

**STATE OF LOUISIANA**

\*

**NO. 2018-KA-0739**

**VERSUS**

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**COURT OF APPEAL**

**TYRONE WARNER**

\*

**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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**BELSOME, J., CONCURS IN PART AND DISSENTS IN PART**

I respectfully concur in the majority opinion, except as to the reversal of the prosecutorial costs.

Before assessing prosecutorial costs, the trial court issued an ex proprio motu order notifying the parties of his intent to assess the defendant the costs of prosecution pursuant to La. C.Cr.P. art 887.<sup>1</sup> The court ordered the District Attorney to compute the costs and submit its assessment to the defendant and the court. After a hearing, the trial court assessed \$57,387.00 in costs, including prosecutorial and court costs.

A review of the transcript from the hearing reflects that the trial court recognized the Defendant's ability to pay the costs of prosecution. In particular, the Defendant owned several pieces of real estate worth approximately \$300,000.00, and posted a \$150,000.00 property bond. Moreover, the Defendant was convicted of aggravated kidnapping and aggravated rape, which are violent crimes. Although the assessment may be high, under these circumstances, I do not

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<sup>1</sup> La. C. Cr. P. art. 887(A) provides in part:

A defendant who is convicted of an offense . . . shall be liable for all costs of the prosecution or proceeding, whether or not costs are assessed by the court, and such costs are recoverable by the party or parties who incurred the expense. However, such defendant or person shall not be liable for costs if acquitted or if the prosecution or proceeding is dismissed. In addition, any judge of a district court, parish court, city court, traffic court, juvenile court, family court, or magistrate of a mayor's court within the state shall be authorized to suspend court costs.

find that the trial court abused its discretion by assessing costs against the Defendant. *See State v. Griffin*, 14-1214, p. 6 (La. 10/14/15), 180 So.3d 1262, 1268 (where the Louisiana Supreme Court found that it was within the discretion of the trial court to impose a broad category of costs on a convicted criminal defendant pursuant to article 887(A)). Therefore, I would affirm the trial court's judgment in its entirety.