

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA** \* **NO. 2004-KA-0336**  
**VERSUS** \* **COURT OF APPEAL**  
**DAVID H. DUCROS** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**  
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APPEAL FROM  
CRIMINAL DISTRICT COURT ORLEANS PARISH  
NO. 434-486, SECTION "D"  
Honorable Frank A. Marullo, Judge

\* \* \* \* \*

**Judge Patricia Rivet Murray**

\* \* \* \* \*

(Court composed of Judge Charles R. Jones, Judge Patricia Rivet Murray,  
Judge Dennis R. Bagneris Sr.)

JONES, J., CONCURS IN THE RESULT

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**AFFIRMED**

The sole issue in this case is whether the trial court erred in denying the defense's motion to quash the indictment on the grounds that it was returned pursuant to an unconstitutional local law as held in *State v. Dilosa*, 2002-2222 (La. 6/27/03), 848 So. 2d 546, which declared unconstitutional certain statutes involving the procedures for selecting grand jurors in Orleans Parish. Because we find the defendant, David Ducros, failed to establish the statute at issue had any serious effect on his rights, we find no error in the trial court's denial of his motion to quash. Because we find no other errors, we affirm.

**STATEMENT OF THE CASE**

On October 31, 2002, a grand jury indicted Mr. Ducros for the second degree murder of Trenika Duncan, a violation of La. R.S. 14:30.1. On November 14, 2002, Mr. Ducros was arraigned and entered a not guilty plea. On January 9, 2003, a lunacy hearing was conducted, and the trial court found Mr. Ducros competent to stand trial. On May 20, 2003, following a hearing, the court denied Mr. Ducros' motion to suppress evidence. On September 8, 2003, the court denied his motion to quash the indictment on

the ground that it was returned pursuant to statutes that constitute unconstitutional local laws. In an unpublished *per curiam*, this Court denied Mr. Ducros' writ application on the showing made, *State v. Ducros*, 2003-1728 (La. App. 4 Cir. 11/12/03). The Louisiana Supreme Court denied as premature his subsequent emergency writ. *State v. Ducros*, 2003-3114 (La. 11/12/03), 858 So. 2d 414.

On November 12 and 13, 2003, a jury trial was held in this matter, and the twelve-person jury returned a verdict of guilty as charged. On December 4, 2003, after hearing victim impact testimony, the trial court sentenced Mr. Ducros to life imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence. On December 9, 2003, the court granted Mr. Ducros' motion for appeal.

### **STATEMENT OF THE FACTS**

On the morning of July 20, 2002, Ms. Duncan, who had spent the night elsewhere, returned home to her apartment. When she knocked at the door, the oldest of her four children, David Ducros, Jr. ("David"), let her into the apartment. Ms. Duncan asked the children if their father (her former boyfriend), Mr. Ducros, was still in the house. The children told her that he was not. The second-oldest child, Davion (nicknamed Yannie), testified that Ms. Duncan told them to check the rooms of the apartment. Yannie and her

brother David did as they were told, but they were not able to find Mr. Ducros anywhere. Ms. Duncan then told the children to clean up their rooms. As they were doing so, Ms. Duncan entered Yannie's room and instructed Yannie and David to lift up the mattress. When they did so, they found Mr. Ducros hiding inside of the mattress. Mr. Ducros, according to Yannie, had apparently taken a knife and hollowed out an area between the mattress and box springs; he then took some covers and a pillow and went under there.

Detective David Walker, the lead investigator, confirmed Yannie's testimony on this point. Detective Walker testified that when he went to the crime scene he checked the bed. He observed that the box spring was turned to the underneath part, the supports were removed, and someone could hide inside and conceal themselves by pulling the mattress over them. He further explained that Mr. Ducros was not hiding under the bed, but was hiding in the box support itself.

According to Yannie, after Mr. Ducros jumped out of the mattress, he and Ms. Duncan began arguing over whether Mr. Ducros could stay in the apartment with them; Mr. Ducros told Ms. Duncan that his momma had put him out and that he did not have anywhere else to stay. Shortly thereafter, Mr. Ducros and Ms. Duncan went outside and continued arguing there.

Yannie neither followed them, nor saw Mr. Ducros stab Ms. Duncan.

David similarly testified that after they found Mr. Ducros under the mattress, Ms. Duncan began arguing with him and insisting that he could not stay at their apartment. According to David, when they went outside, Ms. Duncan was carrying her youngest child, Moonie, in her hands. Watching from his bedroom window, David observed his father stab his mother. David immediately ran outside. When he arrived at the spot where the stabbing occurred, David found Moonie crying on the ground. He witnessed Mr. Ducros flee in a blue car. He then entered the apartment of a neighbor, Raynetta Jones, that Ms. Duncan had gone into; however, by that time, Ms. Duncan had passed out. When asked if he was positive it was his father who stabbed his mother, David replied that he was “super positive.”

Ms. Jones testified that she lived in the apartment a door down from Ms. Duncan. Ms. Jones stated that she knew Ms. Duncan and that she knew Mr. Ducros as the father of Ms. Duncan’s four children. Ms. Jones testified that on the morning of July 20, 2002, at about 7:30 a.m., she was in her bathroom when she heard Ms. Duncan outside hollering, “David, stop.” In response, Ms. Jones ran to her sliding patio glass door. From there, she witnessed Ms. Duncan sitting in the grass with Mr. Ducros standing over her with a knife in his hand. Moonie was lying on the grass nearby as if she had

been dropped. Ms. Jones saw Mr. Ducros raise his hand and make repeated stabbing motions at Ms. Duncan. Ms. Jones then called 911, informing the operator that her next door neighbor had just been stabbed by her ex-boyfriend. According to Ms. Jones, Ms. Duncan then entered her apartment and stated: "He stabbed me. David stabbed me." Shortly thereafter, Ms. Duncan passed out on Ms. Jones' living room floor. The properly authenticated tape of the 911 call was played for the jury.

Detective Walker, who was the lead investigator, testified that he went first to Charity Hospital, where Ms. Duncan was taken. After learning that Ms. Duncan had died, Detective Walker spoke with Ms. Duncan's family, including her four children. With the grandparents' permission, Detective Walker formally interviewed Yannie and David at the police station. Following the interview, he obtained an arrest warrant for Mr. Ducros.

Later that day, Detective Walker received information that the blue car Mr. Ducros fled in was parked in the 13000 block of Dwyer. When he arrived at that location, he observed a blue-green vehicle that had red streaks on the steering wheel. He arranged to have the vehicle towed to Central Evidence and Property Cages at Headquarters and to obtain a warrant to search the vehicle. After obtaining the warrant, the police searched the vehicle and found a blood stained white t-shirt inside the trunk. The police

also found a knife in the vehicle. The crime lab personnel collected samples from apparent blood stains on the steering wheel and the driver's side door.

In addition to the evidence gathered from the vehicle and at the murder scene, the police recovered a bloody knife near a dumpster at the apartment complex where Ms. Duncan lived.

Ann Montgomery, the New Orleans Crime Lab Forensic DNA Technical Leader, was qualified as an expert in forensic DNA analysis. She testified regarding the DNA testing that the police had done on samples collected from Mr. Ducros and Ms. Duncan, comparing them to some of the evidence that was collected. Ms. Montgomery testified that Mr. Ducros could be excluded as the person whose blood was on the white t-shirt, but Ms. Duncan could not. The blood found on the door handle and steering wheel of the vehicle was consistent with Ms. Duncan's DNA sample. The bloody knife was not tested. In this regard, Ms. Montgomery testified that the Crime Lab has a policy that limits to five the number of items submitted for DNA testing per case.

Dr. Richard Tracy, an expert in forensic pathology, testified that he performed the autopsy on Ms. Duncan. He opined that the cause of death was a stab wound to her chest that penetrated her lung. Although she had multiple other stab wounds, the other wounds were superficial. Among the

superficial wounds were cuts on her left hand and wrists, which Dr. Tracy characterized as defensive wounds. He explained that knife cuts or stabs on the hand are by definition called defensive wounds.

The defense presented no witnesses at trial.

### **ERROR PATENT REVIEW**

Mr. Ducros' counsel has filed a brief requesting a review for errors patent and a motion to withdraw. Counsel has complied with the procedures outlined by *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1967), as interpreted by this Court in *State v. Benjamin*, 573 So. 2d 528 (La. App. 4th Cir. 1990). Counsel's brief complies with *State v. Jyles*, 96-2669 (La. 12/12/97), 704 So. 2d 241. Counsel's detailed review of the procedural history of the case and the facts of the case indicate a thorough review of the record. Counsel moved to withdraw because she believes, after a conscientious review of the record, that there is no non-frivolous issue for appeal. Counsel reviewed available transcripts and found no trial court ruling that arguably supports this appeal. A copy of counsel's brief was forwarded to Mr. Ducros, and this court informed him that he had the right to file a brief in his own behalf. In response, Mr. Ducros filed a brief asserting one assignment of error, which we address elsewhere in this opinion.

As required by the *Benjamin* case, we have conducted an independent, thorough review of the pleadings, minute entries, bill of information, and transcripts in the appeal record. Our review reflects that Mr. Ducros was properly charged by grand jury indictment with a violation of La. R.S. 14:30.1, and the indictment was signed by the grand jury foreman. He was present and represented by counsel at arraignment, motion hearings, jury selection, trial, and sentencing. A review of the trial transcript reveals that the State proved the offense beyond a reasonable doubt. There is no error patent on the face of the record.

### **ASSIGNMENT OF ERROR**

In his sole assignment of error, Mr. Ducros contends that the trial court erred in denying his motion to quash his indictment on the grounds that it was returned pursuant to statutes that constitute unconstitutional local laws. Mr. Ducros' argument is based on the *Dilosa* decision. In *Dilosa*, the Louisiana Supreme Court was presented with a pretrial constitutional challenge to two 1999 indictments made by grand juries selected in Orleans Parish. At the time of those indictments, Orleans Parish criminal court judges, on a rotating basis, selected the members of the grand jury from a list of names that the jury commissioner drew by lot from the general venire; the judges also selected the grand jury foreperson. In contrast, in all other

parishes, the sheriff selected grand jury members by drawing names by lot from the grand jury venire; the judge selected only the grand jury foreperson. Finding the challenged statutes that provided for the special process of grand jury selection in Orleans Parish to be local laws in violation of La. Const. art. III, §12, the Louisiana Supreme Court in *Dilosa* affirmed the trial court's grant of the defendants' motion to quash their indictments.

In *Dilosa*, the Court noted the Legislature's 2001 amendments to certain of those statutory provisions and described the effect of those amendments as providing "for random selection of grand jurors and grand jury forepersons, and for selection of grand jury venires in accordance with Article 411(A), the general provision governing all other Louisiana parishes." *Dilosa*, 2002-2222 at p. 1, n. 1, 848 So. 2d at 546. Those 2001 amendments, however, did not rewrite or otherwise amend some of the provisions the *Dilosa* decision declared to be unconstitutional. As a result, even after those amendments some vestiges of the prior special system in Orleans Parish remained in effect.

In *State v. Mercadel*, 2003-3015 (La. 5/25/04), 874 So. 2d 829, the Louisiana Supreme Court was faced with a *Dilosa* challenge to certain of those statutory vestiges remaining in effect at the time of the defendant's 2003 indictment. The trial court in *Mercadel* granted the defendant's motion

to quash and invited the Supreme Court to instruct the courts on the issue of “what we have to do in these matters,” yet noted that “the defendant in this case and the defendants in all of the cases, similarly situated, . . . [have not] suffered any real harm by these statutes or by the way these statutes are constituted as would result in the Court granting a motion to quash and ordering that they be reindicted.” *Mercadel*, 2003-3015 at p. 7, 874 So. 2d at 834. Declining the invitation, the Louisiana Supreme Court framed the dispositive issue before it as whether the defendant had standing; to-wit: whether a defendant is entitled to have his indictment quashed when he has failed to prove he has suffered injury resulting from the application of the laws that he is challenging. The Court further noted that this issue had not been addressed in *Dilosa*. Finding standing was required, the court reasoned:

In this case, the district court specifically found that the defendant had not suffered any real harm as a result of any of the subject criminal code articles and statutes challenged. Thus, the district court implicitly found that the defendant had failed to show that the code articles and statutes he has challenged seriously affected his rights, as required, in order for a person to have standing to bring a constitutional challenge. Once the district court found that the defendant lacked standing to challenge the subject criminal code articles and statutes, it should have denied defendant’s motion to quash.

*Mercadel*, 2003-3015 at p. 8, 874 So. 2d at 834.

Significantly, Mr. Ducros sought to have his emergency writ

application to the Louisiana Supreme Court consolidated with the then-pending direct appeal in *Mercadel*, but the Supreme Court denied both Mr. Ducros' writ and his request, stating: "[w]rit and motion to consolidate with *State v. Mercadel*, 03-KA-3015 denied as premature because the court of appeal has not acted on the merits of Relator's writ." *State v. Ducros*, 2003-3114 (La. 11/12/03), 858 So. 2d 414. Moreover, a review of the motion to quash filed by Mr. Ducros indicates that the reasoning in *Mercadel* applies equally to him. Mr. Ducros made no allegation of prejudice in his motion to quash; instead, he made only a bald assertion that La. R.S. 15:114, which was not changed by the 2001 amendments, was a local law which was declared unconstitutional in *Dilosa*. Mr. Ducros made no showing at the motion to quash hearing establishing that his rights had been seriously affected; rather, he submitted the matter on a written motion. As Mr. Ducros failed to show that the statute had any serious effect on his rights, we find the trial court did not err in denying his motion to quash.

Our finding is further supported by our reasoning in *State v. Williams*, 03-0091, pp. 2-3, (La. App. 4 Cir. 1/14/04), 866 So. 2d 296, 298-299 (*on reh'g*), writ denied, 2004-0438 (La. 6/25/04), 876 So. 2d 831. Addressing the effect of an indictment made by an Orleans Parish grand jury impaneled pursuant to the statutes that were declared unconstitutional in *Dilosa*, we

explained that “the constitutional prohibition against local laws which underlies the *Dilosa* decision simply reflects a policy decision that legislative resources and attention should be concentrated upon matters of general interest and that purely local matters should be left to local governing authorities.” *Id.* Citing La. C.Cr.P. art. 921, which provides that “[a] judgment or ruling shall not be reversed by an appellate court because of any error, defect, irregularity, or variance which does not affect substantial rights of the accused,” we further explained that “the substantial rights of a criminal defendant are not affected *per se* solely because he is indicted by a grand jury selected pursuant to local laws passed by the Louisiana State legislature.” *Williams*, 2003-0091 at p. 3, 866 So.2d at 298. For those reasons, we held that absent a showing that the error affected the defendant’s substantial rights, such error does not require reversal of a defendant’s conviction, sentence, and indictment. *See also State v. Newman*, 2003-1721, pp. 14-19 (La. App. 4 Cir. 7/7/04), 879 So. 2d 870, 847-81; *State v. Rhea*, 2004-0091, pp. 7-9 (La. App. 4 Cir. 5/19/04), 876 So. 2d 131, 136-37.

Given that Mr. Ducros has not made that showing, he lacks standing. This assignment of error is thus unpersuasive.

**DECREE**

For the foregoing reasons, counsel's motion to withdraw is granted,  
and Mr. Ducros' conviction and sentence are affirmed.

**AFFIRMED**