Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **27th day of June, 2023** are as follows:

BY Crichton, J.:

2022-KK-01385 STATE OF LOUISIANA VS. JOHN SHALLERHORN (Parish of Orleans Criminal)

REVERSED AND REMANDED. SEE OPINION.

SUPREME COURT OF LOUISIANA

No. 2022-KK-01385

STATE OF LOUISIANA

VS.

JOHN SHALLERHORN

**On Writ of Certiorari to the Court of Appeal,
Fourth Circuit, Parish of Orleans Criminal**

Crichton, J.

We granted the writ in this matter to answer the *res nova* question of whether a defendant who is charged with first degree murder can elect a bench trial when the state has filed a formal notice that it will not seek capital punishment. The question presented involves the interpretation of Code of Criminal Procedure article 780, specifically the meaning of the phrase "an offense other than one punishable by death." For the reasons set forth below, we reverse the court of appeal and hold that after the state provides formal notice that it will not seek the death penalty, and thereby elects to prosecute the offense of first degree murder as a non-capital case, a defendant may waive a trial by jury and elect a bench trial.

BACKGROUND

On February 26, 2021, defendant John Shallerhorn was arrested for several offenses, including on suspicion of first degree murder. On March 10, 2021, the state filed notice that "for any charges for which the grand jury returns an indictment in [this] case, the State will elect to forego capital punishment." On June 17, 2021, an Orleans Parish Grand Jury returned an indictment charging defendant with first degree murder, a violation of La. R.S. 14:30, and armed robbery with a firearm, a violation of La. R.S. 14:64.3.

Thereafter, on March 16, 2022, defendant filed a motion for a bench trial, seeking to waive his right to a trial by jury pursuant to the provisions of La. C.Cr.P. article 780. The state opposed this motion, and the trial court, agreeing with the state, denied it. The trial court noted that though the state was not currently pursuing the death penalty, "if something changes at the DA's office and somehow death is back on the table," then the defendant could not waive a jury and elect a bench trial.

Defendant sought review in the court of appeal, which granted the writ and affirmed the decision of the trial court. The court of appeal found that the defendant cannot waive a jury trial or elect a bench trial, because the charge at issue here—first degree murder—is "still a capital one insofar as it is '***punishable*** by death'" under La. C.Cr.P. article 780. *State v. Shallerhorn*, 2022-0377, p.6 (La. App. 4 Cir. 8/19/22), 346 So. 3d 818, 821. Judge Jasmine dissented, explaining: "Once the State filed its notice that it would not seek the death penalty, the State chose to prosecute the first degree murder charge as a non-capital case," and therefore the requirement for trial by jury in a capital case "no longer applied." *Id.*, 2022-0377, Dissent p.1, 346 So. 3d at 823. Defendant thereafter filed a writ application with this Court, and we granted the application. *State v. Shallerhorn*, 2022-1385 (La. 1/25/23), 353 So. 3d 719.

ANALYSIS

To answer the question presented, we must interpret Code of Criminal Procedure article 780, and therefore our inquiry begins, as it must, with the language of the statute itself. *State v. Taylor*, 1999-2935, p.4 (La. 10/17/00), 769 So. 2d 535, 537. Criminal statutes must be "given a genuine construction, according to the fair import of their words, taken in their usual sense, in connection with the context, and with reference to the purpose of the provision." La. R.S. 14:3. Courts must endeavor to give an interpretation that will give the statute effectiveness and purpose, rather than one that makes it meaningless. *Taylor*, 99-2935, p.4, 769 So. 2d at 537. In this

case, the lower court decisions are legal determinations; as such, a *de novo* standard of review applies. *State v. Thompson*, 2011-0915, p.14 (La. 5/8/12), 93 So. 3d 553, 563.

Code of Criminal Procedure article 780 governs waiver of a jury trial and election of a bench trial. It provides in Part A: "A defendant ***charged with an offense other than one punishable by death*** may knowingly and intelligently waive a trial by jury and elect to be tried by the judge." (Emphasis added.) Likewise, La.C.Cr.P. art. 782 provides:

> A. A case in which ***punishment may be capital*** shall be tried by a jury of twelve jurors, all of whom must concur to render a verdict. . .
>
> B. Trial by jury may be knowingly and intelligently waived by the defendant ***except in capital cases***.

(Emphasis added.) *See also* La. Const. art. I, §17A ("A criminal case in which the punishment ***may be capital***, shall be tried before a jury of twelve persons. . . . ***Except in capital cases***, a defendant may knowingly and intelligently waive his right to a trial by jury . . . .") (emphasis added).

The question presented in this case is whether first degree murder is an "offense other than one punishable by death" for purposes of La. C.Cr.P. article 780.[1] Therefore, for purposes of interpreting article 780, we must turn to the statute defining the "offense" charged. No statutory or constitutional provision expressly defines what constitutes an "offense . . . punishable by death." However, since a 2007 amendment, punishments for the offense of first degree murder as defined in La. R.S. 14:30(A) have been bifurcated into capital and non-capital provisions. The statute provides:

> C. (1) ***If the district attorney seeks a capital verdict***, the offender shall be punished by death or life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence, in accordance with the

[1] Importantly, the election of the bench trial is the key issue here, as even a capital defendant can waive a jury trial—at least for the culpability phase—by pleading guilty. *See generally State v. Louviere*, 2000-2085 (La. 9/4/02), 833 So. 2d 885 ("[O]nly the issue of the ultimate penalty of death is strictly required to be put before the jury.").

> determination of the jury. The provisions of Code of Criminal Procedure Article 782 relative to cases in which punishment may be capital shall apply.
>
> (2) ***If the district attorney does not seek a capital verdict***, the offender shall be punished by life imprisonment at hard labor without benefit of parole, probation or suspension of sentence. The provisions of Code of Criminal Procedure Article 782 relative to cases in which punishment is necessarily confinement at hard labor shall apply.

La. R.S. 14:30(C) (emphasis added).[2]

We find that the plain language of La. C.Cr.P. article 780 permits this defendant to elect a bench trial. When the state, through the district attorney, makes its discretionary decision not to seek the death penalty, then La. R.S. 14:30(C)(2) clearly instructs that the case is not "capital" and therefore the offense is not "punishable by death." *Compare* La. R.S. 14:30(C)(1) ("***If the district attorney seeks a capital verdict***, the offender shall be punished by death or life imprisonment at hard labor. . . ."), *with* La. R.S. 14:30(C)(2) ("***If the district attorney does not seek a capital verdict***, the offender shall be punished by life imprisonment at hard labor. . . .") (emphasis added in both). Further, La. R.S. 14:30(C)(2) references Code of Criminal Procedure article 782, specifically stating: "[t]he provisions of Code of Criminal Procedure Article 782 ***relative to cases in which punishment is necessarily confinement at hard labor*** shall apply." La. R.S. 14:30(C)(2) (emphasis added). One of those provisions, of course, is waiver of trial by jury in all cases "except capital" ones. La. C.Cr.P. art. 782(B). Together, these provisions provide clear instruction

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[2] 2007 La. Acts 125 amended La. R.S. 14:30 as follows:

> C. ~~Whoever commits the crime of first degree murder shall be punished by death or life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence in accordance with the determination of the jury.~~ Penalty provisions.
>
> (1) If the district attorney seeks a capital verdict, the offender shall be punished by death or life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence, in accordance with the determination of the jury. The provisions of C.Cr.P. Art 782 relative to cases in which punishment may be capital shall apply.
>
> (2) If the district attorney does not seek a capital verdict, the offender shall be punished by life imprisonment at hard labor without benefit of parole, probation or suspension of sentence. The provisions of C.Cr.P. Art 782 relative to cases in which punishment is necessarily confinement at hard labor shall apply.

from the legislature to treat the offense charged here, where the district attorney has filed a formal notice not to pursue the death penalty, as an offense "other than one punishable by death," and therefore permits election of a bench trial under La. C.Cr.P. article 780.

The Fourth Circuit examined these same provisions and reached the opposite conclusion.[3] Notwithstanding the state's filing of notice that it does not intend to seek a death sentence in this case, the court concluded that this prosecution for first degree murder "is still a capital one insofar as it is '***punishable*** by death,'" and therefore defendant cannot waive his right to a jury and elect a bench trial. *Shallerhorn*, 2022-0377, p.5, 346 So. 3d at 821 (emphasis in original). We disagree with the court of appeal majority that this case remains "punishable by death." The court of appeal is apparently referencing a situation—not presented here—where the state changes its mind on the nature of the prosecution and revokes the formal notice. This is a purely theoretical situation, as the state has in fact filed the formal notice in this case, exercising its right to control the prosecution of the case under La. C.Cr.P. art. 61 and R.S. 14:30(C)(2).[4] In any event, as noted above, the plain language of the statute does not support this interpretation, as the statute requires the district attorney to exercise his or her sole discretion to select the nature of the

[3] With the exception of the court of appeal here, the circuit courts have determined that a case is not considered "capital" after the district attorney elects not to seek the death penalty. *See State v. Lewis*, 2009-846, p.10 (La. App. 3 Cir. 4/7/10), 33 So. 3d 1046, 1055 (where a defendant "was not faced with the prospect of a death penalty," he could elect a bench trial); *State v. Lastrapes*, 2019-0056, p.23 (La. App. 3 Cir. 10/2/19), 280 So. 3d 679, 693 ("The statute is clear: if the district attorney does not seek the death penalty, as was the situation in this case, the case is not considered a capital case."); *see also State v. Singleton*, 2005-0622, pp.9-10 (La. App. 5 Cir. 1/31/06), 922 So. 2d 647, 652-53 (finding, under La. R.S. 14:42, that "since the state did not seek a capital verdict, defendant was entitled to waive his right to a jury trial").

[4] The state has not identified any case where it has revoked such a notice. Doing so, of course, would result in a significant shift in the entire prosecution of the case, transforming it into a death penalty prosecution. *See generally* La. C.Cr.P. art. 512 (requiring appointment of capital qualified counsel in death penalty cases); *State v. Brooks*, 1994-2438 (La. 10/16/95), 661 So. 2d 1333 (requiring assistance of reasonably competent counsel acting as a diligent, conscientious advocate for defendant's life in capital cases); La. C.Cr.P. arts. 905, 905.2 (requiring special sentencing hearing before imposing death sentence); *Tennard v. Dretke*, 542 U.S. 274 (2004) (requiring presentation of mitigating evidence at death penalty sentencing hearing); *Wiggins v. Smith*, 539 U.S. 510 (2003) (requiring mitigation investigation in preparation for capital sentencing hearing).

offense—that is, to either seek capital punishment or not. The statute does not permit the district attorney to exercise both options simultaneously.

Our holding today is consistent with *State v. Serigne*, 2016-1034 (La. 12/6/17), 232 So. 3d 1227. In *Serigne*, the Court explained that where a defendant "never faced the prospect of the death penalty,"[5] he was permitted to waive a jury trial and elect a bench trial. 2016-1034, p.7, 232 So. 3d at 1231. The Court rejected the "prior 'capital classification' jurisprudence" on which the lower court in that case relied. *Id.*[6] Here, the Fourth Circuit distinguished *Serigne*, noting that unlike defendant Serigne, Shallerhorn did in fact "face the prospect of the death penalty" when the state charged him with a capital offense, "at least until the state notified the defense that it did not intend to seek that punishment." *Shallerhorn*, 2022-0377, p.4, 346 So. 3d at 820. Again, we find this distinction to be unavailing for the same reason the court of appeal's position that Shallerhorn's offense remains "punishable by death" is unavailing—defendant at this moment in time does not "face the prospect of the death penalty" at all. The state has filed its formal notice not to seek the death penalty, and thereby has elected, at its discretion, to proceed with this prosecution as non-capital.

Finally, our interpretation is also in accord with Article 2 of the Code of Criminal Procedure, which instructs that the Code is "intended to provide for the just determination of criminal proceedings," and the provisions "shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of

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[5] In *Serigne*, the defendant was indicted for aggravated rape committed at a time when that crime was punishable by death. After the United States Supreme Court held the death penalty was unconstitutional for a non-homicide offense, *see generally* 2016-1034, p.2 n.1, 232 So. 3d at 1228 n.1, the defendant waived his right to trial by jury and, following a bench trial, was convicted of aggravated rape. Though the court of appeal in *Serigne* overturned the conviction, finding the defendant was ineligible to waive the death penalty because the aggravated rape charge was, at one time, considered "capital," this Court reversed the court of appeal.

[6] The *Serigne* case contains a thorough description of the evolution of the classification of capital and non-capital crimes in Louisiana and in the United States Supreme Court. 2016-1034, pp.4-6, 232 So. 3d at 1229-30.

unjustifiable delay." Permitting a defendant to elect a bench trial in a first degree murder case that is not a capital offense simplifies the trial process and eliminates delay, while at the same time providing fairness to the defendant who opts for such a trial. *See generally Duncan v. State*, 391 U.S. 145, 160 (1968) (noting that the benefits of trial without a jury include "the benefits to efficient law enforcement and simplified judicial administration resulting from the availability of speedy and inexpensive nonjury adjudications").[7]

CONCLUSION

For the reasons set forth above, we reverse the majority of the court of appeal. When the state opts not to seek the death penalty, then La. R.S. 14:30(C)(2) clearly instructs that the case is not "capital" and therefore the offense is not "punishable by death" under Code of Criminal Procedure article 780. Thus, under the plain language of La. C.Cr.P. article 780, this defendant may elect a bench trial, because the state has given notice that it does not seek the death penalty in this case.

REVERSED AND REMANDED

[7] Any such waiver must, of course, be unequivocal. *See* La. C.Cr.P. art. 780(A) ("A defendant charged with an offense other than one punishable by death may knowingly and intelligently waive a trial by jury and elect to be tried by the judge.") (emphasis added). This Court has continued to assess the "knowing and intelligent" waiver standard by considering the totality of the circumstances and has declined to adopt rigid standards for that waiver colloquy. *See generally State v. Johnson*, 389 So. 2d 1302, 1305 (La. 1980) ("The record also bears witness to the facts that the defendant's options were presented to him by the trial judge, as is required by C.Cr.P. art. 780, and that the defendant stated his election to waive jury trial not once but twice, clearly and unequivocally. Greater proof of knowing and intelligent waiver has been neither constitutionally nor jurisprudentially required."). *See also State v. Wilson*, 437 So. 2d 272, 275 (La. 1983) ("In order to protect this valuable right, as well as to prevent postconviction attacks on the waiver, the better practice is for the trial judge to advise the defendant personally on the record of his right to trial by jury and require the defendant to waive the right personally either in writing or by oral statement in open court on the record. By this procedure, the trial judge not only insures that an express waiver is recorded, but also assures that the waiver is made voluntarily and knowingly.") (internal citation omitted).