STATE OF LOUISIANA	*	**NO. 2017-KA-0659**
VERSUS	*	
		COURT OF APPEAL
ANTHONY BAUMAN	*	
		FOURTH CIRCUIT
	*	
		STATE OF LOUISIANA

* * * * * * *

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 527-364, SECTION "C"
Honorable Benedict J. Willard, Judge
* * * * * *
Judge Daniel L. Dysart
* * * * * *
(Court composed of Judge Terri F. Love, Judge Daniel L. Dysart, Judge Rosemary Ledet)

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AFFIRMED

DECEMBER 20, 2017

The defendant, Anthony Bauman, appeals his conviction of purse snatching. For the reasons that follow, we affirm his conviction and sentence.

PROCEDURAL AND FACTUAL BACKGROUND

By bill of information dated December 1, 2015, the defendant was charged with one count of purse snatching, a violation of La. R.S. 14:65.1.[1] The defendant pled not guilty to the charges and proceeded to a jury trial on June 1, 2016. On the day of trial, the defendant filed numerous motions, including a motion for a twelve person jury and a motion for the court to instruct the jury on responsive verdicts as provided in La. C.Cr.P. art. 815.[2] At the conclusion of the trial, the jury found the defendant guilty. After the trial court denied the defendant's post-trial motions (to arrest the judgment, for a new trial and for a post-verdict judgment of acquittal), the trial court sentenced the defendant to serve five years at hard labor with credit for time served. Thereafter, the State filed a bill of information charging the defendant as a multiple offender. The hearing on the multiple offender bill was set for December 9, 2016, but was continued without date.

This appeal followed.

This case arises out of an incident which occurred on November 6, 2015, at Razoo's Bar and Patio ("Razoo's"), located in the 500 block of Bourbon Street. According to Michael Roberts, who was employed as a security supervisor at Razoo's on that date, he received a report over his radio that a guest's wallet had

[1] The State also charged Kevin Washington with the same offense, as a co-defendant. Mr. Washington pled guilty to the charge of felony theft on the day of trial.

[2] Neither the Docket Master nor the minute entries reflect a ruling by the trial court on these motions. However, the record reflects that the jury was comprised of six members; therefore, the trial court necessarily denied the motion for a twelve member jury or tacitly denied it. The record likewise reflects, as discussed in assignment of error number two, that the trial court instructed the jury as to a responsive verdict of theft. It follows, therefore that the trial court either expressly or tacitly granted the motion for an instruction on responsive verdicts.

been stolen. After speaking to the victim, he reviewed the security camera footage to gather more information.

Mr. Roberts testified that, to his knowledge, Razoo's had thirty-five video cameras placed intermittently throughout the bar at various angles. The cameras recorded twenty-four hours a day and the footage was stored on a hard drive for 365 days. After reviewing the footage that night from three of the cameras (two of which recorded the location of the offense from different angles, and the other recorded an outdoor view of the entrance/exit), he made a copy of the video footage to give to the police. He then escorted the victim to the Eighth District Police Station to file a report.

Mr. Roberts authenticated the videos during his testimony at trial and the State played them in open court while Mr. Roberts narrated the events. Mr. Roberts identified the victim and two suspects in the video. He positively identified the defendant at trial and explained that the footage depicted the defendant and the other suspect speaking to each other and the defendant then reaching toward the side of the victim, following which the two men exited Razoo's.

Mr. Roberts testified that forty-five minutes after he had returned to Razoo's from the police station, he assumed a security position at one of the doors to the club. From there, he observed the two suspects walking down the street together and immediately recognized them from the security footage.

The victim, Makenna Wilson, testified that she was visiting New Orleans from Little Rock, Arkansas, to attend a Saints football game with friends. Once she arrived and checked into her hotel, she and her friends went to dinner, explored Bourbon Street, and then entered Razoo's around 10:00 pm. They were inside the

bar for only a minute or two when a "shot girl" approached them, selling shots of alcohol. Ms. Wilson purchased one and removed her wallet from her purse to pay with cash. Ms. Wilson also removed her cell phone from her purse at the same time to take a picture. After she paid for the shot, she placed her wallet back into her purse, but left the purse open at that point so she could secure her cell phone inside her purse after she took the picture.[3] When she placed the cell phone back into her purse, perhaps thirty seconds to a minute later, she discovered her wallet was no longer there.

Ms. Wilson testified that she began to panic and asked nearby patrons if they had seen anything, then reported the theft to a security guard and a bartender, who reported it to the manager. She then walked to the police station and made a written report which she read in open court at the trial:

> I, Makenna Wilson, was robbed the night of November 6, 2015, in Razoo Bar. The two men worked together. One distracted me, and the other reached in and took the wallet and walked out the door. The young man was the one that had contact. He was about six feet tall with a graphic tee, and a black male.

The State played the security footage in open court again and Ms. Wilson narrated the events. She identified herself in the video and the two men whom she claimed committed the theft. She explained that one of the men approached their group while she was attempting to convince her friend to drink the shot.[4] When the man approached, he stood directly by her side and joined in cajoling the victim's friend to drink the shot, cheering, "Come on, you can take it; do it! Do it!" Ms.

[3] The victim testified that the shot was for her friend but he refused to drink it, so she did not end up taking his picture.

[4] Throughout the victim's testimony, she referred to the man who approached them as "the man in the graphic tee." During a pre-trial suppression hearing, Louisiana State Police Trooper William Woodward identified "the man in the graphic tee" as the co-defendant, Kevin Washington, and identified the defendant as the man who physically removed the wallet.

Wilson testified that she did not know who the man was, nor did she invite him to join their group.

As the video played in court, Ms. Wilson was able to pinpoint the moment that the defendant removed her wallet from her purse and identified her wallet in the defendant's hand. She testified that she did not know the defendant, had not invited him to join them, and gave him neither her wallet, nor consent to possess her wallet. She stated that once the defendant had her wallet in his possession, the man in the graphic tee departed "pretty quickly."

According to Ms. Wilson's testimony, at the time her wallet was taken, it contained about $160 in cash, a credit card, a debit card, her identification, memorabilia she had collected over time, and a blank check signed by her boss. The next day, an unknown woman from Florida contacted her and stated that she had found some of her belongings scattered in an alley the night before. She met the woman and recovered her identification, debit card, credit card, health insurance card, and bank account card. Neither the cash nor the blank check was among the items recovered.

Louisiana State Police Trooper William Woodward stated that he was assigned to the French Quarter on foot patrol to assist the New Orleans Police Department ("NOPD") during heavy traffic flow on the weekends. Sometime after midnight on November 7, 2015, he was assisting the NOPD in effectuating an arrest on a drunk and disorderly subject one block from Bourbon Street when he heard a report over his radio of a purse snatching in the area. After completing the arrest, he observed a motorcycle rider on Toulouse Street commit several traffic violations, so he detained the rider to issue a citation. As he was writing the citation, a man approached him and identified himself as a security guard from a

nearby bar. He informed Trooper Woodward that "he had eyes on" the two suspects who had committed a purse snatching around the corner. Trooper Woodward told the security guard to "keep [his] eyes on [them]," while he finished conducting the traffic stop. Trooper Woodward and his partner then relocated to the intersection of Bourbon and Toulouse Streets to meet the security guard.

Trooper Woodward testified that the security guard led him to two men loitering in the vicinity and touched each of them in the chest saying, "[h]im and him." Trooper Woodward stated that one of the suspects appeared to be in his twenties and the other appeared to be in his late forties or early fifties. Trooper Woodward and his partner immediately placed the two suspects in handcuffs and issued *Miranda* warnings. He took the suspects to the Eighth District Police Station and attempted to view the security footage but it would not play on the equipment at the station so he returned to Razoo's to view the footage there.

Once again, the state played the security footage in open court and Trooper Woodward identified the defendant and Mr. Washington on the video, described their appearance and clothing, and confirmed that they were the two men he arrested, stating that they were wearing the same clothes at the time of the arrest. Trooper Woodward also testified that he had taken pictures of the suspects at the police station, which the state introduced at trial, to show that they were wearing the same clothes in the photos as depicted in the security footage. Trooper Woodward stated that, in a search incident to arrest, he seized $190 in cash from defendant's person.

Former co-defendant in the instant case, Kevin Washington, testified that, earlier that day, he pled guilty to felony theft. He stated that he did not take the victim's wallet and he did not know who had. On cross-examination, he admitted

that he had been arrested and charged with purse snatching, but the state had allowed him to plead to theft that morning to avoid trial. He stated that his lawyer advised him it was in his best interest and he had taken responsibility for his actions.

The defense called NOPD Officer, Juanita Stretz, who testified that she was the officer who wrote the initial report in the instant case. She stated that one of her duties as an administrative officer was to write reports based on information provided by victim(s), and, based on that information, determine the appropriate booking charges. In the report she authored in this case, she entered "theft/pickpocket" under the "charges" section of the report, and wrote "pickpocket" under the "Incident Heading" section. She also listed the "signal code" as a "67-B," which is the code for theft by pickpocket.

On cross-examination, Officer Stretz admitted that the charge she listed in her report was determined solely on information the victim provided. Although she had been in possession of the security footage, she had not viewed it because, as she stated, it was not her responsibility to fully investigate the case. She conceded that the charges listed in her initial reports are not always the charges the District Attorney accepts, and in this case, both the investigating detectives and the state determined the appropriate charge was purse snatching.

DISCUSSION[5]

The defendant has raised two issues in this appeal: whether he was constitutionally entitled to a jury of twelve persons and whether he was entitled to

[5] As is our customary practice, we have reviewed the record for errors patent and found none. *See State v. Lambert*, 15-0886, p. 5, n.6 (La. App. 4 Cir. 1/20/16), 186 So.3d 728, 733, *writ denied*, 16-0335 (La. 2/17/17), and *cert. denied*, 138 S. Ct. 92 (2017).

a jury instruction regarding a responsive verdict. We address each contention in turn.

At the outset, however, we note that, while the defendant did not assign the sufficiency of the evidence as an error or expressly raise it as an issue in this case, in the body of his brief, he argues that the evidence presented at trial "was not sufficient to sustain a conviction for [p]urse [s]natching" but rather, supported "a conviction for misdemeanor theft." Accordingly, and "in accordance with the well-settled jurisprudence, '[w]hen issues are raised on appeal as to the sufficiency of the evidence and as to one or more trial errors, the reviewing court should first determine the sufficiency of the evidence.'" *State v. Miner*, 14-0939, p. 5 (La. App. 4 Cir. 3/11/15), 163 So.3d 132, 135 (quoting *State v. Hearold*, 603 So.2d 731, 734 (La.1992)).

The United States Supreme Court provided the standard for review of a claim of insufficiency of the evidence in *Jackson v. Virginia*, 443 U.S. 307, 319 (1979):

> …the relevant question is whether, after 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. This familiar standard gives full play to the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. Once a defendant has been found guilty of the crime charged, the factfinder's role as weigher of the evidence is preserved through a legal conclusion that upon judicial review *all of the evidence* is to be considered in the light most favorable to the prosecution. (emphasis in original, citation omitted).

In the instant case, the defendant was convicted of purse snatching, which is defined by La. R.S. 14:65.1 as:

> …the theft of anything of value contained within a purse or wallet at the time of the theft, from the person of another or which is in the immediate control of another, by use of force, intimidation, or by snatching, but not armed with a dangerous weapon.

Although the defendant appears to concede that he committed the theft of the victim's wallet, which contained cash and was in her immediate control, the defendant asserts that the state failed to prove the theft occurred by "snatching," due to the lack of speed with which the defendant removed the victim's wallet from her purse.[6] He claims that the security footage shows him standing next to the victim for eighteen seconds, placing his hand on her purse for seven seconds, "then slowly remov[ing] the wallet out of the purse," and walking out of the bar with his nephew at a normal speed. The defendant submits that the legislature has not defined the term "snatching," and offers the definition accepted by the court in *State v. Jackson*, 439 So.2d 616, 617 (La. App. 1 Cir. 1983):

> [W]e believe that "snatching" has a commonly accepted meaning, not significantly different from that given to the jury from Webster's Dictionary by both the State and defendant which included "... to grasp or seize hastily, to grasp, a quick grasp, or grab ..." and "... to grasp abruptly or hastily, to seize or grasp suddenly without permission, ceremony or right . . . ." [7]

It is fair to assume that reasonable jurors would be aware of that common meaning, and would have considered it when reaching their verdict. Here, the

[6] Because Ms. Wilson testified that the defendant had not touched her or harmed her in any way, nor was she even aware of his presence, the use of force or intimidation does not appear to be an issue.

[7] In analyzing whether the evidence was sufficient to uphold a conviction of purse snatching in *State v. Murray*, 436 So.2d 775, 778 (La. 1983), the Supreme Court deferred to the lower court's definition of "snatching" in its charge to the jury as, "to grasp or seize hastily, eagerly, or suddenly…to make grasping or seizing motions." Notably, Black's Law Dictionary defines "sudden" as "happening without previous notice or with very brief notice; coming or occurring unexpectedly; unforeseen; unprepared for." Merriam-Webster's Dictionary defines "abrupt" as "action or change without preparation or warning; sudden and unexpected." Thus, it appears that these two definitions contemplate foreseeability and not speed.

security footage was played in court several times and from several different angles. While deliberating, the jury asked the court to repeat the definitions of purse snatching and theft and the court complied by reading the respective statutes.[8] Fifteen minutes later, the jury returned a verdict of guilty as charged.

The United States Supreme Court has held that a reviewing court "faced with a record of historical facts that supports conflicting inferences must presume – even if it does not affirmatively appear in the record – that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution." *Jackson*, 443 U.S. at 326, 99 S.Ct. at 2793. Therefore, even if reasonable minds could disagree as to whether the defendant's actions constituted a "snatching" according to its commonly accepted meaning, we must presume that the jury resolved the conflict in favor of the prosecution.

This Court held in *State v. Marts*, 98-0099, p. 10 (La. App. 4 Cir. 5/31/00), 765 So.2d 438, 444 that to sustain a conviction of purse snatching, "it was not necessary for the State to present direct evidence concerning either the amount of pressure used to remove [the victim's] wallet **or the relative speed at which [the defendant] accomplished its removal**," (emphasis added) basing its finding on a summary of relevant jurisprudence:

> In *Anderson*,[9] sufficient evidence of a purse snatching was found where the victim testified only that she felt a vibration, then noticed that her purse was no longer on the floor by her feet. Similarly, in *State v. Capote*, 474 So.2d 497 (La. App. 4th Cir.1985), this court held that even though the victim did not feel her purse being removed from the back of her chair, the theft constituted purse snatching because the statute does not require a face to face confrontation, but only a taking from the area

[8] Although the court read the statutory definition of "theft," it did not recite the grades of the offense nor the property values differentiating them.
[9] *State v. Anderson*, 418 So.2d 551 (1982).

> within the victim's control. Under facts more similar to those presented here, a purse snatching conviction was upheld in *State v. Spurlock*, 539 So.2d 977 (La. App. 4th Cir.), *writ denied*, 544 So.2d 399 (La. 1989), where a security guard observed the defendant remove a wallet from the victim's purse without her knowledge of the theft. More recently, in *State v. Neville*, 96-0137 (La. App. 4th Cir. 5/21/97), 695 So.2d 534, *writ denied*, 97-1637 (La.12/12/97), 704 So.2d 1180, although the victim did not see or feel the defendant take her wallet from her purse, she saw him walking off with it, which was sufficient to support the defendant's conviction for purse snatching.

Id., at pp. 9-10, 765 So.2d at 444.[10]

The defendant further argues that if the term "snatching" can be interpreted so broadly as to include any taking, regardless of the nature or speed thereof, the legislature would not have included the requirement that the theft be accomplished by force, intimidation, or by snatching. In searching for legislative intent, the defendant points out that while both purse snatching and theft are included in Title 14, under the title "Offenses Against Property," purse snatching is listed under the subheading "By Misappropriation with Violence to the Person," and is considered a crime of violence under La. R.S. 14:2(B)(24), while theft is included under the subheading "By Misappropriation Without Violence." From this, the defendant concludes that the legislature must have intended for "snatching" to involve something more than just a simple taking; otherwise, the context would be rendered meaningless.

This Court rejected a similar argument in *Marts*, 98-0099, p. 8, 765 So.2d at 443, in which the defendant asserted that because the victim was not immediately

[10] Although this Court held that the evidence was sufficient to sustain the conviction of purse snatching in *Mart*s, the Court ultimately reversed the conviction and remanded for a new trial due to the trial court's failure to charge the jury with theft as a responsive verdict.

aware that his wallet had been taken from his pocket, a snatch had not occurred, therefore his conduct amounted to no more than misdemeanor theft.

In *State v. Murray*, 436 So.2d 775, 777 (La. 1983), the Louisiana Supreme Court analyzed the legislative intent behind designating purse snatching a more serious offense than simple robbery without the requirement of force or intimidation. The Supreme Court explained, that "the legislature's decision that purse snatching is more serious than simple robbery was reasonable considering the widespread exposure of the public to this crime, the personal nature of a wallet or purse, and the potential for loss of greater value." *Id*.

Accordingly, the legislature's decision to include purse snatching as a "crime of violence," where the offense can be accomplished by an undetected "snatching," does not appear to turn on the speed with which the theft occurred and, instead, appears to focus on the nature of the human-to-human contact;[11] the wide-spread societal use of purses and wallets; their personal nature and common expectation that they contain items of value; and the substantial risk of force or violence reasonably foreseeable in the theft or defense of such valuable, personal items.[12] For these reasons, we find that the defendant's argument that the state failed to prove he committed the offense with sufficient speed to meet the element of snatching has no merit.

ASSIGNMENT OF ERROR NUMBER 1

In the defendant's first assignment of error, he asserts that the court erred in denying his motion to have his trial heard before a twelve-person jury. The

[11] La. R.S. 14:65.1 requires the purse or wallet to be on the person of the victim or in their immediate control at the time of the theft.
[12] Additionally, it would not seem reasonable for the defendant to benefit from a lesser conviction of misdemeanor theft while committing the more serious offense of purse snatching, simply because he was successful in his attempt to avoid detection.

defendant further argues that because his potential adjudication as a multiple offender could result in a life sentence, a guilty verdict should require unanimity among all twelve jurors.

The Louisiana Constitution art. 1 § 17 (A) provides, in pertinent part, as follows:

> A criminal case in which the punishment may be capital shall be tried before a jury of twelve persons, all of whom must concur to render a verdict. A case in which the punishment is necessarily confinement at hard labor shall be tried before a jury of twelve persons, ten of whom must concur to render a verdict. A case in which the punishment may be confinement at hard labor or confinement without hard labor for more than six months shall be tried before a jury of six persons, all of whom must concur to render a verdict.[13]

It is clear under this provision and under La. C.Cr.P. art. 782(A) that a twelve member jury is required for those cases where hard labor is mandated. Where the penalties provide for confinement either with or without hard labor, a defendant is not entitled to be tried by a twelve member jury. In that case, a defendant is only entitled to a jury of six members.

Under La. R.S. 14:65.1(B), the punishment for the offense of purse snatching is confinement for not less than two and no more than twenty years, with or without hard labor. In this matter, therefore, because the minimum sentence for the offense of purse snatching is greater than six months, but not necessarily

[13] A virtually identical provision is contained in Article 782(A) of the Louisiana Code of Criminal Procedure: "Cases in which punishment may be capital shall be tried by a jury of twelve jurors, all of whom must concur to render a verdict. Cases in which punishment is necessarily confinement at hard labor shall be tried by a jury composed of twelve jurors, ten of whom must concur to render a verdict. Cases in which the punishment may be confinement at hard labor shall be tried by a jury composed of six jurors, all of whom must concur to render a verdict." La. C.Cr.P. art. 782.

confinement at hard labor, the defendant's right to a jury trial on a charge of purse snatching is confined to a six-person jury.

With respect to the defendant's claim that his potential status as a multiple offender could result in a life sentence at hard labor, and therefore should have entitled to him to a twelve-person jury in the instant case, it is well-established Louisiana law that:

> [T]he habitual offender proceeding is a separate proceeding applicable only after conviction and then at the discretion of the district attorney. It forms no part of the punishment of the criminal case involving defendant's guilt or innocence; therefore, it has no bearing on the determination of the number of persons comprising the jury for the trial of the case.

State v. Juengain, 09-0425 pp. 7-8 (La. App. 4 Cir. 1/20/10), 41 So.3d 499, 505, quoting *State v. Sherer*, 354 So.2d 1038, 1040 (La. 1978). The United States Court of Appeals for the Fifth Circuit discussed due process considerations in multiple offender sentence enhancing statutes:

> We have no doubt that states may properly classify general recidivist statutes of this kind as relating only to the sentencing for the repeat offense. While the fact that the operation of such statutes often increases both the minimum and maximum sentences is a consideration somewhat militating in favor of treatment similar to an offense element, nevertheless we believe that other contrary considerations are decisive. Such statutes are, and have historically been, generally recognized as sentencing statutes, not as separate offense statutes. They plainly involve no legislative attempt to evade constitutional rights. Moreover, they have no relation to the circumstances of the wrongdoing constituting the most recent offense, but rather to something which is wholly unrelated thereto. Further, they do not relate to determining what the accused has done, but rather to what the state has previously determined that he has done. And that previous determination must have been a formal, judicial determination of guilt; and hence one as to which the full measure of constitutional protections was available.

Buckley v. Butler, 825 F.2d 895, 903 (5th Cir.1987). Additionally, this Court has repeatedly rejected identical claims. *See Juengain*, 09-0425 pp. 7-8, 41 So.3d at 504-05; *State v. Winn*, 07-1339 p. 3 (La. App. 4 Cir. 7/2/08), 2008 WL 8922920; and *State v. Collins*, 588 So.2d 766, 769 (La. App. 4 Cir. 1991)(all holding that a potential finding of multiple offender status and the sentence enhancement that may follow is not determinative of the size of the jury required under La. C.Cr.P. 782(A) in a trial for an underlying offense). Therefore, under the current law, the court did not err in denying the defendant's motion to have his case tried before a twelve-person jury.

In his brief, the defendant questions the continued constitutional viability of any statute that authorizes a conviction by a verdict of fewer than twelve jurors. The defendant concedes that the long-established holding in *Williams v. Florida*, 399 U.S. 78, 103, 90 S.Ct. 1893, 1907 (1970) declared that a defendant's "Sixth Amendment rights, as applied to the States through the Fourteenth Amendment, [are] not violated by [a state's] decision to provide a 6-man rather than a 12-man jury," but nonetheless he argues that "[t]hirty years of empirical research … has confirmed that twelve person juries are more likely to consist of a fair cross-section of society, give pause to minority (number) views, deliberate longer, and reach more consistent verdicts than six-person juries."

While the defendant cites a litany of secondary sources which he suggests indicate that twelve-person juries guarantee due process more effectively than six-person juries, he fails to cite any U.S. Supreme Court or Louisiana authority declaring a six-person jury unconstitutional.[14] Moreover, the defendant appears to

[14] The defendant argues that the trial court in the instant case "should have applied [*State v.*] *Jones*, 05-0226 (La. 2/22/06), 922 So.2d 508)] and granted [the defendant's] motion for a twelve

acknowledge the constitutionality of a six-person jury, submitting only that "[t]he time has come for the Court to address" it, and asking this Court to "declare unconstitutional La. Const. art. 1, § 17(A) and La. C.Cr.P. art 782."

As the current law stands, a trial before a six-person jury for charges that do not necessarily carry a punishment of confinement at hard labor remains constitutional. This Court is not inclined to declare unconstitutional a practice upheld by the United States Supreme Court and the Louisiana Supreme Court, and therefore, we find that the defendant's claims do not warrant relief.[15]

ASSIGNMENT OF ERROR NUMBER 2

In his second assignment of error, the defendant argues that the court erred in denying his motion to include "felony" theft as a responsive verdict.[16]

In his pre-trial motion to instruct the jury on responsive verdicts, the defendant requested only that "theft" be included, not "felony theft." Additionally, in his motion for Post-Verdict Judgment of Acquittal, the defendant requested that the court "modify the verdict and render a judgment of conviction on the lesser included offense of theft instead," arguing that, at best, the state proved only that defendant committed "misdemeanor theft." The court's instructions to the jury are not transcribed in the record, indicating that neither party objected to the jury charges issued.[17] Because it appears that the defendant did not move to include

person jury." Problematic in this argument is that the *Jones* court recognized that the twelve-person jury was constituted erroneously, in contravention of La. C.Cr.P. 782, and that here, the defendant's charge required a six-person jury instead. (We note that *Jones* was abrogated by *State v. Brown*, 11-1044 (La. 3/13/12), 85 So.3d 52, which held that such an error was harmless where the twelve-person jury rendered a unanimous verdict).

[15] The defendant's constitutional challenge to the statute allowing a non-unanimous verdict among twelve jurors may not be properly before the court where the defendant did not serve the Attorney General with a copy of the proceeding. *State v. Veal*, 11-44 p. 6 (La. App. 5 Cir. 12/28/11), 83 So.3d 211, 213-14. *See also*, *State v. Joseph*, 10-1090 p. 9 (La. App. 4 Cir. 8/12/11), 71 So.3d 549, 554 (holding that a defendant whose verdict was unanimous lacks standing to challenge statute allowing non-unanimous verdicts).

[16] Although the defendant uses the term "felony" theft in his initial assignment of error, he argues that the court erred in failing to include theft of any denomination as a responsive verdict.

"felony" theft as a responsive verdict nor lodge a contemporaneous objection to the instructions given, he waived any claim based on the allegedly insufficient jury charge. *See State v. Newton*, 42,743, p. 5 (La. App. 2 Cir. 12/19/07), 973 So.2d 916, 920, (where, on motion for new trial, defendant raised the issue of the trial court's failure to give a responsive verdict to the jury, "court properly ruled that the defendant failed to make a contemporaneous objection to the alleged omission, and waived any right to preserve this issue on appeal"); *State v. Morris*, 05-290, p. 13 (La. App. 5 Cir. 11/29/05), 917 So.2d 633, 641 (where "defendant failed to make a timely objection to the trial court's exclusion of attempted possession of a firearm by a convicted felon as a responsive verdict . . . [the] defendant is precluded from raising the issue on appeal); *State v. Craddock*, 307 So.2d 342 (La.1975) ("alleged error concerning the sufficiency of the list of responsive verdicts given the jury, like error in the judge's charge to the jury, is not reviewable under Art. 920(2) and may not be considered unless objection is made in the trial court in time for the trial judge to correct the error").

Moreover, it appears the court did include theft as a responsive verdict, as indicated in the colloquy at the conclusion of the trial:

> **Defense Counsel:** Your Honor, as discussed previously, I filed a motion for Your Honor to include a responsive verdict of theft. As part of—
>
> **The Court:** I did that, Mr. Miller. That's done.
>
> **Defense Counsel:** Yes, Your Honor
>
> **The Court:** That's the law. That's done.
>
> **Defense Counsel:** Thank you, Your Honor.
>
> **The Court:** *State v. March*.[18] You were correct. What else?

[17] The verdict sheets are absent from the record.

Additionally, defense counsel indicated to the jury during closing argument that it could find the defendant guilty of a lesser offense, such as theft, if it was not convinced the defendant committed purse snatching. Finally, when the jury took a break from deliberations to ask the court to repeat statutory definitions, the court read both the purse snatching and the theft statutes.

Nevertheless, the defendant argues that the court should have included "felony" theft as a responsive verdict, especially since the jury asked the court why it was not considering "felony" theft as an option during their break from deliberations. Because the theft of something valued at less than $750 does not carry a possible punishment at hard labor, it is not a felony.

In this case, the jury heard Mr. Washington testify that he was permitted to plead guilty to "felony" theft the morning of trial, which may explain why the jury inquired whether the defendant could also be convicted of "felony" theft. The trial court responded to the jury that "the state didn't argue anything about value to draw a line as to what the values are. Okay? But that's why. It came straight out of the Code regarding what the responsive verdicts were."

In any event, "felony" theft does not appear to be an appropriate responsive verdict to the offense of purse snatching. *State v. Simmons*, 422 So.2d 138, 142 (La. 1982), provides that "if any reasonable state of facts can be imagined wherein the greater offense is committed without perpetration of the lesser offense, a verdict for the lesser cannot be responsive." Purse snatching only requires the theft

[18] The court likely intended to reference *State v. Marts*, 98-099 (La. App. 4 Cir. 5/31/00), 765 So.2d 438, in which this Court reversed a purse snatching conviction due to the trial court's failure to include theft as a responsive verdict. It appears to be merely an error in the transcription.

of “anything of value from a purse or wallet” while the stolen property value required to make theft a “felony” is at least $750. Consequently, it is entirely possible to commit a purse snatching by stealing property valued at less than $750. Therefore, while the offense of theft is appropriately included as a responsive verdict to purse snatching, “felony” theft is not. Here, it appears that theft was included as a responsive verdict in this case; accordingly, this assignment of error is without merit.

CONCLUSION

For the reasons set out above, we affirm the conviction of the defendant Anthony Bauman for the offense of La. R.S.14:65.1; Purse Snatching.

AFFIRMED