

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 KA 0583

STATE OF LOUISIANA

VERSUS

RECO LANDS

Judgment Rendered: November 9, 2011

**Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case No. 09-09-204**

The Honorable Donald R. Johnson, Judge Presiding

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**Defendant/Appellant
*Pro Se***

BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

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GAIDRY, J.

The defendant, Reco Lands, was charged by bill of information (as amended) with first degree robbery on count one, and aggravated flight from a police officer on count two, violations of La. R.S. 14:64.1 and La. R.S. 14:108.1(C). The defendant entered a plea of not guilty. The defendant waived his right to a jury trial and after a bench trial, he was found guilty as charged on both counts. The State filed a habitual offender bill of information to enhance sentencing on count one, and after a hearing, the defendant was adjudicated a third-felony habitual offender. On the enhanced conviction, count one, the trial court sentenced the defendant to twenty-six and six-tenths (26.6) years imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence. On count two, the trial court sentenced the defendant to two years imprisonment at hard labor, to be served concurrently with the sentence on count one. The defendant now appeals, arguing that the trial court erred in imposing an unconstitutionally excessive sentence on count one. The defendant also filed a pro se brief reassigning the argument in the counseled brief and raising the following three additional issues: the constitutionality of La. R.S. 14:108.1(C), the sufficiency of the evidence, and the propriety of the trial court's ruling on his mental competence to stand trial. For the following reasons, we affirm the convictions, habitual offender adjudication, and sentences.

STATEMENT OF FACTS

Near 11:30 p.m., on July 26, 2009, at Albertsons Grocery Store on Government Street in Baton Rouge, Monica King (the victim) observed two males standing in the store parking lot. After she placed her bags of groceries and purse in her vehicle, one of the individuals, the defendant,

approached the victim and shoved what she believed to be a gun covered by a gym bag into her side and stated, "Bitch, you're gonna give me anything I want." The victim gave the defendant her keys and stepped back. The defendant drove out of the parking lot in the victim's car. After reentering the store, the victim reported the incident and the police were contacted.

Approximately twenty minutes later, the police spotted the victim's vehicle on Florida Boulevard and instituted a pursuit. The police activated lights and sirens as the vehicle reached a dead end on 40th Street. The police officers pursued the defendant for approximately two blocks as he struck a gas meter and two houses and lost control of the vehicle. The defendant exited the vehicle and fled, and an on-foot pursuit ensued. With canine assistance, the defendant was ultimately apprehended.

COUNSELED ASSIGNMENT OF ERROR¹

In the defendant's sole counseled assignment of error, he contends that upon enhancement, the trial court imposed an unconstitutionally excessive sentence on count one. The defendant notes that he is twenty-four years old and that his previous convictions were based on non-violent offenses. The defendant further notes that he suffers from mental incapacities and drug addictions. He argues that twenty-six and six-tenths years imprisonment, although the minimum statutory sentence, is excessive in this case.

The Eighth Amendment to the United States Constitution and Article I, Section 20 of the Louisiana Constitution prohibit the imposition of excessive or cruel punishment. Generally, a sentence is constitutionally excessive if it makes no measurable contribution to acceptable goals of punishment, is nothing more than the purposeless imposition of pain and

¹ The constitutionality of the sentence is also listed as an assignment of error in the defendant's pro se brief. Noting that the issue has been argued in the counseled brief, the pro se brief does not present any additional argument on this issue.

suffering, and is grossly out of proportion to the severity of the crime. *State v. Johnson*, 97-1906 (La. 3/4/98), 709 So.2d 672, 676 (citing *State v. Dorthey*, 623 So.2d 1276, 1280-81 (La. 1993)). A sentence is grossly disproportionate if, when the crime and punishment are considered in light of the harm done to society, it shocks the sense of justice. *State v. Lobato*, 603 So.2d 739, 751 (La. 1992). Louisiana Code of Criminal Procedure article 894.1(C) requires the trial court to state for the record the considerations taken into account and the factual basis for imposing sentence. Where the record clearly demonstrates an adequate factual basis for the sentence imposed, a remand for compliance with article 894.1 is unnecessary. *State v. Robertson*, 94-1379 (La. App. 1st Cir. 10/6/95), 671 So.2d 436, 439, writ denied, 95-2654 (La. 2/9/96), 667 So.2d 527.

The Legislature has sole authority under the Louisiana Constitution to define conduct as criminal and provide penalties for such conduct. La. Const. art. III, § 1; *Johnson*, 709 So.2d at 675 (citing *Dorthey*, 623 So.2d at 1280 & *State v. Taylor*, 479 So.2d 339, 341 (La. 1985)). The Habitual Offender Law has been held constitutional, and, thus, the minimum sentences it imposes upon habitual offenders are also presumed to be constitutional. *Johnson*, 709 So.2d at 675. Accordingly, a sentencing judge must always start with the presumption that a mandatory minimum sentence under the Habitual Offender Law is constitutional. The defendant bears the burden of rebutting the presumption that the mandatory minimum sentence is constitutional. Thus, while the Legislature has the constitutional authority to determine the appropriate penalty for a crime, the judiciary has the authority, in the rare case, to declare a sentence within these statutory limits excessive under the facts of a particular case. *Johnson*, 709 So.2d at 676.

In *Johnson*, the court held that in order to rebut the presumption that the mandatory minimum sentence under the Habitual Offender Law is constitutional, the defendant must clearly and convincingly show that:

[he] is exceptional, which in this context means that because of unusual circumstances this defendant is a victim of the [L]egislature's failure to assign sentences that are meaningfully tailored to the culpability of the offender, the gravity of the offense, and the circumstances of the case. (Citation omitted).

Johnson, 709 So.2d at 676. The trial judge must consider that the goals of the Habitual Offender Law are to deter and punish recidivism. If clear and convincing evidence justifies a downward departure from that set forth in the Habitual Offender Law, the judge is required to sentence the defendant to the longest sentence that is not constitutionally excessive.

Although the classification of a defendant's instant or prior offenses as non-violent should not be discounted, this fact has already been taken into account under the Habitual Offender Law for third and fourth offenders. Louisiana Revised Statute 15:529.1 provides that persons adjudicated as third or fourth offenders may receive a longer sentence if their instant or prior offense is defined as a "crime of violence" under La. R.S. 14:2(B). Thus the Legislature, with its power to define crimes and punishments, has already made a distinction in sentences between those who commit crimes of violence and those who do not. Accordingly, as noted by the Louisiana Supreme Court in *Johnson*, a defendant's record of non-violent offenses cannot be the sole reason, or even the major reason, for declaring a mandatory minimum sentence excessive. *Johnson*, 709 So.2d at 676.

Herein, the defendant's predicate convictions include an August 25, 2004 guilty plea to illegal possession of stolen things having a value of five hundred dollars or more and an October 4, 2006 guilty plea to unauthorized use of a motor vehicle. Based on those predicate convictions and the

underlying conviction of first degree robbery, the Habitual Offender Law mandates the imposition of a term of imprisonment of not less than twenty-six and six-tenths (26.6) years and not more than eighty (80) years, without the benefit of parole, probation, or suspension of sentence. See La. R.S. 15:529.1(A)(1)(b)(i) (prior to 2010 amendments), La. R.S. 14:64.1(B), La. R.S. 14:68.4(B) & La. R.S. 14:69(B). Thus, the trial court imposed the mandatory minimum term of imprisonment.

Prior to sentencing, the trial court heard testimony by Holly Bonaventure, the defendant's rehabilitation sponsor. Bonaventure, in part, testified that the defendant was a non-disruptive, hard worker whom she supported and trusted in her home and with her children. She noted that the defendant attempted to commit suicide due to depression prior to his incarceration. The defendant also addressed the court prior to sentencing. He noted that he was raised in a single-parent household with few resources. He further noted his aspirations, athletic and trade achievements, and the fact that he financially supported his mother by paying her bills, though acknowledging that he did not do the same for his child's mother. The defendant stated that many of his actions were his method of survival and that he has not had the opportunity to redeem himself.

The trial court also reviewed the defendant's competency evaluations, stating that they were highly relevant. The trial court noted that the defendant discontinued his education in the eighth or ninth grade and began using drugs. The trial court further noted that while the defendant is a slow learner, there was no concrete evidence of mental retardation. In considering the defendant's pattern of behavior, the trial court concluded that the maximum sentence allowed under the habitual offender law would be excessive in this case. The trial court considered the facts of the instant

offense, including the effect on the victim. In imposing the minimum mandatory sentence, the trial court noted that the defendant met the requisite faculty for competency despite his cognitive limitations. We note that the instant crime is a crime of violence. We further note that even maximum or near-maximum sentences imposed on persons with similar diminished mental capacities have been upheld. *State v. King*, 41,084 (La. App. 2d Cir. 6/30/06), 935 So.2d 815, writ denied, 2006-1803 (La. 2/16/07), 949 So.2d 411. Based on the record before us, we find that the defendant has failed to make a showing of exceptional circumstances to justify a downward departure from the minimum sentence mandated by the Habitual Offender Law. This assignment of error is without merit.

PRO SE ASSIGNMENT OF ERROR NUMBER TWO

Pro se assignment of error number two challenges the constitutionality of La. R.S. 14:108.1(C), specifically arguing that the irrefutable presumptions established by the statute constitute a violation of due process. The defendant argues that two of the acts listed in the statute create irrefutable presumptions of danger to human life even where no human life was actually endangered, an essential element of the offense. The defendant contends that the language in the statute creates impermissible mandatory presumptions that unconstitutionally restrict the trier of fact and fail to place the burden of proof on the State to prove each element of the offense beyond a reasonable doubt.

At the outset we note that the defendant did not file a motion to quash on the grounds that La. R.S. 14:108.1 was unconstitutional. Accordingly, no hearing was held nor evidence adduced. La. Code Crim. P. arts. 532(1), 535-536. Nor did the defendant file a motion in arrest of judgment, attacking the constitutionality of this statute. La. Code Crim. P. art. 859(2).

This constitutional attack is presented for the first time in the defendant's pro se brief on appeal. It is well-settled that a constitutional challenge may not be considered by an appellate court unless it was properly pleaded and raised in the trial court below. *State v. Hatton*, 2007-2377 (La. 7/1/08), 985 So.2d 709, 718. Moreover, based on the following analysis, the defendant's constitutional challenge is meritless.

Due process requires the prosecution to prove each element of a crime beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1072-73, 25 L.Ed.2d 368 (1970). In criminal cases, a distinction has been made between "permissive presumptions" and "mandatory presumptions." A permissive presumption is one that allows, but does not require, the finder of fact to infer the fact that is an element of the crime from the basic fact that has been proven. A permissive presumption will generally be upheld unless there is no rational way that the finder of fact could make the connection permitted by the inference. This is because the finder of the fact is free to accept or reject the inference, which does not shift the burden of proof. *State v. Lindsey*, 491 So.2d 371, 374 (La. 1986).

Mandatory presumptions are of two types: conclusive presumptions, which remove the presumed element from the case altogether if the State proves the basic predicate facts; and mandatory rebuttable presumptions, which relieve the State of the burden of persuasion on the presumed element unless the defendant persuades the finder of fact not to make such a finding. A mandatory presumption is examined on its face to determine the extent to which the basic and elemental facts coincide. The Louisiana Supreme Court has adopted the "beyond a reasonable doubt" test for judging the validity of mandatory presumptions. To sustain the use of a mandatory presumption to prove a crime or element of a crime, the prosecution must demonstrate that

the presumed fact must, beyond a reasonable doubt, flow from the proven fact on which it is made to depend. *State v. Caruso*, 98-1415 (La. 3/2/99), 733 So.2d 1169, 1171; *Lindsey*, 491 So.2d at 374.

Louisiana Revised Statutes 14:108.1, in pertinent part, provides (as in effect at the time of the offense):

C. Aggravated flight from an officer is the intentional refusal of a driver to bring a vehicle to a stop, under circumstances wherein human life is endangered, knowing that he has been given a visual and audible signal to stop by a police officer when the officer has reasonable grounds to believe that the driver has committed an offense. The signal shall be given by an emergency light and a siren on a vehicle marked as a police vehicle.

D. Circumstances wherein human life is endangered shall be any situation where the operator of the fleeing vehicle commits at least two of the following acts:

- (1) Leaves the roadway or forces another vehicle to leave the roadway.
- (2) Collides with another vehicle.
- (3) Exceeds the posted speed limit by at least twenty-five miles per hour.
- (4) Travels against the flow of traffic.
- (5) Fails to obey a stop sign or a yield sign.
- (6) Fails to obey a traffic control signal device.

Statutes are presumed valid and their constitutionality should be upheld whenever possible. Louisiana criminal statutes shall be given a genuine construction, according to the fair import of their words, taken in their usual sense, in connection with the context, and with reference to the purpose of the provision. La. R.S. 14:3; *Caruso*, 733 So.2d at 1170.

The defendant cites *Lindsey* in his pro se brief. Although the defendant relies on *Lindsey*, the Louisiana Supreme Court therein limited its holding to the statute in question in that case. The Court did not hold that

mandatory presumptions in general would not pass constitutional scrutiny. In *Lindsey*, the Court noted that it agreed with the defendant in that if La. R.S. 14:71(A)(2) establishes a mandatory presumption, then it would fail constitutional scrutiny. In that regard, the Court specifically noted there “are too many other reasonable explanations for failure to pay a dishonored check within ten days of the time notice of dishonor is mailed.” *Lindsey*, 491 So.2d at 374. In this case, we are assessing a completely different statute. The mandatory conclusive presumptions established in La. R.S. 14:108.1 flow, beyond a reasonable doubt, from the proven fact on which they are made to depend. See *State v. Daranda*, 388 So.2d 759, 762 (La. 1980); *State v. Delatte*, 506 So.2d 898, 908 (La. App. 1st Cir.), writ denied, 511 So.2d 769 (La. 1987). No other reasonable conclusion which would negate the endangerment of human life can flow from proof of the evidentiary facts listed in La. R.S. 14:108.1(D). Thus, we find that the mandatory presumptions in La. R.S. 14:108.1 do not relieve the prosecution of its duty to prove each element of a crime beyond a reasonable doubt. Pro se assignment of error number two lacks merit.

PRO SE ASSIGNMENT OF ERROR NUMBER THREE

In the third pro se assignment of error, the defendant argues that the evidence is insufficient to support the conviction. He specifically argues that, based on the evidence, he should have been charged with simple robbery instead of first degree robbery. The defendant further argues that the identification made by the victim was suggestive, unreliable, and insufficient, and should have been suppressed. The defendant contends that the victim failed to positively indicate any of his identifiable features.

The standard of review for the sufficiency of the evidence to uphold a conviction is whether or not, 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, 1308-09 (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 the fact finder must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. See *State v. Patorno*, 2001-2585 (La. App. 1st Cir. 6/21/02), 822 So.2d 141, 144. Furthermore, 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 credibilities of the witnesses, and this court will generally not second-guess those determinations. See *State v. Hughes*, 2005-0992 (La. 11/29/06), 943 So.2d 1047, 1051. 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. See *State v. Moten*, 510 So.2d 55, 61 (La. App. 1st Cir.), writ denied, 514 So.2d 126 (La. 1987).

First degree robbery is the taking of anything of value belonging to another from the person of another, or that is in the immediate control of another, by use of force or intimidation, when the offender leads the victim to reasonably believe he is armed with a dangerous weapon. La. R.S.

14:64.1(A). It is not necessary that a defendant actually be armed with a dangerous weapon to be convicted of first degree robbery. Rather, direct testimony by the victim that she believed the defendant was armed, or circumstantial inferences arising from the victim's immediate surrender of her personal possessions in response to the defendant's threats, may support a conviction for first degree robbery. See *State v. Gaines*, 633 So.2d 293, 300 (La. App. 1st Cir. 1993), writ denied, 93-3164 (La. 3/11/94), 634 So.2d 839. Aggravated flight from an officer is the intentional refusal of a driver to bring a vehicle to a stop under circumstances wherein human life is endangered, knowing that he has been given a visual and audible signal to stop by a police officer when the officer has reasonable grounds to believe that the driver or operator has committed an offense. The signal shall be given by an emergency light and a siren on a vehicle marked as a police vehicle. La. R.S. 14:108.1(C).

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. In determining the likelihood of misidentification of a suspect, a court must look to the "totality of the circumstances" as informed by the five factors set forth by the United States Supreme Court in *Neil v. Biggers*, 409 U.S. 188, 199-200, 93 S.Ct. 375, 382, 34 L.Ed.2d 401 (1972). These factors include "the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of the witness' prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation." Any corrupting effect of a suggestive identification is to be weighed against these factors. *Manson v. Brathwaite*, 432 U.S. 98, 98-99, 97 S.Ct. 2243, 2345, 53 L.Ed.2d

140 (1977). It is the likelihood of misidentification that violates due process, not suggestibility by itself, and thus the mere fact that an identification is unduly suggestive is not sufficient to establish its inadmissibility. *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. One-on-one identifications are not favored by the law, but they are nevertheless permissible when justified by the overall circumstances. *State v. Dunbar*, 356 So.2d 956, 962 (La. 1978).

The victim, Monica King, testified that when the perpetrator approached her he had a black gym bag on his arm and put it up to her body before making his demand. She added, "I thought it was a gun. I mean in my mind that's what it was. That's what he was implying that it was." The victim reported to the police that the perpetrator had a gun. King testified that she got a good look at the robber's face. An hour or less after the offense, the police contacted King for an identification.

Officer James Moncrief responded to the scene after the victim reported the offense. The victim's vehicle was described as a white Audi with a peanut butter colored top. Officer Nicholas Collins spotted the victim's vehicle about thirty minutes after the BOLO was issued. Officer Collins immediately requested back-up. When the assistance arrived and as they approached a dead end, Officer Collins stopped his unit, stood in its doorway, and used his loudspeaker to instruct the driver to stop the vehicle, throw the keys outside, and hold his hands up in view. At that point, the defendant put the vehicle in reverse and drove into a grassy area between Officer Collins's unit and the roadway, forcing Officer Collins to close his door and jump out of the way to avoid injury. When the driver backed into a private driveway, Officer Collins got a good look at him. During the trial,

Officer Collins identified the defendant in court as the perpetrator. After the defendant hit two houses, Officer Collins observed as the defendant stopped, exited the car, and ran behind a house, and Officer Collins then pursued him on foot. Corporal David Kennedy also participated in the chase, was present when the defendant was apprehended, and during the trial was able to identify the defendant as the driver. Corporal Kennedy testified that when they got in front of the vehicle within ten feet, the defendant put the vehicle in drive and drove toward the officers, who had to jump out of the way. Once the defendant was apprehended, he was brought back to the scene and the victim positively identified him. During the trial, the victim also identified the defendant in court as the perpetrator without doubt.

After a thorough review of the record, we find that the evidence negates any reasonable probability of misidentification and supports the judge's guilty verdict. The defendant clearly led the victim to reasonably believe he was armed with a dangerous weapon, and three individuals identified the defendant with complete certainty. Further, even without the use of the statutory presumptions, based on the testimony, it is clear that the defendant refused to bring the vehicle to a stop under circumstances wherein human life was endangered, knowing that he had been given a visual and audible signal to stop by a police officer when the officer had reasonable grounds to believe that he committed the robbery offense. Viewing the evidence in the light most favorable to the State, we are convinced that 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 the first degree robbery of King and aggravated flight from a police officer. See *State v. Calloway*, 2007–2306 (La. 1/21/09), 1 So.3d

417, 422-23 (per curiam). Pro se assignment of error number three is without merit.

PRO SE ASSIGNMENT OF ERROR NUMBER FOUR

In pro se assignment of error number four, the defendant contends that he has a history of mental instability or retardation. The defendant contends that the examining physicians could not be certain of their results without further clinical evaluation and argues that the trial court erred in failing to order additional testing upon the defendant's request. The defendant contends that one of the physicians noted that he seemed to have confusion and memory loss and the competency evaluation was shortened when the defendant began nodding and asking for his mother.

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 issue of a defendant's mental capacity to proceed shall be determined by the court in a contradictory hearing. La. Code Crim. P. art. 647.

It has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subject to trial. The failure to observe procedures adequate to protect a defendant's right not to be tried or convicted while incompetent to stand trial deprives him of his due process rights as set forth in Articles 642 and 647. Our statutory scheme for detecting mental incapacity jealously guards a defendant's right to a fair trial. See State v. Nomey, 613 So.2d 157, 159-61 (La. 1993). See also State v. Carr, 629

So.2d 378 (La. 1993) (per curiam); *State v. Harris*, 406 So.2d 128, 129-30 (La. 1981); *State v. Mathews*, 2000-2115 (La. App. 1st Cir. 9/28/01), 809 So.2d 1002, 1014-16, writs denied, 2001-2873 (La. 9/13/02), 824 So.2d 1191, 2001-2907 (La. 10/14/02), 827 So.2d 412.

Louisiana law also imposes a legal presumption that a defendant is sane and competent to proceed. La. R.S. 15:432; *State v. Carmouche*, 2001-0405 (La. 5/14/02), 872 So.2d 1020, 1041. Accordingly, the defendant has the burden of proving by a preponderance of the evidence his incapacity to stand trial. *Carmouche*, 872 So.2d at 1041. In evaluating the legal capacity of the criminally accused, the Louisiana Supreme Court has stated that the considerations in determining whether the defendant is fully aware of the nature of the proceedings include: whether he understands the nature of the charge and can appreciate its seriousness; whether he understands what defenses are available; whether he can distinguish a guilty plea from a not guilty plea and understand the consequences of each; whether he has an awareness of his legal rights; and whether he understands the range of possible verdicts and the consequences of conviction. *State v. Bennett*, 345 So.2d 1129, 1138 (La. 1977) (on rehearing). The supreme court has stated that the facts to consider in determining the defendant's ability to assist in his defense include: whether he is able to recall and relate facts pertaining to his actions and whereabouts at certain times; whether he is able to assist counsel in locating and examining relevant witnesses; whether he is able to maintain a consistent defense; whether he is able to listen to the testimony of witnesses and inform his lawyer of any distortions or misstatements; whether he has the ability to make simple decisions in response to well-explained alternatives; whether, if necessary to defense strategy, he is capable of testifying in his own defense; and to what extent, if any, his

mental condition is apt to deteriorate under the stress of trial. *State v. Campbell*, 2006-0286 (La. 5/21/08), 983 So.2d 810, 850, cert. denied, ___ U.S. ___, 129 S.Ct. 607, 172 L.Ed.2d 471 (2008).

While a thorough mental examination is necessary, the final determination of a defendant's competency to stand trial must rest in a judicial authority; it is a legal, rather than a medical, issue. *State v. Harris*, 518 So.2d 590, 597 (La. App. 1st Cir. 1987), writ denied, 521 So.2d 1184 (La. 1988). The trial judge should not rely so heavily upon the medical testimony that he commits the ultimate decision of competency to the physician. *Harris*, 518 So.2d at 597. The trial court's ruling will not be disturbed on appeal absent a clear abuse of discretion. *Campbell*, 983 So.2d at 849.

Dr. Terry LeBourgeois and Dr. David Hale were appointed to the sanity commission and evaluated the defendant for competence to stand trial. At the sanity hearing the defense and the State stipulated to the physicians' reports. Dr. LeBourgeois, in part, relied on a brief interview and observation of the defendant, an interview of the defendant's mother, and a review of the defendant's medical records. Dr. LeBourgeois acknowledged that it was difficult for him to provide a detailed assessment in reference to the *Bennett* criteria since the defendant chose not to participate in a full interview. However, Dr. LeBourgeois was still able to provide relevant information. While the defendant contends that the physician noted confusion and memory loss, the report actually states that the defendant was making what appeared to be, in the physician's experience, "exaggerated expressions of confusion" and "presenting in a manner as someone who was 'confused' or had memory problems." He concluded that the defendant understood the concept of the right to remain silent and probably understood other rights

and how to invoke them. The defendant exhibited the ability to make a consistent choice and the ability to comport his behavior as he so chooses, depending on the setting. The defendant was aware of current events and the record review and interviews did not yield evidence that he was ever diagnosed with mental retardation. The defendant was receiving treatment for depression. In concluding that the defendant was competent to stand trial, Dr. LeBourgeois found that the defendant did not have a mental illness or defect that would be expected to significantly impair his competence.

Dr. Hale also interviewed the defendant's mother and reviewed the defendant's medical records. Dr. Hale noted the defendant's refusal to take part in the examination. Dr. Hale concluded that the defendant does not have a mental disease or condition that would result in incompetence and found him competent to stand trial. Dr. Hale further noted that the defendant's abnormal presentation with the examiner was inconsistent with his general behavior in other locations, indicating he was well aware of the potential dangers of proceeding to trial and making an active effort to prevent that from occurring. Both doctors recommended substance abuse treatment.

Under our jurisprudence, the trial court's determination of mental capacity to assist at trial is entitled to great weight, especially where the evaluation of credibility or the resolution of conflicting well-founded medical testimony is concerned. *State v. Brooks*, 541 So.2d 801, 807 (La. 1989). In this case, the trial court evaluated the evidence and determined that the defendant was competent to proceed. Based on the record before us, we find no abuse of the trial court's discretion, and the trial court's ruling will not be disturbed. See *Brooks*, 541 So.2d at 807. Thus, pro se assignment of error number four is without merit.

DECREE

The defendant's convictions, habitual offender adjudication, and sentences are affirmed.

**CONVICTIONS, HABITUAL OFFENDER ADJUDICATION,
AND SENTENCES AFFIRMED.**