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NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2016 KA 1524

STATE OF LOUISIANA

VERSUS

ALVIN DAVIS, JR.

Judgment Rendered: JUL 05 2017

* * * * * * *

Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Trial Court Number 572397

Honorable Scott Gardner, Judge

* * * * * * *

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* * * * * *

BEFORE: WELCH, CRAIN, AND HOLDRIDGE, JJ.

APPENDIX A

FULL OPINION OF THE COURT

WELCH, J.

The defendant, Alvin Davis, Jr., was charged by bill of information with forcible rape, a violation of Louisiana Revised Statutes 14:42.1 (prior to amendment by 2015 La. Acts, No. 184 §1 and 256 §1). He entered a plea of not guilty and, following a jury trial, was found guilty as charged by a unanimous verdict. He filed motions for new trial and postverdict judgment of acquittal, both of which were denied. The defendant was sentenced to thirty-five years at hard labor, with two years to be served without the benefit of probation, parole, or suspension of sentence. The State subsequently filed a habitual offender bill of information. After a hearing, the defendant was adjudicated a fourth-felony habitual offender.[1] The district court then vacated the previously imposed sentence and resentenced the defendant to life imprisonment at hard labor, with the first two years of his sentence to be served without the benefit of parole. See La. R.S. 15:529.1A(4)(a) & G. He now appeals, alleging four assignments of error.[2] For the following reasons, we affirm the defendant's conviction, habitual offender adjudication, and sentence.

FACTS

On January 18, 2014, the victim, D.H.,[3] and her boyfriend, Luis Rivera, walked to the defendant's trailer in Slidell, Louisiana, to purchase marijuana. The victim testified that she and her boyfriend smoked marijuana, but she could not recall if the defendant smoked as well. Rivera then left to go to the store. After

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[1] The defendant's predicate offenses included: (1) a May 19, 2009, conviction for possession of a Schedule IV controlled dangerous substance ("CDS") under Twenty-Second Judicial District Court ("JDC") docket number 462,624; (2) an April 27, 2011, convictions for possession of a Schedule II CDS (count one) and possession of stolen things (count two) under Twenty-Second JDC docket number 501,259; and (3) a May 19, 2014, conviction for possession of a Schedule II CDS under Twenty-Second JDC docket number 545,341.

[2] We note that the *amicus curiae* brief appears to raise additional issues; however, issues not raised by the parties cannot be raised by *amicus curiae* on appeal. See **Barfield v. Bolotte**, 2015-0847 (La. App. 1st Cir. 12/23/15), 185 So.3d 781, 784.

[3] To protect the identity of the victim, she will be referenced herein by initials only. See La. R.S. 46:1844(W).

Rivera left, the defendant began making sexual advances toward the victim. The victim attempted to leave, but the defendant punched the right side of her face, knocking her out. The defendant then pushed the victim onto his bed and had sexual intercourse with her. The victim attempted to stop the defendant, but was unable. Afterward, the defendant left the room, and the victim was able to leave the defendant's trailer. Later that evening, friends of Rivera drove the victim to the hospital where the victim was interviewed and a rape examination was conducted. Pursuant to information provided by the victim, the defendant's trailer was searched and he was taken into custody.

SUFFICIENCY OF THE EVIDENCE

In cases where a 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. When the entirety of the evidence, both admissible and inadmissible, is sufficient to support the conviction, the accused is not entitled to an acquittal, and the reviewing court must review the assignments of error to determine whether the accused is entitled to a new trial. **State v. Hearold**, 603 So.2d 731, 734 (La. 1992). Accordingly, we will first address the defendant's second assignment of error, which challenges the sufficiency of the State's evidence and the district court's denial of his motions for postverdict judgment of acquittal and new trial. Specifically, the defendant contends that "the allegation and [its] proof came solely from [the victim's] statements and nothing else." At trial, the defendant did not challenge the fact that he had sexual intercourse with the victim, but rather, argued that it was consensual and that the victim's injuries were inflicted by Rivera.

A conviction based on insufficient evidence cannot stand as it violates Due Process. See U.S. Const. amend. XIV; La. Const. art. I, §2. The standard of

review for the 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 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. C.Cr.P. art. 821B; **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 into La. C.Cr.P. art. 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 factfinder 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.

In pertinent part, forcible rape is "rape committed when . . . vaginal sexual intercourse is deemed to be without the lawful consent of the victim because it is committed under . . . the following circumstances:"

> (1) When the victim is prevented from resisting the act by force or threats of physical violence under circumstances where the victim reasonably believes that such resistance would not prevent the rape.
>
> (2) When the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind produced by a narcotic or anesthetic agent or other controlled dangerous substance administered by the offender and without the knowledge of the victim.

La. R.S. 14:42.1A (prior to amendment by 2015 La. Acts, No. 184 §1 and 256 §1).

When a conviction is based on both direct and circumstantial evidence, the reviewing court must resolve any conflict in the direct evidence by viewing that evidence in the light most favorable to the prosecution. When the direct evidence is thus viewed, the facts established by the direct evidence and the facts reasonably inferred from the circumstantial evidence must be sufficient for a rational juror to conclude beyond a reasonable doubt that the defendant was guilty of every

essential element of the crime. **State v. Wright**, 98-0601 (La. App. 1st Cir. 2/19/99), 730 So.2d 485, 487, writs denied, 99-0802 (La. 10/29/99), 748 So.2d 1157 and 2000-0895 (La. 11/17/00), 773 So.2d 732.

The victim was twenty-three years old when she testified at trial. According to her testimony, she and her boyfriend, Rivera, originally from New York, traveled to Slidell to work at a carnival in September 2013. At the time, there were arrest warrants for Rivera. The two traveled around Louisiana working different carnivals. During the off-season, they lived in a bunk house in the "winter quarters" for the carnival in Slidell.

On January 18, 2014, the victim and Rivera walked to the defendant's trailer to purchase marijuana. According to the victim, she had previously seen the defendant, who she referred to as "Stoney," when he came to the carnival winter quarters to sell marijuana to others, but she had never really communicated with him. The victim testified that she did not remember anyone being present at the trailer other than the defendant. She and Rivera smoked marijuana, but she could not recall if the defendant smoked as well. According to the victim, the "high" that she felt was "different" and "more intense" than any she had previously experienced. Afterward, Rivera left the defendant's trailer to go to the store. The victim testified that she thought Rivera would quickly return, and although she felt a little uncomfortable with the defendant, she did not necessarily feel unsafe.

After Rivera left, the defendant began making unwanted sexual advances toward the victim and told her to relax. When the victim attempted to leave the trailer, the defendant told her that she was not leaving, and stated, "I'm telling you as a man not to walk out that door," and then he punched the right side of her face. When the defendant punched the victim, she fell down to the floor. She testified that she could not remember exactly what happened afterward, but the next thing she remembered was the defendant pushing her onto the bed. The defendant

denied ever having any problems with the defendant. On the date of the incident, he and the victim went to the defendant's trailer to purchase marijuana. According to Rivera, two other men were at the trailer when he and the victim arrived. He stated that they all "hung out" for two hours and smoked marijuana. He then decided to go to the store and one of the men there offered to drive him. After the other man had a private conversation with the defendant, both men left with Rivera to go to the store. He stated that the men ended up stopping at other places and that they were all gone approximately two or two-and-one-half hours. He asked them to drop him off and went to his trailer in the compound to see if the victim was there. The door was locked, so he walked back to the defendant's trailer to check if the victim was still there. The defendant told him that the victim left an hour prior. He returned to his trailer and waited approximately one hour until it was time for him to go to work. When he returned from work, someone told him that the victim was in the bathroom. He finally saw the victim and observed the injuries to her face. The victim asked him why he left her with the defendant and stated, "He took it from me." The victim then explained to Rivera that the defendant had raped and beaten her. According to Rivera, the victim told him that when she tried to leave, the victim grabbed her by her hair and slammed her on the bed stating, "You're either going to give it to me or I'm going to take it from you." Rivera also stated that the victim told him after he left to go to the store, she and the defendant smoked a "blunt" which contained marijuana and cocaine, but she did not realize it was laced with cocaine while she was smoking. Rivera explained that he did not go to the hospital with the victim because he had "problems with the cops in the past."

Dr. Ujwal Meka, an emergency room doctor at Slidell Memorial Hospital, testified that the victim initially refused the rape examination and asked to be treated for her facial injuries, possible pregnancy prevention from sexual assault,

and treatment for possible sexually transmitted diseases. She subsequently changed her mind and agreed to undergo the rape examination.

St. Tammany Parish Coroner's Office forensic DNA analyst Tara Johnson testified that from the sperm cell fraction of the vaginal swabs taken during the victim's rape examination, she developed a profile consistent with a mixture of DNA of two donors. The defendant and Rivera could not be excluded as donors of the DNA.

The defendant did not testify at trial. The defendant's friend, Jerry Banks, testified on the defendant's behalf that he had seen the victim at the defendant's trailer at least five times, sometimes with Rivera and sometimes alone. Banks claimed that Rivera and the victim would "fuss" over drugs and that Rivera "hit [the victim] before." According to Banks, there was usually only cocaine in the defendant's trailer, but never marijuana. The defendant's sister, Alvinetta Davis Bourgeois, testified that the defendant had been a problem in their family due to his use of cocaine, but to her knowledge he did not smoke marijuana.

A thorough review of the record indicates that any rational trier of fact, viewing the evidence presented in this case in the light most favorable to the State, could find that the evidence proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, all of the elements of forcible rape, and the defendant's identity as the perpetrator of that offense. The verdict rendered in this case indicates that the jury credited the testimony of the witnesses against the defendant. The trier of fact may accept or reject, in whole or in part, the testimony of any witness. Moreover, when 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. Lofton**, 96-1429 (La. App. 1st Cir. 3/27/97), 691 So.2d 1365, 1368, writ denied, 97-1124 (La. 10/17/97), 701 So.2d

1331. The credibility of witnesses will not be reweighed on appeal. **State v. James**, 2002-2079 (La. App. 1st Cir. 5/9/03), 849 So.2d 574, 581. Although the defendant complains that there was no evidence corroborating the victim's testimony, the testimony of the victim alone is sufficient to prove the elements of the offense. See **State v. Orgeron**, 512 So.2d 467, 469 (La. App. 1st Cir. 1987), writ denied, 519 So.2d 113 (La. 1988); **State v. Rives**, 407 So.2d 1195, 1197 (La. 1981).

The verdict rendered in this case further indicates the jury rejected the defendant's hypothesis of innocence that the sexual intercourse was consensual and Rivera, who was abusive and beat the victim, inflicted the victim's injuries. When a case involves circumstantial evidence and the jury 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. No blood of Michelle was found in my bedroom or bathroom. Her tanktop was very bloody & her face was bloody. Please explain, "Where did traces of her blood was found inside or outside of my trailer? That's why Mr. Canizzaro did not arrest me for rape. No rape ever happen, plus the items taken out of my bedroom for forensic testing on my bed, comforter, blanket, sheet, pillows, pillow cases plus the pictures taken of my bedroom proved no rape occurred a few hours later after she lied to police. See **State v. Moten**, 510 So.2d 55, 61 (La. App. 1st Cir.), writ denied, 514 So.2d 126 (La. 1987). No such hypothesis exists in this case. Further, in reviewing the evidence, we cannot say that the jury's determination was irrational under the facts and circumstances presented to them. See **Ordodi**, 946 So.2d at 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. See **State v. Calloway**, 2007-2306 (La. 1/21/09), 1 So.3d 417, 418 (*per curiam*); **State v. Mire**, 2014-2295 (La. 1/27/16), __So.3d__, __, 2016 WL 314814 (*per curiam*). Based on the foregoing reasons, this assignment of error lacks merit.

BATSON CHALLENGE

In his first assignment of error, the defendant contends that the State improperly exercised peremptory challenges against prospective jurors on the basis

of race and gender.[4] Specifically, the defendant contends that the State failed to give race-neutral reasons for striking potential jurors Christopher Dupuy and Janice Rollins.[5]

In **Batson v. Kentucky**, 476 U.S. 79, 93-98, 106 S.Ct. 1712, 1721-1724, 90 L.Ed.2d 69 (1986), the United States Supreme Court adopted a three-step analysis to determine whether the constitutional rights of a defendant or prospective jurors have been infringed by impermissible discriminatory practices. First, the defendant must make a *prima facie* showing that the prosecutor has exercised peremptory challenges on the basis of race. Second, if the requisite showing has been made, the burden shifts to the prosecutor to articulate a race-neutral explanation for striking the jurors in question. Finally, the district court must determine whether the defendant has carried his burden of proving purposeful discrimination. **State v. Harris**, 2015-0995 (La. 10/19/16), __So.3d__, __, 2016 WL 6123605 (*per curiam*); **State v. Handon**, 2006-0131 (La. App. 1st Cir. 12/28/06), 952 So.2d 53, 56.

To establish a *prima facie* case, the defendant must show: (1) the defendant is a member of a cognizable group and the prosecutor exercised peremptory challenges to remove venire members of the defendant's race; (2) the challenge was peremptory rather than for cause; and (3) relevant circumstances sufficient to raise an inference that the prosecutor struck the venire person on account of his being a member of that cognizable group. See **Batson**, 476 U.S. at 96, 106 S.Ct. at 1723. Without an inference that the prospective jurors were stricken because they are members of the targeted group, the defendant is unable to make a *prima facie*

[4] The defendant argues in his brief that the State improperly exercised peremptory challenges on the basis of gender, citing **J.E.B. v. Alabama ex rel. T.B.**, 511 U.S. 127, 114 S.Ct. 1419, 128 L.Ed.2d 89 (1994). However, the defendant did not raise this issue in the district court, nor does he address it further on appeal. Therefore, the issue of gender will not be addressed.

[5] The record reveals that the objection made by the defendant was untimely, as it was made after the jury was empaneled and sworn. See **State v. Williams**, 524 So.2d 746, 746-47 (La. 1988) (*per curiam*). However, because the district court allowed the defendant to object and ruled on the objection, we will address the defendant's assignment of error.

case of purposeful discrimination, and his **Batson** challenge expires at the threshold. See **State v. Sparks**, 88-0017 (La. 5/11/11), 68 So.3d 435, 468, cert. denied sub nom., **El-Mumit v. Louisiana**, __U.S.__, 132 S.Ct. 1794, 182 L.Ed.2d 621 (2012).

The district court may "effectively collapse the first two stages of the **Batson** procedure, whether or not the defendant established a *prima facie* case of purposeful discrimination, and may then perform the critical third step of weighing the defendant's proof and the prosecutor's race-neutral reasons to determine discriminatory intent." **State v. Jacobs**, 99-0991 (La. 5/15/01), 803 So.2d 933, 941, cert. denied, 534 U.S. 1087, 122 S.Ct. 826, 151 L.Ed.2d 707 (2002). A district court judge may take into account not only whether a pattern of strikes against a suspect class of persons has emerged during voir dire, but also whether the opposing party's questions and statements during voir dire examination and in exercising his challenges may support or refute an inference of discriminatory purpose. See **State v. Duncan**, 99-2615 (La. 10/16/01), 802 So.2d 533, 545, cert. denied, 536 U.S. 907, 122 S.Ct. 2362, 153 L.Ed.2d 183 (2002).

The State, in presenting race-neutral reasons for its excusal of prospective jurors, need not present an explanation that is persuasive, or even plausible; unless a discriminatory intent is inherent in the State's explanation after review of the entire record, the reason offered will be deemed race neutral. For a **Batson** challenge to succeed, it is not enough that a discriminatory result be evidenced; rather, that result must ultimately be traced to a prohibited discriminatory purpose. Thus, the sole focus of the **Batson** inquiry is upon the intent of the opposing party at the time he exercised his peremptory strikes. See **State v. Green**, 94-0887 (La. 5/22/95), 655 So.2d 272, 287. A reviewing court owes the district court's evaluations of discriminatory intent great deference and should not reverse them unless they are clearly erroneous. **Handon**, 952 So.2d at 58.

The defendant contends that two African Americans were peremptorily stricken from the jury by the State: Christopher Dupuy and Janice Rollins, and the State failed to give sufficient race-neutral reasons for striking those prospective jurors. The record indicates that Dupuy and Rollins were part of the second panel of prospective jurors. After the jury panel was sworn, defense counsel moved to dismiss "the entire panel" because of "the systematic exclusion of black people from the jury by the prosecution, **Batson versus Kentucky**." He subsequently specified that his challenges were to Dupuy and Rollins.

The State argued that the challenge was untimely and noted that one of the jurors that "appeared to be [African American], if we are going to go on skin tone" was struck by the defense. The district court stated that the challenge was likely untimely, but "out of an abundance of caution" allowed the State to give race-neutral reasons for the exclusion of Dupuy and Rollins. The district court noted that it "took the liberty during jury selection of the total of . . . 44 venire persons that we occasioned, that three appeared to me to be of African American descent. But again, I did not have themselves identify which would have been helpful in this process also."

As to prospective juror Dupuy, the State argued that he was an unwed father of two children, and it "just [did not] like that on a jury of this type, having an unwed father." As to Rollins, the State argued that "she along with everybody else who answered half, we struck, both Caucasian and African American. She believes half of rape allegations are false." The district court inquired as to whether the State struck Karen Livingston, the third African American prospective juror. The State noted that it accepted Livingston as an alternate, but the defendant used a peremptory strike to remove her. The State explained that although Livingston did state that she believed half of all rape allegations are false, "the Court had given the State only one peremptory challenge, each side I should say,

one peremptory challenge as to alternates. And we had to exercise the one we felt was best suited for our case." The State noted that it exercised its one peremptory challenge on potential alternate juror Thomas Rowley, who also indicated that he believed half of all rape allegations are false.

The district court accepted the race-neutral reasons provided by the State and denied the defendant's **Batson** challenge. The defendant then argued that the entire jury pool was "suspect" inasmuch as there were very few African Americans within the pool. The district court noted that the jury selection process is random and specified that of the forty-four potential jurors, it identified Dupuy, Rollins, and Scott Baham as African American, and noted that Baham, who was also in the second panel of prospective jurors, was peremptorily stricken by the defense.

Our review of the State's explanations for the peremptory challenges against the two prospective jurors at issue – Dupuy and Rollins – reflect race-neutral justifications. The State explained that it struck Dupuy because it did not like to have unwed fathers on a jury for a rape offense. Rollins was stricken because she answered that half of all rape allegations were false. The State's race-neutral explanations were reasonable, and the proffered rationales had some basis in accepted trial strategy. See **Handon**, 952 So.2d at 59. Other than the reliance upon the number of African Americans who were peremptorily stricken, defense counsel offered no facts or circumstances supporting an inference that the State exercised its strikes in a discriminatory manner. Thus, the defendant's proof, when weighed against the State's race-neutral reasons, was not sufficient to prove the existence of discriminatory intent. See **Green**, 655 So.2d at 290. Moreover, a review of the entire voir dire transcript fails to reveal any evidence that the use of peremptory strikes by the State was motivated by impermissible considerations. See **Handon**, 952 So.2d at 59. Accordingly, we find no abuse of discretion by the district court in its denials of the defendant's **Batson** challenges regarding these

prospective jurors.

This assignment of error is without merit.

OTHER CRIMES EVIDENCE

In his third assignment of error, the defendant argues that the district court erred in allowing other crimes evidence to be introduced by the State. Specifically, the defendant complains that during Detective Canizaro's testimony, he alluded to other charges.

During the defendant's cross-examination of Detective Canizaro, defense counsel asked the detective whether he recalled when the defendant was arrested. The detective indicated that he did not. Defense counsel then asked, "You had information about someone who had assaulted [the victim] on January 18th, 2014, because it happened on that date. And she went to the hospital on that date. And you had information on or about January 18th, 2014, that she is alleging that she was raped?" The detective responded affirmatively. Defense counsel then asked, "But [the defendant] was not arrested until much later?" The detective responded, "For that offense, correct." Defense counsel stated, "For that offense. So did you investigate in the meantime the allegations that this lady gave you?" Detective Canizaro responded affirmatively. Defense counsel reiterated, "And you're saying that you had her statement about what happened, but you didn't arrest him until maybe a year later?"

Defense counsel continued questioning the detective and later asked whether the detective conducted a background check on the defendant. The following colloquy then occurred:

> [Defense counsel]: Did you see anything in his background check where he was accused of doing this before?
>
> [Canizaro]: What this?
>
> [Defense counsel]: Rape[.]

[Canizaro]: No.

[Defense counsel]: Sexual offenses of any kind?

[Canizaro]: None that I found.

On redirect examination, the State asked:

> [State]: Detective Canizaro, [defense counsel] just asked you a question regarding the background check you did in to [sic] [the defendant]. Do you recall seeing on August 24, 1988, that he WAS arrested for felony carnal knowledge of a juvenile? [(Emphasis in original).]
>
> [Canizaro]: If it's on this report, it's correct. I don't recall the exact. I know there were no recent issues or arrests involving any kind of sexual battery or anything like that.
>
> [State]: And felony carnal knowledge of a juvenile is a sex offense?
>
> [Canizaro]: Yes, it is.
>
> [State]: Now, Detective, I want to go back to a couple other points.
>
> [Defense counsel]: This is a prolonged and late objection. He is only entitled to ask him about convictions.
>
> [State]: Objection to –
>
> [State]: May we approach?
>
> [District Court]: Hold on for a second. Overruled. You may ask another question.
>
> [State]: Thank you, sir.

The State then continued its redirect examination of the detective and asked, "Detective, [the defendant] was actually arrested for other offenses than what he is on trial for today on, when you executed that search warrant. He was arrested for those offenses, correct?" The detective responded affirmatively. The State then asked, "And you waited until the DNA report came in, in September, prior to authoring an affidavit for an arrest warrant for him on these offenses, correct?" The detective again responded affirmatively and explained that the purpose of waiting for the DNA to come in was for "scientific evidence to directly refute what

[the defendant] told me as he was walking past my cubicle."[6]

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or waste of time. La. C.E. art. 403. A district court's determination regarding the relevancy and admissibility of evidence will not be overturned on appeal absent a clear abuse of discretion. **State v. Freeman**, 2007-0470 (La. App. 1st Cir. 9/14/07), 970 So.2d 621, 625, writ denied, 2007-2129 (La. 3/14/08), 977 So.2d 930.

Louisiana Code of Evidence article 404(B)(1) provides:

> Except as provided in Article 412, evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, of the nature of any such evidence it intends to introduce at trial for such purposes, or when it relates to conduct that constitutes an integral part of the act or transaction that is the subject of the present proceeding.

Generally, evidence of criminal offenses other than the offense being tried is inadmissible as substantive evidence because of the substantial risk of grave prejudice to the defendant. **State v. Pierre**, 2012-0125 (La. App. 1st Cir. 9/21/12), 111 So.3d 64, 68, writ denied, 2012-2227 (La. 4/1/13), 110 So.3d 139. A direct or indirect reference to another crime committed or alleged to have been committed by the defendant, as to which evidence would not be admissible, made within the hearing of the jury by the judge, district attorney or a court official, during trial or in argument, would require a mistrial on motion of the defendant. La. C.Cr.P. art. 770(2).

In the instant case, the defendant did not move for a mistrial. Instead, he objected to the testimony, arguing that the State was "only entitled to ask about

[6] As previously noted, when the defendant walked past Detective Canizaro's cubicle, he stated, "I did not f*** that girl."

convictions." However, it was defense counsel, on cross-examination, who opened the door to the State's line of questioning. Although defense counsel contends the State was only entitled to ask about convictions, defense counsel's questions were not limited to convictions. Defense counsel asked whether the background check revealed that the defendant was "accused of rape or any sexual offenses." When defense counsel questioned Detective Canizaro, he clearly opened the door to the State's line of questioning on redirect examination. Rebuttal evidence is defined as that "which is offered to explain, repel, counteract or disprove facts given in evidence by the adverse party." **State v. Tyler**, 97-0338 (La. 9/9/98), 723 So.2d 939, 948-949, cert. denied, 526 U.S. 1073, 119 S.Ct. 1472, 143 L.Ed.2d 556 (1999). Rebuttal evidence is evidence which has become relevant or important only as an effect of some evidence introduced by the other side. **State v. Turner**, 337 So.2d 455, 458 (La. 1976). The governing statutory provision on rebuttal evidence is La. C.E. art. 611E, which provides that "the state in a criminal prosecution shall have the right to rebut evidence adduced by their opponents." Where defense counsel went on cross-examination, the State had the right to follow on redirect. **State v. Constance**, 2008-2585 (La. App. 1st Cir. 11/18/09), 2009 WL 3853163 (unpublished), writ denied, 2010-0083 (La. 6/25/10), 38 So.3d 335. Accordingly, this assignment of error is without merit.

HABITUAL OFFENDER STATUS

In his last assignment of error, the defendant contends that the district court erred in finding him to be a fourth-felony habitual offender without a transcript or **Boykin** form. The defendant argues that his prior convictions were not "sufficiently proven" by the State because it admitted only fingerprints and minute entries in connection with the prior convictions. According to the defendant, because the State failed to introduce transcripts of the **Boykin** colloquies in connection with his prior convictions, it failed to establish that he validly waived

his rights.

To obtain a multiple-offender adjudication, the State is required to establish both the prior felony convictions and that the defendant is the same person convicted of those felonies. 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 (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. **Payton**, 810 So.2d at 1132.

In connection with the defendant's 2009 predicate offense (Twenty-Second JDC docket number 462,624), the State introduced a transcript; in connection with the defendant's 2011 predicate offense (Twenty-Second JDC docket number 501,259), the State introduced a minute entry; and in connection with the defendant's 2014 predicate offense (Twenty-Second JDC docket number 545,341), the State introduced both a plea form and minute entry. The documents admitted by the State indicate that the defendant was represented by counsel, that the court advised him of his right to a trial, right to confront his accusers, and right against self-incrimination, and that the defendant waived those rights.

The State also introduced the testimony of Deputy First Class Lauren Engel, an expert in latent fingerprint identification comparison. Deputy Engel testified that she made a fingerprint card using the fingerprints of the defendant on the morning of the habitual offender hearing. She compared those fingerprints to those on the bills of information in connection with the defendant's three predicate offenses and determined that all three sets of fingerprints were the same as those taken of the defendant on the morning of the hearing. Therefore, the State met its

burden of establishing the predicate felony convictions and the defendant's identity as the person convicted of those felonies.

Once the State met its burden, the burden shifted to the defendant to produce some affirmative evidence showing an infringement of his rights or a procedural irregularity in the taking of the pleas. If the defendant is able to do this, then the burden shifts back to the State. The State will meet its burden if it introduced 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 a 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 the State to determine whether the State has met its burden of proving that the defendant's prior guilty plea was informed and voluntarily made with an articulated waiver of the three **Boykin** rights. **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 (La. 7/2/04), 879 So.2d 689, 691 (*per curiam*).

The only evidence presented at the hearing by the defense was the defendant's own testimony wherein he alleged that he was under the impression that for each predicate offense to which he pled guilty, the offenses were "supposed to be a misdemeanor for paraphernalia." He admitted that as to one of the three offenses, he "did have one . . . crack cocaine rock," but claimed that he

was under the impression that he was pleading guilty to a misdemeanor offense. He claimed that in connection with his 2009 predicate offense under Twenty-Second JDC docket number 462,624, he did not sign a **Boykin** form and "[did not] recall" whether the district court judge advised him of his rights. However, he subsequently agreed with defense counsel that he was informed of his rights, as reflected in the record of that offense.

On cross-examination, the defendant admitted that he remembered being sentenced to four years in connection with his 2014 predicate felony offense and admitted that it was a felony offense. In connection with his 2011 predicate felony offense, the defendant denied receiving a sentence of five years. In connection with his 2009 predicate felony offense, he admitted being sentenced to two years at hard labor, but maintained that he was under the impression he was being sentenced for a misdemeanor offense.

At the conclusion of the defendant's testimony, his counsel argued that the State failed to produce a **Boykin** form in connection with the three predicate offenses and claimed that in connection with his 2009 offense, the district court "only advised him of certain rights." On appeal, the defendant contends that "proof of the prior convictions was defective" because the State "merely introduce[d] proof that the fingerprints on the prior convictions were that of [the defendant]. No **Boykin** or plea colloquy was presented to the trial court[.]"

As noted above, the State proved the existence of the prior convictions and the defendant's identity as the person convicted of those felonies through minute entries, plea forms, transcripts, and expert testimony regarding fingerprints of the defendant when compared to those in the prior records. The only evidence presented by the defendant was his testimony wherein he alleged he thought he was entering guilty pleas to misdemeanor offenses. Because the defendant did not produce any affirmative evidence showing an infringement on his rights, the State

had no burden to prove the constitutionality of the predicates offenses at issue by "perfect" transcript or otherwise. See **Shelton**, 621 So.2d at 779-80. Nonetheless, in connection with the defendant's 2009 predicate offense, the State did introduce a "perfect" transcript; in connection with the 2011 predicate offense, the State introduced a minute entry; and in connection with the 2014 predicate offense, the State introduced both a plea form and a minute entry. These documents indicated that the defendant was represented by counsel, advised of his right to trial, right to confront his accusers, and right against self-incrimination, and that the defendant waived those rights. Based on the foregoing, we find that the district court did not err in adjudicating the defendant a fourth-felony habitual offender. Accordingly, this assignment of error is without merit. See **State v. Hatcher**, 2014-1364 (La. App. 1st Cir. 3/9/15), 2015 WL 1033698 (unpublished), writ denied, 2015-0695 (La. 2/26/16), 187 So.3d 472.

For the foregoing reasons, the defendant's conviction, habitual offender adjudication, and sentence are affirmed.

CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.

APPENDIX A

NOT DESIGNATED
FOR PUBLICATION

COURT OF APPEAL, FIRST CIRCUIT
STATE OF LOUISIANA

RE: Docket Number 2016-KA-1524

State Of Louisiana

-- Versus --

Alvin Davis, Jr.

22nd Judicial District Court
Case #: 572397
St. Tammany Parish

On Application for Rehearing filed on 07/19/2017 by Alvin Davis, Jr.

Rehearing

Jewel E. "Duke" Welch

William J Crain

Guy Holdridge

Date JUL 31 2017

Rodd Naquin, Clerk

APPENDIX A

STATE OF LOUISIANA

VERSUS

ALVIN DAVIS

NUMBER: 572397

DIVISION: "G"

ST. TAMMANY PARISH

STATE OF LOUISIANA

FILED: June 23, 2010

DEPUTY CLERK

For purposes of your deliberations, you are provided a written list of the verdicts responsive to the offense charged:

GUILTY OF FORCIBLE RAPE

GUILTY OF ATTEMPTED FORCIBLE RAPE

GUILTY OF SIMPLE RAPE

GUILTY OF ATTEMPTED SIMPLE RAPE

GUILTY OF SEXUAL BATTERY

NOT GUILTY

APPENDIX B

VERDICT OF THE JURY

WE, the jury, find the defendant, **ALVIN DAVIS**

Guilty

FOREPERSON

Covington, Louisiana this 23 day of June, 2016.

APPENDIX B

TWENTY SECOND JUDICIAL DISTRICT COURT
PARISH OF ST TAMMANY
STATE OF LOUISIANA

No. 572 397 G

STATE OF LOUISIANA

VS

ALVIN DAVIS, JR.

ORDER

Considering the above and foregoing Motion for Appeal,
IT IS ORDERED THAT the Motion for Appeal granted. Return date 75 days from signing

Covington, La. August 1, 2016

Honorable Scott Gardner
22nd Judicial District Court

APPENDIX B

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

NO. 2017-K-1440

VS.

ALVIN DAVIS, JR.

- - - - - -

IN RE: Alvin Davis, Jr.; - Defendant; Applying For Writ of Certiorari and/or Review, Parish of St. Tammany, 22nd Judicial District Court Div. G, No. 572397; to the Court of Appeal, First Circuit, No. 2016 KA 1524;

- - - - - -

May 18, 2018

Denied.

SJC

BJJ

JLW

GGG

MRC

JDH

JTG

Supreme Court of Louisiana
May 18, 2018

Theresa McCarthy

Deputy Clerk of Court
For the Court

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA NO. 2017-K-1440

VS.

ALVIN DAVIS, JR.

IN RE: Alvin Davis, Jr.; -Defendant; Applying for Reconsideration of this Court's action dated May 18, 2018, Parish of St. Tammany, 22nd Judicial District Court Div. G, No. 572397; to the Court of Appeal, First Circuit, No. 2016 KA 1524;

September 21, 2018

Not considered. See La.S.Ct. Rule IX, § 6.

JDH

BJJ

JLW

GGG

MRC

SJC

JTG

Supreme Court of Louisiana

Deputy Clerk of Court
For the Court

APPENDIX C

APPENDIX C