NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2007-KA-0742**
VERSUS	*	**COURT OF APPEAL**
DION M. BERGERON	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 461-908, SECTION "C"
Honorable Benedict J. Willard, Judge
* * * * * *
Judge Roland L. Belsome
* * * * * *

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

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CONVICTION AFFIRMED; REMANDED

STATEMENT OF THE CASE

On August 4, 2005, defendant-appellant, Dion M. Bergeron, was charged with being a convicted felon in possession of a firearm. At his arraignment on August 15, 2005, he entered a plea of not guilty. Counsel for defendant then filed motions to suppress the evidence, statement and identification. On October 18, 2006, the district court denied the motion to suppress the evidence and found probable cause to hold defendant for trial. A judge trial was held on March 22, 2007.

During the course of investigating the murder of eighty-eight year old Leonard Brusky whose home was burglarized, homicide Detective Ronnie Ruiz obtained a search warrant for 2025 L. B. Landry Street, Apartment 3-E where defendant had been residing with his girlfriend and her children. Ruiz stated that surveillance was conducted, and defendant and a female were observed leaving the residence and entering a vehicle. The officers stopped the vehicle, and the occupants were identified as defendant and his girlfriend Terlise Snowden. Both were transported to the police station while the search was conducted. The search revealed a loaded .380 caliber semi automatic handgun under the side of the bed

used by defendant between the box spring and the mattress. Terlise Snowden stated that defendant lived with her and her six children in the apartment. She stated that the gun belonged to defendant and that he would keep it in his waist.

Defendant testified in his own behalf. He stated that he had been living at 2524 Woodmere Avenue in Harvey since 2004. He denied owning the gun seized and stated that he only occasionally went to Snowden's apartment when her husband was working offshore. He testified that Everett Carter knew that he lived on Woodmere Avenue and did not know why he would lie and tell Detective Ruiz that he lived with Snowden. He stated that Snowden lied because the Housing Authority would evict her from her apartment if she admitted that she owned the gun.

At the close of trial the defendant was found guilty as charged. On April 10, 2007, defendant was sentenced to serve fourteen years at hard labor with credit for time served but without benefit of parole, probation or suspension of sentence. Thereafter, the defendant's motion to reconsider the sentence was denied.

ASSIGNMENT OF ERROR

By his sole assignment of error, defendant asserts that the trial judge erred by allowing him to waive his right to a jury trial without first obtaining a knowing and intelligent waiver of this right by addressing him directly and inquiring if counsel had advised or consulted with him prior to entering the waiver. In support of his argument defendant cites the following colloquy with the trial court and counsel prior to trial:

> BY THE COURT: Are you ready for trial? Ms. Debose?
> BY MS. DEBOSE: Your Honor, I'm ready for trial.
> BY THE COURT: Judge or jury?
> BY MS. DEBOSE: Judge, Your Honor.

BY THE COURT: You want a judge trial?
BY MS. DEBOSE: Yes.
BY THE COURT: All right.

In State v. Santee, 2002-0693, p. 3 (La. App. 4 Cir. 12/4/02), 834 So. 2d 533, 534-535, this court set forth the test for determining whether a defendant knowingly waived his right to a jury trial:

> A defendant may waive his right to a jury trial and elect to be tried by the judge. La. C.Cr.P. art. 780. Generally, the waiver is to be entered at arraignment. However, the trial judge may accept a waiver of a jury trial at any time prior to the commencement of trial. La. C.Cr.P. art. 780(B). A waiver of trial by jury is valid only if the defendant acted voluntarily and knowingly. State v. Kahey, 436 So.2d 475, 486 (La. 1983). The waiver must be express and is never presumed. Kahey, 436 So.2d at 486. The record must show a knowing and intelligent waiver. State v. Williams, 99-223 (La.App. 5 Cir. 6/30/99), 742 So.2d 604, 606. While it is preferred for the trial judge to advise the defendant personally on the record of his right to a jury trial and have the defendant waive the right personally on the record, the Louisiana Supreme Court has refused to mandate this method as an absolute rule. Kahey, 436 So.2d at 486. While the trial judge must determine if the defendant's jury trial waiver is knowing and intelligent, that determination does not require a *Boykin*-like colloquy. State v. Frank, 549 So.2d 401 (La.App. 3 Cir.1989).

This court has found adequate waivers of the right to jury trial even when there is no colloquy between the court and the defendant at the time of the waiver if the record shows the defendant was aware of this right and did not object when defense counsel waived this right for him. In Santee, the record reflected that the court advised the defendant at arraignment of his right to a jury trial. At the beginning of trial, counsel waived the right for him. During trial itself counsel asked the defendant if he wished to waive the jury, and he replied affirmatively. This court found the defendant's waiver was knowingly made, especially given the fact that he had prior criminal convictions. Likewise, in State v. Wolfe, 98-0345

(La. App. 4 Cir. 4/21/99), 738 So. 2d 1093, the court advised the defendant at arraignment of his right to a jury, and at trial counsel waived this right for him. This court found the waiver was knowingly and intelligently entered, especially given the fact that the defendant was present when counsel waived his right and did not object. In State v. Abbott, 92-2731 (La. App. 4 Cir. 2/25/94), 634 So. 2d 911, after defense counsel waived the jury for the defendant, the trial court asked the defendant if he wanted to waive the jury, and the defendant indicated he did. This court found a knowing waiver of the defendant's right to a jury trial.

Although there was no colloquy between the trial court and defendant on the day of trial, the docket master and minute entries of August 15, 2005 reflect that defendant was "informed of his right to a trial by judge or jury". The court's advisement here was more explicit than those in the cases cited above, and as in Santee the defendant had a prior criminal history.[1] Defendant's trial testimony clearly reflects an understanding of the criminal justice system and his rights. Thus, the court adequately determined that defendant's waiver was knowingly and intelligently made. Therefore, we must affirm the defendant's conviction.

Additionally, a review for errors patent reveals one error in defendant's sentence. A person convicted of being a felon in possession of a firearm shall be imprisoned at hard labor without benefit of parole, probation or suspension of sentence and fined not less than $1000.00 nor more than $5000.00. (emphasis added). La.R.S. 14:95.1(B); La.C.Cr. P. art. 6(1).

In the instant case, the sentencing transcript of April 10, 2007 indicates that the trial court failed to impose the mandatory fine of not less than $1000.00 nor

[1] At trial, defendant testified that he had been convicted of the following: possession of cocaine in 1988, distribution of cocaine in 1992, attempted possession of heroin in 1999 and 2000, and simple burglary in 1987. In addition, he also explained that another felony charge was nolle prosequied for lack of evidence.

more than $5000.00. In State v. Williams, 2003-0302 (La. App. 4 Cir. 10/6/03), 859 So. 2d 751, this court held that a reviewing court must remand cases for the imposition of a mandatory fine where the trial court failed to do so. Thus, this case must be remanded to the trial court for the imposition of the mandatory fine.

CONCLUSION

Accordingly, Dion Bergeron's conviction is affirmed and the case is remanded to the district court for the imposition of the mandatory fine.

CONVICTION AFFIRMED; REMANDED