

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 KA 0020

STATE OF LOUISIANA

VERSUS

DARIUS ANTOINE FLANIGAN

Judgment Rendered: JUN 06 2014

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On Appeal from the  
21st Judicial District Court,  
In and for the Parish of Tangipahoa,  
State of Louisiana  
Trial Court No. 1202731

Honorable Robert H. Morrison, III, Judge Presiding

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Scott M. Perilloux  
District Attorney  
Le'Anne H. Malnar  
Assistant District Attorney  
Amite, LA

Attorneys for Appellant,  
State of Louisiana

David E. Stanley  
Baton Rouge, LA

Attorney for Defendant-Appellee,  
Darius Antoine Flanigan

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BEFORE: KUHN, HIGGINBOTHAM, AND THERIOT, JJ.

*TMH*  
*CE*  
*MT.*

**HIGGINBOTHAM, J.**

Defendant, Darius Antoine Flanigan, was charged by bill of information with two counts of racketeering, violations of La. R.S. 15:1353(A) and La. R.S. 15:1353(C). He pled not guilty. Defendant filed a motion to quash, alleging that the trial court had no jurisdiction over the charged offenses. After a hearing, the trial court granted that motion. The state now appeals, alleging that the trial court erred in granting defendant's motion to quash. For the following reasons, we reverse the trial court's ruling and remand for further proceedings.

**FACTS**

Defendant is charged, with others, with violating the laws against racketeering. Specifically, defendant is alleged to have committed the offense of receiving and investing proceeds derived from racketeering activity (La. R.S. 15:1353(A)), and with participating in a racketeering enterprise through a pattern of racketeering activity (La. R.S. 15:1353(C)).

According to an investigatory document included in the state's response to defendant's motion for a bill of particulars, the alleged enterprise is a compartmental, multi-level organization involving several members who all participated in the operation and management of the enterprise. The members of the enterprise are alleged to be involved in a pattern of continuous smuggling, transporting, storing, and distributing of marijuana and cocaine in Texas, Louisiana, Mississippi, and Alabama on wholesale, retail, and personal-use levels. The enterprise allegedly purchases bulk quantities of marijuana and cocaine in Houston, Texas, at wholesale prices and then uses "mules" to transport the marijuana and cocaine in rental vehicles to Huntsville, Alabama, where it is distributed to mid-level dealers, lower-level dealers, and end users at substantial markups each time the drugs change hands. Investigators were able to document a total of eight alleged trips between August and October, 2011, totaling nine

kilograms of cocaine and seventy-eight pounds of marijuana, allegedly resulting in a gross profit of six-hundred-fifty thousand dollars.

### **ASSIGNMENT OF ERROR**

In the state's sole assignment of error, it argues that the trial court erred in granting defendant's motion to quash, which was based on the trial court's lack of jurisdiction. The state argues that the 21st Judicial District Court in Tangipahoa Parish has both jurisdiction and venue over defendant's charged offenses because defendant was part of a criminal enterprise that transported narcotics into and through Tangipahoa Parish. Specifically, the state asserts that defendant funded other enterprise members' trips to Houston, from where they obtained and then transported narcotics to and through Tangipahoa Parish.

### **DISCUSSION**

The motion to quash is essentially a mechanism by which to raise pretrial pleas of defense, i.e., those matters which do not go to the merits of the charge. See La. Code Crim. P. arts. 531-34; **State v. Beauchamp**, 510 So.2d 22, 25 (La. App. 1st Cir.), writ denied, 512 So.2d 1176 (La. 1987). It is treated much like an exception of no cause of action in a civil suit. **Beauchamp**, 510 So.2d at 25. In considering a motion to quash, a court must accept as true the facts contained in the bill of information and in the bills of particulars and determine, as a matter of law and from the face of the pleadings, whether or not a crime has been charged. While evidence may be adduced, such may not include a defense on the merits. The question of factual guilt or innocence of the offense charged is not raised by the motion to quash. **Id.**

When a trial court rules on a motion to quash, factual and credibility determinations should not be reversed on appeal in the absence of a clear abuse of the trial court's discretion. See **State v. Odom**, 2002-2698 (La. App. 1st Cir. 6/27/03), 861 So.2d 187, 191, writ denied, 2003-2142 (La. 10/17/03), 855 So.2d

765. However, a trial court's legal findings are subject to a *de novo* standard of review. See **State v. Smith**, 99-0606 (La. 7/6/00), 766 So.2d 501, 504.

Investigator Leland Dwight, of the Louisiana State Police ("LSP"), testified at defendant's preliminary examination held on September 13, 2013.<sup>1</sup> According to Investigator Dwight, Corey Hammond and Alesha Smith were stopped while traveling through Tangipahoa Parish on September 16, 2011. Hammond and Smith were allegedly carrying at least twenty-seven pounds of marijuana in their vehicle. Following their arrests, Hammond and Smith gave inculpatory statements to officers about other individuals who were involved in transporting marijuana from Houston, Texas, to Huntsville, Alabama. At the time of this arrest, neither individual mentioned defendant's name as a member of the alleged enterprise. However, Hammond expressed a desire to cooperate in furthering the officers' investigation against at least two other members of the enterprise. As part of their investigation, the officers downloaded information from Hammond's cell phone. That information revealed a text message sent to Hammond by defendant on September 2, 2011, which Investigator Dwight came to appreciate as an instruction for Hammond to come retrieve money from him in Huntsville before a drug run to Houston.

Investigator Dwight further testified that on October 19, 2011, officers conducted a stop of Marcus Anders, Tephania Monroe, and Hammond as they traveled through West Baton Rouge Parish. During this stop, the officers recovered two kilograms of cocaine. The individuals stated that they had purchased the cocaine in Houston and were on the way to Huntsville. Anders told investigators that defendant, along with himself and some others, had put up money for the drug buy they had just made in Houston. He also stated that defendant was Hammond's "number one main guy," and that they were

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<sup>1</sup> Defendant's motion to quash was argued at a December 2, 2013 hearing, but the trial court referenced his notes from the preliminary examination in ruling on the motion to quash.

inseparable. Monroe told investigators that defendant was Hammond's "right-hand man," that he was heavily involved with him in the distribution of cocaine and marijuana in Huntsville, and that the two were inseparable partners in the "organization." She also told investigators that defendant put up money and that he knew of all the trips that were made.

Investigator Dwight testified that the evidence from his investigation led him to believe that defendant was involved in the alleged enterprise between at least August and October of 2011. He further stated that it was his belief, based on the text message and other evidence, that defendant was providing proceeds from earlier transactions to Hammond in order to purchase marijuana and/or cocaine in Houston.

In granting the motion to quash, the trial judge stated that he had reviewed his notes from the preliminary hearing and recalled mention of only one text message with respect to defendant. He further stated that while several people identified defendant as Hammond's right-hand man, none of them stated that they had personally witnessed defendant do anything. Finally, he agreed with defense counsel's argument that the state had failed to show any conduct by defendant within the state of Louisiana.

Under La. R.S. 15:1353(A), "[i]t is unlawful for any person who has knowingly received any proceeds derived, directly or indirectly, from a pattern of racketeering activity to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in immovable property or in the establishment or operation of any enterprise." Under La. R.S. 15:1353(C), "[i]t is unlawful for any person employed by, or associated with, any enterprise knowingly to conduct or participate in, directly or indirectly, such enterprise through a pattern of racketeering activity."

“Racketeering activity” means committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit, inter alia, money laundering (a violation of La. R.S. 14:230). See La. R.S. 15:1352(A)(17). An “enterprise” is any individual, sole proprietorship, partnership, corporation, or other legal entity, or any unchartered association, or group of individuals associated in fact and includes unlawful as well as lawful enterprises and governmental as well as other entities. See La. R.S. 15:1352(B). A “pattern of racketeering activity” means engaging in at least two incidents of racketeering activity that have the same or similar intents, results, principals, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such incidents occurs after August 21, 1992, and that the last of such incidents occurs within five years after a prior incident of racketeering activity. See La. R.S. 15:1352(C).

The bill of information, bill of particulars, and Investigator Dwight’s testimony allege that defendant has used money laundered from proceeds of previous racketeering activities to finance further racketeering activities involving the transport of marijuana and cocaine through Louisiana. Defendant is further alleged to have participated in an enterprise of approximately thirty individuals which has been involved in a pattern of racketeering activity in Texas, Louisiana, Georgia, and Alabama.

At the preliminary examination, Investigator Dwight admitted that he did not know of any incident where defendant physically entered the state of Louisiana. In fact, he knew of no Louisiana residents who were even part of the alleged enterprise. Defendant apparently worked at a Huntsville, Alabama, CarMax dealership with Hammond.

In a related case arising from these same facts, the Supreme Court addressed the issue of whether the trial court was correct in finding no probable cause based

on a jurisdictional argument made by another alleged member of the enterprise, Cecil Redditt. See State v. Redditt, 2013-0295 (La. 4/19/13), 113 So.3d 1075 (per curiam). Redditt, like defendant in this case, apparently never had any physical contact with Louisiana. Instead, he was alleged to be one of the dealers used by Hammond to sell drugs in Huntsville. As with defendant in this case, other members of the alleged enterprise were aware of a connection between Hammond and Redditt through their place of employment. Further, the state had presented evidence regarding testimony about text messages between Hammond and Redditt discussing the availability of drugs for sale, the transportation of those drugs, and the quality of those drugs. See Redditt, 113 So.3d at 1077-78.

The trial court, after hearing the state's evidence at the preliminary examination, found that there was no probable cause based on jurisdiction. Redditt, 113 So.3d at 1076. The Supreme Court reversed. The Supreme Court noted that La. Code Crim. P. art. 611(A), in pertinent part, states that "[i]f acts constituting an offense or if the elements of an offense occurred in more than one place, in or out of the parish or state, the offense is deemed to have been committed in any parish in this state in which any such act or element occurred." See Redditt, 113 So.3d at 1078. The Supreme Court stated that where there was compelling evidence that the alleged criminal enterprise transported drugs in and through Tangipahoa Parish on eight occasions, with evidence that Redditt was a middle-man for the ultimate sale of those drugs, the state has shown probable cause of Redditt's involvement in the alleged criminal enterprise in Tangipahoa Parish. Therefore, the Supreme Court found that Redditt should be subject to the requirement of bail on the racketeering charges filed there, and it reversed the trial court's finding of no probable cause. See Id.

We note that the instant case is procedurally different from Redditt. Whereas Redditt's case arose out of the trial court's finding of no probable cause, the instant case arises from the trial court's granting of a motion to quash.

However, the issue of jurisdiction is common to both cases. In finding that the trial court erred in finding no probable cause based on a jurisdictional argument, the Supreme Court necessarily made an implicit finding that the trial court had jurisdiction.

The similarities of facts between Redditt's case and defendant's case are readily apparent. Neither individual was ever alleged to have any physical presence in Louisiana. Both individuals allegedly worked mainly through one man – Hammond – as his financier (defendant) and as one of his dealers (Redditt). Similarly, there is some evidence that both individuals had contact with Hammond through text messages regarding the alleged enterprise.

On the basis of the bill of information, the bill of particulars, and Investigator Dwight's testimony, we find that the state has made a sufficient initial showing that jurisdiction<sup>2</sup> in Tangipahoa Parish is proper in the instant case. The state has alleged both that defendant used laundered proceeds from a pattern of racketeering activity to fund further operations of an alleged criminal enterprise and that he knowingly participated in such an enterprise through a pattern of racketeering activity. At least one occurrence of that activity is alleged to have taken place in Tangipahoa Parish as a result of the transportation of drugs through that parish, and there are a total of at least eight alleged occurrences of these activities.

### **CONCLUSION**

Accordingly, the district court's granting of defendant's motion to quash is reversed. The case is remanded to the district court for further proceedings.

**REVERSED AND REMANDED.**

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<sup>2</sup> We note that "jurisdiction," as used in La. Code Crim. P. art. 532(8), covers a wide variety of situations, such as the court's lack of jurisdiction because of improper venue, or because the crime is not a Louisiana crime, or because the particular tribunal does not have sufficient jurisdictional stature. See La. Code Crim. P. art. 532, Official Revision Comment. In all senses of the word, jurisdiction is proper in Tangipahoa Parish.