NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2001-KA-1990**
VERSUS	*	**COURT OF APPEAL**
NOLAN LEBANKS	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 386-852, SECTION "L"
Honorable Terry Alarcon, Judge

* * * * * *

Chief Judge William H. Byrnes, III

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(Court composed of Chief Judge William H. Byrnes, III, Judge Charles R. Jones, and Judge Patricia Rivet Murray)

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AFFIRMED

In this consolidated case, the defendant, Nolan LeBanks, appeals his sentence as a third offender based on the claim that his mandatory minimum life sentence without benefit of parole, probation or suspension of sentence is excessive. We affirm.

Nolan LeBanks was charged with and found to be guilty of burglary of an inhabited dwelling after a trial on August 6, 1997 in Case Number 99-1890; Criminal District Court ("CDC") No. 387-071. He was also tried and found to be guilty of purse snatching on November 13, 1997 in Case Number 99-1905; CDC No. 386-852). The state filed a multiple bill charging him as a triple offender on both convictions, and after a hearing, LeBanks was sentenced to life imprisonment without benefit of parole, probation, or suspension of sentence on each count under La. R.S. 15:529.1. He challenged his multiple offender adjudications on appeal, and in an unpublished opinion, this court affirmed his convictions and vacated the two life sentences. *State v. LeBanks*, 99-1890 c/w 99-1905 (La. App. 4 Cir. 12/6/00), 778 So.2d 110.

The facts of the case as presented in the earlier appeal are as follows:

> At trial on the burglary charge (99-KA-1890, CDC #387-071), Mr. Steven Adams ("Mr. Adams") testified that he was living at 5309 Painters Street on August 14, 1996, when his apartment was burglarized. He left to go to work that day at about 7:30 a.m. Mr. Adams testified that he had locked his door but not his bedroom window. The window had burglar bars. When he returned home at about 5:40 p.m., he saw a cabinet in front of his door. Then he noticed that his door was open. Mr. Adams testified that upon entering his apartment, he found that all of his stereo equipment, his CD's, his camera, and his television were gone. His bedroom was ransacked. The burglar bars had been taken out of the window. Candlesticks that had been standing on each of the two speakers were on his kitchen table. Some time after the burglary, an officer asked Mr. Adams if he would try to identify some of his belongings, and Mr. Adams found his camera. Mr. Adams further testified that he never gave the defendant permission to enter his house.
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> Officer Greg Torregano ("Officer Torregano") testified that he investigated a residential burglary at 5309 Painters Street, and he met with Mr. Adams. The officer determined that the burglar had entered a bedroom window. Officer Torregano also testified that fingerprints were found on a glass candlestick.
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> Officer Millard Green, an expert in the field of lifting fingerprints, testified that he was able to obtain six fingerprints from the glass candlesticks in Mr. Adams' apartment.
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> Officer Glen Burmaster ("Officer Burmaster"), an expert in fingerprint analysis, testified that he compared the fingerprints lifted from the candlesticks with those of the defendant, which were in the computer, and he found that the fingerprints were the same.

Detective Paul McCaskell ("Detective McCaskell") testified that when he received the fingerprint report from Officer Burmaster, he obtained a search warrant for 3606 Benefit Street, Apartment C, the home of the defendant. After searching the apartment, Detective McCaskell found a Polaroid camera that Mr. Adams identified as his because of paint speckles on the back of the camera. The detective interviewed the defendant and read him his rights. The defendant informed the detective that he could neither read nor write, but he did understand the rights that the detective read to him.

At trial on the purse snatching charge (99-KA-1905, CDC #386-852), Officer Darryl Albert ("Officer Albert") testified that he first saw the defendant on October 10, 1996, when the defendant ran in front of the officer's vehicle on Esplanade Avenue. Officer Albert testified that the defendant was carrying a woman's purse, and a man was chasing him. The traffic was too heavy for Officer Albert to follow the defendant by car; therefore, he parked and joined the foot chase. Officer Albert testified that at Royal Street and Esplanade Avenue, the defendant jumped over a wall, and the officer called for assistance and set up a perimeter watch to block any escape route. The resident at the corner of Royal Street and Esplanade Avenue allowed the police into the yard. The police found the defendant hiding in the courtyard. Officer Albert identified the defendant as the man he had seen running with the purse. The officer had seen the defendant drop the purse on the neutral ground just before he crossed the street and jumped the wall. The purse was later recovered.

Officer Melvin Hunter ("Officer Hunter") testified that he responded to Officer Albert's call for assistance. Officer Hunter testified that he found the defendant in the courtyard.

Ms. Karen Ohda ("Ms. Ohda"), of Pleasant

Hill, California, testified that she, her husband, her mother and her sister were staying at the Lamothe House on Esplanade Avenue while vacationing in New Orleans in October of 1996. They were walking to the hotel after dinner on October 10th, when a man running behind her grabbed her purse. He then ran across the street, and her husband followed him. She saw a police car, and shortly thereafter, the police apprehended the man. She identified him for the police. A woman, who was walking a dog on the neutral ground, picked up the purse and returned it to Ms. Ohda.

Mr. Dale Ohda ("Mr. Ohda") testified that on the night in question, he and his family were walking toward their hotel when he heard his wife make a noise, and something bumped his arm. Mr. Ohda testified that he saw a man run between him and his wife. The man, later identified as the defendant, was carrying Mr. Ohda's wife's purse. Mr. Ohda gave chase. In the course of the run, the defendant crossed the street. Mr. Ohda testified that he did not cross over but followed while remaining on the same side of the street. Mr. Ohda testified that there was a crowd on the other side of the street, and the defendant crossed Esplanade Avenue. Mr. Ohda thought the defendant had turned a corner, but he later learned that the defendant had jumped a fence. Mr. Ohda further testified that another man was also chasing the defendant, and he informed Mr. Ohda that the defendant was on the other side of the fence under a carriage house. Almost immediately, the police were there, and they apprehended the defendant.

Ms. Cindy Bogle ("Ms. Bogle"), the sister of Ms. Ohda, testified that she and her family were walking on Chartres Street when she noticed a young man walking toward them. He was wearing white tennis shoes, shorts, and an Army jacket. Ms. Bogle stated that Ms. Ohda and her mother were walking behind Ms. Bogle, and after a young man passed her, Ms. Bogle heard her sister scream,

> "Stop that son of a b….. He stole my purse." The young man sprinted by her and continued on to Esplanade Avenue. Ms. Bogle saw the defendant run across the street and then return. Ms. Bogle testified that her brother-in-law was chasing the man.
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> Mr. Nathan Hills ("Mr. Hills") testified that in October of 1996 he lived at 820 Esplanade Avenue. On the night in question, he and his wife were walking their dog near Chartres Street when he noticed a man coming toward him wearing winter clothes on a warm night. Mr. Hills testified that he then heard a ruckus and later saw the same man running away from the French Quarter, on Chartres Street. Mr. Hill was on Esplanade Avenue on the Marigny side when he saw the man cross the street toward him. As Mr. Hills began to chase him, the defendant turned back to re-cross the street. According to Mr. Hills, the man looked like he was carrying a football. Mr. Hills further testified that the man jumped over a gate at Royal Street and Esplanade Avenue and ran behind one of the side buildings. Mr. Hills saw the defendant apprehended and recognized him as the man he had chased.
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> *State v. LeBanks*, pp. 2-6).

The resentencing hearings were held on February 20 and March 13, 2001. At the February 20, 2001, hearing, the fingerprint expert testified that the Nolan LeBanks fingerprinted in court that day was the same man whose prints were on the arrest registers leading to the convictions dated 1979 and 1982. Furthermore, he stated that all the information as to the defendant's name, date of birth, item number, and date of arrest on the documents from 1979 was consistent as was the information on the documents from 1982.

This court found an error in each of LeBank's original multiple bills sentencing him to two life terms. On the sentence based on the simple burglary conviction, this court held:

> The Habitual Offender Law provides that a third offender shall receive a term of life if one of the three felonies is a crime of violence under La. R.S. 14:2(13) or is a violation of the Uniform Controlled Dangerous Substances Law or any other crime punishable by more than twelve years imprisonment. On the multiple bill of information, the defendant is charged with three convictions for simple burglary: the first in July of 1979; the second in September of 1982; and the third in August of 1997. None of these crimes falls under La. R.S. 15:529.1(A)(1)(b)(ii). Therefore, the enhanced sentence of life imprisonment in case number 387-071 is an illegal term, and the sentence must be vacated. [Footnote omitted]. *State v. LeBanks*, p. 7.

At the resentencing hearing on March 13, 2001, the trial court again found that the defendant was a third offender and then imposed a term of twelve years at hard labor under La. R.S. 15:529.1(A)(1)(b)(i) for that conviction.

As to the purse snatching conviction, on which this court found the evidence of the ten-year cleansing period insufficient on appeal, the trial court reviewed a pen pack supplied by the state. After finding that LeBanks was on supervised parole until April 1, 1996, and the crime at issue here occurred on October 10, 1996, the trial court found that the ten-

year cleansing period had not elapsed. LeBanks was then sentenced to life imprisonment without benefits of parole, probation, or suspension of sentence as a third felony offender under La. R. S. 15:529.1(A)(1)(b)(ii) on the purse snatching conviction.

On appeal from his resentencing, LeBanks argues that his life sentence is excessive. He concedes that the sentence is mandatory pursuant to La. R. S. 15:529.1(A)(2)(b)(ii), but he maintains that under *State v. Dorthey*, 623 So.2d 1276 (La. 1993), the mandatory life sentence should be deemed excessive considering the circumstances of this "garden variety" purse snatching.

The Louisiana Supreme Court held that the penalties provided by La. R.S. 15:529.1 are not unconstitutional on their face and do not provide grounds for quashing a multiple bill in *State v. Pollard*, 93-0660 (La. 10/20/94), 644 So.2d 370. A trial court has the authority to reduce the mandatory minimum sentence provided by the statute for a particular offense and offender when such a term would violate the defendant's constitutional protection against excessive punishment. *Id.* However, as the Supreme Court explained in *State v. Johnson*, 97-1906, p. 8 (La. 3/4/98), 709 So.2d 672, 677, "it is not the role of the sentencing court to question the wisdom of the Legislature in requiring enhanced punishments for multiple offenders."

Rather, the sentencing court can only "determine whether the particular defendant before it has proven that the mandatory minimum sentence is so excessive in his case that it violates our constitution." *Id*. A defendant must prove by clear and convincing evidence 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." *Id.,* 709 So.2d at 676, citing J. Plotkin's concurrence in *State v. Young*, 94-1636, pp. 5-6 (La. App. 4 Cir. 10/26/95), 663 So.2d 525, 528. If the sentence needlessly imposes pain and suffering and is grossly out of proportion to the gravity of the offense so as to shock our sense of justice, then it may be determined to be unconstitutionally excessive as violative of La. Const. Art. 1, Sec. 20 (1974). *State v. Lobato*, 603 So.2d 739, 751 (La.1992). In the present case, the trial court had little discretion in sentencing LeBanks to the mandatory life sentence without benefit of parole, probation or suspension of sentence, given the fact that LeBanks had three offenses, one of which was a crime of violence. The record did not provide clear and convincing evidence to distinguish LeBanks as exceptional. The evidence does not rebut the presumption that the mandatory minimum sentence was constitutional. *State v. Johnson, supra,*

709 So.2d at 676; *State v. Finch*, 97-2060 (La. App. 4 Cir. 2/24/99), 730 So.2d 1020; *State v. Francis*, 96-2389 (La. App. 4 Cir. 4/15/98), 715 So.2d 457. The presentencing investigatory report in the record indicates LeBanks has an extensive criminal record, including juvenile offenses dating from 1975 and more than ten burglary offenses.

Accordingly, LeBanks's sentences are affirmed.

AFFIRMED