

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA** \* **NO. 2007-KA-0400**  
**VERSUS** \* **COURT OF APPEAL**  
**CORNELL WILLIAMS** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**

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APPEAL FROM  
CRIMINAL DISTRICT COURT ORLEANS PARISH  
NO. 465-242, SECTION "D"  
HONORABLE FRANK A. MARULLO, JUDGE

\* \* \* \* \*

**JUDGE MICHAEL E. KIRBY**

\* \* \* \* \*

(Court composed of Judge Michael E. Kirby, Judge David S. Gorbaty, Judge Roland L. Belsome)

EDDIE J. JORDAN, JR., DISTRICT ATTORNEY  
ALYSON R. GRAUGNARD, ASSISTANT DISTRICT ATTORNEY  
1340 POYDRAS STREET  
SUITE 700  
NEW ORLEANS, LA 701121221  
COUNSEL FOR PLAINTIFF/APPELLEE

HILLIARD C. FAZANDE III  
528 ELMIRA AVENUE  
NEW ORLEANS, LA 701141239  
COUNSEL FOR DEFENDANT/APPELLANT

**CONVICTION AFFIRMED; REMANDED FOR IMPOSITION OF  
MANDATORY FINE**

## **STATEMENT OF CASE**

On May 9, 2006, the State charged Cornell Williams with being a convicted felon in possession of a firearm. At his arraignment on June 15, he pled not guilty. The court heard and denied his motion to suppress the evidence on July 28. On September 19, a twelve-person jury found him guilty as charged. Williams filed a motion for new trial on October 24, and the court denied the motion on November 17. On January 18, 2007, the court sentenced him to serve ten years at hard labor without benefit of parole, probation, or suspension of sentence. On that same date the court granted his motion for appeal.

## **FACTS**

Officer Ed Wilson testified that on March 16, 2006, he and his partner Cedric Davellier were flagged down by an unknown citizen in the Algiers area of New Orleans. The citizen told them that there were some people at an apartment complex in the area who were shooting guns. Off. Wilson testified that later that evening he and his partner were driving by an apartment complex in the 2000 block of Murl Street when they saw two men standing next to a silver car. Off.

Wilson testified that they saw two men take assault rifles out of the back seat of the silver car and put them into the car's trunk. Off. Wilson testified that the car was parked in the parking lot of the apartment complex, but they could clearly see the men moving the guns. Off. Wilson testified that they drove the police car over to the silver car, in essence blocking it from leaving. He stated that he and his partner handcuffed the two men, identified as Jerome Gray and the defendant Cornell Williams. Off. Wilson testified that they put the men into the back of the police car and then walked back to the silver car, whose trunk was still open. Off. Wilson stated he and his partner seized the rifles and unloaded them. Off. Wilson stated that one of the rifles was an AK-47 and the other was an SKS rifle, and both guns were fully loaded. Off. Wilson testified that while they waited for crime lab personnel to arrive, they ran the suspects' names through the police computer and learned that Williams had a prior felony conviction. They then arrested him for being a convicted felon in possession of a firearm and arrested Gray for illegal possession of a firearm.

On cross-examination, Off. Wilson testified that he did not see either Williams or Gray driving the silver car. He admitted that he did not have either Williams or Gray checked for gunpowder residue. He stated that he did not know who owned the silver car.

Off. Cedric Davellier's testimony concerning the events leading up to the arrest basically tracked that of Off. Wilson. He testified that the apartment complex where they arrested the men was the DeGaulle Manor Apartment complex in the 2000 block of Murl Street. Off. Davellier testified that he saw Williams holding the black and brown assault rifle, which Off. Wilson had

previously identified as the AK-47. Off. Davellier testified that the AK-47 was operational when he seized it.

On cross-examination, Off. Davellier testified that he did not ask that Williams or Gray be checked for gunpowder residue. He testified that the silver car had been rented by the aunt of a woman whom he described as Williams' girlfriend. He admitted that he did not retrieve the keys to the car from either of the suspects, nor did he see either suspect driving the car.

Tonya Ramsey testified that she works for the Louisiana Department of Probation and Parole. She stated that she supervised Williams' parole for his conviction for distribution of marijuana. She stated that Williams was on parole on the date of this offense, as his parole was set to expire in April 2008. She positively identified Williams as the man who met with her several times in her office while he was on parole from the prior conviction.

Jerome Gray appeared for the defense. He testified that on the day of their arrest Williams had picked him up from work, had taken him to a fast food restaurant to get something to eat, and then had taken him to his girlfriend's apartment complex. He described the car in which they had been riding as a white Chevy Impala that belonged to Williams' mother. Gray testified that as they exited the car at the complex, police officers ran up to them, ordered them to get on the ground, and asked them for keys. Gray testified that he and Williams had no guns in the white car and were nowhere near a silver car. He testified that he was arrested for trespassing.

On cross-examination, Gray testified that he did not know the police officers involved in the arrest and had not seen them before that evening. He insisted that the officers did not ask him or Williams anything about guns; instead, they kept

asking about keys that he did not have. He admitted that he was arrested for illegal possession of a firearm and that he had been arrested earlier for trespassing. He insisted that he did not know anything about a silver car or a rental car, and he denied seeing the assault rifles. He insisted that there was a silver car parked in driveway of the complex about a block from where he was stopped and arrested, and he insisted that the silver car's doors and trunk were closed when he saw it. Gray testified he was living with Williams, Williams' mother, and Williams' brother Kevin at the time he was arrested. He testified that he did not know who Williams' girlfriend was at the time, and he identified Shanoca Thomas as Williams' friend.

Kevin Williams identified himself as Cornell Williams' brother. He testified that he just happened to be driving down Murl Street when he saw that his brother had been placed in the back seat of a police car. He testified that Gray was standing outside the white Impala. He stated that he stopped to ask the officers why they had arrested his brother and Gray, and an officer just mentioned that they were "under investigation." Kevin Williams testified that he saw no weapons in the area, nor did he see any other police investigations in the area. He testified that he left the scene before his brother was taken away by the police.

On cross-examination, Kevin Williams testified that the white car upon which he saw Gray leaning was his (Kevin's) mother's car. He testified that although the officers did not mention any guns to him, they did ask him the whereabouts of some keys, but he did not know for what car. He insisted that the officers did not ask him about a silver car or a rental car.

Shanoca Thomas identified the silver car as one her aunt had rented for her. She testified that she had loaned the car earlier that day to a man she only knew as

“David.” She testified that she arrived at the apartment complex that evening to visit a friend and saw two men being detained by police officers near a car, with one man standing by the car and the other in sitting the back seat of a police car. She testified she went upstairs to visit her friend, and apparently they watched the proceedings from a balcony. Ms. Thomas testified that her friend indicated that one of the men was named Cornell. She testified that she then saw a tow truck come into the complex and drive to the other building in the complex. Ms. Thomas testified that they went to a gray car that she realized was the car her aunt had rented, and from the car they seized guns. Ms. Thomas denied giving the car to Cornell Williams, and she stated that she did not think that the person to whom she loaned the car knew Williams. Ms. Thomas denied seeing any guns in the Impala. She also denied that the officers took Williams or Gray from the rental car.

On cross-examination, Ms. Thomas admitted that she did not know the last name of the man to whom she loaned the car. She insisted she did not see that man on the scene that evening. She stated that the doors and trunk to the silver car were not open until the tow truck driver opened them.

On rebuttal, the State called Off. Benjamin Christoval, who testified that he ran the suspects’ names in the police computer when he arrived on the scene. He testified that when he arrived, one suspect was in the back of one police car, while the other was in the back of another police car. He testified that he saw two assault rifles on the back of a silver car. He testified that the tow truck arrived after he did, and the trunk of the silver car was already open by the time the tow truck arrived. He stated that he did not remember seeing a white Chevy in the area.

## **DISCUSSION AND RECOMMENDATION**

### **A. Errors Patent**

A review of the record reveals one patent error. When imposing sentence, the trial court failed to impose a fine. La. R.S. 14:95.1B provides that a trial court must impose a fine of not less than \$1000 nor more than \$5000. Here, the trial court imposed the minimum term of years, but it did not impose a fine as mandated by La. R.S. 14:95.1. Thus, the panel should remand this case to the trial court for the imposition of the mandatory fine. See State v. Jefferson, 2004-1960 (La. App. 4 Cir. 12/21/05), 922 So. 2d 577, writ den. 2006-0940 (La. 102706), 939 So. 2d 1276; State v. Brown, 2003-2155 (La. App. 4 Cir. 4/14/04), 895 So. 2d 542.

There are no other patent errors.

### **B. Assignment of Error**

By his sole assignment of error, the appellant contends that the trial court erred by denying his motion for new trial. Specifically, he alleges that sometime after trial, Ms. Thomas signed an affidavit indicating that she did not loan the silver car to a man named David, but rather she loaned it to her brother Bryan Thomas. He asserts that this newly-discovered testimony, if known at the time of trial, would have bolstered Ms. Thomas' credibility and supported her assertion that she did not lend the car to the appellant.

In State v. Price, 2002-0360, pp. 26-27 (La. App. 4 Cir. 4/02/03), 842 So. 2d 491, 508-509, this court set forth the standard for reviewing a trial court's denial of a motion for new trial based upon a claim of newly-discovered evidence:

In order to obtain a new trial based on newly discovered evidence, a defendant must show: (1) the new evidence was discovered after trial; (2) the failure to

discover the evidence at the time of trial was not due to the defendant's lack of diligence; (3) the evidence is material to the issues at trial; and (4) the evidence is of such a nature that it would probably have changed the verdict of guilty. La. C.Cr.P. art. 851(3); *State v. Brisban*, 2000-3437, p. 12 (La. 2/26/02), 809 So.2d 923, 931; *State v. Bright*, 98-0398, pp. 25-26 (La. 4/11/00), 776 So.2d 1134, 1149. A trial court assessing the legal merits of a motion for new trial is given considerable latitude in evaluating the impact of newly discovered evidence on the verdict. *State v. Brooks*, 98-0693, p. 12 (La.App. 4 Cir. 7/21/99), 758 So. 2d 814, 821. The trial court has much discretion in ruling on a motion for new trial. *State v. Cureaux*, 98-0097, p. 4 (La.App. 4 Cir. 5/26/99), 736 So.2d 318, 321. Review of the trial court's ruling is limited to determining whether the trial court abused its discretion. *State v. Labran*, 97-2614, p. 6 (La.App. 4 Cir. 5/26/99), 737 So.2d 903, 907.

See also *State v. Coleman*, 2005-1617 (La. 6/29/07), 959 So. 2d 465.

The trial court did not err by denying the motion for new trial. Although there was no testimony taken on the motion, the motion itself notes that the failure of Ms. Thomas to provide a last name for the man to whom she loaned the car damaged her credibility. Taking the factors described in *Price*, the “newly-discovered” evidence, that Ms. Thomas actually loaned her car to her brother rather than to a man named David, was not necessarily “newly-discovered.” Ms. Thomas should have known to whom she loaned the car. Although it is uncertain whether the defense could have known that the car was loaned to Bryan Thomas rather than to David, this evidence was not material to the issues at trial. In either instance, Ms. Thomas insisted that she did not loan the car to the appellant. Likewise, in either instance, the fact that she loaned the car to another person would not have negated that person from then giving the car to the appellant. Consequently, the evidence, that she gave the car to her brother rather than to a man whose last name she did not know, probably would not have changed the



verdict had the jury heard the evidence. Even if the jury were to believe that she loaned the car to someone other than the appellant earlier that morning, this fact did not negate the possibility that that person then gave the car to the appellant later that day.

The defense presented two other witnesses, Gray and Kevin Williams, who insisted that the appellant was not arrested anywhere near the silver car. The jury apparently chose not to believe them. This court has repeatedly held that a factfinder's credibility decision should not be disturbed unless it is clearly contrary to the evidence. State v. Huckabay, 2000-1082 (La. App. 4 Cir. 2/6/02), 809 So. 2d 1093; State v. Harris, 99-3147 (La. App. 4 Cir. 5/31/00), 765 So. 2d 432. Therefore, even if the jury had been informed that Ms. Thomas gave the car to her brother earlier that day and the jury believed all of her testimony, this "evidence" probably would not have changed the jury's verdict. Thus, the trial court did not abuse its discretion by denying the motion for new trial based upon evidence that it was not clear was even newly-discovered. This assignment has no merit.

Accordingly, we affirm appellant's conviction and remand the case for the imposition of the mandatory fine.

**CONVICTION AFFIRMED; REMANDED FOR IMPOSITION OF MANDATORY FINE.**