**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2006 KA 0235**

**STATE OF LOUISIANA**

**VERSUS**

**VAN MORRIS**

Judgment Rendered: SEP 20 2006

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On Appeal from the 19th Judicial District Court
In and For the Parish of East Baton Rouge, State of Louisiana
Trial Court No. 11-04-0632
Honorable Richard Anderson, Judge Presiding

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**BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.**

Downing, J. concurs.

**HUGHES, J.**

The defendant, Van Stanley Morris, was charged by bill of information with one count of second degree battery (Count I), a violation of LSA-R.S. 14:34.1, three counts of simple burglary (Counts II, III, and IV), violations of LSA-R.S. 14:62, and one count of attempted simple burglary (Count V), a violation of LSA-R.S. 14:27 and 14:62. He pled not guilty on all counts. Following a jury trial on Counts II and V, he was found guilty as charged on both counts.[1] On Count II, he was sentenced to twelve years at hard labor. On Count V, he was sentenced to six years at hard labor to run concurrently with the sentence imposed on Count II. Thereafter, the State filed a habitual offender bill of information alleging, in regard to Count II, the defendant was a third felony habitual offender. Predicate Number 1 was set forth as the defendant's May 17, 1989 guilty plea to simple burglary of an inhabited dwelling.[2] Predicate Number 2 was set forth as the defendant's February 26, 1985 guilty plea to simple burglary.[3] Following a hearing, the defendant was adjudged a third felony habitual offender, the sentence on Count II was vacated, and he was resentenced to imprisonment for the remainder of his natural life at hard labor without benefit of parole, probation, or suspension of sentence.[4] He moved for reconsideration of sentence, but the motion was denied. He now appeals, designating one

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[1] Count I was severed prior to trial and dismissed following trial. Counts III and IV were dismissed prior to trial.

[2] The State further set forth, in regard to Predicate Number 1, the defendant had been arrested on March 2, 1989, charged under 19th Judicial District Court Docket Number 03-89-924, and sentenced to six years at hard labor.

[3] The State further set forth, in regard to Predicate Number 2, the defendant had been arrested on May 16, 1984, charged under 19th Judicial District Court Docket Number 06-84-125, and sentenced to one year at hard labor.

[4] The sentence is deemed to contain the provisions of LSA-R.S. 15:529.1(A)(1)(b)(ii) denying parole, probation, or suspension of sentence. See LSA-R.S. 15:301.1(A).

assignment of error. We affirm the convictions, habitual offender adjudication, and sentences.

## ASSIGNMENT OF ERROR

In defendant's sole assignment of error, he asserts that the sentence imposed is unconstitutionally excessive.

## FACTS

### COUNT II

Between September 17, 2004 and September 18, 2004, a vehicle belonging to Michael Tyrone Ross was burglarized on Kingston Drive in Baton Rouge. Items taken from the vehicle included: the owner's manual, two pairs of prescription glasses, a pair of sunglasses, several music CDs, a work identification card, and a cellular telephone. Following the burglary, Ross had the cellular telephone turned off, but had the number transferred to another cellular telephone that he owned. Several days later, Anitra Zanders returned the defendant's September 18, 2004 telephone call made from the stolen cellular telephone. Zanders informed Ross that the defendant had called her using the stolen cellular telephone. Additionally, the defendant's fingerprints were discovered on the exterior of the burglarized vehicle. Ross had not given the defendant permission to touch, get into, or to take anything from the vehicle.

### COUNT V

On September 17, 2004, Gloria D. Parker saw the defendant, with something in his hands, trying to pry open the door to Geraldine Bell's storage shed on Davenport Avenue in Baton Rouge. Parker asked the defendant why he was under Mr. Bell's carport, and the defendant looked toward Parker. Parker indicated she would know the defendant anywhere. She also immediately selected his photograph from a six-man photographic lineup. A

subsequent examination of the door of the storage shed revealed evidence that someone had recently attempted to forcefully open the door. Geraldine Bell had not given the defendant permission to enter the storage shed.

## EXCESSIVE SENTENCE

The defendant argues the sentence imposed on Count II is unconstitutionally excessive. He also references LSA-C.Cr.P. art. 894.1. He does not contest the sentence imposed on Count V.

Louisiana Revised Statute 15:529.1, in pertinent part, provides:

> 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:
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> (b) If the third felony is such that upon a first conviction, the offender would be punishable by imprisonment for any term less than his natural life then:
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> * * *
>
> (ii) If the third felony and the two prior felonies are ... any other crimes punishable by imprisonment for twelve years or more, or any combination of such crimes, the person shall be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.

On Count II, the defendant was sentenced to imprisonment for the remainder of his natural life at hard labor without benefit of parole, probation, or suspension of sentence.[5]

## LSA-C.Cr.P. Art. 894.1

The Louisiana Code of Criminal Procedure sets forth items that must be considered by the trial court before imposing sentence. LSA-C.Cr.P. art. 894.1. The trial court need not recite the entire checklist of Article 894.1, but the record must reflect that it adequately considered the criteria. In light of the criteria expressed by Article 894.1, a review for individual excessiveness should consider the circumstances of the crime and the trial

[5] See Footnote 4, supra.

court's stated reasons and factual basis for its sentencing decision. **State v. Hurst**, 99-2868, p. 10 (La. App. 1 Cir. 10/3/00), 797 So.2d 75, 83, writ denied, 2000-3053 (La. 10/5/01), 798 So.2d 962.

**CONSTITUTIONAL EXCESSIVENESS**

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. **Hurst**, 99-2868 at pp. 10-11, 797 So.2d at 83.

In order for a trial court to depart from a mandatory minimum sentence, the defendant must clearly and convincingly show that he is "exceptional," which in this context means that "because of unusual circumstances this defendant is a victim of the 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." **State v. Johnson**, 97-1906, p. 8 (La. 3/4/98), 709 So.2d 672, 676.

At sentencing, defense counsel argued Predicate Number 2 stemmed from an arrest that had occurred over twenty-one years earlier and the defendant had taken responsibility for that offense and Predicate Number 1 by pleading guilty. In regard to the instant offense, the defense argued

Count II involved the burglary of an unlocked automobile and Count V involved the attempted prying open of a storage room door. The State replied the defendant was a burglar, had been convicted of three different burglaries over twenty-one years, and had thirty-four arrests.

In denying the motion to reconsider sentence, the court noted the defendant's offense and criminal history placed him under LSA-R.S. 15:529.1(A)(1)(b)(ii) and he continued to repeatedly commit the same offense.

At the initial sentencing, the trial court noted: the defendant was forty years old; he was a third felony habitual offender; he was arrested in 1983 for felony theft, pled guilty, and was sentenced to one year in parish prison; he was arrested in May of 1984 for simple burglary, was convicted in 1985, was placed on supervised probation for three years, but that probation was revoked in 1985; he was arrested in March of 1989 for simple burglary of an inhabited dwelling, pled guilty, was sentenced to six years at hard labor, the first year to be served without benefit of probation, parole, or suspension of sentence, was released on parole in July of 1992, but that parole was revoked in 1993; he was arrested in April of 1996 for simple battery, disturbing the peace, and resisting an officer, was convicted of battery on an officer and resisting an officer, and was sentenced to six months in parish prison. The court also noted the defendant had at least six arrests on bench warrants. The court found the defendant continued to commit burglary despite being convicted two previous times of committing burglary and serving department of corrections time on both offenses. The court further found the defendant in need of a custodial environment and ineligible for probation.

In the instant case, 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 LSA-R.S. 15:529.1(A)(1)(b)(ii) in sentencing the defendant on Count II.

Further, the trial court adequately considered the criteria of Article 894.1 and did not manifestly abuse its discretion in imposing the sentence on Count II. See LSA-C.Cr.P. art. 894.1(A)(2) and (B)(21).

Additionally, the sentence imposed on Count II was not grossly disproportionate to the severity of the offense and, thus, was not unconstitutionally excessive.

This assignment of error is without merit.

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