

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 KA 1335

STATE OF LOUISIANA

VERSUS




JOSHUA DION WILLIAMS

Judgment Rendered: February 11, 2011

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Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case Number 07-09-0147
Honorable Donald R. Johnson, Presiding

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BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

GUIDRY, J.

The defendant, Joshua Dion Williams, was charged by East Baton Rouge Parish grand jury indictment with second degree murder, a violation of La. R.S. 14:30.1. On February 5, 2010, prior to trial, the defendant filed a motion to quash the indictment, asserting that La. C.Cr.P. art. 404(B), which provides the procedure for selecting grand jurors in East Baton Rouge Parish, is unconstitutional special legislation. A hearing was held on the motion, and the district court took the matter under advisement. Thereafter, on April 29, 2010, the district court granted the defendant's motion to quash. The state now seeks review of the district court's ruling. For the following reasons, we transfer the case to the Louisiana Supreme Court.

ASSIGNMENT OF ERROR **GRANTING OF DEFENSE MOTION TO QUASH**

In a single assignment of error, the state argues that the district court abused its discretion in granting the defendant's motion to quash the indictment, while specifically refusing to make a finding as to the constitutionality of Article 404(B), the sole claim asserted in the motion. In response, the defendant argues that this court lacks jurisdiction to hear this matter, since the legal effect of the district court's ruling was to find Article 404(B) unconstitutional. He asserts the district court's ruling granting relief could have been based only upon the constitutionality of the statute, because that was the sole claim raised in the motion to quash. We agree.

In his motion to quash and accompanying memorandum of law, the defendant claimed that the grand jury commission in this case was selected using a constitutionally deficient process, and thus, the grand jury indictment is invalid. Specifically, he argued that the selection procedure set forth in Article 404(B), which provides a separate and distinct procedure or process for selecting grand

jurors in East Baton Rouge Parish, is a special or local law prohibited by Article III, § 12 of the Louisiana Constitution. Paragraph seven of the motion to quash reads, in pertinent part, “Article 404(B) is unconstitutional and the indictment herein is illegal and should be quashed by this Honorable Court.” In response, the state argued the defendant lacked standing to challenge the constitutionality of the statute.

Louisiana Constitution Article III, § 12, reads, in pertinent part:

(A) **Prohibitions.** Except as otherwise provided in this constitution, the legislature shall not pass a local or special law:

* * *

(3) Concerning any civil or criminal actions, including changing the venue in civil or criminal cases, or regulating the practice or jurisdiction of any court, or changing the rules of evidence in any judicial proceeding or inquiry before courts, or providing or changing methods for the collection of debts or the enforcement of judgments, or prescribing the effects of judicial sales.

* * *

(B) **Additional Prohibition.** The legislature shall not indirectly enact special or local laws by the partial repeal or suspension of a general law.

Louisiana Code of Criminal Procedure article 404(B) provides, in pertinent part:

In the parish of East Baton Rouge the function of the jury commission shall be performed by the judicial administrator of the Nineteenth Judicial District Court or by a deputy judicial administrator designated by him in writing to act in his stead in all matters affecting the jury commission. The judicial administrator or his designated deputy shall have the same powers, duties and responsibilities, and be governed by those provisions of law as presently pertain to jury commissioners which are applicable, including the taking of an oath to discharge their duties faithfully. The clerk of court of the parish of East Baton Rouge shall perform the duties and responsibilities otherwise imposed upon him by law with respect to jury venires, shall coordinate the jury venire process, and shall receive the compensation generally authorized for a jury commissioner.

In ruling on the motion to quash in this case, the district court first addressed the standing argument made by the state. The court noted, “Louisiana Code of Criminal Procedure article 533 is the authorization by which the defendant in this case asserts his claim to relief It provides the standing requisition, the standing authority, to assert relief.”¹ The court then went further to make the following finding:

Having dealt with the standing issue, and resolved that in favor of the defendant, the court considers the motion on the merits. Is this law special? Is it local? Is the determinative, is the determinative issue I think that is warranted here. Both parties have characterized the law as being in the nature of non general.

However, the state argues that it – for purposes of the analysis I must make – should not necessarily fall in the category, which would amount to a local or special law in violation of the constitution. The defense argues to the contrary. And there are some cases which have been cited to me as to what expansion or limitation the reviewing courts have placed on the concept of local and the concept of special.

How are these words operationalized? A local law is one that operates only in a – and this is one way of explaining what a local law is. A local law is one that operates only in a particular locality without the possibility of extending its coverage to other areas should the requisite criteria of its statutory classification exists there. That’s one definition of local.

A definition of special is a statute is special if it affects only a certain number of persons within a class and not all persons possessing the characteristics of the class. Additionally, a statute is suspect as local or special if its operation is limited to certain parishes or designated areas unless the limitation – and this is a qualifier— results from a reasonable classification such as population or physical characteristics.

Does this law – is it limited, one, to certain parishes? The answer is yes. Specifically, limited to East Baton Rouge Parish. Does a qualifier apply? Unless the limitation results from a reasonable classification such as population or physical characteristics.

First of all, the language presumes that if it’s based upon population, that’s reasonable or other physical characteristics. The statute does not use population, which the court has seen used a lot by this legislature, particularly when it used to pertain to Orleans Parish

¹ Louisiana Code of Criminal Procedure article 533(1) provides that a motion to quash an indictment by a grand jury may be based on, among other things, “[t]he manner of selection of the general venire, the grand jury venire,” or because “the grand jury was illegal.”

as being the most populated parish in our state. I've seen multiple statutes that were written particularly for Orleans Parish, and it was characterized based upon population exceeding four hundred thousand or something like that. But that is not the language in this statute.

Now, I'm reading **State ex rel. Miller versus Henderson**, 329 So.2d 707. **State versus Slay**, 370 So.2d 508. In this case, the provisions in Louisiana Code of Criminal Procedure Article 404(B) specifically concern East Baton Rouge Parish grand jury proceedings. The complained law is operative only in East Baton Rouge Parish. Perhaps on its face it could constitute as written to be a local or special law, read it plain and simple, if words mean what they say. Or are they going to mean something as defined by a superior court?

Trial courts are not supposed to write law. A lot of us say appellate courts are not supposed to make law. I differ with that understanding. Everything I read from appellate courts say that they have authority, and do all the time, write law because they define words which are not defined by the statutes. The mere fact that a statute's enforcement is limited to particular locality does not in and of itself or by itself render the statute a local or special law.

The characteristic of a special law that makes it operable as being local or special is the qualifying possibility of extending coverage to other areas of the state, other parishes. There is no ability, the way the statute is written, to permit it to be classified or characterized to other parishes. There is no other East Baton Rouge Parish designated in the State of Louisiana. There's a West Baton Rouge Parish. There are other east and west parishes in Louisiana, such as East Carroll [sic] and West Carroll [sic]. But parishes in Louisiana, there's 64 of them, and they all have a particular name having exclusive territorial and jurisdictional geographical operation.

In this case, the complained statute does apply to all jury proceedings and persons subject to such proceedings. Statute does not however possess the possibility to extend across other parish lines because of its specific wording and tailoring in East Baton Rouge Parish, and it states that no other provisions to apply to other parishes in the future, unless it's amended.

I believe, based upon my knowledge as written, that the statute does not meet the requisite general law of Louisiana, and I must conclude that it is local and it is special. So based upon my analysis, officers, I do grant relief.

Shortly thereafter, the prosecutor requested clarification of the court's ruling and the following exchange occurred:

THE COURT: And I did not address the constitutionality of this issue; that, even though the assertion may have been that it was perhaps unconstitutional, the mechanism that [defense counsel] has

utilized here does not seek relief to declare the issue of constitutionality or non constitutionality. I have simply used the Code of Criminal Procedure method which gives him standing to assert an illegal proceeding.

So, no. The answer is no. I have not entered any declaration of the constitutionality of this statute.

[PROSECUTOR]: Okay. That was –

THE COURT: I am not entering that declaration.

[PROSECUTOR]: That was the relief that he was seeking so I just wanted to clarify that's what your ruling was.

THE COURT: I did not deny or grant relief on that. I have not commented one way or the other whether this statute is constitutional or not, and I'm not granting relief on that basis. I'm granting relief under the Code of Criminal Procedure. That's my ruling. ...

In his appeal brief, the defendant claims the district court's ruling could only have been based on the constitutionality of the statute, because that was the sole claim asserted in the motion to quash. We agree. Considering the single claim raised by the defendant in his motion to quash, and the district court's ruling in its entirety (which includes a discussion of the constitutionality of the statute), we find that the court clearly granted the motion to quash on the basis that the East Baton Rouge Parish grand jury procedure set forth in Article 404(B) is unconstitutional local and special legislation. Although the district court claimed to have been granting relief under the Code of Criminal Procedure, the record on appeal simply does not support this conclusion.

Article V, § 5(D)(1) of the Louisiana Constitution grants appellate jurisdiction to the Louisiana Supreme Court in cases in which a law has been declared unconstitutional. Although the district court stated it was not ruling on the issue of constitutionality, since the court specifically declared Article 404(B) to be a violation of the Louisiana Constitution's prohibition against local and special legislation, the court's ruling effectively declared the statute unconstitutional.

Therefore, the Louisiana Supreme Court has exclusive appellate jurisdiction in this matter.

CASE TRANSFERRED TO LOUISIANA SUPREME COURT.