

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA

NO. 2015 KW 1568

VERSUS

KYLE RUSS, JR.

DEC 07 2015

In Re: Kyle Russ, Jr., applying for supervisory writs, 19th
Judicial District Court, Parish of East Baton Rouge,
No. 01-14-0566.

BEFORE: PETTIGREW, HIGGINBOTHAM AND CRAIN, JJ.

WRIT DENIED.

TMH

JTP

Crain, J., dissents and would grant the writ. I find merit in the State's argument that the district court erred in finding that the joinder of offenses is prejudicial. See **State v. Morris**, 99-3075 (La. App. 1st Cir. 11/3/00), 770 So.2d 908, writ denied, 2000-3293 (La. 10/12/01), 799 So.2d 496, cert. denied, 535 U.S. 934, 122 S.Ct. 1311, 152 L.Ed.2d 220 (2002). A defendant in any case bears a heavy burden of proof when alleging prejudicial joinder of offenses as grounds for a motion to sever. **State v. Davis**, 92-1623 (La. 5/23/94), 637 So.2d 1012, 1019, cert. denied, 513 U.S. 975, 115 S.Ct. 450, 130 L.Ed.2d 359 (1994). The district court abused its discretion in finding that the defendant met this heavy burden of proving a prejudicial joinder under the facts herein. While the district court focused on the difference between second degree murder and armed robbery in its ruling, the murder involved an armed robbery. Both instances occurred on Friday afternoons, two weeks apart, in the same neighborhood. In both, the defendant was on a bicycle and armed when he rode up to the victims and demanded their property. The first two victims, who were unarmed, were pistol-whipped during their robberies. The third victim, who was armed, was shot before he was robbed.

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