kill himself." The question of competency, therefore, should have been addressed by the trial court. As such, the defendant argues the trial court's dismissing the sanity hearing was error. The matter, the defendant avers, should be remanded to determine if a *nunc*

pro tunc hearing on the issue of competency is appropriate if a meaningful inquiry into the defendant's competency may still be had.

Louisiana Code of Criminal Procedure article 642 provides:

> The defendant's mental incapacity to proceed may be raised at any time by the defense, the district attorney, or the court. When the question of the defendant's mental incapacity to proceed is raised, there shall be no further steps in the criminal prosecution, except the institution of prosecution, until the defendant is found to have the mental capacity to proceed.

The proper legal standard for determining whether a criminal defendant is competent to stand trial was set forth, in pertinent part, in **State v. Carmouche**, 2001-0405 (La. 5/14/02), 872 So.2d 1020, 1041-1042, as follows:

> A criminal defendant has a constitutional right not to be tried while legally incompetent. *Medina v. California*, 505 U.S. 437, 449, 112 S.Ct. 2572, 2579, 120 L.Ed.2d 353, 365-66 (1992). ... A state must observe procedures adequate to protect a defendant's right not to be tried while incompetent, and its failure to do so deprives the defendant of his due process right to a fair trial. *Id.* ... In his dissent in *Medina*, Justice Blackmun expressed his opinion that due process does not simply forbid the state to try to convict a person who is incompetent, but it also "demands adequate *anticipatory, protective procedures* to minimize the risk that an incompetent person will be convicted." *Medina*, 505 U.S. at 458, 112 S.Ct. at 2584, 120 L.Ed.2d at 371 (1992) (Blackmun, J. dissenting) (emphasis in original); *see also State v. Martin*, 00-0489, p. 1 (La.9/22/00), 769 So.2d 1168, 1169 (per curiam); *State v. Nomey*, 613 So.2d 157, 161 (La.1993).
>
> Louisiana's statutory scheme for detecting mental incapacity jealously guards a defendant's right to a fair trial. *Nomey*, 613 So.2d at 161 .... In Louisiana, "[m]ental incapacity to proceed exists when, as a result of mental disease or defect, a defendant presently lacks the capacity to understand the proceedings against him or to assist in his defense." La.C.Cr.P. art. 641; *see also Nomey*, 613 So.2d at 161. Our law also imposes a legal presumption that a defendant is sane and competent to proceed. La. R.S. 15:432; *State v. Bridgewater*, 00-1529, p. 6 (La.1/15/02), 823 So.2d 877, 888; *Martin* at p. 1, 769 So.2d at 1169. Accordingly, the defendant has the burden of proving by a preponderance of the evidence his incapacity to stand trial .... A reviewing court owes the trial court's determinations as to the defendant's competency great weight, and the trial court's ruling thereon will not be disturbed on appeal absent a clear abuse of discretion. *Bridgewater* at p. 6, 823 So.2d at 888; *Martin* at p. 1, 769 So.2d at 1169 .... Specifically, the appointment of a sanity commission is not a perfunctory matter, a ministerial duty of the trial court, or a matter of right. *Martin* at p. 1, 769 So.2d at 1169; *State v. Nix*, 327 So.2d 301, 323 (La.1975). It is not guaranteed to every defendant in every case, but is one of those matters committed to the sound discretion of the court. *Martin* at p. 1, 769 So.2d at 1169 .... The Louisiana Code of Criminal Procedure provides that a court *shall* order a mental examination of a defendant and accordingly appoint a sanity commission when it "has reasonable ground to doubt the defendant's mental capacity to proceed." La.C.Cr.P. art. 643. Reasonable ground in this context refers to information which, objectively considered, should reasonably raise a doubt about the defendant's

> competency and alert the court to the possibility that the defendant can neither understand the proceedings, appreciate the proceedings' significance, nor rationally aid his attorney in his defense. *State v. Snyder*, 98-1078, p. 24 (La.4/14/99), 750 So.2d 832, 851 .... In the exercise of its discretion, the court may consider both lay and expert testimony before deciding whether reasonable grounds exist for doubting the defendant's capacity to proceed and ruling on the defendant's motion to appoint a sanity commission. *Martin* at p. 2, 769 So.2d at 1169 .... [Footnote omitted.]

See **State v. Campbell**, 2006-0286 (La. 5/21/08), 983 So.2d 810, 848-849, cert. denied, 555 U.S. 1040, 129 S.Ct. 607, 172 L.Ed.2d 471 (2008).

The record in the instant matter contains no information that indicated the defendant suffered from any mental disease or defect that could have rendered him incompetent to stand trial. The entirety regarding the defendant's competency follows. On November 2, 2015, the defendant was represented by public defender Latoia Williams-Dyson. At a pretrial conference on this date, the following exchange took place:

> By Ms. Williams-Dyson:
> Your Honor, we're going to file a sanity in this case.
>
> The Court:
> Defense is going to file --
>
> By Ms. Williams-Dyson:
> Yes, Your Honor.
>
> The Court:
> A motion for a sanity commission. All right. I'll set it for December 10. And if y'all get it filed in time for them to review him, talk with him, then that will happen.
>
> By Ms. Williams-Dyson:
> Thank you, Your Honor.

The minute entry for this November 2 date states, "Based on the fact Ms. Dyson will be filing papers for a sanity commission, on motion of the [defense]."

Nothing was filed regarding a sanity commission or the competency of the defendant. There was nothing at the November 2 pretrial conference to even suggest the defendant's mental capacity was at issue. It is clear from the above exchange that defense counsel would be filing a motion to request a sanity commission, which would require a hearing for the trial court to determine if it would even appoint a commission.

The minute entry dated January 14, 2016, indicates that the matter appearing on the docket for the sanity hearing was continued to February 11, 2016. At this point, the

defendant's counsel was public defender Thomas Frierson. On March 7, 2016, the defendant had a new public defender, Ryan Brown. At a pretrial hearing on this date, Brown informed the trial court they were going "to withdraw the sanity hearing." The trial court stated: "All right. The sanity is withdrawn."

While there was mention by the defendant's first defense counsels of "filing papers" for a sanity commission, no further action was taken. Two defense counsels later, there was still nothing ever raised regarding the defendant's mental capacity, and, moreover, any motion or request for a hearing to first determine if a sanity commission would even be appointed, was withdrawn. A mental examination of a defendant is required only when there are reasonable grounds to doubt the defendant's mental capacity to proceed. La. Code Crim. P. art. 643; **State ex rel. Seals v. State**, 2000-2738 (La. 10/25/02), 831 So.2d 828, 832.

In **State v. Julien**, 2013-1327 (La. App. 3 Cir. 5/21/14), 139 So.3d 1152, 1165, writ denied, 2014-1406 (La. 5/15/15), 169 So.3d 383, the third circuit found:

> In the current case, we conclude that the trial court did not have reasonable grounds to doubt Defendant's mental capacity to proceed. The caption of the initial motion filed with the trial court referenced the appointment of an expert for Defendant, who is indigent. While a generic request for a mental examination was made in the body of the motion, there was no specific example of the reason the request was made, such as in [*State v. Carney*, 25,518 (La. App. 2 Cir. 10/13/95), 663 So.2d 470, 472] wherein it was stated that the defendant "appeared to be hallucinating, could not assist counsel during interviews, and did not have the mental capacity to understand the proceeding against him or assist in his defense." Because the record supports the finding that Defendant erroneously requested that an expert be appointed to examine his mental capacity, the trial court committed no error in granting Defendant's request to withdraw the sanity commission request.

Similarly herein, defense counsel entered a not guilty plea, and more than five months passed before defense counsel stated she would be filing papers for a sanity commission. Nothing else, however, was ever done regarding this issue and, accordingly, the trial court never ruled on the motion for appointment of a sanity commission. That is, there was never any threshold determination by the trial court that a sanity commission should be appointed. As such, the defendant implicitly waived his right to a sanity

commission. See **State v. Gowan**, 96-0488 (La. 3/29/96), 670 So.2d 1222; **State v. Barnett**, 96-2050 (La. App. 1 Cir. 9/23/97), 700 So.2d 1005, 1014-1015.

This assignment of error is without merit.

SENTENCING ERRORS

This court routinely reviews the record for error under La. Code Crim. P. art. 920(2), whether such a request is made by a defendant or defense counsel. Under Article 920(2), we are limited in our review to errors discoverable by a mere inspection of the pleadings and proceedings without inspection of the evidence. After a careful review of the record in these proceedings, we have found sentencing errors. See **State v. Price**, 2005-2514 (La. App. 1 Cir. 12/28/06), 952 So.2d 112, 123-125 (en banc), writ denied, 2007-0130 (La. 2/22/08), 976 So.2d 1277.

The defendant was sentenced as a habitual offender to twenty-five years imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence, pursuant to La. R.S. 15:529.1(A)(4)(a), which provides for a "determinate term not less than the longest prescribed for a first conviction but in no event less than twenty years and not more than his natural life." Whoever commits the crime of resisting an officer with force or violence shall be fined not more than two thousand dollars or imprisoned with or without hard labor for not less than one year nor more than three years, or both. La. R.S. 14:108.2(C).

A defendant's sentence under the Habitual Offender Law is determined by the sentencing provisions of both the underlying crime and the Habitual Offender Law. **State v. Bruins**, 407 So.2d 685, 687 (La. 1981). There is no parole restriction in the penalty provision for resisting an officer with force or violence; and the applicable provisions of the Habitual Offender Act do not preclude eligibility for parole. See La. R.S. 14:108.2(C), 15:529.1(A)(4)(a) & 15:529.1(G). Accordingly, the defendant's enhanced twenty-five year sentence as a habitual offender should not have contained a parole restriction and is, therefore, illegally harsh.

The correction of this sentence requires the exercise of discretion. Had the trial court realized there was no parole restriction in the enhanced twenty-five-year sentence,

it might have sentenced the defendant to a longer overall term of imprisonment. Therefore, under **State v. Haynes**, 2004-1893 (La. 12/10/04), 889 So.2d 224 (per curiam), we must vacate the defendant's enhanced sentence and remand the matter to the trial court for resentencing. See **State v. LeBlanc**, 2014-1455 (La. App. 1 Cir. 6/5/15), 174 So.3d 1187, 1189-1190.

The trial judge for the defendant's case was Judge Elizabeth P. Wolfe. At the defendant's initial habitual offender hearing on December 1, 2016, after the State introduced into the record, evidence of the defendant's prior convictions, Judge Wolfe adjudicated the defendant a fourth-felony habitual offender. Other matters were taken up on the docket. Judge Wolfe then informed the parties that she was an assistant district attorney on a plea by the defendant in 2000. Accordingly, Judge Wolfe recused herself from any further hearings regarding the defendant's case. Judge Wolfe stated for the record that she was vacating her adjudication of the defendant as a fourth felony habitual offender. By random re-allotment, Judge Douglas Hughes was assigned the defendant's case. Judge Wolfe specifically noted that the case was "realloted for the whole brand new habitual offender petition hearing before Judge Hughes."

At the new habitual offender hearing on March 30, 2017, the defendant stipulated to the prior convictions in the State's habitual offender bill of information. Judge Hughes vacated the previous one-year sentence and resentenced the defendant to twenty-five years imprisonment without benefit of parole, probation, or suspension of sentence.

As noted, the enhanced sentence should not have contained a parole restriction. Further, Judge Hughes failed to properly adjudicate the defendant a habitual offender. Finally, Judge Hughes allowed the defendant to "stipulate" without requiring anything more. The defendant was not informed of his rights,[2] and the State did not introduce anything into evidence regarding the defendant's prior convictions. The evidence the

[2] At the December 1, 2016 habitual offender hearing, Judge Wolfe advised the defendant of his rights but then, as noted, recused herself from the instant hearing and any other further hearings, habitual offender or otherwise.

State introduced in the December 1, 2016 hearing should have been introduced again in the new March 30, 2017 hearing.

If, at any time, either after conviction or sentence, it shall appear that a person convicted of a felony has previously been convicted of a felony, the district attorney of the parish in which the subsequent conviction was had may file an information accusing the person of a previous conviction. See La. R.S. 15:529.1(D)(1)(a). After a habitual offender bill of information is filed, the court in which the subsequent conviction was had shall cause the person to be brought before it and shall inform him of the allegation contained in the information and of his right to be tried as to the truth thereof according to law, and shall also require the offender to say whether the allegations are true. **Id.** The statute further implicitly provides that the court should advise the defendant of his right to remain silent. **State v. Griffin**, 525 So.2d 705, 706 (La. App. 1 Cir. 1988).

Generally, the failure of the trial court to advise a defendant of his right to a hearing and his right to remain silent is not considered reversible error where the State has offered competent evidence of the defendant's status as a habitual offender at a hearing. **State v. Bell**, 2003-217 (La. App. 5 Cir. 5/28/03), 848 So.2d 87, 90. When the defendant's guilt, however, is proven by his own stipulation or admission without having been informed of his right to a hearing or his right to remain silent, by either the trial court or his attorney, there is reversible error. **Id.** 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. **State v. Gonsoulin**, 2003-2473 (La. App. 1 Cir. 6/25/04), 886 So.2d 499, 501 (en banc), writ denied, 2004-1917 (La. 12/10/04), 888 So.2d 835.

In this case, while the defendant stipulated (presumably to his prior convictions and his identity), the State offered no competent evidence of the defendant's status as a habitual offender at the hearing. Accordingly, there was no proof introduced of the defendant's identity as to the alleged predicate offenses. The admission by the defendant without prior advisement of his right to remain silent and in the absence of any documentary proof by the State requires reversal of the habitual offender finding. See

State v. Delaney, 42,990 (La. App. 2 Cir. 2/13/08), 975 So.2d 789, 799-800. Cf. **State v. Cook**, 2011-2223 (La. 3/23/12), 82 So.3d 1239, 1240 (per curiam) (where the Louisiana Supreme Court found that the trial court adjudicated the defendant as a habitual offender on the basis of not only his stipulation, but also the documentary evidence introduced by the State at the hearing).

For the foregoing reasons, the defendant's habitual offender adjudication and enhanced sentence are vacated. The defendant's original sentence of one year at hard labor is reinstated, and the matter is remanded to the trial court for further proceedings.[3]

CONVICTION AFFIRMED; HABITUAL OFFENDER ADJUDICATION AND ENHANCED SENTENCE VACATED, ORIGINAL SENTENCE REINSTATED; REMANDED TO TRIAL COURT.

[3] The defendant is not protected by principles of double jeopardy from being tried again under the Habitual Offender Law. **State v. Young**, 99-1310 (La. App. 1 Cir. 4/17/00), 769 So.2d 12, 14.