Fifth Circuit Court of Appeal
State of Louisiana

No. 26-K-150

STATE OF LOUISIANA

versus

EDUARDO CARDENAS

IN RE EDUARDO CARDENAS
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE RAYMOND S. STEIB, JR., DIVISION "A", No. 25-3982

TRUE COPY

LINDA TRAN
DEPUTY CLERK

May 14, 2026

Panel composed of Judges Marc E. Johnson,
Scott U. Schlegel, and Timothy S. Marcel

WRIT DENIED

Defendant, Eduardo Cardenas, seeks supervisory review of the trial court's March 2, 2026 denial of his motion to quash. We deny defendant's writ application for the following reasons.

Factual and Procedural Background

On October 4 and 5, 2019, while vacationing in New Orleans, Y.I. went to Bourbon Street with her sister and another female friend. She was intoxicated from drinking throughout the day and met an unknown male at a bar. Her companions left, but she wished to stay longer with the male and his friend. She did not remember anything after that except that she was in a fetal position in the back seat of an unknown vehicle with the Hispanic male spooning her and forcing

his penis into her vagina, during which she passed out again. The next thing she remembered was being in an unknown body of water, holding onto a tree in a swampy area. She turned out to be in St. John Parish, where she was rescued by the local fire department. She was brought to a hospital, where a sexual assault examination was performed. The results of the examination were sent to the Louisiana State Police Crime Lab for testing.

In the affidavit for arrest warrant on September 2, 2022, a detective with the New Orleans Police Department stated that on July 24, 2020, a CODIS match notification letter was sent, which listed defendant as the suspect. The detective also stated that defendant's DNA was found on the external genitalia swabs collected during the examination. Y.I. was shown a photographic lineup that included defendant, but she did not make a positive identification.

Defendant was arrested pursuant to the warrant on September 26, 2023, and was extradited from Texas to New Orleans.

On November 20, 2023, the Orleans Parish District Attorney ("OPDA") filed a bill of information charging defendant with the third degree rape of Y.I. in violation of La. R.S. 14:43 (count one) and the second degree kidnapping of Y.I. in violation of La. R.S. 14:44.1 (count two). Following arraignment and a preliminary hearing, a trial was initially scheduled for May 13, 2024. On April 25, 2024, OPDA filed a motion for continuance due to a family event, and the trial date was subsequently set for August 12, 2024. On July 29, 2024, defendant and the OPDA moved for a joint continuance of the trial. Thereafter, a new trial date of October 21, 2024 was selected.

The trial began on October 21, 2024. The matter proceeded with jury selection and by the end of the day, a jury had been empaneled but not sworn in. The next day, on October 22, 2024 at approximately 8:40 a.m., prior to the start of the docket and before the jury was sworn, the OPDA entered a written *nolle*

prosequi on the bill of information in court. The trial court, however, allegedly had not been notified, and proceeded to swear the jury in at approximately 9:22 a.m. After admonishing the State, the trial court released the defendant.

On July 23, 2025, the Jefferson Parish District Attorney sent a letter to the Louisiana Attorney General's Office asking for its assistance in prosecuting defendant. On September 11, 2025, a Jefferson Parish Grand Jury indicted defendant for the third degree rape of Y.I. in violation of La. R.S. 14:43 (count one) and the second degree kidnapping of Y.I. in violation of La. R.S. 14:44.1 (count two).

Defendant subsequently filed a motion to quash the indictment based on double jeopardy, improper venue, and violations of defendant's due process and speedy trial rights. The State opposed the motion to quash.

A hearing on the motion to quash was held on March 2, 2026. There was no testimony at the hearing, but extensive exhibits were attached to the motion and the State's opposition and considered by the trial court. At the end of the hearing, the trial court denied the motion. Defendant timely filed the pending writ application.

Law and Analysis

1. *Legal Standard*

A motion to quash is a procedural vehicle for challenging an indictment or a bill of information. La. C.Cr.P. arts. 531-533; *State v. Seymore*, 23-50 (La. App. 5 Cir. 9/20/23), 371 So.3d 587, 590-91. A trial court's ruling on a motion to quash should not be reversed in the absence of a clear abuse of the trial court's discretion. *State v. Robinson*, 23-59 (La. App. 5 Cir. 3/20/24), 384 So.3d 1078, 1087-88, *writ denied*, 24-508 (La. 11/6/24), 395 So.3d 872.

Defendant asserts that (1) the State violated the principles of due process and fundamental fairness by its tactical dismissal and subsequent reinstitution of

charges against him; and (2) the trial court erroneously denied the motion to quash because Jefferson Parish is an improper venue.

2. *Alleged Violation of Due Process and Fundamental Fairness*

Defendant argues that his motion to quash should have been granted because the State dismissed the charges in Orleans Parish on the second day of trial as a remedy for its own lack of preparation for trial. Defendant contends that the State's actions violated defendant's rights to due process, speedy trial, fundamental fairness, and double jeopardy.

In its opposition to the motion to quash, the State responded that defendant had failed to demonstrate that his speedy trial or due process rights were violated as a result of the case being dismissed and reinstituted.

La. C.Cr.P. art. 691 confers on the district attorney the power to dismiss a formal charge, and provides:

> The district attorney has the power, in his discretion, to dismiss an indictment or a count in an indictment, and in order to exercise that power it is not necessary that he obtain consent of the court. The dismissal may be made orally by the district attorney in open court, or by a written statement of the dismissal signed by the district attorney and filed with the clerk of court. The clerk of court shall cause the dismissal to be entered on the minutes of the court.

La. C.Cr.P. art. 693 further expressly provides, subject to narrowly delineated exceptions, that dismissal of a prosecution "is not a bar to a subsequent prosecution[.]" *State v. Batiste*, 05-1571 (La. 10/17/06), 939 So.2d 1245, 1249. The general limit imposed by the legislature on the discretion of the State under La. C.Cr.P. art. 691 to dismiss a prosecution without the consent of the court is that the dismissal of the original charge is "not for the purpose of avoiding the time limitation for commencement of trial established by Article 578." *Batiste*, 939 So.2d at 1249.

A court's resolution of motions to quash in cases where the district attorney entered a *nolle prosequi* and later reinstituted charges should be decided on a case-

by-case basis. *Id.*; *State v. Ordonez*, 14-186 (La. App. 5 Cir. 9/24/14), 151 So.3d 94, 98 (citing *State v. Love*, 00-3347 (La. 5/23/03), 847 So.2d 1198, 1209). 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." *Ordonez*, 151 So.3d at 98.

At the trial on October 22, 2024, the State explained that the reason for the *nolle prosequi* was the receipt of additional evidence (text messages and photographs) late the previous night, and that the evidence was only turned over to defense counsel that morning, as well as an attempt to resolve unanswered questions regarding the newly discovered evidence prior to the commencement of trial. The assistant district attorney explained:

> We did ask for these pictures multiple times. The most recently [*sic*] was on a Zoom prep with the witness. And she told us that those pictures were taken on her work phone. That she had to turn that phone in when she left that job, and she no longer had them.
>
> We asked if they were in her iCloud. She said, "No." So we believed that they did not exist. Last night, all of a sudden, she has found them. I have not even spoken to her to find out – because she was on a plane this morning – how she found them. Where they came from.

In response, the trial court stated that the *nolle prosequi* was not orally placed on the record prior to the swearing in of the jury and lectured the OPDA for not being prepared.

The record shows that the jury entered the courtroom and was sworn in by the clerk at 9:22 a.m. At this time, the assistant district attorney had already entered the *nolle prosequi* on the bill by crossing a line through the bill and adding the words "*nolle prosequi* as to all counts," and signing and dating the bill. La. C.Cr.P. art. 691 provides that the district attorney has the power to dismiss a bill of information, which may be made by written statement of the dismissal signed by

the district attorney and filed with the clerk of court. In this case, the *nolle prosequi* was entered by the OPDA on the bill before the jury was sworn in.

Further, defendant has not shown that the OPDA was flaunting its authority at the expense of defendant by entering the *nolle prosequi*. Rather, the record shows that the OPDA entered a *nolle prosequi* prior to the jury being sworn in on October 22, 2024 because of newly discovered evidence given to the State the night before. The State had been trying to obtain this evidence since November 2023 but was told by the victim's friend it could not be located. Thus, under the facts of this case, the State's *nolle prosequi* of the bill in Orleans Parish was not grounds to grant the defendant's motion to quash.

In his motion to quash filed in the trial court, defendant argued that the prosecution in Jefferson Parish places him in double jeopardy. Although this argument was made only in passing in the pending writ, we will consider it. We conclude that double jeopardy did not attach in this case because, as discussed above, the OPDA dismissed the case by *nolle prosequi* before the jury was sworn in. Thus, no jury was sworn in and jeopardy did not attach. *See* La. C.Cr.P. art. 592 ("[J]eopardy begins when the jury panel is sworn pursuant to Article 790.").

Defendant further argues that his right to speedy trial was violated. During oral argument on the motion to quash, the trial court noted that defendant had not filed a motion for speedy trial and also said that there was no prejudice to defendant. Defendant responded that the right to speedy trial is implicit in the Constitution.

We consider this argument because the speedy trial issue is somewhat intertwined with the issue regarding the State's dismissal of the first case and reinstitution of proceedings at a later date. The right to a speedy trial is guaranteed by the Sixth Amendment to the United States Constitution and Article 1, § 16 of the Louisiana Constitution. The right attaches when an individual becomes an

accused by formal indictment or by bill of information, or by arrest and actual restraint. *Ordonez*, 151 So.3d at 99. The underlying purpose of this constitutional right is to protect a defendant's interest in prolonged pretrial incarceration, limiting possible impairment of his defense, and minimizing his anxiety and concern. *Id*. (citing *Barker v. Wingo*, 407 U.S. 514, 515, 92 S.Ct. 2182, 2184, 33 L.Ed.2d 101 (1972)).

The United States Supreme Court has set forth the following four factors for courts to consider in determining whether a defendant's right to a speedy trial has been violated: (1) the length of the delay; (2) the reasons for the delay; (3) the accused's assertion of his right to speedy trial; and (4) the prejudice to the accused resulting from the delay. *Id*. (citing *Barker*, 407 U.S. at 531-32, 92 S.Ct. at 2192-93). Unless the length of delay is presumptively prejudicial, there is no necessity for inquiry into the other factors. *Id*. The specific circumstances of a case will determine the weight to be ascribed to the length of and reason for the delay because "the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge." *Id.*

In *Ordonez*, 151 So.3d at 99, this Court stated:

> When calculating the time delay in a constitutional speedy claim, the United States Supreme Court has said, "under the rule of *MacDonald,* when defendants are not incarcerated or subjected to other substantial restrictions on their liberty, a court should not weigh that time towards a claim under the Speedy Trial Clause." *United States v. Loud Hawk,* 474 U.S. 302, 312, 106 S.Ct. 648, 88 L.Ed.2d 640 (1986) (citing *United States v. MacDonald,* 456 U.S. 1, 102 S.Ct. 1497, 71 L.Ed.2d 696 (1982)). Further, "when no indictment is outstanding, only the 'actual restraints imposed by arrest and holding to answer a criminal charge ... engage the particular protections of the speedy trial provision of the Sixth Amendment.'" *Loud Hawk,* 474 U.S. at 310, 106 S.Ct. 648, 88 L.Ed.2d 640. See also *State v. Mathews,* 13–0525 (La.11/15/13), 129 So.3d 1217, 1219.

In the instant case, the alleged offense occurred in October 2019, and in September 2023, defendant was extradited to New Orleans. In November 2023, the Orleans Parish District Attorney filed a bill of information, and in October

2024, it dismissed the case. According to defendant's writ, he was then released and returned home to Texas. In September 2025, after being indicted in Jefferson Parish, defendant was arrested and again extradited from Texas. Accordingly, defendant has been incarcerated for a total of approximately 22 months since the date of the alleged offense. This delay is not presumptively prejudicial, and therefore, it is not necessary to analyze the other *Barker* factors. *See Ordonez*, 151 So.3d 94 (This court found that a 28-month delay was not presumptively prejudicial in a case where the original bill was filed in 2007, the bill was dismissed in 2009, and the State reinstituted prosecution in 2013). Consequently, defendant has not suffered a speedy trial violation.

We conclude that defendant has not shown an abuse of the trial court's discretion with respect to any violation of due process and fundamental fairness.

3. *Alleged Improper Venue*

The trial court found as follows as to defendant's argument that Jefferson Parish is an improper venue:

> As to Improper Venue, again, the Statutes Code of Criminal Procedure 611 and 612 are written very liberally. 611 States that venue is proper in – if any act constituting the offense or element of the offense occurred in more than one place and in this case, the intoxication of the victim is an element of third degree rape. And there's no argument that she was not intoxicated throughout this travel from Orleans through Jefferson to St. John.
>
> Also, Code of Criminal Procedure 612, the offense is deemed to be committed in any parish through which the vehicle passed and in which it could have been committed. Again, there's no argument that the vehicle passed through Jefferson Parish.
>
> Those statutes are written very liberally. It's not my job to, to impose limits on the legislature's statutes. That's their job. So I'm denying the Motion to Quash as to Improper Venue.

Defendant argues that his motion to quash should have been granted because Jefferson Parish is an improper venue. He contends the indictment must be quashed because: (1) the trial court's reliance on La. C.Cr.P. art. 612 was

inapplicable as the State failed to prove by a preponderance of the evidence that defendant committed any element of a crime in Jefferson Parish; (2) the substantial effects of the charges clearly occurred in Orleans and St. John the Baptist Parishes; and (3) the charges were originally instituted in Orleans Parish. In short, defendant argues this case has no nexus to Jefferson Parish other than the car passing through without stopping.

The State responds that at least one element of each of the offenses occurred in Jefferson Parish, and thus Jefferson Parish is a proper venue for the instant prosecution by the preponderance of the evidence.

When a defendant files a motion to quash for improper venue, La. C.Cr.P. art. 615 mandates that the venue issue "shall be tried by the judge alone" and that venue "*shall* be a jurisdictional matter to be *proven by the state by a preponderance of the evidence* and decided by the court in advance of trial." (Emphasis added).

La. C.Cr.P. art. 611(A) provides:

> 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.

As further noted in Official Revision Comment (d) to Article 611:

> The so-called "continuing offenses" are not specifically provided for. If an offense is continuing in the sense that part of the offense is committed in one parish and another part in another parish, it falls within the scope of this article.

Moreover, La. C.Cr.P. art. 612 provides:

> If an offense is committed on a train, vessel, aircraft, or other public or private vehicle while in transit in this state and the exact place of the offense in this state cannot be established, *the offense is deemed to have been committed in any parish through or over which the* train, vessel, aircraft, or *other vehicle passed*, and in which the crime could have been committed.

(Emphasis added).

In *State v. Hester*, 99-426 (La. App. 5 Cir. 9/28/99), 746 So.2d 95, 112-14, *writ denied sub nom. State v. Patterson*, 99-3217 (La. 4/20/00), 760 So.2d 342, this Court reviewed a prosecution for, *inter alia*, aggravated rape and aggravated crime against nature in which the victim was kidnapped in Jefferson Parish and raped in Orleans Parish. Defendant Hester argued that because the rape and aggravated crime against nature offenses were alleged to have occurred in Orleans Parish, the crimes should not have been tried in Jefferson Parish. This Court stated that the evidence showed that the perpetrators threatened the victim with bodily harm from the outset of the kidnapping in Jefferson Parish. Further, the threats continued even after the defendants took the victim to the motel in Orleans Parish. This Court found that it was therefore arguable that an element of the aggravated rape (that the victim is "prevented from resisting by threats of great and immediate bodily harm") did occur in Orleans Parish. *Id.* at 113. Similarly, this Court found that an element of aggravated crime against nature (that the victim is "prevented from resisting the act by threats of great and immediate bodily harm accompanied by apparent power of execution") began in Jefferson Parish and continued at the motel in Orleans Parish. *Id.* at 113-14. This Court concluded, "[a]ssuming that an element of each of these offenses was committed in Jefferson Parish, Jefferson Parish was a proper venue in which to try them. Accordingly, the trial court did not err in denying Hester's motion to quash Counts 3 and 4 of the indictment." *Id.* at 114.

In the instant case, defendant is charged with third degree rape and second degree kidnapping. The facts establish that Y.I. was intoxicated when first approached by defendant, and given the sporadic recollections of memory by Y.I., this condition arguably continued throughout the crime and in each Parish she traversed, including Jefferson Parish. One of the elements of third degree rape pertains to "the victim [being] incapable of resisting or of understanding the nature

of the act by reason of a stupor or abnormal condition of mind produced by an intoxicating agent or any cause and the offender knew or should have known of the victim's incapacity." La. R.S. 14:43(A)(1). Thus, we find that the evidence was sufficient for the trial court to conclude that the State had shown by a preponderance of the evidence that at least one element of third degree rape had occurred in Jefferson Parish.

As for second degree kidnapping, one of the elements references "[t]he forcible seizing and carrying of any person from one place to another." La. R.S. 14:44.1(B)(1). Here, the victim was arguably forcibly carried through a number of parishes, including Jefferson Parish, while she was trapped in the vehicle. Thus, an element of second degree kidnapping arguably occurred in Jefferson Parish.

We find that defendant has not shown that the trial court abused its discretion by finding venue was proper in Jefferson Parish.

Considering the foregoing, we find no abuse of discretion in the trial court's denial of defendant's motion to quash. Accordingly, this writ application is denied.

Gretna, Louisiana, this 14th day of May, 2026.

SUS
MEJ
TSM

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **05/14/2026** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

26-K-150

E-NOTIFIED

24th Judicial District Court (Clerk)
Hon. Raymond S. Steib, Jr. (DISTRICT JUDGE)
J. Taylor Gray (Respondent)
Jane C. Hogan (Relator)
Thomas J. Butler (Respondent)
J. Bryant Clark, Jr. (Respondent)
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