NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2001-KA-1279**
VERSUS	*	**COURT OF APPEAL**
ATRESS WILLIAMS	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 418-434, SECTION "L"
Honorable Terry Alarcon, Judge
* * * * * *
Judge Dennis R. Bagneris, Sr.
* * * * * *

(Court composed of Chief Judge William H. Byrnes, III, Judge Miriam G. Waltzer, and Judge Dennis R. Bagneris, Sr.)

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AFFIRMED

STATEMENT OF THE CASE

The defendant, Atress A. Williams ("the defendant"), was charged by bill of information on December 5, 2000 with simple burglary, a violation of La. R.S. 14:62. The defendant pled not guilty at his December 8, 2000 arraignment. The trial court found probable cause and denied defendant's motions to suppress the evidence and statement on December 18, 2000. The defendant was found guilty as charged on March 20, 2001, during a trial by a six-person jury. The trial court denied the defendant's oral motion for new trial that date. The trial court adjudicated the defendant a third-felony habitual offender on April 10, 2000. The defendant waived all legal delays and was sentenced to eight years at hard labor, to run concurrently with any time the defendant owed on parole. The trial court denied the defendant's motions to quash and to reconsider sentence and granted his motion for appeal.

FACTS

Nicole Felton testified that she came outside of her Crowder Blvd. residence at approximately 9:00 a.m. on November 7, 2000 and found a male inside of her 1993 Isuzu automobile. She confronted the man, who was holding a white piece of paper in his hand that he said belonged to him. He walked away after she told him to leave. He was wearing black suede shoes, gray shiny pants, a white sweatshirt, and a blue baseball cap. She drove to her church, where she telephoned police. Ms. Felton testified that she realized that her driver's license had been stolen. Police soon brought a suspect to her for identification. Ms. Felton identified the suspect, who was the defendant. Ms. Felton identified a photograph of the defendant during her direct examination and said the clothes he was wearing in the photo were the same clothes he wore on the day of the crime. Ms. Felton identified her driver's license and said a small piece of paper shown to her had her name, address, social security number and zip code on it. She said the piece of paper was approximately the same size as the one she had seen the defendant holding after he exited her car.

New Orleans Police Officer Kenneth Polite testified that he and his partner, Officer Keith Sanchez, arrested the defendant on November 7, 2000. The defendant was arrested at the intersection of Crowder Blvd. and I-10 Service Road, around the corner from the crime scene. Police took a

photograph of the defendant approximately fifteen minutes after he was arrested, which Officer Polite said accurately depicted the defendant as he appeared at that time. Officer Polite identified Ms. Felton's driver's license, which he said was found in the defendant's right rear pocket. Officer Polite also found a piece of paper, which the defendant apparently had attempted to dispose of, in the back seat of his patrol car.

Officer Keith Sanchez's testimony essentially tracked that of Officer Polite.

ERRORS PATENT

A review of the record reveals no errors patent.

ASSIGNMENT OF ERROR NUMBER ONE

In his first assignment of error, the defendant asserts that the trial court erred in failing to grant a mistrial pursuant to La. C.Cr.P. art. 770 when the prosecutor posed a question to the jury during rebuttal argument concerning the defendant's motive in wanting the victim's social security number and the other information he apparently wrote down on the piece of paper. The defendant suggests that the prosecutor was attempting to portray the defendant as someone who planned to either steal the victim's identity or

commit some other crime.

La. C.Cr.P. art. 770 provides in pertinent part that upon motion of a defendant, a mistrial shall be ordered when a remark or comment made within the hearing of the jury by the district attorney in argument refers directly or indirectly to another crime committed or alleged to have been committed by the defendant, as to which evidence is not admissible. However, La. C.Cr.P. art. 770 mandates the granting of a mistrial '[u]pon motion of a defendant." The defendant's failure to move for a mistrial precludes him from arguing on appeal that the trial court erred in not granting one. State v. Weaver, 99-2376, p. 5 (La. App. 4 Cir. 9/27/00), 770 So. 2d 831, 834, writ denied, 2000-2994 (La. 10/26/01), ---- So.2d ----.

There is no merit to this assignment of error.

ASSIGNMENT OF ERROR NUMBER TWO

In this assignment of error, the defendant claims that the trial court erred in refusing to instruct the jury on a responsive verdict of vehicular trespass, a violation of La. R.S. 14:63.10 and a misdemeanor. Prior to the start of trial, defense counsel requested that the trial court instruct the jury on the responsive verdicts of vehicular trespass and attempted vehicular trespass. The trial court denied the request, and defense counsel noted an

objection.

The defendant was charged with simple burglary of an automobile. This is a violation of La. R.S. 14:62, which defines the offense of simple burglary as the unauthorized entering of any dwelling, vehicle, watercraft or other structure, with the intent to commit a felony or theft therein. La. C.Cr.P. art. 814(A)(44) provides that the only responsive verdicts to a charge of simple burglary are guilty, guilty of attempted simple burglary, guilty of unauthorized entry of a place of business, guilty of attempted unauthorized entry of a place of business, and not guilty. The defendant submits that, because La. C.Cr.P. art. 814 does not specify the responsive verdicts for simple burglary of an automobile, La. C.Cr.P. art. 815(2) applies. La. C.Cr.P. art. 815(2) provides that, in all cases not provided for in Article 814, a verdict of guilty of a lesser and included grade of the offense is responsive, even though the offense charged is a felony and the lesser offense is a misdemeanor.

However, La. C.Cr.P. art. 814(A)(44) provides the responsive verdicts for all simple burglaries. When responsive verdicts are mandated by La. C.Cr.P. art. 814, the trial court is without authority to alter or add to the legislatively prescribed responsive verdicts. State v. Major, 597 So. 2d 108, 110 (La. App. 4 Cir. 1992). In Major, this court specifically held that

criminal trespass, a violation of La. R.S. 14:63, was not a responsive verdict to simple burglary. Accord State v. Jones, 426 So. 2d 1323 (La. 1983); State v. Hall, 26,505 (La. App. 2 Cir. 12/7/94), 647 So. 2d 453. Both criminal trespass and vehicular trespass are of the same genus, and the gravamen of each offense is an entry. The trial court correctly denied the defendant's request to charge the jury with a responsive verdict of vehicular trespass.

There is no merit to this assignment of error.

CONCLUSION

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

AFFIRMED