NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 KA 1308

STATE OF LOUISIANA

VERSUS

RONALD LIMOND KYLES

DATE OF JUDGMENT: FEB 11 2011

ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
NUMBER 06 CR5 94491, DIV. B/CRIMINAL, PARISH OF WASHINGTON
STATE OF LOUISIANA

HONORABLE AUGUST J. HAND, JUDGE

* * * * * *

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* * * * * *

BEFORE: KUHN, PETTIGREW, AND HIGGINBOTHAM, JJ.

Disposition: CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.

KUHN, J.

The defendant, Ronald Limond Kyles, was charged by amended bill of information with one count of simple burglary, a violation of La. R.S. 14:62, and pled not guilty. Following a jury trial, he was found guilty as charged. Thereafter, the State filed a habitual offender bill of information against him, alleging he was a seventh-felony habitual offender.[1] He was initially sentenced to ten years at hard labor. Following a habitual offender hearing, he was adjudicated a multiple offender under La. R.S. 15:529.1(A)(1)(c)(ii),[2] the previously imposed sentence was vacated, and he was sentenced to serve a term of imprisonment for the remainder of his natural life without benefit of parole, probation, or suspension of sentence. He moved for reconsideration of sentence, but the motion was denied. He now appeals, contending: (1) the evidence was insufficient; (2) the trial court erred in denying the motion to reconsider sentence; and (3) the sentence imposed was unconstitutionally excessive. Additionally, in a pro se brief, he contends: (1) the trial court erred in adjudicating and sentencing him as a habitual offender in connection with predicates #3, #5, and #6; and (2) the trial court erred in denying the motion to quash the habitual offender bill of information. For the following reasons, we affirm the conviction, habitual offender adjudication, and sentence.

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[1] Predicate #1 was set forth as the defendant's conviction, under Twenty-Fourth Judicial District Court Docket #9800309, for theft over $500. Predicate #2 was set forth as the defendant's conviction, under Sixteenth Judicial District Court Docket #95142501, for possession of stolen property. Predicate #3 was set forth as the defendant's conviction, under Twenty-Fourth Judicial District Court Docket #952689, for possession of stolen property. Predicate #4 was set forth as the defendant's conviction, under Orleans Parish Criminal District Court Docket #319726, for theft. Predicate #5 was set forth as the defendant's conviction, under Twenty-Fourth Judicial District Court Docket #9502943, for "[b]urglary." Predicate #6 was set forth as the defendant's conviction, under Twenty-Fourth Judicial District Court Docket #946083, for "[b]urglary."

[2] Louisiana Revised Statute 15:529.1(A)(1)(c)(ii) was in effect at the time of the trial. The pertinent language of La. R.S. 15:529.1 (A)(1)(c)(ii) has been moved to La. R.S. 529.1(A)(4)(b) by 2010 La. Acts No. 911, § 1.

FACTS

On February 9, 2006, at approximately 11:30 a.m., Hope Elizabeth Powe noticed a white Chrysler automobile parked on the grass behind a home belonging to her neighbor, Alcide Layford, at 1119 Monroe Street in Washington Parish. Powe was aware that Layford had moved out of the home after her son was found dead there and that the home had been unoccupied for over a year. Powe saw the defendant exit the home, place a box into the car, and then reenter the home. She walked up to the car and saw a Skil saw and other items in the box. She then ran across the street and called the police. Thereafter, she saw the defendant exit Layford's home with a "really big" television set. Powe shouted to the defendant, "Hey, what [are] you doing?" He replied, "A white guy in there sold me the television." Powe told the defendant that a white guy did not live at the house. The defendant got into the Chrysler and began backing out of the driveway. He then stopped in front of Powe's house, and she asked him what he was doing. He answered he had "just got the television from the guy[.]" Powe told the defendant to "[h]old up a minute," so she could talk to him, but he drove off. She noticed a temporary license plate on the back of the Chrysler, a "Mack Grub sticker" on the front of the vehicle, and a neon green keychain hanging from the rearview mirror.

Bogalusa Police Department Captain John Sumrall and another officer responded to Powe's report of a burglary and, upon their arrival, Powe informed them about her conversation with the defendant, including his claim that "a white guy" inside of the house had sold him the television set. Captain Sumrall and the other responding officer found the back door of 1119 Monroe Street kicked open and the house in "total disarray," but did not find anyone else in the house.

After the police left the scene, Powe realized she had seen the Chrysler before, and drove around her neighborhood looking for the car. She located the car in an alley. She looked into the car and saw the neon green keychain hanging from the rearview mirror. She also saw a blue hat and a gray shirt that the defendant had been wearing when she spoke to him. Powe also realized the car belonged to the defendant's wife, Michele Holmes, who she knew from the neighborhood. She alerted the police to the location of the car.

Captain Sumrall then returned to the area after Powe reported she had located the getaway vehicle. The vehicle was parked at 1012 Lincoln Street. There was no license plate on the rear of the vehicle, but there was a "Mack Grub Chevrolet" advertising plate on the front of the vehicle. Bogalusa Police Department Sergeant Tate advised Captain Sumrall that the defendant lived at the residence. Additionally, the vehicle's identification number identified Michele Holmes as its owner and indicated her address was 1012 Lincoln Street. Holmes answered the door of 1012 Lincoln Street and, at the request of the police, asked the defendant to come to the door. The police advised the defendant of his ***Miranda***[3] rights and told him he was a suspect in the burglary of 1119 Monroe Street. The defendant stated he had a saw and power converter from the house, and Captain Sumrall seized those items. The defendant claimed "Danny" had the television from the house. The defendant did not provide Danny's surname, height, weight, or clothing description, but indicated he lived "[s]omewhere off of Austin Street." The defendant gave no other information as to the identity of the purported seller of the merchandise. Captain Sumrall asked several detectives and

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[3] ***Miranda v. Arizona***, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

other people in the area if they knew of a white male named Danny; none of them knew of anyone of that description.

The police contacted Layford and asked her to see if any items were missing from her house at 1119 Monroe Street. Layford discovered numerous items were missing from the home, including: a circular Skil saw; a current converter box; a computer monitor; an air compressor; carpenter tools; a free-standing light; and a "big" television set. She identified the circular saw and converter box seized from the defendant as items taken from her home and indicated she did not give the defendant permission to enter her home or to take any items from it on the day of the offense.

SUFFICIENCY OF THE EVIDENCE

In counseled assignment of error number 1, the defendant asserts that the evidence was insufficient to support the conviction because it failed to exclude his hypothesis of innocence. The defendant propounded the theory that he is not guilty of simple burglary because he did not steal the items from the Layford house because he bought them from Danny.

The defendant relies on the fact that Captain Sumrall typed in his report that Powe had seen a white man, Danny, with Kyles. Although Captain Sumrall's report stated such, both Powe and Sumrall testified that she did not say that she had seen a second perpetrator. Rather, she told the officers that the defendant told her that he had bought the items from a white male in the house.

The standard of review for 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 conclude the State proved the essential

elements of the crime and the defendant's identity as the perpetrator of that crime beyond a reasonable doubt. In conducting this review, we also must be expressly mindful of Louisiana's circumstantial evidence test, which states in part, "assuming every fact to be proved that the evidence tends to prove, in order to convict," every reasonable hypothesis of innocence is excluded. ***State v. Wright***, 98-0601 (La. App. 1st Cir. 2/19/99), 730 So.2d 485, 486, ***writs denied***, 99-0802 (La. 10/29/99), 748 So.2d 1157, 2000-0895 (La. 11/17/00), 773 So.2d 732 (quoting La. R.S. 15:438).

The jury rejected the defendant's theory of purchasing the items from Danny. When a jury reasonably and rationally rejects the exculpatory hypothesis of innocence offered by a defendant, an appellate court's task in reviewing the sufficiency of the evidence under the Due Process Clause is at an end unless there is an alternate, sufficiently reasonable hypothesis that would prevent a rational juror from finding guilt beyond a reasonable doubt. ***State v. Calloway***, 2007-2306, p. 10 (La. 1/21/09), 1 So.3d 417, 422 (per curiam). No such hypothesis exists in the instant case.

Additionally, the verdict rendered against the defendant indicates the jury accepted the testimony offered against him. As the trier of fact, the jury was free to accept or reject, in whole or in part, the testimony of any witness. Furthermore, where 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. ***State v. Johnson***, 99-0385, pp. 9-10 (La. App. 1st Cir. 11/5/99), 745 So.2d 217, 223, writ denied, 2000-0829 (La. 11/13/00), 774 So.2d 971. On appeal, this court will not assess the credibility of

witnesses or reweigh the evidence to overturn a fact finder's determination of guilt. ***State v. Glynn***, 94-0332, p. 32 (La. App. 1st Cir. 4/7/95), 653 So.2d 1288, 1310, writ denied, 95-1153 (La. 10/6/95), 661 So.2d 464. Moreover, in reviewing the evidence, we cannot say that the jury's determination was irrational under the facts and circumstances presented to them. See ***State v. Ordodi***, 2006-0207, p. 14 (La. 11/29/06), 946 So.2d 654, 662. An appellate court errs by substituting its appreciation of the evidence and credibility of witnesses for that of the fact finder and thereby overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the jury. ***Calloway***, 2007-2306 at pp. 1-2, 1 So.3d at 418.

This assignment of error is without merit.

EXCESSIVE SENTENCE

In counseled assignment of error number 3, the defendant contends the statutorily-mandated sentence was unconstitutionally excessive in this case. In assignment of error number 2, he urges the trial court erred in denying the motion to reconsider sentence because the sentence was unconstitutionally excessive.

Article I, Section 20 of the Louisiana Constitution prohibits the imposition of excessive punishment. Although a sentence may be within statutory limits, it may violate a defendant's constitutional right against excessive punishment and is subject to appellate review. Generally, a sentence is considered excessive if it is grossly disproportionate to the severity of the crime or is nothing more than the needless imposition of pain and suffering. A sentence is considered grossly disproportionate if, when the crime and punishment are considered in light of the harm to society, it is so disproportionate as to shock one's sense of justice. A trial

judge is given wide discretion in the imposition of sentences within statutory limits, and the sentence imposed should not be set aside as excessive in the absence of manifest abuse of discretion. ***State v. Hurst***, 99-2868, pp. 10-11 (La. App. 1st Cir. 10/3/00), 797 So.2d 75, 83, writ denied, 2000-3053 (La. 10/5/01), 798 So.2d 962.

In ***State v. Dorthey***, 623 So.2d 1276, 1280-81 (La. 1993), the Louisiana Supreme Court recognized that if a trial judge determines that the punishment mandated by the Habitual Offender Law makes no "measurable contribution to acceptable goals of punishment" or that the sentence amounts to nothing more than "the purposeful imposition of pain and suffering" and is "grossly out of proportion to the severity of the crime," he is duty bound to reduce the sentence to one that would not be constitutionally excessive.

However, the holding in ***Dorthey*** was made only after, and in light of, express recognition by the court that, "the determination and definition of acts which are punishable as crimes is purely a legislative function. It is the Legislature's prerogative to determine the length of the sentence imposed for crimes classified as felonies. Moreover, courts are charged with applying these punishments unless they are found to be unconstitutional." ***Dorthey***, 623 So.2d at 1278. (Citations omitted.)

In ***State v. Johnson***, 97-1906 (La. 3/4/98), 709 So.2d 672, the Louisiana Supreme Court reexamined the issue of when ***Dorthey*** permits a downward departure from the mandatory minimum sentences in the Habitual Offender Law. The court held that to rebut the presumption that the mandatory minimum sentence was constitutional, the defendant had to "clearly and convincingly" show:

> he is exceptional, which in this context means that because of unusual circumstances this defendant is a victim of the legislature'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.

Johnson, 97-1906 at p. 8, 709 So.2d at 676.

Whoever commits the crime of simple burglary shall be fined not more than two thousand dollars, imprisoned with or without hard labor for not more than twelve years, or both. La. R.S. 14:62(B).

Prior to amendment by 2010 La. Acts Nos. 911, § 1 and 973, § 2, La. R.S. 15:529.1, in pertinent part, provided:

> A. (1) Any person who, after having been convicted within this state of a felony ... thereafter commits any subsequent felony within this state, upon conviction of said felony, shall be punished as follows:
>
> .... (c) If the fourth or subsequent felony is such that, upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life then:
>
> (i) The person shall be sentenced to imprisonment for the fourth or subsequent felony 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; or
>
> (ii) If the fourth felony and two of the prior felonies are felonies ... punishable by imprisonment for twelve years or more, ... the person shall be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.

At the habitual offender hearing, the defendant asserted, under ***Dorthey***, the court should deviate downward from the mandatory life sentence, which he claimed was excessive as applied to the particular facts of the case. He maintained the instant offense involved the burglary of a house that had been unoccupied "for some time," and the taking of a television set and circular saw. The defendant

conceded, however, "the record [would] more fully reflect what [was] stole[n]." He contended the predicate convictions "obviously were not very serious crimes," noting that predicate #1 involved theft over $1000; predicate #3 involved possession of stolen property valued between $100 and $500; predicate #4 was a theft "over twenty years ago"; and that predicates #5 and #6 both involved burglaries of sheds. He also claimed he had led a relatively crime-free life since 1998.

The State maintained the defendant was not the "rare exception" for whom the mandatory penalty would be constitutionally excessive, but rather was exactly the type of recidivist for whom the habitual offender law was created. The State noted, when the amount of time the defendant had been incarcerated was considered, he had only been crime-free for approximately one year before committing exactly the same type of offense for which he had served twenty years in the penitentiary. Further, the State disagreed with the suggestion that the instant offense was a *de minimus* offense. The State noted the victim was a widow who was trying to raise her four surviving children on her income as a former law enforcement officer, and the house the defendant burglarized was only unoccupied because the victim's son had committed suicide there.

The trial court refused to sentence the defendant to less than the mandatory sentence, concluding that the philosophy of ***Dorthey*** did not fit the facts of the instant case. The trial court adjudicated the defendant a multiple offender under La. R.S. 15:529.1(A)(1)(c)(ii), vacated the previous sentence imposed for the instant offense, and sentenced the defendant to serve a term of imprisonment for

the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.

There was no manifest abuse of discretion in sentencing the defendant. The sentence imposed was not grossly disproportionate to the severity of the offense and, thus, was not unconstitutionally excessive. The defendant failed to clearly and convincingly show that, because of unusual circumstances, he was a victim of the legislature's failure to assign sentences that were meaningfully tailored to his culpability, the gravity of the offense, and the circumstances of the case. Accordingly, there was no reason for the trial court to deviate from the provisions of La. R.S. 15:529.1(A)(1)(c)(ii) in sentencing the defendant. A trial judge may not rely solely upon the non-violent nature of the instant crime or of past crimes as evidence that justifies rebutting the presumption of constitutionality. ***Johnson***, 97-1906 at p. 8, 709 So.2d at 676. When determining whether the defendant has met his burden of proof by rebutting the presumption that the mandatory minimum sentence is constitutional, the trial judge must also keep in mind the goals of the Habitual Offender Law. The major reason the Legislature passed the Habitual Offender Law was to deter and punish recidivism. ***Johnson***, 709 So.2d at 676-77. Incarceration of the defendant for the remainder of his natural life will prevent him from committing any more burglaries and punish him for repeatedly committing crimes.

These assignments of error are without merit.

PRO SE ASSIGNMENTS OF ERROR

In pro se assignment of error number 1, the defendant claims the "cleansing period" prevented consideration of predicates #3, #5, and #6. In pro se assignment

of error number 2, he asserts the trial court erred in denying the motion to quash because: (a) he had not been convicted of the necessary offenses under La. R.S. 15:529.1(A)(1)(c)(ii); (b) the State failed to prove his identity as the person who committed the predicate offenses; and (c) the State failed to produce transcripts showing his advice and waiver of rights for predicates #1, #3, #5 and #6, suggesting that he was not advised of all of his Constitutional rights when pleading guilty.

Prior to amendment by 2010 La. Acts No. 911, § 1, La. R.S. 15:529.1(C), in pertinent part, provided:

> The current offense shall not be counted as, respectively, a ... fourth, or higher offense if more than ten years have elapsed between the date of the commission of the current offense ... and the expiration of the maximum sentence or sentences of the previous ... convictions ... or between the expiration of the maximum ... sentences of ... preceding ... convictions ... alleged in the multiple offender bill and the date of the commission of the following offense ... . In computing the intervals of time as provided herein, any period of servitude by a person in a penal institution ... shall not be included in the computation of any of said ten-year periods between the expiration of the maximum ... sentences and the next succeeding offense[.]

Pro se assignment of error number 1 is without merit. The defendant committed the instant offense on February 9, 2006. On March 30, 1998, he pled guilty to predicate #1, a theft of a vehicle valued over $1,000, committed on December 30, 1997, and, on September 23, 1998, he was sentenced to seven years at hard labor. On June 26, 1995, he pled guilty to predicate #5, simple burglary of a shed, committed on May 20, 1995, and was sentenced to one year in parish prison to run concurrently with the sentence imposed on predicate #3. On June 27, 1995, he pled guilty to predicate #3, possession of stolen things, valued between $100 and $500, committed on April 30, 1995, and was sentenced to one year in parish prison

to run concurrently with the sentence imposed on predicate #5. On March 22, 1995, he pled guilty to predicate #6, simple burglary of a shed, committed on October 20, 1994, and was sentenced to one year in parish prison. On June 10, 1987, he pled guilty to predicate #4, theft of three chrome wheels, valued over $500, committed between January 24, 1987 and January 26, 1987, and was sentenced to two years in parish prison, suspended, and two years probation. Accordingly, even without consideration of the periods of the defendant's servitude in penal institutions, more than ten years did not pass between the date of the commission of the current offense and predicates #3, #5, and #6 without the defendant committing another offense, i.e., predicate #1.

Pro se assignment of error number 2(a) is also without merit. The instant offense and predicates #5 and #6 are crimes punishable by imprisonment for twelve years or more. See La. R.S. 14:62(B); 15:529.1(A)(1)(c)(ii) (prior to amendment by 2010 La. Acts Nos. 911, §1 and 973 §2).

Pro se assignment of error number 2(b) is also without merit. To obtain a multiple offender adjudication, the State is required to establish both the prior felony conviction and that the defendant is the same person convicted of that felony. In attempting to do so, the State may present: (1) testimony from witnesses; (2) expert opinion regarding the fingerprints of the defendant when compared with those in the prior record; (3) photographs in the duly authenticated record; or (4) evidence of identical driver's license number, sex, race and date of birth. The Habitual Offender Act does not require the State to use a specific type of evidence to carry its burden at a habitual offender hearing and prior convictions may be proved by any competent

evidence. ***State v. Dudley***, 2006-1087, p. 26 (La. App. 1st Cir. 9/19/07), 984 So.2d 11, 28.

In connection with the habitual offender proceedings, the State presented testimony from Bogalusa Police Department Captain Joe Culpepper. The trial court accepted Captain Culpepper as an expert in the field of fingerprint identification. He identified State Exhibit #1 as a fingerprint card upon which he had placed the defendant's fingerprints. Captain Culpepper indicated the defendant advised him that the defendant was born on June 28, 1964, and provided his social security number.[4] Captain Culpepper compared State Exhibit #1 with the fingerprints appearing on predicates #1, #3, and #6 and testified they matched. The defendant's name, date of birth, and social security number matched the name, date of birth, and social security number appearing on predicate #4. The defendant's name and date of birth matched the name and date of birth appearing on predicate #5. Additionally, the sentences in predicates #3 and #5 were imposed to run concurrently with each other, and cross-referenced each other.

Pro se assignment of error number 2(c) is also without merit. The State may, but is not required to, introduce transcripts concerning predicates in a habitual offender proceeding. If the defendant denies the allegations of the bill of information, the burden is on the State to prove the existence of the prior guilty pleas and that the defendant was represented by counsel when they were taken. If the State meets this burden, the defendant has the burden to produce some affirmative evidence showing an infringement of his rights or a procedural irregularity in the taking of the plea. If the defendant is able to do this, then the

[4] Captain Culpepper's testimony included the actual social security number.

burden of proving the constitutionality of the plea shifts to the State. The State will meet its burden of proof if it introduces a "perfect" transcript of the taking of the guilty plea, one that reflects a colloquy between the judge and the defendant wherein the defendant was informed of and specifically waived his right to trial by jury, his privilege against self-incrimination, and his right to confront his accusers. If the State introduces anything less than a "perfect" transcript, for example, a guilty plea form, a minute entry, an "imperfect" transcript, or any combination thereof, the judge then must weigh the evidence submitted by the defendant and by the State to determine whether the State has met its burden of proving that the defendant's prior guilty plea was informed and voluntary, and made with an articulated waiver of the three ***Boykin*** rights.[5] ***State v. Shelton***, 621 So.2d 769, 779-80 (La. 1993). The purpose of the rule of ***Shelton*** is to demarcate sharply the differences between direct review of a conviction resulting from a guilty plea, in which the appellate court may not presume a valid waiver of rights from a silent record, and a collateral attack on a final conviction used in a subsequent recidivist proceeding, as to which a presumption of regularity attaches to promote the interests of finality. See ***State v. Deville***, 2004-1401, p. 4 (La. 7/2/04), 879 So.2d 689, 691 (per curiam).

In connection with the habitual offender proceedings in the instant case, the State introduced into evidence documents establishing the defendant, with

[5] In ***Boykin v. Alabama***, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969), the United States Supreme Court reversed five robbery convictions founded upon guilty pleas because the court accepting the pleas had not ascertained that the defendant voluntarily and intelligently waived his rights against compulsory self-incrimination, to trial by jury, and to confront his accusers. ***Boykin*** only requires a defendant be informed of these three rights. "Its scope has not been expanded to include advising the defendant of any other rights which he may have, nor of the possible consequences of his actions." ***State v. Smith***, 97-2849, p. 3 (La. App. 1st Cir. 11/6/98), 722 So.2d 1048.

representation of counsel and following advice and waiver of his ***Boykin*** rights, pled guilty in connection with predicates #1, #3, #4, #5, and #6. The defense introduced into evidence transcripts of the ***Boykin*** hearings in predicates #1, #3, and #6. In regard to predicate #1, the defense conceded the defendant was advised of his ***Boykin*** rights, but asserted the right against self-incrimination was not explained to the defendant. In regard to predicate #3, the defense conceded the defendant was advised of his ***Boykin*** rights, but asserted the right against self-incrimination, the elements of the offense, and the maximum sentence were not explained to the defendant. In regard to predicate #6, the defense conceded the defendant was advised of his ***Boykin*** rights, but asserted the right against self-incrimination and the elements of the offense were not explained to the defendant.

Prior to explaining his ***Boykin*** rights in predicates #3 and #6 to the defendant, the trial court asked, "Has anybody threatened you, sir, or members of your family, in any way, to force you to plead guilty today?" The defendant responded, "No, sir." The trial court then explained the consequences of the defendant's guilty plea. In doing so, the trial court instructed, "If you plead guilty, and the Court accepts your guilty plea, you no longer have the right to assert any allegation of defect, such as an illegal arrest, illegal search and seizure, *illegal confession*, [or] illegal line up." The trial court then asked, "Now, sir, when you plead guilty, you give up these rights; and has this been explained to you, and do you understand this?" The defendant responded, "Yes sir, I do." Before the trial court accepted his guilty pleas, it considered the defendant's age, educational background, and this affirmation, under oath, that the plea was of his own free will.

In the colloquy explaining the consequences of a guilty plea for predicate #1, the trial court asked, "Do you understand that the plea of guilty is your decision?" and "Do you understand, that no one can force you to so plea?" The defendant responded affirmatively to both questions. The trial court then asked, "Has anyone used any force, intimidation, coercion, or promise of reward against either you or any member of you family for the purpose of making or forcing you to plead guilty?" The defendant answered, "No, Ma'am." The trial court further explained the forfeiture of his rights to the defendant and then stated, "[I]f you plead guilty, you do not have the right to assert any allegation of defect, such as, (sic) an illegal arrest, illegal search and seizure, *illegal confessions*, illegal line up, or lack of sufficient evidence to convict you."

The United States Constitution provides that no one shall be compelled in any criminal case to be a witness against himself. U.S. Const. Amend. V. This provision guarantees that no person shall be compelled to give evidence against himself and so is violated whenever a truly coerced confession is introduced at trial. ***Kansas v. Ventris***, ___ U.S. ____, ____, 129 S.Ct. 1841, 1845, 173 L.Ed.2d 801 (2009). Its sole concern is to afford protection against being forced to give testimony leading to the infliction of penalties affixed to criminal acts. ***New Jersey v. Portash***, 440 U.S. 450, 458, 99 S.Ct. 1292, 1296, 59 L.Ed.2d 501 (1979).

Considering the colloquy between the trial courts and the defendant, the Fifth Amendment right against self incrimination was adequately explained. In all three predicates, each court ascertained whether the defendant was pleading guilty of his own free will without being forced to by coercion or threats against him or

members of his family. The court also informed him that he would give up any right to allege an illegal confession was made.

There was no error. In connection with the challenged predicates, the State met its initial burden of proof under ***Shelton***. Thereafter, the defendant failed to produce any affirmative evidence showing an infringement of his rights or a procedural irregularity in the taking of the pleas.

These assignments of error are without merit.

REVIEW FOR ERROR

In his pro se brief, the defendant requests that this court examine the record for error under La. C.Cr.P. art. 920(2). This court routinely reviews the record for such errors, whether or not such a request is made by a defendant. 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 no reversible errors. See ***State v. Price***, 2005-2514, pp. 18-22 (La. App. 1st Cir. 12/28/06), 952 So.2d 112, 123-25 (en banc), writ denied, 2007-0130 (La. 2/22/08), 976 So.2d 1277.

DECREE

For these reasons, we affirm the conviction, the habitual offender adjudication, and the sentence of defendant-appellant, Ronald Limond Kyles.

CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.