STATE OF LOUISIANA	*	**NO. 2002-KA-0594**
VERSUS	*	**COURT OF APPEAL**
EDWARD STARKS	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 422-612, SECTION "G"
HONORABLE JULIAN A. PARKER, JUDGE
* * * * * *
JAMES F. MCKAY III
JUDGE
* * * * * *

(Court composed of Judge James F. McKay III, Judge Dennis R. Bagneris, Sr., Judge Michael E. Kirby)

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AFFIRMED

STATEMENT OF CASE

On June 29, 2001, the defendant, Edward Starks, was charged by bill of information with armed robbery, a violation of La. R.S. 14:64. On September 26, 2001, he was tried and found guilty as charged by a jury. On October 17, 2001, the defendant pled not guilty to a multiple offender bill of information, and after a hearing on November 6, 2001, he was found to be a fourth felony offender and sentenced pursuant to La. R.S. 15:529.1, to life imprisonment at hard labor without benefit of probation, parole, or suspension of sentence, with credit for time served. The trial court denied the defendant's motion to reconsider sentence.

STATEMENT OF FACT

Titian Knox, fourteen years old at the time of the trial, testified that on April 30, 2001 at about 3:45 p.m., she was standing in front of her grandmother's house after school. At that time, the appellant pulled up in an automobile, exited the vehicle, and engaged in conversation with Ms. Knox, who he knew through his daughter and Ms. Knox's older sister. After engaging in casual conversation, the defendant pulled a gun, forced Ms.

Knox into the vehicle, locked the doors, and drove off. While driving, the defendant told Ms. Knox to take everything out of her pockets. At a stop sign at First and Loyola, he pointed the gun at Ms. Knox's head and he took forty dollars in cash from her skirt pocket. He then told her to leave the car, which she did, and Ms. Knox ran back to her grandmother's house to call her sister.

Chanell Carter, Ms. Knox's sister, testified that she had given her little sister forty dollars cash to pay for school expenses and that she learned of the robbery when Ms. Knox telephoned her and stated "June robbed me." Ms. Carter testified that she knew the defendant as "June.". Sergeant Michael Lohman, the investigating officer, testified that when he heard that the defendant had been stopped, he drove Ms. Knox to the location where she made the identification. A search of the vehicle the defendant was stopped in revealed two loaded nine-millimeter clips but no firearm was found.

The defendant testified and denied Ms. Knox's allegations.

ERRORS PATENT

A review of the record for errors patent reveals none.

ASSIGNMENT OF ERROR NUMBER 1

The defendant first agues that the trial court erred in allowing the

State to impeach him with the details of his convictions and to use the facts of those convictions to suggest that he acted in conformity with the character revealed thereby. Specifically, the defendant argues that the State pressed him on the particulars of his convictions, and having reiterated on cross-examination that he had two prior felony convictions for firearms-related offenses, used that fact to attempt to demonstrate that it was the appellant's "custom and practice" to carry a gun.

Pursuant to La. C.E. Art. 609.1, which reads as follows, the credibility of a testifying witness may be attacked by evidence of prior conviction:

> A. General criminal rule. In a criminal case, every witness by testifying subjects himself to examination relative to his criminal convictions, subject to limitations set forth below.
> B. Convictions. Generally, only offenses for which the witness has been convicted are admissible upon the issue of his credibility, and no inquiry is permitted into matters for which there has only been an arrest, the issuance of an arrest warrant, an indictment, a prosecution, or an acquittal.
> C. Details of convictions. Ordinarily, only the fact of a conviction, the name of the offense, the date thereof, and the sentence imposed is admissible. However, details of the offense may become admissible to show the true nature of the offense:
> (1) When the witness has denied the conviction or denied recollection thereof;
> (2) When the witness has testified to exculpatory facts or circumstances surrounding the conviction; or
> (3) When the probative value thereof outweighs the danger of unfair prejudice, confusion of the issues, or misleading the jury.

It is well established that the prosecution may question the defendant as to the details of prior conviction in order to impeach his credibility. State v. Wheeler, 93-1385, (La. App. 4 Cir. 10/13/94), 644 So.2d 1089, 1091. However, that questioning must be of a limited nature and may not go into far-reaching and irrelevant matters, which might prejudice the rights of the accused. Id., *citing* State v. Talbert, 416 So.2d 97 (La.1982) and State v. Connor, 403 So.2d 678 (La. 1981). The extent of inquiry allowable depends upon the facts of each case, and the trial judge's discretion in determining the scope of prosecutorial questioning is great and will not be disturbed on appeal absent a showing of abuse. Wheeler, 93-1385, 644 So.2d at 1091.

On direct examination, the defendant admitted to his prior convictions, as follows:

Q: Do you have a conviction from 1985?
A: Yes, I do.
Q: Will you tell the Court what that was for?
A: Possession of stolen property.
Q: And you have one from 1990?
A: Yes, sir.
Q: Tell us what's that for?
A: Illegal carrying of a firearm, I think.
Q: Do you have a conviction from '91?
A: Yes, I did.
Q: What was that?
A: Simple burglary.
Q: Did you have one from 1995?
A: Yes.
Q: What was that?
A: Simple burglary.

Q: Did you have a conviction in 1996?
A: Yes, I did.
Q: What was that for?
A: Convicted felon with a firearm.
Q: Did you have one from 1999?
A: Yes, I did.
Q: What was that for?
A: Possession of stolen property under five hundred dollars

On cross-examination, the State questioned the defendant regarding his prior convictions as follows:

Q: Now, you have two possession of firearm convictions, correct.
A: Yes, I do.
MR. HART [DEFENSE COUNSEL]:
Objection, Your Honor.
THE COURT:
Overruled
BY THE STATE:
Q: You carry a gun, correct?
A: Not necessarily.
Q: Well, you've been convicted twice of carrying guns?
MR. HART:
Objection, Your Honor.
THE COURT:
Well, first of all, objection is sustained. You have to be more specific.
BY THE STATE:
Q: Sir, you have been convicted twice of having a firearm in your possession, correct?
A: Yes, I have.
Q: All right. So, is it your testimony today that it is not your custom and practice to carry a guy?
A: No, it is not.
Q: It is not your custom and practice?
A: No, it's not.

In this case, the State cross-examined the defendant regarding the fact

of his prior convictions. No details were elicited or used to impeach the defendant. At most, the State used the fact of the defendant's previous convictions for weapons to challenge the credibility of the defendant's statement that he did not carry guns. A more extreme example of this is found in Talbert, where the State cross-examined the defendant witness regarding a vital element of the crime for which he had been previously convicted and which he refused to reveal without further, more detailed questioning by the State, including the victim's name, the date, and the location of the incident. Talbert, 416 So.2d at 102. It does not appear that in the instant case the trial court erred when even the more extreme cross-examination in Talbert did not require reversal. Therefore, it appears that this assignment is without merit.

ASSIGNMENT OF ERROR NUMBER 2

The defendant next argues that his sentence of life without benefits for armed robbery as a fourth felony offender was constitutionally excessive. In State v. Lindsey, 99-3256 (La.10/17/00), 770 So.2d 339, 342-43, *cert. denied,* 532 U.S. 1010, 121 S.Ct. 1739 (2001), the Louisiana Supreme Court summarized the current jurisprudence relating to the issue of sentencing below the statutory minimum of the multiple offender law. The court held that the habitual offender statute was constitutional and that the mandatory

minimum sentences contained therein should be enforced unless unconstitutionally excessive under Article I, Section 20 of the Louisiana Constitution. The standard set forth in State v. Dorthey, 623 So.2d 1276 (La. 1993), requires affirmance of the statutory sentence unless it makes no measurable contribution to acceptable goals of punishment or is nothing more than the purposeful imposition of pain and suffering and is grossly out of proportion to the severity of the crime. A trial court may depart from the statutory minimum sentence only where there is clear and convincing evidence that would rebut the presumption of constitutionality, and such cases are rare. The burden is on a defendant to rebut the presumption that a mandatory minimum sentence is constitutional. To do so, a defendant must show 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. State v.Johnson, 97-1906, (La.03/04/98), 709 So.2d 672, 676-677.

In this case, La. R.S. 15:529.1 mandated a life sentence without benefits for Starks because he was a fourth felony offender and his fourth felony (armed robbery) is defined in La. R.S. 14:2(13)(w) as a crime of

violence. The only argument offered in support of the claim that the imposed sentence is excessive is that "he received an extremely grave sentence based in large measure upon his nonviolent history as a thief." Such an allegation is insufficient to clearly and convincingly show that Starks is the exceptional defendant for which downward departure from the statutorily minimum sentence is required. Therefore, this argument is also without merit

For the above and foregoing reasons we find the defendant's assignments of error are without merit and accordingly, we affirm the defendant's conviction and sentence.

AFFIRMED