NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 KA 1994

STATE OF LOUISIANA

VERSUS

CHRISTOPHER KING

Judgment rendered May 4, 2007.

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Appealed from the
22nd Judicial District Court
in and for the Parish of St. Tammany, Louisiana
Trial Court No. 378070
Honorable William J. Burris, Judge

* * * * * *

HON. WALTER P. REED
DISTRICT ATTORNEY
COVINGTON, LA
AND
KATHRYN W. LANDRY
BATON ROUGE, LA

ATTORNEYS FOR
STATE OF LOUISIANA

KATHERINE M. FRANKS
SLIDELL, LA

ATTORNEY FOR
DEFENDANT-APPELLANT
CHRISTOPHER KING

* * * * * *

BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.

PETTIGREW, J.

The defendant, Christopher King, was charged by bill of information with first degree robbery, a violation of La. R.S. 14:64.1. The defendant pled not guilty and moved to suppress the evidence, confession, and identifications. Following a hearing, the trial court denied all three motions. The defendant was tried by a jury and unanimously convicted as charged. The trial court denied the defendant's motion for post verdict judgment of acquittal and motion for a new trial. The State filed a multiple offender bill of information seeking to have the defendant adjudicated a third felony habitual offender and sentenced under La. R.S. 15:529.1. Following a hearing, the trial court found the defendant to be a third felony habitual offender and sentenced him to life imprisonment at hard labor. The defendant now appeals, raising the following counseled assignments of error:

> 1. The trial judge erred in denying the motion to suppress the evidence seized without a warrant from Christopher King's motel room.
>
> 2. The state failed to establish beyond a reasonable doubt that the Christopher King convicted in this case was the same Christopher King convicted of the two previous felonies originating in Calcasieu Parish relied upon in the multiple offender proceeding to establish multiple offender status. The state also failed to establish by its exhibit that, during the out of state proceedings offered to establish that a life sentence was appropriate, Mr. King was either Boykinized or represented by counsel in all cases, making the convictions unavailable to establish multiple offender status in light of the affirmative defense challenge to the proceedings.
>
> 3. The jury did not act as a rational fact-finder in finding Christopher King guilty of first degree robbery when the cashier's actions at the time of the till-tapping belied her statement that Christopher King had threatened her and that she believed he was armed when he grabbed money from the register. The elements of the offense of first degree robbery were not established beyond a reasonable doubt.

The defendant raises the following pro se assignments of error:

> 1. The trial judge erred in denying the motion to suppress the evidence, identification and confession due to an illegal arrest.
>
> 2. The jury did not act as a rational fact-finder in finding Christopher King guilty of first degree robbery when the cashier's statement, testimony and actions at the time of the theft did not coincide with the elements required to convict for first degree robbery.

We affirm the conviction, vacate the third felony habitual offender adjudication, vacate the habitual offender sentence, and remand for further proceedings.

FACTS

On February 1, 2004, at approximately 5:00 p.m., Terry Crawford was working at the Chevron service station (the store) on Gause Boulevard and Interstate 10 in Slidell, Louisiana. The defendant was present in the store with Crawford, Alfred "Buck" McKinley, and several other customers. They all had been engaged in casual conversation. At some point thereafter, the defendant retrieved a quart of beer and approached the register to purchase it. When Crawford attempted to give the defendant his change, the defendant put his hand down toward the waistband of his pants and said, "give me all your money or I will shoot." Crawford admittedly did not take the defendant seriously initially. She stated that she thought he was "teasing." The defendant reached over the counter and attempted to remove the cash from the register. Crawford resisted and attempted to prevent the defendant from grabbing the money. A struggle ensued. During the struggle, Crawford called out to McKinley, who had gone to use the restroom. The defendant eventually removed the cash from the register and fled.

Once the defendant fled the store, Crawford immediately contacted the police. Detective Shawn Maddox and Sergeant Kevin Simon of the Slidell Police Department arrived on the scene and immediately utilized canine tracking to attempt to locate the perpetrator. The dog tracked to the Value Travel Inn Motel parking lot near the store. The dog lost track of the scent at a fence in the motel parking lot. From the parking lot, Sergeant Simon observed a white male exit room 213 of the motel. The man made eye contact with Sergeant Simon and then proceeded to walk towards the back of the motel.

Subsequently, once the dog failed to track any further, the officers returned to the store to continue their investigation. While viewing the surveillance footage, Sergeant Simon immediately recognized the perpetrator as the individual he had just observed exiting room 213 at the motel. The officers immediately returned to the motel and approached room 213. The door to the room was partially ajar. The officers announced their presence and demanded that any occupants of the room exit. No one came out. The officers looked inside to make sure no one was there and then they entered the room. On a bed inside the room, Sergeant Simon observed a tan ball cap and a blue shirt

with white writing on it. He immediately recognized these items as matching the clothing worn by the perpetrator in the surveillance video. However, the items were not immediately seized. Instead, Sergeant Simon and Detective Maddox continued on their search for the defendant, walking towards the back of the motel. Upon observing an individual suspiciously exit room 207 and reenter after seeing them, the officers decided to approach. They knocked on the door of room 207, and the man answered. Through the opened door, the officers observed the defendant sitting on the bed. The defendant was arrested. During a search of the defendant's person incident to the arrest, the officers recovered a motel key to room 213 and approximately $106.00 from his pocket. The officers returned to room 213 and seized the clothing items observed earlier.

Meanwhile, Crawford and McKinley were separately transported to the motel where they both positively identified the defendant as the individual who had been inside the store and who had robbed it. Later, at the police station, after being informed of his **Miranda** rights, the defendant waived his rights and provided a written statement. In the statement, the defendant admitted taking money from the register at Chevron but denied possessing a gun. He claimed he never told Crawford he had a gun or threatened to shoot her.

COUNSELED ASSIGNMENT OF ERROR THREE AND PRO SE ASSIGNMENT OF ERROR TWO

In cases such as this one, where the defendant has raised issues on appeal both as to the sufficiency of the evidence and as to one or more trial errors, the reviewing court should preliminarily determine the sufficiency of the evidence before discussing the other issues raised on appeal. **State v. Hearold**, 603 So.2d 731, 734 (La. 1992). The sufficiency issue must be decided first because a finding of insufficient evidence to support the guilty verdict bars the retrial of a defendant based on the constitutional protection against double jeopardy. Thus, all other issues would be rendered moot. **State v. Davis**, 2001-3033, pp. 2-3 (La. App. 1 Cir. 6/21/02), 822 So.2d 161, 163. Accordingly, we will first address the defendant's third counseled assignment of error

and his second pro se assignment of error, both of which challenge the sufficiency of the State's evidence.

In these assignments of error, the defendant argues the evidence presented herein was insufficient to support the first degree robbery conviction. The defendant contends Crawford's actions at the time of the offense were inconsistent with her statement and testimony indicating that the defendant threatened her and led her to believe he was armed with a weapon when he grabbed the money from the register. Specifically, the defendant asserts that Crawford's willingness to struggle with him and her attempt to prevent him from removing the money from the register belies her claim that she believed that the defendant was armed with a weapon. Instead, he asserts, Crawford's actions support her statement to the police wherein she indicated she believed the defendant to be "teasing."

The standard of review for sufficiency of the evidence to support a conviction is whether, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could conclude that the State proved the essential elements of the crime and defendant's identity as perpetrator of that crime beyond a reasonable doubt. See La. Code Crim. P. art. 821; **State v. Johnson**, 461 So.2d 673, 674 (La. App. 1 Cir. 1984).

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).

The first degree robbery statute has objective and subjective components. The State must prove that the offender induced a subjective belief in the victim that he was armed with a dangerous weapon and that the victim's belief was objectively reasonable under the circumstances. The statute thus excludes unreasonable panic reactions by the victim, but otherwise allows the victim's subjective beliefs to determine whether the offender has committed first degree robbery or the lesser offense of simple robbery in violation of La. R.S. 14:65. Direct testimony by the victim that he believed that the defendant was armed, or circumstantial inferences arising from the victim's immediate

surrender of his personal possessions in response to the defendant's threats, may support a conviction for first degree robbery. **State v. Gaines**, 633 So.2d 293, 300 (La. App. 1 Cir. 1993), writ denied, 93-3164 (La. 3/11/94), 634 So.2d 839 (citing **State v. Fortune**, 608 So.2d 148, 149 (La. 1992) (per curiam)).

In the instant case, it is undisputed that the defendant took something of value from Crawford. In his statement to the police, the defendant admitted taking the money from the register. The victim must have had such control of the item taken that absent the force or intimidation of the offender, he could have prevented the taking. See **State v. Varnado**, 97-2825, p. 17 (La. App. 4 Cir. 9/22/99), 753 So.2d 850, 860, writ denied, 99-3187 (La. 4/20/00), 760 So.2d 341.

At the trial in this case, the State introduced a videotape (without audio) of the offense into evidence. The videotape showed the defendant standing at the counter handing Crawford something, Crawford ringing up the purchase and then reaching over to hand the defendant something, the defendant speaking to Crawford while gesturing towards the waistband of his pants, the defendant reaching across the counter and into the register with his spare hand continuously at his waistband, Crawford struggling to keep the defendant's hand out of the register, and the defendant grabbing something from the register, picking his beer up from the counter, and leaving the store.

At the trial, Crawford testified that as she attempted to give the defendant the change from his purchase, he told her that he was armed and threatened to shoot her if she did not give him all of the money in her register. Although she did not see a gun, and did not initially believe the defendant was serious, Crawford testified she later believed that defendant had a weapon in his pants because of his actions. She testified that, although she did not initially take the threat seriously, once the defendant reached down towards his waistband, she "knew he wasn't teasing." From this point, she believed that the defendant had a weapon. This testimony was sufficient to show Crawford's subjective belief that the defendant was armed with a dangerous weapon, a belief we find objective under the circumstances. See **State v. Gaines**, 633 So.2d at 300-301.

Contrary to the defendant's assertions, the fact that Crawford's initial reaction was to instinctively attempt to prevent the defendant from taking the money from the register does not negate the fact that she was later intimidated and fearful that defendant had a weapon. The jury evidently believed Crawford's testimony in this regard. As the trier of fact, the jury was free to accept or reject, in whole or in part, the testimony of any witness. **State v. Johnson**, 99-0385, p. 9 (La. App. 1 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. 1 Cir. 4/7/95), 653 So.2d 1288, 1310, writ denied, 95-1153 (La. 10/6/95), 661 So.2d 464. The fact that Crawford initially, perhaps foolishly, refused to give the defendant the money in her register is of no moment. As previously noted, the evidence herein sufficiently established that the defendant induced a subjective belief in the victim he was armed with a dangerous weapon and the victim's belief was objectively reasonable under the circumstances. Accepting as true Crawford's testimony that she believed the defendant had a weapon, was apprehensive about whether defendant would use it, and that the defendant took the money from the register in Crawford's immediate control, there was ample evidence to convict defendant of first degree robbery.

These assignments of error lack merit.

COUNSELED ASSIGNMENT OF ERROR ONE AND PRO SE ASSIGNMENT OF ERROR ONE

In these assignments of error, the defendant challenges the trial court's ruling denying his motions to suppress the evidence, the confession, and the identifications. In the counseled assignment of error, the defendant argues that his rights were violated as a result of the illegal seizure of the clothing items from his motel room. The defendant asserts that the plain-view doctrine, by itself, does not authorize the seizure of evidence. In order to justify a seizure of an item in plain view, a warrant or an "exception" to the warrant requirement is required. The defendant argues that the

plain-view doctrine is an area of inapplicability of the Fourth Amendment, not an exception to the warrant requirement. The defendant further argues that none of the three recognized exceptions to the warrant requirement were present when the officers returned to room 213 to seize the evidence. The defendant maintains that the exigency justifying the initial intrusion into the motel room was over.

In the pro se assignment of error, the defendant argues that the motions to suppress should have been granted because his arrest was illegal. He contends the police did not possess reasonable suspicion sufficient to justify approaching the man in room 207. He further asserts the officers did not have probable cause (based upon the fact that he fit a general description of the perpetrator) to arrest him. He argues that the confession and identifications were fruits of the unlawful arrest.

The Fourth Amendment to the United States Constitution and Article I, section 5 of the Louisiana Constitution protect persons against unreasonable searches and seizures. Subject only to a few well-established exceptions, a search or seizure conducted without a warrant issued upon probable cause is constitutionally prohibited. Once a defendant makes an initial showing that a warrantless search or seizure occurred, the burden of proof shifts to the State to affirmatively show it was justified under one of the narrow exceptions to the rule requiring a search warrant. La. Code Crim. P. art. 703(D); **State v. Lowery**, 2004-0802, p. 6 (La. App. 1 Cir. 12/17/04), 890 So.2d 711, 717, writ denied, 2005-0447 (La. 5/13/05), 902 So.2d 1018. A defendant adversely affected may move to suppress any evidence from use at the trial on the merits on the ground that it was unconstitutionally obtained. La. Code Crim. P. art. 703(A). The constitutional protection provided in the Fourth Amendment also applies to hotel rooms. **State v. Warren**, 2005-2248, p. 9 (La. 2/22/07), 949 So.2d 1215, 1223.

Police generally need a warrant to enter a home, but warrantless searches will be allowed when police have a reasonable belief that exigent circumstances require immediate action and there is no time to secure a warrant. To justify a warrantless entry, the exigent circumstances must be known to the officers at the time of the warrantless entry and cannot be based on evidence discovered during the search.

State v. Warren, 2005-2248 at 10, 949 So.2d at 1224. In **U.S. v. Coles**, 437 F.3d 361, 366 (3rd Cir. 2006), the Third Circuit noted examples of exigent circumstances that included, but were not limited to, hot pursuit of a suspected felon, the possibility that evidence may be removed or destroyed, and danger to the lives of officers or others. **State v. Warren**, 2005-2248 at 10-11, 949 So.2d at 1224.

The search warrant requirement does not apply to items in plain view. Two conditions must be satisfied to trigger the applicability of the plain-view doctrine: (1) there must be a prior justification for an intrusion into the protected area; and (2) it must be immediately apparent without close inspection that the items are evidence or contraband.[1] "Immediately apparent" requires no more than probable cause to associate the property with criminal activity. **State v. Howard**, 2001-1487, p. 8 (La. App. 1 Cir. 3/28/02), 814 So.2d 47, 53, writ denied, 2002-1485 (La. 5/16/03), 843 So.2d 1120.

In **State v. Fisher**, 97-1133, pp. 4-5 (La. 9/9/98), 720 So.2d 1179, 1182-83, the Louisiana Supreme Court recognized a three-tiered analysis governing the Fourth Amendment's application to interactions between citizens and police. At the first tier, mere communications between officers and citizens implicate no Fourth Amendment concerns where there is no coercion or detention. **United States v. Watson**, 953 F.2d 895, 897 n.1 (5th Cir.), cert. denied, 504 U.S. 928, 112 S.Ct. 1989, 118 L.Ed.2d 586 (1992); **State v. Britton**, 93-1990 (La. 1/27/94), 633 So.2d 1208 (per curiam) (noting that police have the same right as any citizen to approach an individual in public).

At the second tier, the investigatory stop recognized by the United States Supreme Court in **Terry v. Ohio**, 392 U.S. 1, 30, 88 S.Ct. 1868, 1884-85, 20 L.Ed.2d 889 (1968), the police officer may briefly seize a person if the officer has an objectively reasonable suspicion, supported by specific and articulable facts, that the person is, or

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[1] The defendant's brief states three conditions, but inadvertence is no longer a necessary condition of a plain-view seizure. See **Horton v. California**, 496 U.S. 128, 130, 110 S.Ct. 2301, 2304, 110 L.Ed.2d 112 (1990).

is about to be, engaged in criminal conduct or is wanted for past criminal acts. **State v. Moreno**, 619 So.2d 62, 65 (La. 1993). Louisiana Code of Criminal Procedure article 215.1(A) provides that an officer's reasonable suspicion of crime allows a limited investigation of a person. However, reasonable suspicion is "insufficient to justify custodial interrogation even though the interrogation is investigative." **Florida v. Royer**, 460 U.S. 491, 499, 103 S.Ct. 1319, 1325, 75 L.Ed.2d 229 (1983).

In the instant case, the defendant does not dispute that exigent circumstances justifying the initial intrusion into room 213 existed. Instead, the defendant argues that the initial exigency was over. Thus, he contends the officers should have obtained a warrant to reenter the motel room after the defendant's arrest. Since the officers did not obtain a warrant, the defendant argues that the clothing seized from room 213 should have been suppressed.

In denying the defendant's motion to suppress, the trial court concluded that the officers were reasonable in seizing the evidence in question as it was within plain view. The court noted that the evidence could be viewed from outside the room through the opened door.

We find no abuse of discretion in the trial court's denial of the defendant's motions to suppress. As the trial court noted, the officers observed the evidence in question in plain view when they were lawfully inside the motel room. Under the plain-view doctrine, the officers could have immediately seized the evidence based upon its obvious nature as evidence of the crime. The fact that the officers decided to continue their pursuit of the defendant before seizing the evidence is of no moment. Furthermore, although the testimony does not clearly state, it is likely that the door to the motel room remained opened and thus, the officers could still see the evidence in plain view upon their return.

Moreover, even if the trial court were to find that the officers should have somehow secured the room and obtained a search warrant before reentering, any error in the failure to suppress the clothing was harmless. The evidence seized from the room was not critical evidence given the facts and circumstances of this case wherein the defendant does not challenge his identity as the perpetrator. The record establishes that

not only did two eyewitnesses identify the defendant as the perpetrator, the defendant confessed to taking the money from the register. Even without the evidence in question, there was sufficient evidence to convict the defendant. Thus, we find that the guilty verdict in this case was surely unattributable to any such error. See **State v. Crotwell**, 2000-2551, p. 13 (La. App. 1 Cir. 11/9/01), 818 So.2d 34, 44.

In his pro se assignment, the defendant contends his arrest was illegal. Consequently, he asserts that the confession and identifications, fruits of the poisonous tree, should have been suppressed. Our review of the record reflects that the defendant did not challenge the arrest as illegal in the trial court. There is no indication in the record that the legality of the defendant's arrest was ever made a part of the defendant's motion to suppress. The defendant cannot raise a new issue for the first time on appeal. See La. Code Crim. P. art. 703(F); **State v. Huls**, 95-0541, p. 9 (La. App. 1 Cir. 5/29/96), 676 So.2d 160, 168, writ denied, 96-1734 (La. 1/6/97), 685 So.2d 126. Therefore, as the issue raised in the defendant's pro se assignment was not preserved for appeal, the defendant is procedurally barred from raising it. Furthermore, the defendant's argument challenging the legality of his arrest is clearly meritless as the officer recognized the defendant from the surveillance video in close time and proximity to the offense.

These assignments of error lack merit.

COUNSELED ASSIGNMENT OF ERROR TWO

In his second counseled assignment of error, the defendant avers that the evidence presented at the multiple offender hearing was insufficient to prove that the defendant was a third felony habitual offender. Specifically, the defendant contends the State failed to provide sufficient documentation to connect him to the prior convictions.

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. **State v. Payton**, 2000-2899, p. 6 (La. 3/15/02), 810 So.2d 1127, 1130. The Habitual Offender Act does not require the State to use a specific type of evidence in order to carry its burden at the hearing, and the prior convictions may be proved by any competent evidence. **State v. Payton**, 2000-2899 at 8, 810 So.2d at 1132.

In **State v. Westbrook**, 392 So.2d 1043 (La. 1980) (on rehearing), a case where the defendant was convicted of a second offense of driving while intoxicated, the defendant complained of an insufficient connexity to prove he was actually the prior offender. In affirming his second offense DWI conviction, the Louisiana Supreme Court held "the driver's license number, sex, race and birth date all identified the prior offender with defendant. The State [therefore] carried its burden of proving that this defendant is the Westbrook previously convicted." **State v. Westbrook**, 392 So.2d at 1045. See also **State v. Lee**, 97-1035, pp. 3-5 (La. App. 5 Cir. 2/11/98), 709 So.2d 226, 228-229 (affirming the defendant's adjudication as a multiple offender even though the bill of information for a predicate conviction did not contain the defendant's fingerprints); **State v. Hawthorne**, 580 So.2d 1131, 1132-1133 (La. App. 4 Cir. 1991) (affirming the defendant's second felony habitual offender adjudication because the defendant's fingerprints matched those on the arrest register in the defendant's name for a charge of aggravated rape, and conviction documentation showed the same crime, same defendant, same date of crime, and same victim's name as that found on the arrest register).

Herein, the multiple-offender bill of information alleged the following prior convictions: 1) a July 20, 1995 conviction in case number W95-00349 of the 30th Judicial District Court in Memphis, Tennessee, for forgery; 2) a July 20, 1995 conviction in case number W95-00348 of the 30th Judicial District Court in Memphis for aggravated burglary; 3) a July 22, 1999 conviction in case number 99-03749 of the 30th Judicial District Court in Memphis for forgery; 4) a July 22, 1999 conviction in case number 99-03848 of the 30th Judicial District Court in Memphis for forgery; 5) a July 22, 1999 conviction in case number 99-03849 of the 30th Judicial District Court in Memphis for

forgery; 6) a July 22, 1999 conviction in case number 99-03851 of the 30th Judicial District Court in Memphis for burglary of a business; 7) a June 2, 2000 conviction in case number 00-CR-003732 of the 14th Judicial District Court for burglary of an inhabited dwelling, 8) a June 2, 2000 conviction in case number 00-CR-003733 of the 14th Judicial District Court for burglary of an inhabited dwelling, 9) an October 4, 1994 conviction in case number CR-94100 of the Circuit Court of Pope County, Arkansas, for violating the Hot Check Law; 10) a February 22, 1995 conviction in case number CR1994-86 of the Circuit Court of Johnson County, Arkansas, for burglary; and 11) a November 15, 1989 conviction in case number 5863-89 of the 14th Judicial District Court for simple burglary.

At the habitual offender hearing, the State advised the court that although the multiple offender bill listed numerous prior convictions, the State was seeking a third felony offender adjudication based only upon the defendant's two prior burglary convictions in the 14th Judicial District Court cases number 5863-89 (predicate 1) and 00-CR-003733 (predicate 2). For each of these convictions, the State submitted into evidence certified copies of the bills of information, guilty plea forms, and minute entries. The State also introduced copies of two arrest registers. Neither of the bills of information contained the defendant's fingerprints.[2]

The State also called Sergeant Carl Fullilove with the St. Tammany Parish Crime Lab Division to testify about fingerprint comparisons. The trial court accepted Sergeant Fullilove as an expert in the field of fingerprint identification. Sergeant Fullilove testified that he prepared a fingerprint card of the defendant's fingerprints on the date of the habitual offender hearing. The fingerprint card was submitted into evidence. Sergeant Fullilove compared the defendant's fingerprints on the test card with the defendant's prints on the arrest registers introduced by the State. He concluded that the defendant's prints matched those on the arrest registers.

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[2] Over the defense objection, the State also introduced a pen pack from Arkansas. The State explained that this particular information was being introduced as evidence of the defendant's criminal history and to support a finding that the defendant is in need of correctional treatment in a custodial environment.

It is sufficient to match fingerprints on an arrest register to a defendant, and then match the arrest register to a bill of information and other documents evidencing conviction and sentence; this can be done through a date of birth, social security number, bureau of identification number, case number, specifics and details of the offense charged, etc. See **State v. Payton**, 2000-2899 at 6-9, 810 So.2d at 1130-1132.

In the instant case, the arrest register submitted to prove the defendant's identity as the individual convicted of burglary in predicate 1 contains the identical first, middle, and last name of the defendant, the defendant's date of birth, his sex, and race. The State also introduced a booking photograph in connection with the defendant's arrest on this particular offense. While the date of the offense, as listed on the bill of information, differs from the date of arrest on the arrest register, we note that the dates are very close within the same month. The documentation also establishes that this arrest took place in the same parish and for the same offense charged in the bill of information. Thus, we find this information sufficient to connect the defendant with the prior conviction in predicate 1.

On the other hand, the State did not meet its burden of proving the defendant's identity on predicate 2. While the expert testimony was sufficient to match the defendant's fingerprints to both of the arrest registers introduced by the State, the evidence failed to connect any of the arrest records to the conviction alleged in predicate 2. Examination of the documentation submitted at the habitual offender hearing in connection with this predicate reveals that the arrest record, to which the expert connected the defendant, does not even correspond with the bill of information, guilty plea form, and minute entry. The arrest register and mugshot profile lists an arrest date of October 29, 2000. The bill of information and other evidence in support of the prior conviction lists the date of the offense as June 10, 1998, and the date of the conviction as June 2, 2000. Thus, it is clear that the expert testimony in this case proved, at best, that the defendant was arrested on an obviously different offense. There is nothing in the record before us to connect the bill of information and minute entry for this conviction to the fingerprints on the arrest registers. The bills of information and conviction documents

do not contain any item numbers or sheriff's department numbers to correspond with the arrest register. The State's evidence on this predicate, when viewed in its entirety, is insufficient to connect the defendant to the documentation evincing the conviction. Because the State failed to provide sufficient proof of the defendant's identity as the person with the prior felony conviction on predicate 2, the defendant's third felony habitual offender adjudication must fall.

Accordingly, we affirm the conviction. We vacate the defendant's third felony habitual offender adjudication, vacate the habitual offender sentence, and remand the matter to the trial court for further proceedings. We note the defendant is not protected by principles of double jeopardy from being tried again as a habitual offender. See **State v. Thomas**, 2005-2210, p. 12 (La. App. 1 Cir. 6/9/06), 938 So.2d 168, 177.

CONVICTION AFFIRMED; HABITUAL OFFENDER ADJUDICATION AND HABITUAL OFFENDER SENTENCE VACATED; REMANDED FOR FURTHER PROCEEDINGS.