Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **30th day of September, 2021** are as follows:

PER CURIAM:

2020-K-00743 STATE OF LOUISIANA VS. WALTER JOHNSON (Parish of Ascension)

REVERSED. SEE PER CURIAM.

Weimer, C.J., additionally concurs and assigns reasons.
Hughes, J., dissents and would affirm the court of appeal.
Crichton, J., additionally concurs and assigns reasons.
Crain, J., additionally concurs and assigns reasons.
McCallum, J., concurs in the result and assigns reasons.
Griffin, J., additionally concurs for the reasons assigned by Chief Justice Weimer.

09/30/21

SUPREME COURT OF LOUISIANA

No. 2020-K-00743

STATE OF LOUISIANA

versus

WALTER JOHNSON

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIRST CIRCUIT, PARISH OF ASCENSION**

PER CURIAM:

The State alleges that on July 14, 2015, defendant Walter Johnson, JaQuendas Octave, Jay Lyons, and Casey Johnson took jewelry, cell phones, wallets, money, and credit cards at gunpoint from Roussel's Antiques on Airline Highway in Gonzales and from the store's employees. On September 30, 2015, the State charged defendant and the others with four counts of armed robbery committed with the use of a firearm, La. R.S. 14:64 and 14:64.3. The State also charged defendant with possession of a firearm by a person convicted of certain felonies, La. R.S. 14:95.1.

Defendant's trial was set for June 21, 2017, with a status hearing scheduled for April 17, 2017. However, defendant was not transported to court on April 17. The trial court reset trial for the week of January 22, 2018, and advised the parties that this was a special setting and no further continuances would be granted.

On December 18, 2017, the State turned over to the defense 800 pages of discovery. On January 11, 2018, the trial court granted defendant's motion to continue trial because of the State's recent discovery disclosure. The court reset the trial for October 15, 2018, a date proposed by the State. The trial court again advised the

parties that no further continuances would be granted.

On May 5, 2018, co-defendant JaQuendas Octave wrote a statement indicating that neither defendant nor co-defendant Jay Lyons was involved in the robbery. Nonetheless, on May 22, 2018, JaQuendas Octave pleaded guilty with the agreement that he would testify as a witness for the State at defendant's trial.

On October 1, 2018, the State sought a continuance, citing scheduling conflicts with other trials. The trial court denied the State's motion and observed that it had set defendant's trial date in January, before the dates of the other conflicting trials were selected. On October 12, 2018, the Friday before trial, the State filed another motion to continue. In it, the State argued that a material witness, an FBI Agent, was unavailable. The State also contended that it could not adequately prepare for trial without knowing whether Mr. Octave would testify in accordance with his written statement or in accordance with his plea agreement.

Defendant also filed a motion to continue at that time. In defendant's motion, he sought a continuance in order to prepare a motion to recuse the trial judge, to investigate the implications of a plea offered by the State, and to conduct a preliminary examination. In addition, defendant contended that, because the State was by now seeking to set aside Mr. Octave's guilty plea, and because their cases had never been severed, trying them together would prejudice his defense. Finally, defendant contended that the State had only just disclosed that there were recorded jailhouse conversations pertaining to the case.

Trial did not begin on October 15, 2018, because the State again failed to arrange for defendant to be transported to court.[1] Therefore, the trial court instructed

[1] The State also did not arrange for Mr. Octave to be transported to court, although his lawyer was present and prepared to advise him.

the venire to return for jury selection the next day. On October 16, 2018, the trial court held a hearing on the motions to continue. The trial court addressed the State's motions first.

The trial court denied the State's motion to set aside Mr. Octave's plea agreement because it had not yet been violated. The trial court also found that a continuance was not warranted because the conflicting statement (in which Mr. Octave claimed defendant and Mr. Lyons were not involved in the robbery) was made before the plea agreement was reached, approximately five months before the trial date.

The trial court also denied the State's motion to continue based on an absent FBI agent witness. The trial court observed that the State had not subpoenaed the witness.[2] The State had also not contacted the witness to determine when he would be available despite the trial court's request that the State do so.

After resolving the State's motions, the trial court addressed defendant's motion to continue. As noted above, defendant contended that he required a continuance because: (1) he wanted time to submit a motion to recuse the trial judge; (2) he wanted time to review the implications of a plea offer extended by the State; (3) he had not received copies of his co-defendants' plea agreements; (4) he was dissatisfied that counsel had failed to present oral argument with regard to his pro se motions; (5) he sought a preliminary examination; (6) the State had moved to withdraw Mr. Octave's plea agreement; and (7) on October 11, 2018, the State notified the defense of the existence of jailhouse recordings between defendant and various parties that may be introduced at trial.

After the trial court denied the State's motions, defense counsel informed the trial court that the sixth reason above, pertaining to the State's efforts to set that plea

[2] In additional to failing to subpoena the FBI Agent, the State did not issue subpoenas for any of

aside, was moot. Defense counsel also indicated that the first and second reasons, pertaining to recusal and the plea offer, had been resolved on the preceding day. As to the fourth reason, pertaining to the pro se motions, defense counsel stated that it was resolved after the trial court indicated it would issue reasons for judgment regarding its denial of the pro se motions before trial. The trial court then denied the defense motion to continue.

In light of the unfavorable rulings on its motions to continue, the State then announced that it was entering an order of nolle prosequi. Defendant objected. Later that day, the State filed a new bill of information charging defendant with the same crimes.

After several delays, none of which were attributable to the defense, trial was set September 16, 2019, nearly one year after the dismissal and reinstitution. On July 8, 2019, defendant filed a motion to quash contending that State exercised its authority to dismiss and reinstitute to evade the limitations period of La.C.Cr.P. art. 578 and that the State had flaunted its authority to dismiss and reinstitute. The trial court held a hearing on the motion on August 19, 2019 (after continuing the hearing at the State's request). After argument, the trial court granted the motion to quash. The trial court found that the State had flaunted its authority to dismiss and reinstitute to, in effect, grant itself the continuance the trial court had denied, and that the State had done so as a dilatory tactic at defendant's expense. While acknowledging that the unavailability of a material witness might ordinarily justify granting a continuance, the trial court determined that the witness unavailability was used a pretext and the State was simply unprepared for trial.

The court of appeal reversed the trial court's ruling and remanded for further

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the law enforcement officers it intended to call as witnesses at trial.

proceedings. *State v. Johnson*, 2019-1391 (La. App. 1 Cir. 5/11/20), 304 So.3d 448. The court of appeal found that the trial court had abused its discretion in granting the motion to quash because defendant was not prejudiced by the delay. The court of appeal observed that the United States Supreme Court identified four factors in *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972), which are applicable to determining whether a defendant has been deprived of his constitutional right to a speedy trial.[3] The court of appeal acknowledged that the approximately four-year delay here was presumptively prejudicial under the first *Barker* factor. However, it also found that "[t]o meet his burden, a defendant must prove the district attorney flaunted his authority 'for reasons that show that he wants to favor the State at the expense of the defendant, such as putting the defendant at risk of losing witnesses.'" *Johnson*, 2019-1391, p. 10, 304 So.3d at 455 (quoting *State v. Batiste*, 2005-1571, p. 5 (La. 10/17/06), 939 So.2d 1245, 1249). While recognizing that the State did not refute defendant's assertion that he lost witnesses during the delay, the court of appeal nonetheless found defendant failed to carry his burden of showing that the State flaunted its authority *at his expense*.

This court summarized the pertinent jurisprudence in *State v. Reimonenq*, 2019-0367 (La. 10/22/19), 286 So.3d 412. We wrote:

> District attorneys are imbued with vast authority over criminal prosecutions—they alone determine whom, when, and how they shall

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[3] This court has summarized the four *Barker v. Wingo* factors as follows:

> The speedy trial guarantee of the Sixth Amendment to the United States Constitution applies to prosecutions in state courts. In determining whether this constitutional right has been offended, the fixed-time period provided by statute or court rule is not determinative. Rather, the issue is determined by a balancing test, in which the conduct of both the prosecution and the defendant are weighed. Four of the factors to be assessed by the courts in determining, in each instance, whether a defendant has been denied a speedy trial are: Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.

State v. Harris, 297 So.2d 431, 432 (La. 1974) (internal quotes and citations omitted).

prosecute and may dismiss an indictment or a count in an indictment at their discretion without leave of court. *See* La. Const. art. V, § 26(B); La.C.Cr.P. art. 61. Indeed, they alone determine whether to dismiss a case. *State v. Sykes*, 364 So.2d 1293, 1297 (La. 1978). A dismissal is generally not a bar to a subsequent prosecution for the same offense. However, a district attorney's exercise of this power cannot impinge on the accused's right to a speedy trial because that right is "'fundamental' and is imposed by the Due Process Clause of the Fourteenth Amendment on the States." *Barker v. Wingo*, 407 U.S. 514, 515, 92 S.Ct. 2182, 2184, 33 L.Ed.2d 101 (1972).

This Court has primarily explored the limits of the district attorney's ability to dismiss and reinstitute criminal charges through the speedy trial lens, or more generally, the delay caused when a district attorney dismisses charges in response to a denied request for a continuance. *See State v. King*, 10-2638 (La. 5/6/11), 60 So.3d 615 (per curiam); *State v. Batiste*, 05-1571 (La. 10/17/06), 939 So.2d 1245; *State v. Love*, 00-3347 (La. 5/23/03), 847 So.2d 1198. In *Love*, the State entered an order of nolle prosequi when[, after] the State's witness [had previously] suffered a heart attack during voir dire, and the trial court denied the State's request for a continuance [when the witness was unavailable again two months later]. This Court held that: (1) the unavailability of a state witness was a legitimate reason for delaying trial under the Speedy Trial Clause; (2) the record supported the trial court's decision to deny the state's motion for continuance based on the unavailability of the state's witness for valid medical reasons; (3) the trial court acted within its discretion in denying defendant's motion to quash; (4) a 22-month delay in prosecuting defendant was presumptively prejudicial; but, (5) defendant's right to a speedy trial was not violated. Under the circumstances presented in *Love*, this Court found that "the State did not seek to gain an unfair advantage over the defendant." *Love*, 00-3347, p. 12, 847 So.2d at 1208.

In *Batiste*, the State entered an order of nolle prosequi because the victim was not present for trial and was unsure whether she wanted to go forward with her testimony, and then reinstituted the charge a month later. Defendant complained that he suffered a speedy trial violation. Under the circumstances presented in *Batiste*, this court found that "there was a legitimate reason for the nolle prosequi in this case," and "the record reveals no intentional delay on the State's part for the purpose of gaining a tactical advantage." *Batiste*, 05-1571, p. 6–7, 939 So.2d at 1249–50. Thus, the *Batiste* court found there was "no indication the district attorney was flaunting his authority at the expense of the defendant ...." *Id.*, 05-1571, pp. 5–6, 939 So.2d at 1249.

In *King*, the State entered an order of nolle prosequi after a bank failed to comply with its subpoena for records, and the trial court denied its request for a continuance. The State later reinstituted the charges. Quoting from *State v. Love*, this court found as follows: "In situations where it is evident that the district attorney is flaunting his authority for

> reasons that show that he wants to favor the State at the expense of the defendant, such as putting the defendant at risk of losing witnesses, the trial court should grant a motion to quash[,] and an appellate court can appropriately reverse a ruling denying a motion to quash in such a situation." *King*, 10-2638, pp. 5–6, 60 So.3d at 618 (quoting *Love*, 00-3347, p. 14, 847 So.2d at 1209).

Reimonenq, 2019-0367, pp. 4–5, 286 So.3d at 415–16 (footnotes omitted; edited for consistency).

We agree with the court of appeal's application of some of the *Barker v. Wingo* factors, but disagree in two crucial aspects. The court of appeal here applied the first factor to determine that the lengthy delay was presumptively prejudicial, and we agree with that determination. Second, as for the reason for the delay, the court of appeal found neither party was singularly responsible. In making that determination, the court of appeal was working from an imperfect record. During oral argument in this court, it became apparent that the parties had drafted their briefs based on different and inconsistent records. Accordingly, this court ordered that a single record be perfected and lodged (and supplemental briefing follow). Whereas the court of appeal drew the neutral conclusion from the imperfect record that the delays were somewhat attributable to both parties, the perfected record confirms that the final year and a half of delays are attributable to the State.

In reversing the trial court, the court of appeal seemed most influenced by the fourth *Barker v. Wingo* factor,[4] prejudice to the accused. The court of appeal found the trial court had abused its discretion by granting the motion to quash because "there is nothing indicating the State, by dismissing and refiling the case, was attempting to gain

[4] With regard to the third factor, which is the accused's assertion of his right to a speedy trial, the court of appeal found that while counsel did not invoke defendant's right to a speedy trial until July 8, 2019, defendant pro se had previously tried to assert his right, both by filing a pro se motion and by pursuing pro se writs of habeas corpus. Therefore, the court of appeal found "defendant sufficiently asserted his speedy trial claim to merit consideration." *Johnson*, 2019-1391, p. 9, 304 So.3d at 454–55.

a tactical advantage over defendant, beyond assuring that all of its witnesses were present to testify." *Johnson*, 2019-1391, p. 11, 304 So.3d at 456. However, the defendant's assertion that he lost "four witnesses who would testify on his behalf" as a result of the delay was uncontroverted by the State and accepted by the trial court. Nonetheless, the court of appeal found defendant was not prejudiced and the State was simply trying to assure that its witnesses were present.

Respectfully, we reach a different conclusion from our colleagues on the court of appeal. While the absence of a witness is considered a valid reason for delaying trial under the Speedy Trial Clause, the record here supports the trial court's finding that the unavailability of the State's witness was a pretext and that the State was simply unprepared. In addition, the State's motion to continue was lacking information required by La.C.Cr.P. art. 709.[5] When the trial court inquired further at the motion hearing, the State was unable to provide any additional information, and the State offered the implausible explanation that, as a policy, it did not subpoena trial

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[5] Code of Criminal Procedure art. 709, pertaining to continuance based on absence of a witness, provides:

> A. A motion for a continuance based upon the absence of a witness shall state all of the following:
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> (1) Facts to which the absent witness is expected to testify, showing the materiality of the testimony and the necessity for the presence of the witness at the trial.
>
> (2) Facts and circumstances showing a probability that the witness will be available at the time to which the trial is deferred.
>
> (3) Facts showing due diligence used in an effort to procure attendance of the witness.
>
> B. In addition to the requirements set forth in Paragraph A of this Article, when the motion for continuance is based upon the absence of a witness who is in the armed forces, the moving party, either the district attorney or the defense counsel, shall attest to facts showing that the absent witness is on active military duty in the United States Armed Forces.

While minimally compliant with Part (A)(1), the State here failed to provide any information regarding Parts (A)(2) or (A)(3).

witnesses.[6] When the court requested that the State contact the witness to obtain additional information, offering the State another opportunity to meet the procedural requirements, the State declined to do so. The trial court likely viewed these events in the context of the State's failures to arrange for the defendant to be transported to court, the denial of the State's request to continue trial based on scheduling conflicts, and the State's concern as to how Mr. Octave would ultimately testify.

The circumstances here differ significantly from those presented in *State v. Love*, 2000-3347 (La. 5/23/03), 847 So.2d 1198, in which the State entered an order of nolle prosequi when its witness, who had previously suffered a heart attack during voir dire, was unavailable at the subsequent resetting of trial. After reviewing the record in *Love*, this court found that the trial court did not abuse its discretion when it denied defendant's motion to quash. As this court observed in *Love*, "an appellate court is allowed to reverse a trial court judgment on a motion to quash only if that finding represents an abuse of the trial court's discretion." *Id.*, 2000-3347, pp. 9–10, 847 So.2d at 1206. Here, the court of appeal erred in finding the trial court abused its discretion when the record provided no basis to do so.

The State contends that defendant cannot show prejudice when he also requested a continuance to address several concerns. However, as described above, most of those concerns were resolved to the defendant's satisfaction or rendered moot before the State dismissed and reinstituted the prosecution. Just three reasons for a defense continuance were not explicitly resolved: defendant had not received copies of his co-defendant's plea agreements; defense counsel explained to the court that a preliminary exam had been scheduled but was never held; and the prosecutor "had alluded to"

[6] When an officer did not appear at a subsequent preliminary hearing, the State offered as an explanation that it had inadvertently failed to subpoena the officer. When the trial court observed that the State previously informed the court that it was not the State's policy to issue subpoenas to

jailhouse conversations between defendant and another unidentified person.

Notably, two of defendant's three unresolved reasons for continuance appear to be the result of the State's failure to provide the defense with adequate discovery. Thus, to find that defendant was not prejudiced by the State's use of its authority to dismiss and reinstitute would be to further reward the State for its shortcomings. As for the preliminary examination, it is unclear why that hearing was not held earlier. All that is clear is that a preliminary hearing was eventually held. Regardless, while defendant may have wished for a brief continuance to address three outstanding issues, there is no indication that he wished to delay trial for an additional year. Notably, defendant objected strenuously when the state declared its intention to dismiss prosecution, arguing against any additional delay once his own motion to continue was denied.

Accordingly, we find the court of appeal erred in determining that the trial court abused its discretion in granting defendant's motion to quash. Under the unusual circumstances presented, we can find no abuse of discretion when the record supports the trial court's determination that the absence of the witness was a pretext and that the State was simply unprepared for trial. Therefore, we reverse the ruling of the court of appeal and we reinstate the trial court's ruling.

REVERSED

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officers, the State explained that it issues subpoenas for preliminary hearings but not trials.

09/30/21

SUPREME COURT OF LOUISIANA

NO. 2020-K-00743

STATE OF LOUISIANA

VERSUS

WALTER JOHNSON

On Writ of Certiorari to the Court of Appeal, First Circuit,
Parish of Ascension

WEIMER, C.J., additionally concurring.

I agree with the case-and-fact specific analysis which results in the determination that the district court did not abuse its discretion in granting defendant's motion to quash. However, I write separately to point out that this case is particularly appropriate for the application of the shifting burden of proof analysis that I have repeatedly called for adopting that places the burden of showing that defendant was not prejudiced by a "*nolle prosequi* and reinstitution" on the state, rather than on the shoulders of the defendant. See, **State v. Reimonenq**, 19-0367 (La. 10/22/19), 286 So.3d 412, 418-421 (Weimer, J., concurring); **State v. Love**, 00-3347 (La. 5/23/03), 847 So.2d 1198, 1215 (Weimer, J., concurring in part, dissenting in part); **State v. Batiste**, 05-1571 (La. 10/17/06), 939 So.2d 1245, 1253 (Weimer, J., dissenting); **State v. King**, 10-2638 (La. 5/6/11), 60 So.3d 615, 620 (Weimer, J., dissenting). Here, as the district court concluded and the record supports, the state was unable to demonstrate that its stated need for the exercise of its extraordinary "*nolle prosequi* and reinstitution" power was legitimate and not taken as a dilatory tactic at defendant's expense.

09/30/21

SUPREME COURT OF LOUISIANA

No. 2020-K-00743

STATE OF LOUISIANA

VS.

WALTER JOHNSON

On Writ of Certiorari to the 1st Circuit Court of Appeal, Parish of Ascension

Crichton, J., additionally concurs and assigns reasons:

I agree with the majority that the district court did not abuse its discretion when granting defendant's motion to quash in this case. *See State v. Love*, 2000-3347 (La. 5/23/03), 847 So. 2d 1198, 1207 (A trial judge's responsibility to control the district court over which he presides under La. C.Cr.P. art. 17 "frequently includes the exercise of discretion when deciding whether to grant or deny a motion to quash, and the duty to make reasonable rulings that protect the rights of defendants, without placing unnecessary limits on the State's ability to prosecute cases."). In reversing the district court's ruling, the court of appeal erroneously asserted "a defendant must prove the district attorney flaunted his authority 'for reasons that show that he wants to favor the State at the expense of the defendant, such as putting the defendant at risk of losing witnesses[.]'" *State v. Johnson*, 2019-1391 (La. App. 1 Cir. 5/11/20), 304 So. 3d 448, 455 (citing *State v. Batiste***,** 2005-1571 (La. 10/17/06), 939 So.2d 1245, 1249). I write separately to clarify this misunderstanding of applicable jurisprudence.

While this Court has recognized a prosecutor's responsibility "to avail himself of all legitimate means to gain adequate time to marshal the proof needed to properly present its case" and that a prosecutor's decision to *nolle prosse* is "entitled to the presumption that he exercised this power for a proper and lawful purpose in keeping

with his duty as a public official," this right is not without limitation. *State v. Alfred*, 337 So. 2d 1049, 1057 (La. 1976); *see also State v. Reimonenq*, 2019-0367 (La. 10/22/19), 286 So. 3d 412, 421 (Crichton, J., additionally concurring) ("[T]he district attorney's authority [under La. C.Cr.P. art. 61 and La. Const. art. 5 sec. 26(B)] must coexist with other provisions of our Constitution and Code of Criminal Procedure, which requires balancing the various broad grants of authority in our state."). It is true that this Court has repeatedly recognized that a district court should grant a motion to quash where it is shown the prosecutor enters a *nolle prosse* and reinstitutes charges in order to favor the State to the prejudice of the defendant, often to circumvent an unfavorable ruling. *See*, *e.g.*, *Batiste*, 939 So. 2d at 1249 ("In those cases 'where it is evident that the district attorney is flaunting his authority for reasons that show that he wants to favor the State at the expense of the defendant, such as putting the defendant at risk of losing witnesses, the trial court should grant a motion to quash and an appellate court can appropriately reverse a ruling denying a motion to quash in such a situation.'") (quoting *Love*, 847 So. 2d at 1209).

Contrary to the court of appeal's assertion, however, this Court has never limited a district court's discretion to grant a motion to quash a reinstituted indictment to instances where the State seeks to prejudice the defendant. In the seminal case *State v. Alfred*, *supra*, the Court recognized various instances in which quashing a reinstituted indictment would be warranted. Finding the defendant failed to prove the prosecutor in that case exercised his authority for improper purposes, the Court reasoned:

> None of these delays were extraordinary or capricious; none were deliberate on the part of the District Attorney, designed to hamper the defense; ***none were due to negligence on the part of*** the court, the ***prosecutor or others charged with the responsibility of providing a speedy trial***; all were legitimate and recognized grounds for continuances. In some cases delays are demanded by the nature of the situations presented. No hard and fast time limit can be fixed for all cases; each must be decided on its own facts and circumstances.

337 So. 2d at 1057 (La. 1976) (emphasis added). *Alfred* thus implied that even negligence of the prosecution may warrant quashing a reinstituted indictment. Such is the case here, where the facts illustrate that the State's egregious neglect of the prosecution not only violated defendant's right to speedy trial, as recognized by the per curiam, but also undermined the district court's inherent control over its docket. *See* La. C.Cr.P. art. 17.

"[T]he district attorney has an awesome amount of power in our justice system, which encompasses the entire charge and control of every criminal prosecution instituted or pending in his district" and includes the determination of "whom, when, and how he shall prosecute." *See State ex rel. Morgan v. State*, 15-100 (La. 10/19/16), 217 So. 3d 266, 277-78 (Crichton, J., additionally concurring) (citing La. C.Cr.P. art. 61). However, a prosecutor's responsibility is as "a minister of justice and not simply that of an advocate," and the vast authority of the prosecutor does not permit "the unfettered exercise of this authority to undermine trial court proceedings and evade appellate review." *Id*. (internal quotations omitted); *Reimonenq*, 286 So. 3d at 416. Instead of, in effect, granting themselves a continuance by a defiant *nolle prosse* and reinstitution maneuver, followed by more continuances, the prosecutors in this case should have contemporaneously objected to the district court's adverse ruling, requested a stay, and sought supervisory review by the court of appeal.

The unlawful exercise of the *nolle prosse* power impinges on a defendant's constitutional rights, offends the dignity of the trial judge, and burdens the justice system. The district court was well within its discretion in condemning such conduct in this case.

SUPREME COURT OF LOUISIANA

No. 2020-K-00743

STATE OF LOUISIANA

VS.

WALTER JOHNSON

On Writ of Certiorari to the 1st Circuit Court of Appeal, Parish of Ascension

CRAIN, J., additionally concurs and assigns reasons.

I agree the trial court did not abuse its discretion in granting the motion to quash under the facts of this case. A district attorney is vested with extensive authority over criminal prosecutions. *See* La. Const. art. V, § 26(B); La. C. Cr. P. arts. 61 and 691. This authority, however, cannot be exercised in a manner that infringes upon a defendant's right to due process or undermines the trial court's jurisdiction and authority to conduct criminal proceedings in an orderly and expeditious manner. For these purposes, the trial court's jurisdiction starts when the district attorney chooses to file the charge. *See* La. Const. art. V, § 16; La. Code Crim. Pro. art. 17; *State v. Williams*, 21-0205 (La. 6/8/21), 317 So. 3d 317, 318 (*per curiam*); *State v. Reimonenq*, 19-0367 (La. 10/22/19), 286 So. 3d 412, 416; *State v. Papizan*, 17-0028, (La. App. 1 Cir. 11/2/17), 256 So. 3d 1091, 1096, *writ denied*, 17-2028 (La. 10/29/18), 255 So. 3d 572. A district attorney is also bound by his duty of candor to the tribunal and must, without exception, refrain from knowingly making a false statement of fact or law to the court. *See* La. R. Prof. Cond. 3.3(a).

These restraints on prosecutorial authority are an essential part of our criminal justice system and demand respect. Abuses of the authority are intolerable and, as demonstrated herein, carry significant consequences. Dismissal of a prosecution, unlike the exclusionary rule or granting a new trial, means a defendant who may be guilty of a serious crime is freed without being tried. *See State v. Alfred*, 337 So. 2d

1049, 1057 (La. 1976); *Papizan*, 256 So. 3d at 1096. A potential victim is denied justice. When deciding whether to test the boundaries of his prosecutorial authority, a district attorney must be mindful of the heavy price of being wrong.

09/30/21

SUPREME COURT OF LOUISIANA

No. 2020-K-00743

STATE OF LOUISIANA

VS.

WALTER JOHNSON

On Writ of Certiorari to the Court of Appeal, First Circuit,
Parish of Ascension

McCallum, J., concurs and assigns reasons.

I concur in the result because of the particular facts of this case. However, I recognize that La. Const. art. V, §26 and La. C.Cr.P. articles 61, 691, and 693 grant broad authority to district attorneys over prosecutions and the dismissal and reinstitution of cases. Cases that concern the possible abuse of the power to *nolle prosequi* by a prosecutor are best addressed on a case-by-case basis, rather than through the confection of a prospective, judicially-created rule.