

STATE OF LOUISIANA

*

NO. 2015-K-0164

VERSUS

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COURT OF APPEAL

ERIK NUNEZ

*

FOURTH CIRCUIT

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STATE OF LOUISIANA

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CONSOLIDATED WITH:

CONSOLIDATED WITH:

STATE OF LOUISIANA

NO. 2015-K-0449

VERSUS

BRANDON LICCIARDI

LANDRIEU, J., CONCURS WITH REASONS

I agree with the majority that the allotment process in the instant case violated the defendant's right to due process. I write separately to note that the Louisiana Supreme Court jurisprudence distinguishes between a defendant who challenges the allotment process prior to trial and one who challenges the allotment of his case on appeal, post-conviction. A defendant challenging a process of random allotment prior to trial need not prove actual prejudice but need only establish that the prosecuting authority has the ability to influence the allotment process. *See, e.g.: State v. Reed*, 95–0648 (La. 4/28/95), 653 So.2d 1176 (*per curiam*); *State v. Payne*, 556 So.2d 47 (La.1990); *State v. Simpson*, 551 So.2d 1303 (La.1989) (*per curiam*). *See also, State v. Huls*, 95-0541 (La. App. 1 Cir. 5/29/96), 676 So.2d 160.

I further agree with the concurring opinion of Judge Tobias that the proper procedural vehicle by which to challenge the allotment of a criminal case is not a motion to quash.