

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA** \* **NO. 2011-KA-0140**  
**VERSUS** \*  
**LARRY JONES** \* **COURT OF APPEAL**  
\* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**  
\* \* \* \* \*

APPEAL FROM  
CRIMINAL DISTRICT COURT ORLEANS PARISH  
NO. 497-017, SECTION "B"  
HONORABLE LYNDA VAN DAVIS, JUDGE  
\* \* \* \* \*

**JUDGE MICHAEL E. KIRBY**  
\* \* \* \* \*

(Court composed of Chief Judge Joan Bernard Armstrong, Judge Michael E. Kirby, Judge Terri F. Love)

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**AFFIRMED**

**STATEMENT OF CASE:**

The State of Louisiana, through the Orleans Parish District Attorney, charged Larry Jones with violating La. R.S. 14:71,<sup>1</sup> issuing a worthless check to David Gaines in the amount of five hundred dollars or more. As per a standard form, the bill of information states the offense occurred in the Parish of Orleans and within the jurisdiction of the Criminal District Court. Mr. Jones entered a not guilty plea and filed preliminary motions, one of which was a motion to quash that was granted by the trial court. The State of Louisiana has appealed that ruling.

**STATEMENT OF FACTS:**

The motion to quash alleges that the alleged victim filed identical charges in St. Tammany Parish, which were still pending there under case number 471-837, Division I of the Twenty-Second Judicial District Court. Attached to the motion as

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<sup>1</sup>Section 71. Issuing worthless checks

A. (1)(a) Issuing worthless checks is the issuing, in exchange for anything of value, whether the exchange is contemporaneous or not, with intent to defraud, of any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time of the issuing that the offender has not sufficient credit with the bank, or other depository for the payment of such check, draft, or order in full upon its presentation.

“Exhibit B” is a form entitled “Worthless Check Affidavit, State of Louisiana Parish of Orleans.” It is dated July 10, 2007, and is signed by one David L. Gaines. It is not notarized and, although there is a line for a witness to sign beneath the signature of the “reporting person,” that line is blank. In this document, Mr. Gaines identifies his address as “Shylock Drive, Slidell, LA,” and states that he received a certain check No. 654 dated July 16, 2006, in the amount of thirty-one thousand (\$31,000.00) dollars from Larry Jones of LJ Construction, 7833 Marquist [sic] Street, New Orleans, Louisiana. The form goes on to state that the check was issued at 1015 Harding Drive in New Orleans, Louisiana, and that it was issued for “investment for work on house [sic] in New Orleans.” The Orleans Parish bill of information charging Mr. Jones with issuing a worthless check to Mr. Gaines was filed on May 21, 2010.

Another attachment to the motion to quash is an affidavit form captioned “State of Louisiana, Parish of St. Tammany, Justice of the Peace,” also bearing the signature of one David L. Gaines on October 3, 2008. The form is not dated or signed by a Justice of the Peace or Notary Public. On this form, Mr. Gaines states that Mr. Jones issued a worthless check to him in St. Tammany Parish on July 16, 2006. Mr. Gaines lists his address on the St. Tammany Parish form as 2015 Wellington Lane in Slidell, Louisiana. The record does not contain a copy of the bill of information in the St. Tammany case, although defendant states in brief that it was filed on August 17, 2009.

The motion further alleges that Mr. Gaines gave sworn testimony, presumably in the St. Tammany Parish proceeding, that the check was issued in Slidell, Louisiana, and that immediately thereafter the check was taken to Texas where it was ultimately deposited in a bank account there and dishonored. Another exhibit to the motion is two pages (pages five and eleven)<sup>2</sup> of an undated, unidentified and uncertified transcript referred to in footnotes as “Motion hearing,” again presumably from the St. Tammany Parish proceeding. These pages are apparently excerpts of the testimony Mr. Gaines gave in St. Tammany Parish that support Mr. Jones’ allegation in the motion to quash the proceedings in Orleans Parish.

The seven page transcript of the hearing on the motion to quash reveals that no testimony was taken and no evidence introduced. There is only colloquy between the court and counsel. The assistant district attorney informed the court that the victim came into the district attorney’s office, filled out and signed a sworn affidavit stating the check was received at a Harding Drive address in New Orleans, and that the check was from L.J. Construction Co., which is also located in Orleans Parish. The court then referenced the two-page transcript attached to the motion, identified by defense counsel as excerpted from the motion hearing in St. Tammany Parish that occurred a few months earlier. The court confirmed with defense counsel that both cases involved the same check and the same amount of money. Upon inquiry from the court as to the status of the St. Tammany case, the

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<sup>2</sup> We note that “Exhibit ‘A’ in globo” to defendant’s brief to this court purports to be a copy of the Motion to Quash with exhibits. It contains an additional page (page 6) of the St. Tammany transcript. This page does not appear in the official record from the trial court and we cannot consider it.

prosecutor responded merely that it was “pending.” The court also confirmed with the prosecutor that both cases presented the same set of facts. When the assistant district attorney could not explain why St. Tammany accepted the charge, the court stated, “Well, then, let St. Tammany figure it out. The Motion to Quash is granted.”

**ASSIGNMENT OF ERROR:**

The State asserts that the trial court erred in granting defendant’s motion to quash for lack of jurisdiction.

**DISCUSSION:**

We review the trial court’s ruling under the abuse of discretion standard. *State v. Love*, 2000-3347 (La. 5/23/03); 847 So.2d 1198.

The motion to quash raises all pre-trial pleas or defenses, except those related to mental capacity to proceed or pleas of “not guilty” and “not guilty and not guilty by reason of insanity.” La. C.Cr.P. art. 531. The general grounds for the motion to quash are specified in La. C.Cr.P. art. 532. Among them is the assertion that the court lacks jurisdiction of the offense charged.

Article I, Section 16 of the Louisiana Constitution guarantees everyone charged with a crime a trial in the parish where the offense or an element of the offense occurred, unless venue is changed in accordance with law. This Constitutional right is implemented in La C.Cr.P. art. 611.<sup>3</sup> Furthermore, La.

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<sup>3</sup> Art. 611. Venue; trial where offense committed

A. All trials shall take place in the parish where the offense has been committed, unless the venue is changed. If 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.

C.Cr.P. art. 615 provides that venue is “a jurisdictional matter to be proven by the state by a preponderance of the evidence and decided by the court in advance of trial.”

In its appeal brief, the State concedes that Mr. Jones delivered the check in St. Tammany Parish, but argues that venue and jurisdiction are proper in Orleans Parish because the check that was later dishonored was issued in exchange for work performed by Mr. Gaines in Orleans Parish. The Louisiana Supreme Court has instructed that we determine the situs of an offense from the location of the act(s) constituting it and that the initial step in that process is to identify the conduct of the offense and then discern the location of the commission of the criminal acts. *State v. Joshlin*, 99-1004 (La. 1/19/00), 752 So.2d 834.

In this case, the elements of issuing worthless checks are: (1) that the defendant issued a check in exchange for something of value; (2) with the intent to defraud at the time of the issuance; and (3) with the knowledge that at the time he wrote it, he did not have enough money in the account for the check to clear upon presentation. *State v. Deluzain*, 2009-1893, pp. 5-6 (La.App. 1 Cir. 5/7/10), 38 So.3d 1054, 1057. In *State v. Bellavia*, 599 So.2d 915 (La.App 4 Cir. 1992), this Court said the gravamen of the offense *sub judice* is the giving or delivering of a worthless check in exchange for something of value with the intent to defraud. Thus, the act(s) or conduct constituting issuing worthless checks is the delivery (issuing) of the check.

The defendant in this case states that the delivery of the check in question was in St. Tammany Parish. The State of Louisiana concedes this fact in its appeal brief. Therefore, charges in the instant case were properly brought in St. Tammany Parish. The trial court did not abuse its discretion in granting the motion to quash the charges filed against the defendant in Orleans Parish.

For the reasons stated above, the trial court ruling granting the defendant's motion to quash is affirmed.

**AFFIRMED**