

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2008 KA 1721**

**STATE OF LOUISIANA**

**VERSUS**

**LARRY PAUL TAYLOR**

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**On Appeal from the 22nd Judicial District Court  
Parish of St. Tammany, Louisiana  
Docket No. 401539, Division "I"  
Honorable Reginald T. Badaux, III, Judge Presiding**

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**and**

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**Attorney for  
Defendant-Appellant  
Larry Paul Taylor**

**BEFORE: PARRO, McCLENDON, AND WELCH, JJ.**

**Judgment rendered March 27, 2009**

*Handwritten initials:*  
RKB  
JAE  
JEW

**PARRO, J.**

Defendant, Larry Paul Taylor, was charged by bill of information with one count of aggravated battery, a violation of LSA-R.S. 14:34. Defendant pled not guilty and was tried before a jury. The jury determined defendant was guilty as charged. The state then instituted habitual offender proceedings against defendant seeking to have him adjudicated a second felony habitual offender. Defendant admitted the allegations of the habitual offender bill read to him, and was subsequently sentenced as a second felony habitual offender to six years of imprisonment at hard labor without benefit of probation or suspension of sentence.

Defendant appeals, citing the following two assignments of error:

1. The failure of the prosecutor to file the multiple offender bill of information until the day after defendant was sentenced as a multiple offender requires the adjudication and sentencing to be vacated.
2. The sentence imposed is illegally excessive.

**FACTS**

Lisa Sharp was married to defendant and they resided in a trailer park located off U.S. Highway 190 in Covington. On June 23, 2005, Sharp decided to leave defendant and move back home with her mother. One of Sharp's neighbors, Priscilla Finn, was assisting Sharp with her move. Priscilla's husband, Justin Cleland, had declined to assist his wife and Sharp with the move because he was hesitant to get involved in the situation. During the move, Sharp sold some furniture to Libby Finn, Priscilla's mother. Priscilla used her husband's truck to move the furniture to Libby's residence.

Out of concern for his wife and his truck, Cleland was observing the women load things into his truck. As he sat outside, defendant approached, holding a beer bottle and cursing at Sharp. Cleland was able to calm defendant down to the point that defendant actually thanked him for helping his wife. Defendant walked away; however within a few minutes he returned in what Priscilla described as a "rage."

Cleland observed defendant wielding a baseball bat and using it to beat on Sharp's vehicle. When Cleland started yelling at defendant to stop, defendant moved toward Cleland. According to Cleland, he picked up another baseball bat in order to

defend himself. As Cleland tried to point out the futility of a physical confrontation, defendant swung the bat at him. Cleland testified that the next thing he knew, he was on the ground being struck by the defendant with the bat.

Defendant was pulled away by some of his friends and fled the area. After the incident was reported to the police, Deputy Daniel Ard of the St. Tammany Parish Sheriff's Office responded to the scene. Defendant was eventually located in a nearby wooded area by a canine unit while trying to conceal himself underneath a fallen tree.

Cleland sustained a shattered elbow requiring multiple surgeries, and was unable to work for six months following the incident. Cleland denied he ever wanted to fight with defendant.

### **FAILURE TO FILE MULTIPLE OFFENDER BILL**

In defendant's first assignment of error, he contends his habitual offender adjudication should be vacated because the bill of information alleging habitual offender status was not filed until after he was adjudicated and sentenced as a habitual offender.

The record indicates that following the jury's verdict on March 6, 2008, the state provided oral notice that it intended to file a multiple offender bill against defendant based on his 2001 aggravated battery conviction.<sup>1</sup> At the March 19, 2008 sentencing hearing, the transcript reflects the trial court read the contents of the state's multiple offender bill of information to defendant and then advised him of his rights on the multiple offender bill. The March 19, 2008 minute entry reflects that the state filed a multiple offender bill on that date. Defendant, against the advice of his counsel, who was present at the hearing, admitted to the allegations of the bill. The sentencing hearing was continued until April 29, 2008.

At the April 29, 2008 hearing, the trial court noted that the multiple offender bill was not contained in the record, and the prosecutor stated that she would file another multiple offender bill into the record.<sup>2</sup> Defense counsel admitted that he had previously

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<sup>1</sup> Defendant was previously convicted of aggravated battery on August 15, 2001, in docket number 01-CR9-081663 of the Twenty-Second Judicial District Court for Washington Parish.

<sup>2</sup> According to the record, the state filed another (duplicate) multiple offender bill into the record on the following day, April 30, 2008.

been provided with a copy of the multiple offender bill, and no objection was lodged to the lack of a multiple offender bill being in the record. The April 29, 2008 minute entry also reflects the state had previously filed a multiple offender bill on March 19, 2008. The trial court then adjudicated defendant as a second felony habitual offender and sentenced him to a term of six years of imprisonment at hard labor, without benefit of probation or suspension of sentence.

Defendant asserts that the state's filing of the multiple offender bill into the record after he was adjudicated and sentenced as a second felony habitual offender requires this court to vacate his adjudication and sentence. We disagree. In considering the facts and circumstances of the present case, we note there is evidence in the record that the state timely filed the habitual offender bill. First, we note that following the jury verdict, the prosecutor provided oral notice that defendant's 2001 aggravated battery conviction would be used to establish he was a second felony habitual offender. The March 19, 2008 minute entry reflects that the state filed the habitual offender bill. At the March 19, 2008 sentencing hearing, the transcript reflects that the trial court read the multiple offender bill of information to defendant. Defendant, against the advice of his counsel who was present, admitted to the allegations of the multiple offender bill. At the continuation of the sentencing hearing on April 29, 2008, when the trial court noted the absence of the multiple offender bill in the record, defense counsel acknowledged that he had previously been provided with a copy of the multiple offender bill and did not object when the prosecutor advised the court that she would file another bill into the record. Moreover, the April 29, 2008 minute entry references the previously filed habitual offender bill of information on March 19, 2008.

Considering the foregoing, we cannot say defendant did not have notice that the state was seeking to enhance his present aggravated battery conviction by seeking to have him adjudicated as a second felony habitual offender based on defendant's 2001 aggravated battery conviction. Defendant waived his right to challenge his previous conviction by admitting the allegations of the multiple offender bill that were read to

him by the trial judge. Defendant has failed to offer contradictory proof that the minute entries indicating the habitual offender bill was filed on March 19, 2008, are incorrect.

This assignment of error is without merit.

#### **EXCESSIVE SENTENCE**

In his second assignment of error, defendant contends that his sentence is illegally excessive on the sole basis that the trial court had no authority to prohibit defendant from being eligible for parole. Defendant notes the penalty provision for aggravated battery only provides for a fine of not more than five thousand dollars, and imprisonment with or without hard labor for not more than ten years, or both. LSA-R.S. 14:34. Defendant further points to a provision of the Habitual Offender Law in LSA-R.S. 15:529.1(G), which provides, "Any sentence imposed under the provisions of this Section shall be without benefit of probation or suspension of sentence."

Our review of the sentencing transcript indicates that the trial court sentenced defendant as a second felony habitual offender to a term of six years of imprisonment at hard labor without benefit of probation or suspension of sentence. The sentencing transcript fails to reflect the trial court improperly denied parole eligibility for this sentence. Defendant's argument that the trial court improperly denied him parole is based on the April 29, 2008 minute entry which reflects the trial court sentenced defendant to a term of six years without benefit of probation, parole, or suspension of sentence. However, when there is a discrepancy between the minute entry and the transcript, the transcript shall prevail. **State v. Lynch**, 441 So.2d 732, 734 (La. 1983). Accordingly, we order the trial court to correct the minute entry to reflect the terms of the sentence as provided for by the sentencing transcript.

This assignment of error is without merit.

**CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE  
AFFIRMED; REMANDED WITH ORDER.**