

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2001-KA-1463**
VERSUS * **COURT OF APPEAL**
HENRY L. COLEMAN * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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CONSOLIDATED WITH:

STATE OF LOUISIANA

VERSUS

HENRY L. COLEMAN

CONSOLIDATED WITH:

NO. 2002-KA-1151

APPEAL FROM
25TH JDC, PARISH OF PLAQUEMINES
NOS. 2000-0646 C/W 2001-0585, DIVISION "A"
Honorable Anthony D. Ragusa, Judge
* * * * *

Judge Dennis R. Bagneris, Sr.

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

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**CONVICTIONS AFFIRMED, SENTENCES VACATED AND
REMANDED FOR RESENTENCING**

On February 28, 2000, Henry Coleman 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 armed

robbery charge was dismissed on October 3, 2000.

After a three-day jury trial, the defendant was found guilty on October 5, 2000, of aggravated battery, aggravated burglary, unauthorized entry of an inhabited dwelling and two counts of false imprisonment while armed with a dangerous weapon. The state filed a multiple bill charging the defendant as a second offender, and on February 15, 2001, the trial court sentenced the defendant under La. R.S. 15:529.1 to serve fifteen years at hard labor on the aggravated battery conviction, twenty years on the aggravated burglary conviction, eight years on the unauthorized entry of an inhabited dwelling, and fifteen years on each count of false imprisonment while armed with a dangerous weapon. The sentence on the aggravated battery conviction is to run consecutively to the other four sentences which are to be served concurrently with each other. The defendant's motion for reconsideration of sentence was denied, and his motion for an appeal was granted.

The facts of the case, as presented in State v. Kenyon Williams, 2001-1464 (La. App. 4 Cir. 5/1/02), 818 So. 2d 274, are as follows:

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.

State v. Williams, 2001-1464 at pp. 2-4, 818 So. 2d at 275-276.

In State v. Williams the facts did not include any testimony as to false imprisonment by someone armed with a dangerous weapon because Williams was found to be not guilty on those charges. However, Coleman was found to be guilty on two charges of false imprisonment on the testimony of Kendall Merrick, who told the court that Coleman entered his home with a knife, cut the telephone line, and tied him up, and that of Rolenda Merrick, who testified that Coleman—armed with a knife---forced her into her home and then tied up her son; he was in the process of tying her hands when his accomplices called to him and he left.

A review of the record for errors patent reveals none.

The defendant through counsel makes three assignments of error. He argues that (1) the trial court erred in sentencing the defendant as a multiple offender on all of his convictions; (2) the defendant is entitled to a new multiple bill hearing because the transcript of part of the hearing is missing; and, (3) the trial court erred in failing to advise the defendant of the time limitations for filing for post-conviction relief.

In his first assignment the defendant cites State ex rel. Porter v. Butler, 573 So. 2d 1106 (La. 1991), in his argument that under La. R.S. 15:529.1 a defendant can be sentenced as a multiple offender on only one conviction when all the convictions arose out of the same incident or criminal episode. The defendant is correct. In State ex rel. Porter v. Butler the defendant was convicted of three armed robberies arising out of the same incident and sentenced under the Habitual Offender Bill on each. The Supreme Court explained that the key issue is whether the convictions arose out of the same criminal episode. Thus Porter, who had prior felony convictions, could be multiple billed on only one of his armed robbery convictions rather than on all three.

This court in State v Ward, 94-0490 (La. App. 4 Cir. 2/29/96), 670 So. 2d 562, presented a thorough explanation concerning when a defendant with prior convictions and multiple current offenses can be multiple billed on more than one conviction. In Ward, the defendant, who had a prior felony conviction, was convicted of three purse snatchings occurring on different dates and with different victims. This court concluded that the trial court properly sentenced the defendant as a multiple offender on all three purse snatching convictions.

However, in the instant case, the defendant committed all five of the

felonies at issue in this appeal in one criminal episode. In the process of robbing Darwin Ankara, the defendant (or his accomplices) shot Ancar, committed aggravated burglary in the Ancar's home as well as unauthorized entry into Rolanda Merrick's home, and falsely imprisoned Rolanda Merrick and her son, Kendall.

This case is similar to State v. Porche, 2001-2086 (La. App. 4 Cir. 5/22/02), 819 So. 2d 1122, in which the defendant was convicted of eight felonies and multiple billed on three of the eight offenses. The defendant's criminal behavior consisted of four distinct episodes of robbery; during one of the robberies, the defendant also committed sexual battery. Two of the crimes on which the multiple bill was based, a robbery and sexual battery, occurred in the same episode. This court held that the trial court erred in sentencing the defendant as a multiple offender on both those offenses because they involve the same criminal episode.

Accordingly, the trial court in this case erred in sentencing Coleman as a multiple offender on all five of his offenses. The sentences must be vacated and the case remanded for resentencing.

Because the second and third assignments of error concern the defendant's sentencing, they are moot.

CONCLUSION

Accordingly, the defendant's convictions are affirmed. His sentences are vacated, and the case is remanded for resentencing.

**CONVICTIONS AFFIRMED, SENTENCES VACATED AND
REMANDED FOR RESENTENCING**