



**Gilbert V. Andry IV**  
**Assistant District Attorney**  
610 Baronne Street  
New Orleans, LA 70113

**COUNSEL FOR THE STATE OF LOUISIANA/APPELLEE**

**AFFIRMED**

On February 28, 2000, defendant, Kenyon R. Williams, was charged by bill of information with one count of attempted first degree murder in violation of La. R.S. 14: (27)30, one count of armed robbery in violation of La. R.S. 14:64, two counts of aggravated burglary in violation of La. R.S. 14:60, and two counts of false imprisonment while armed with a dangerous weapon in violation of La. R.S. 14:46.1. The defendant pled not guilty to all charges at his arraignment on March 13, 2000.

A preliminary and suppression hearing was held on June 14, 2000. The trial court found probable cause and denied defendant's motions to suppress evidence and identification. The State dismissed the armed robbery charge on October 3, 2000. After a three-day jury trial, the defendant was found guilty of aggravated battery and two counts of unauthorized entry of an inhabited dwelling on October 5, 2000. The defendant was acquitted on the two counts of false imprisonment.

On February 15, 2001, the trial court sentenced the defendant to serve

ten years at hard labor on the aggravated battery conviction and three years on each count of unauthorized entry of an inhabited dwelling. The sentences on the convictions for unauthorized entry of an inhabited dwelling were to be served concurrently with each other and consecutively to the sentence on the aggravated battery conviction.

On the evening of November 4, 1999, Derwin Ancar, his girlfriend, Yvonne Barthelemy and Latisha Ancar, his niece, were asleep in his trailer. Ancar awoke when he heard someone knocking at the door. When he opened the door, three men attacked him. Ancar told the men that his girlfriend and niece were in the trailer and to leave them alone. At that point, Latisha woke up and heard Ancar arguing with someone outside. Latisha ran into the bedroom and woke up Yvonne. One of the men, later identified as Henry Coleman, entered the trailer armed with a gun and told the women to come out into the living area. Latisha told Coleman that Yvonne was pregnant, and he allowed them to sit on the sofa. Coleman asked Yvonne “where were the drugs and money?” She stated that she did not know anything about drugs but that they did have some money that was in the bedroom. She showed Coleman where the money had been hidden. Coleman took the money, approximately six thousand dollars, and walked outside. He returned inside the trailer; then he heard someone say that the

police were coming, and all of the men left. Shortly thereafter, she heard a gunshot towards the highway.

At approximately the same time, Rolenda Merrick, Ancar's sister who lived next door, heard Ancar talking to someone. She heard someone say, "Where it's at?" She went outside and asked the man, later identified as Ortiz Jackson, what he wanted with her brother. Jackson told her to shut up and stay there. Jackson had a knife at Ancar's throat. A few minutes later, another man, later identified as Coleman, asked her if anyone was in the trailer and if she had a telephone. She stated that she did not have a phone and that her children and grandchild were in the trailer. Ancar and Jackson began fighting outside when Coleman went inside Ancar's trailer. He was able to break away from Jackson and ran towards the highway. He turned and saw the three men running from the trailer and entering a blue Cadillac. At that point, he observed Kenyon Williams take off the mask he had been wearing. The defendants saw Ancar near the highway and fired at him. Ancar ran back towards the trailers. He did not realize he had been shot until he got back to his trailer. Rolenda took Ancar to the hospital.

When the police arrived on the scene, Yvonne gave the officers a statement and then proceeded to the hospital. On the way to the hospital, she was stopped and asked if she could identify the perpetrators in a one on one

identification. She identified Coleman at the scene. Letisha identified Coleman in a photographic lineup, and Ancar identified Williams, Coleman and Jackson in photographic lineups. Ancar stated that he had seventy-five hundred dollars in his trailer that was to be used to pay off his vehicle. He testified that his mother loaned some of the money to him and the rest was received as a partial settlement of a lawsuit. He admitted to several misdemeanor and traffic convictions as well as two convictions for possession of cocaine.

Detective Jessie Ledet, the officer in charge of the investigation, arrived on the scene at approximately 11:30 p.m. When he arrived on the scene, he learned that the victim's sister had taken the victim to the hospital. He took photographs of the scene and obtained statements from several witnesses. He conducted photographic lineups with the witnesses who identified Coleman, Jackson and Williams.

Officer William Black, Jr. was on patrol when he heard the description of the vehicle used during the incident. He observed a vehicle fitting the description in Ironton. He stopped the vehicle one mile north of Ironton, near the BP plant. Other officers assisted in stopping the vehicle. The three subjects in the vehicle were ordered out of the vehicle and patted down. Williams was driving the vehicle, Coleman was the passenger in the

front seat, and Jackson was the passenger in the rear seat. No weapons were found in the vehicle. Each subject was placed in a separate police vehicle and advised of his rights. While they were on the scene, Lt. Bowers arrived with Yvonne Barthelemy. After she identified the subjects, they were transported to jail.

### **ERRORS PATENT**

A review of the record for patent errors reveals none.

### **DISCUSSION**

In his sole assignment of error, the defendant contends that the trial court denied defendant his Sixth Amendment right to confront his accusers when the trial court allegedly limited his cross-examination of Ancar. The defendant sought to cross-examine him on his plea bargain in a criminal matter in another division of the 25<sup>th</sup> Judicial District Court for the Parish of Plaquemines. The trial court allowed the defendant to proffer testimony on the issue outside the presence of the jury. Our review of the testimony elicited from the witnesses presented during the proffer indicates that the alleged plea bargain had nothing to do with the present matter and did not involve his testimony in the case at bar. The trial court properly refused to

allow the defendant to present evidence of Ancar's plea agreement.

In State v. Rankin, 465 So.2d 679 (La. 1985), the Louisiana Supreme Court held that the defendant was entitled to cross examine a witness and the witness' attorney about a plea agreement entered into with the State in which the witness agreed to testify against the defendant truthfully.

The case at bar presents different circumstances than those set out in Rankin. Unlike the witness in Rankin, Ancar did not enter into an agreement with the State to testify against the defendant in exchange for a lesser sentence on his pending charge. During the proffer, he admitted that he had been accused of distributing cocaine in October of 1999. He was not arrested until after the shooting incident as the police officers were in involved in a continuing undercover operation. Ancar was eventually arrested and charged with two counts of distribution of cocaine. He eventually pled guilty to the lesser offense of possession of cocaine on each count. Ancar stated that he pled guilty, while he denied selling cocaine, because he was afraid of going to jail for five years. He pled guilty to possession of cocaine in June of 2000. He stated that he did not enter a deal with the State to plead to a lesser offense in exchange for his testimony at the defendant's trial.

The testimony of David Hufft, the assistant district attorney who

handled Ancar's distribution of cocaine case, was also proffered. Mr. Hufft stated that he could not personally identify Ancar but reviewed his file prior to testifying:

Q. Okay. Let me ask you, Mr. Hufft, the plea arrangement as we understand already, we already heard and it's part of the record here that Mr. Ancar pled guilty to possession of cocaine, originally charged with two counts of distribution of cocaine, do you know the basis of the plea agreement, why it came about?

A. The basis of the plea agreement was tendered by me pursuant to pretrial discussion with his attorney Mr. Bopp, Eric Bopp was representing him at that time. It was my understanding, and I've attempted to review the facts of the file before coming here, since I was just called and I do remember the case though. Mr. Ancar was the driver of a vehicle, there was an identification problem in connection with this case. No actual narcotics agents could I.D. Mr. Ancar as the driver. It was only certain cooperating individuals who told the agents that Mr. Ancar was the driver of the vehicle that night. Now, the agents did identify the vehicle as being both owned and registered to Mr. Ancar. But I have no narcotics agents to testify that Mr. Ancar was actually operating the vehicle that night.

Q. So as result of that, do you tender a lesser plea in the proceeding with the possession of cocaine?

A. That's correct. And one of the other factors that came into plea agreement was the fact that as to my knowledge and the information that I presently have before me and I had before me in June of 2000, was that Mr. Ancar had no previous felony convictions.

Mr. Hufft's testimony also reveals that Ancar's guilty pleas to the charges of possession of cocaine were not related to Ancar's testimony in the present case. In fact, Mr. Hufft stated that the present case was originally assigned to Division "B."

Q. Any deal made since Mr. Ancar was a victim of a crime in this case that we are here for trial, was there any deal made or any consideration for the fact that he was the victim of another crime?

A. To be honest with you, and I know that Derwin Ancar is a victim in this crime, initially this case that's before this court today was assigned to Division "B". At the time it was assigned to Division "B" for me to review, I realized and was also verified by Ms. Kennedy, that I was prosecuting Derwin Ancar on two counts of distribution. At that time I made the determination not to even review it because in my view I had a conflict of interest, I could not have defendant that I was prosecuting and a victim and handle both at the same time. So I transferred it immediately to Division "A."

Mr. Hufft further stated that never talked to Mr. Ballay, the prosecutor in the present case, after Hufft transferred the case to Division "A."

The evidence presented during the proffer reveals that there was no memorandum of understanding between the State and Ancar concerning his testimony in the present case. The testimony indicates that Ancar was able to plead guilty to the lesser offense of possession of cocaine due to the weakness of the State's case and his attorney's ability to negotiate.

Accordingly, the trial court did not err when it refused to allow the defendant to cross-examine Ancar about his plea agreement, since it bore no relation to the instant case.

## **CONCLUSION**

For the foregoing reasons, we affirm the defendant's convictions and sentences.

**AFFIRME**

**D.**