STATE OF LOUISIANA	*	**NO. 2000-KA-2117**
VERSUS	*	**COURT OF APPEAL**
AARON JONES	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 408-533, SECTION "B"
HONORABLE PATRICK G. QUINLAN, JUDGE
* * * * * *
JAMES F. MC KAY, III
JUDGE
* * * * * *

(Court composed of Chief Judge William H. Byrnes, III, Judge Miriam G. Waltzer, Judge James F. McKay, III)

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AFFIRMED

STATEMENT OF CASE

On July 26, 1999, defendant, Aaron Jones, was charged by bill of information with unauthorized use of a vehicle in violation of La. R.S. 14:68.4. The defendant entered a plea of not guilty at his arraignment on August 2, 1999. The trial court conducted a preliminary hearing on September 10, 1999 and found probable cause. After a jury trial on December 6, 1999, the defendant was found guilty as charged. The State filed a multiple bill of information on January 26, 2000. A multiple bill and sentencing hearing was held on February 16, 2000. The trial court adjudicated the defendant to be fourth felony offender and sentenced him to life imprisonment at hard labor without benefit of probation, parole or suspension. The trial court denied the defendant's motion to reconsider sentence, and granted the defendant's motion for appeal.

STATEMENT OF FACT

Otto Bourgeois, Jr., testified that in April of 1999, he, his son, Cory, and a helper, James, were working in Kissimee, Florida renovating a motel near the Orange County Convention Center. The three men were sharing an apartment at the Parkway Village Apartments. Their employer provided

housing while they worked in Florida. The defendant, Aaron Jones, moved in with the men when he started working on the same job. Bourgeois knew the defendant before he took the job in Florida. On April 10, 1999, Bourgeois woke up late, and noticed that the alarm clock had not rung. Upon examination of the clock, he saw that the alarm had been switched off. The witness stated that he also noticed his wallet and keys were gone. He woke up Cory and James and told them to check to see if the truck was still in the parking lot. The truck was gone. The witness later found his empty wallet in the bathroom. Bourgeois called his boss and the police department to report the truck stolen. The defendant was also gone. Bourgeois told the police he thought the defendant stole his truck. He did not give the defendant permission to use the truck or provide the defendant with keys to the truck. Bourgeois was still working in Kissimee when the truck was found. The witness identified photographs of the truck and his keys. The witness further testified that there were tools in the truck worth approximately three hundred to four hundred dollars. Some of these tools were gone when the truck was recovered. Bourgeois stated that the night before the defendant left, James was missing some money and accused defendant of taking the money. James did not threaten the defendant. Cory had told the witness that he saw the defendant going through everyone's

property one night. Bourgeois acknowledged that the defendant left his clothes at the apartment.

Cory Bourgeois, Otto's son, stated that he was working with his father as an electrician's helper in April of 1999. Cory testified that his father woke him up on the morning of April 10th and asked him to see if the truck was in the parking lot. On May 22, 1999, New Orleans Police Officers Donald Hayes and Keith Thibeaux were en route to a call for service they observed a two-tone Ford truck disregard a stop sign on Dumaine Street. In addition, the officers noted that the vehicle was being driven erratically at a high rate of speed. The officers pulled the vehicle over and conducted a traffic stop. The officers learned that the license plate on the truck had been stolen. The defendant, who had been driving the vehicle, was placed under arrest. The officers then ran the vehicle identification number and learned that the vehicle had been reported stolen. The defendant was advised of the additional charge of possession of a stolen vehicle. The officers also noted that the defendant had a strong smell of alcohol. A DWI unit was called to the scene.

The defendant, Aaron Jones, testified at trial on his own behalf. The defendant acknowledged prior convictions for armed robbery in 1982, negligent homicide in 1989, and issuing worthless checks in 1995. Jones

testified that he was friends with Bourgeois and had his permission to use the truck. He stated that Bourgeois had allowed him to use the truck to run errands. On the night of April 9, 1999, he heard James and Cory planning something against him. He decided to take the truck and return home to New Orleans, leaving all of his belongings in Florida. He stated he left because he was afraid.

ERRORS PATENT

A review of the record for errors patent reveals none.

DISCUSSION

ASSIGNMENT OF ERROR NUMBER 1

In his first assignment, the defendant argues that the trial court erred when it denied his motion for mistrial when the State introduced evidence of other crimes through the testimony of Otto Bourgeois. During Mr. Bourgeois' examination by the State, he stated that a number of his tools were missing from the truck when the vehicle was returned to him. The defendant objected contending that this statement was evidence of other crimes. The trial court overruled defendant's objection and denied his requests for an admonition and/or mistrial. The defendant also complains of statements made by the police officers concerning his arrests for the stolen license plate and driving while intoxicated. The defendant objected to these

statements but the trial court overruled his objections.

Generally, evidence of other crimes, wrongs or acts is not admissible. However, La. C. E. article 404(B) provides that evidence of other crimes may "be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, of the nature of any such evidence it intends to introduce at trial for such purposes, or when it relates to conduct that constitutes an integral part of the act or transaction that is the subject of the present proceeding." The final phrase replaces the term "res gestae" as provided in former La. R.S. 15:447-448. Evidence of other crimes is admissible when it is related and intertwined with the charged offense to such an extent that the State could not have accurately presented its case without reference to it. State v. Brewington, 601 So. 2d 656 (La. 1992); State v. Parker, 96-1852 (La. App. 4 Cir. 6/18/97), 696 So.2d 599.

In State v. Brewington, the Louisiana Supreme Court commented on the res gestae exception as follows:

> This court has approved the admission of other crimes evidence when it is related and intertwined with the charged offense to such an extent that the state could not have accurately presented its case without reference to it. State v. Boyd, 359 So.2d 931, 942 (La.1978); State v. Clift, 339 So.2d 755, 760 (La.1976). In

> such cases, the purpose served by admission of other crimes evidence is not to depict the defendant as a bad man, but rather to complete the story of the crime on trial by proving its immediate context of happenings near in time and place. McCormick, Law of Evidence 448 (2d ed.1972). The concomitant other crimes do not affect the accused's character, because they were done, if at all, as parts of a whole; therefore, the trier of fact will attribute all of the criminal conduct to the defendant or none of it. And, because of the close connection in time and location, the defendant is unlikely to be unfairly surprised. 1 Wigmore, Evidence Sec. 218 (3d ed.1940). State v. Haarala, 398 So.2d 1093, 1097 (La.1981).

601 So.2d at 656-657.

In the present case, the statements made by Mr. Bourgeois and Officer Donald Haynes were admissible under the res gestae exception. Mr. Bourgeois' statements concerning the missing tools were part of the offense committed by the defendant. The State alleged that the defendant took the vehicle without Bourgeois' permission. Evidence that some of the tools were missing was relevant to show that the defendant knew he did not have permission to take the vehicle and that the defendant had an intent to deprive Bourgeois of the use of his vehicle and the items in the vehicle. Officer Haynes' statements that the defendant was arrested for possession of a stolen license plate and driving while intoxicated are likewise admissible under the res gestae exception. The officer was referring to the events which led up to the defendant's arrest for unauthorized use of the vehicle. Officer Haynes testified that the defendant was stopped because he was driving erratically

and ran a stop sign. Upon stopping the defendant, the officers ran the license plate number and learned that the plate was stolen. The officers also learned at that time that the license plate did not belong to the vehicle the defendant was driving. The officers then ran the VIN of the vehicle and learned that the vehicle had been reported stolen. All of the events occurred within minutes of the defendant's original detention. Thus, the trial court did not commit error when it overruled defendant's objections and denied his request for a mistrial.

This assignment is without merit.

ASSIGNMENT OF ERROR NUMBER 2

The defendant further contends that the trial court erred in adjudicating him to be a fourth felony offender. The defendant argues that the State failed to prove his identity as the person who was convicted of issuing worthless checks. In addition, the defendant suggests that the State failed to prove that his guilty plea to negligent homicide was voluntary.

La. R.S. 15:529.1(D)(1)(b), the Habitual Offender Statute, provides:

> Except as otherwise provided in this Subsection, the district attorney shall have the burden of proof beyond a reasonable doubt on any issue of fact. The presumption of regularity of judgment shall be sufficient to meet the original burden of proof. If the person claims that any conviction or adjudication of delinquency is invalid, he shall file a written response to the information. A copy of the response shall be served upon the prosecutor. A person claiming that a conviction or adjudication of delinquency alleged in the

> information was obtained in violation of the Constitutions of Louisiana or of the United States shall set forth his claim, and the factual basis therefor, with particularity in his response to the information. The person shall have the burden of proof, by a preponderance of the evidence, on any issue of fact raised by the response. Any challenge to a previous conviction or adjudication of delinquency which is not made before sentence is imposed may not thereafter be raised to attack the sentence.

In State v. Cossee, 95-2218 (La. App. 4 Cir. 7/24/96), 678 So.2d 72, this court held that the defendant's failure to file a written response to the multiple bill did not preserve for appellate review the issue of whether the State produced sufficient proof of the prior convictions. See also State v. Short, 96-2780 (La. App. 4 Cir. 11/18/98), 725 So.2d 23. However, an oral objection by the defense is sufficient to preserve the issue for review. State v. Anderson, 97-2587 (La. App. 4 Cir. 11/18/98), 728 So.2d 14.

While defendant did not file a written response to the multiple bill of information, he questioned Officer Terry Bunch on his fingerprint analysis and noted to the trial court the State's failure to provide the guilty plea in the negligent homicide case. While the defendant did not formally object to the adjudication, it is apparent from his questioning and argument to the trial court that he objected to the use of two of the three prior felonies. Thus, we conclude that the defendant preserved this issue for appellate review.

The defendant contends that the State failed to meet its initial burden of proving the voluntariness of the 1989 guilty plea to negligent homicide.

The Louisiana Supreme Court in State v. Shelton, 621 So.2d 769 (La. 1993), reviewed the jurisprudence concerning the burden of proof in habitual offender proceedings and found it proper to assign a burden of proof to a defendant who contests the validity of his guilty plea. In State v. Winfrey, 97-427 (La. App. 5 Cir 10/28/97), 703 So.2d 63, 80, the Fifth Circuit Court of Appeal addressed the procedure for determining the burden of proof in a multiple offender hearing:

> If the defendant denies the multiple offender allegations then the burden is on the State to prove (1) the existence of a prior guilty plea, and (2) that defendant was represented by counsel when the plea was taken. Once the State proves those two things, the burden then shifts to the defendant to produce affirmative evidence showing (1) an infringement of his rights, or (2) a procedural irregularity in the taking of the plea. Only if the defendant meets that burden of proof does the burden shift back to the State to prove the constitutionality of the guilty plea. In doing so, the State must produce either a "perfect" transcript of the Boykin colloquy between the defendant and the judge or any combination of (1) a guilty plea form, (2) a minute entry, or (3) an "imperfect" transcript. If anything less than a "perfect" transcript is presented, the trial court must weigh the evidence submitted by the defendant and the State to determine whether the State met its burden of proof that defendant's prior guilty plea was informed and voluntary.

Prior to State v. Shelton, 621 So.2d 769 (La. 1993), the requirement for proof of Boykinization was a transcript of the plea of guilty or a minute

entry showing an articulated waiver of the three rights. In State v. Bland, 419 So.2d 1227,1232 (La. 1982), the minute entry alone was sufficient to show that the defendant was informed of his rights where the minute entry itemized those rights.

In the case at bar, the State produced documentation evidencing the guilty plea entered by the defendant. The packet included the arrest register, the bill of information, the docket master and the minute entry of the guilty plea. The packet did not include the waiver of rights form signed by the defendant. The defendant contends that the State did not meet its initial burden because it did not produce the waiver of rights form. The defendant is mistaken. The minute entry of the guilty plea reflects that the defendant was represented by counsel at the time he pled guilty. The entry also specifically states that the trial court advised the defendant of his rights, that the defendant understood his rights, and that the defendant chose to waive those rights. The entry also specifically lists that the trial court advised the defendant of his right against self-incrimination, right to confront his accusers, right to counsel, right to a jury or judge trial and right to appeal.

As the State met its initial burden of proving that the existence of a guilty plea and that the defendant was represented by counsel the burden then fell upon the defendant to prove a defect in the plea. The defendant has

not met this burden.

The defendant also argues that the State failed to prove his identity as the person previously convicted of issuing worthless checks. However, the defendant fails to state that he admitted to the three prior convictions, including the negligent homicide conviction, at the trial of this matter. Furthermore, Officer Bunch testified that he compared the defendant's fingerprints with the fingerprints found on the arrest register and concluded that the fingerprints on the arrest register were those of the defendant. The documentation evidencing the conviction for issuing worthless checks was then matched to the arrest register. The documentation, including the bill of information, docket master, guilty plea and minute entry of the guilty plea, bore the same information on the arrest register concerning defendant's date of birth, the date of offense, the offense, the folder number, and the docket number.

In State v. Henry, 96-1280, p. 7 (La. App. 4 Cir. 3/11/98), 709 So.2d 322, 325, writ denied, 99-2642 (La. 3/24/2000), 758 So.2d 143, this court stated:

> To obtain a multiple offender conviction, the State is required to establish both the prior felony conviction and that the defendant is the same person convicted of that felony. State v. Hawthorne, 580 So.2d 1131 (La. App. 4th Cir. 1991). Various methods are available to prove that the defendant on trial is the same person convicted

> of the prior felony offense, such as by testimony of witnesses, by expert opinion as to the fingerprints of the accused when compared with those of the person previously convicted, by photographs contained in a duly authenticated record, or by evidence of identical driver's license number, sex, race and date of birth. State v. Westbrook, 392 So.2d 1043 (La. 1980); State v. Curtis, 338 So.2d 662 (La. 1976); State v. Pitre, 532 So.2d 424 (La. App. 1st Cir. 1988), writ den. 538 So.2d 590 (La. 1989); State v. Savoy, 487 So.2d 485 (La. App. 3rd Cir. 1986). The mere fact that the defendant on trial and the person previously convicted have the same name does not constitute sufficient evidence of identity. Curtis, 338 So. 2d at 664. In State v. Westbrook, 392 So.2d 1043 (1980), the supreme court found that along with defendant's name, his driver's license number, sex, race, and date of birth were sufficient evidence for the State to carry its burden of proving that this defendant was the same person previously convicted of another felony.

See also State v. Davis, 98-0731 (La. App. 4 Cir. 10/20/99), 745 So.2d 136, writ denied, 99-3295 (La. 5/12/2000), 762 So.2d 11, where this court found the State sufficiently proved identity as to the prior convictions through the use of fingerprints on an arrest register, the information from which matched the information contained in the certified copies of the prior conviction.

Thus, under Henry and Davis, the State sufficiently proved defendant's identity as the person who pled guilty to issuing worthless checks. This assignment is without merit.

ASSIGNMENT OF ERROR NUMBER 3

The defendant also suggests that the trial court imposed an unconstitutionally excessive sentence. After being adjudicated a fourth felony offender, the defendant was sentenced to a mandatory sentence of life imprisonment under La. R.S. 15:529.1.

Article 1, Section 20 of the Louisiana Constitution of 1974 provides that "No law shall subject any person ... to cruel, excessive or unusual punishment." A sentence within the statutory limit is constitutionally excessive if it is "grossly out of proportion to the severity of the crime" or is "nothing more than the purposeless imposition of pain and suffering." State v. Caston, 477 So.2d 868 (La.App. 4 Cir.1985). Generally, a reviewing court must determine whether the trial judge adequately complied with the sentencing guidelines set forth in La.C.Cr.P. art. 894.1 and whether the sentence is warranted in light of the particular circumstances of the case. State v. Soco, 441 So.2d 719 (La.1983); State v. Quebedeaux, 424 So.2d 1009 (La.1982). If adequate compliance with Article 894.1 is found, the reviewing court must determine whether the sentence imposed is too severe in light of the particular defendant and the circumstances of his case, keeping in mind that maximum sentences should be reserved for the most egregious violators of the offense so charged. Id.; State v. Guajardo, 428 So.2d 468 (La.1983).

Although a sentence is within the statutory limits, the sentence may still violate a defendant's constitutional right against excessive punishment. State v. Sepulvado, 367 So.2d 762 (La. 1979). A sentence is unconstitutionally excessive if it makes no measurable contribution to acceptable goals of punishment, is nothing more than the purposeless and needless imposition of pain and suffering, and is grossly out of proportion to the severity of the crime. State v. Lobato, 603 So.2d 739 (La. 1992); State v. Telsee, 425 So.2d 1251 (La. 1983).

The minimum sentences imposed on multiple offenders by the Habitual Offender Law are presumed to be constitutional. State v. Johnson, 97-1906 (La. 3/4/98), 709 So.2d 672. The defendant bears the burden of rebutting the presumption that the mandatory minimum sentence is constitutional. State v. Short, 96-2780 (La. App. 4 Cir. 11/18/98), 725 So.2d 23. A court may only depart from the minimum sentence if it finds that there is clear and convincing evidence in the particular case before it that would rebut the presumption of constitutionality. State v. Johnson, 97-1906 at p. 7, 709 So.2d at 676.

In the case at bar, the defendant was found guilty of unauthorized use of a vehicle. He suggests that a life sentence for such an offense is unconstitutionally excessive. However, the defendant was adjudicated a

fourth felony offender under the multiple bill offender statute. The defendant's prior convictions include issuing worthless checks in 1995, armed robbery in 1982 and negligent homicide in 1989. The defendant was initially charged with manslaughter in the 1989 case and subsequently pled guilty to an amended charge of negligent homicide. While the present offense is non-violent, it appears that the defendant has a history of violent offenses on persons. Further, while the defendant was charged and convicted of unauthorized use of a vehicle, the testimony established by the witnesses at trial would have been sufficient to convict the defendant of theft of the automobile. Clearly, the trial court considered these factors in sentencing the defendant. In addition, the defendant has not produced any evidence to suggest that the sentence is unconstitutionally excessive in light of his particular circumstances. Therefore, the life sentence imposed by the trial court is not unconstitutionally excessive.

This assignment is without merit.

CONCLUSION

Accordingly, we affirm the defendant's conviction and sentence.

AFFIRMED