

COURT OF APPEAL

THIRD CIRCUIT

STATE OF LOUISIANA

DOCKET NUMBER: _____

STATE OF LOUISIANA - APPELLEE

VERSUS

STACY L. BENDER - APPELLANT

ON APPEAL FROM THE NINTH JUDICIAL DISTRICT
COURT IN AND FOR THE PARISH OF RAPIDES
STATE OF LOUISIANA, DOCKET NUMBERS: 334,067, 334,068, & 334,069

THE HONORABLE MARY L. DOGETT PRESIDING

***REQUEST FOR EXPEDITED CONSIDERATION
EMERGENCY SUPERVISORY WRIT OF
CERTIORARI AND REVIEW AND REQUEST FOR STAY ORDER***

CRIMINAL WRIT APPLICATION

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REASONS FOR EXPEDITED CONSIDERATION

The defendant, Stacy L. Bender, an undercover police officer, was charged by three (3) separate Bills of Information for crimes alleged committed while performing his duties as an undercover narcotics officer. He is charged with Malfeasance in Office, Abuse of Office, and Filing False Public Documents and his trial by jury is to commence on May 6, 2019.

JURISDICTIONAL STATEMENT

Jurisdiction in this matter is based upon Article V, Section 10(B) of the Louisiana Constitution, which grants to the Courts of Appeal the right to appeal and supervision regarding decisions of the district courts.

STATEMENT OF THE CASE

The defendant served many years as a detective in the Rapides Parish Sheriff's Office. Thereafter, he was assigned as an undercover narcotics officer. While in the course of performing his duties he encountered many people who were not the most credible in our society, as is the nature of narcotics work.

He befriended several of these people to use as 'snitches' and or to use to provide sources of information concerning the local narcotics traffic. On occasion the relationship between the narcotics officer and the source sours. When that occurs the source knows they can cause the officer a lot of problems simply by reporting to another agency that this officer is and has violated the criminal laws of this state. That is what occurred here.

A source used by Detective Bender reported to the Louisiana State Police that Detective Bender had committed various criminal acts including having sexual relations with her.

As a result of the report by the now upstanding citizen, Detective Bender was arrested by the Louisiana State Police with many offenses. These were not formally

charged but others were charged by bill of information. These were later dismissed and he was then charged with still other offenses.

The offenses charged were brought in three (3) separate bills of information. One of the instruments (No. 334,067) charges him with One (1) count of Malfeasance in Office under La. R.S. 14:134(A)(1).

Another one, filed in No 334,068, alleges he committed the offense of Abuse of Office under La. R.S. 14:134.3. The third one filed in No. 334,069, alleges Filing False Public Documents in violation of La. R.S. 14:133(A)(3).

All of these alleged offenses were to have occurred in the course of his employment enforcing the narcotics laws of this state.

The defendant filed several pre-trial Motions. Among them were:

- (1.) Motion to Quash in No. 334,067
- (2.) Motion to Quash in No. 334,068,
- (3.) Motion to Quash in No. 334,069,
- (4.) Motion to Quash in all three (3) docket numbers, being No. 334,067, 334,068, and 334,069, and
- (5.) Motion in Limine with respect to internal investigation and/or Motion to Suppress in all three (3) docket numbers, being No. 334,067, 334,068, and 334,069.

The State filed a Notice of Intent to Introduce Other Crimes Evidence in all three (3) docket numbers, which was opposed by the defendant. The hearing on those requests occurred the same date.

On February 19, 2019, the Trial Court, after presentation of evidence and argument thereon orally denied all the Motions listed above except the first Motion which it took under advisement. Later, that motion was denied by written order dated March 15, 2019.

The trial judge granted the State's request to introduce evidence of other

crimes per the notice filed in each docket number.

It is from these rulings that defendant seeks relief.

ASSIGNMENT OF ERROR NO. 1

The Trial Court erred in denying **DETECTIVE BENDER**'s Motion To Quash the bill of information charging Abuse of Office.

ASSIGNMENT OF ERROR NO. 2

The Trial Court erred in denying **DETECTIVE BENDER**'s Motion To Quash the bill of information charging Filing False Public Documents.

ASSIGNMENT OF ERROR NO. 3

The Trial Court erred in denying **DETECTIVE BENDER**'s Motion To Quash all three (3) bills of information separately charging different offenses.

ASSIGNMENT OF ERROR NO. 4

The Trial Court erred in granting the State's Motion to Introduce Other Crimes Evidence.

ASSIGNMENT OF ERROR NO. 5

The Trial Court erred in denying **DETECTIVE BENDER**'s Motion To Quash the bill of information charging Malfeasance in Office.

ISSUES

Whether the rulings of the Trial Court on the various motions were an abuse of discretion.

LAW AND ARGUMENT

ASSIGNMENT OF ERROR NO.1 *(Abuse of Office)*

The State charged Detective Bender with one (1) count of Abuse of Office in violation of La. R.S. 14:134.3.

That crime is defined as follows:

“§134.3. Abuse of office

A. No public officer or public employee shall knowingly and intentionally use

the authority of his office or position, directly or indirectly, to compel or coerce any person to provide the public officer, public employee or any other person with anything of apparent present or prospective value when the public officer or employee is not entitled by the nature of his office to the services sought or the object of his demand.

B.(1) Whoever violates the provisions of this Section shall be fined up to five thousand dollars, or be imprisoned with or without hard labor for not less than one year nor more than five years.

(2) In addition to the penalty provided for in Paragraph (1) of this Subsection, a person convicted of the provisions of this Section may be ordered to pay restitution to the state if the state suffered a loss as a result of the offense. Restitution shall include the payment of legal interest at the rate provided in R.S. 13:4202.

C. The provisions of this Section shall not apply to benefits or services rendered to a person who is entitled to such benefits or services from the state or any political subdivision of the state or any governmental entity when the public officer or public employee is performing his duties as authorized by law. Nothing in this Section shall prohibit or limit the ability of a public officer or public employee from performing his duties as authorized by law or as a condition of his employment or office.

Acts 2008, 1st Ex. Sess., No. 22, §1, eff. March 11, 2008; Acts 2010, No. 811, §1, eff. Aug. 15, 2011.”

The Bill of Information states that the committed this offense “in that he being a public officer and employee under the law, to-wit: a commissioned Deputy Sheriff with the Rapides Parish Sheriff’s Office, knowingly and intentionally used the authority of his office and position, directly and indirectly, to compel and coerce Heather Garland to provide him with a thing of present and prospective value, to-wit: sexual contact and sexual intercourse, when the said Stacy Bender was not entitled by the nature of his position as a Deputy Sheriff for the Rapides Parish Sheriff’s Office to the sexual contact and sexual intercourse.”

Intent Required

The statute the defendant is accused of violating is La. R.S. 14:134.3 and it requires a general intent. It states, in pertinent part,

“ . . . shall knowingly and intentionally use the authority of his office or position, directly or indirectly, to compel or coerce any person to provide . . . “

General Criminal Intent is required for this crime and it is defined in La. R.S.

14:10(2) as being present “when the circumstances indicate that the offender, in the ordinary course of human experience must have adverted to the prescribed criminal consequences as reasonably certain to result from his act or failure to act.”

The materials filed in the trial court by the state (in response to defendant’s discovery request) reflect a consensual relationship. They do not reflect anything other than that. There is no information contained in those documents which indicates the defendant had the intent required by the statute.

If all the allegations of this Bill of Information are taken as true and the claim of the State is taken as a fact, there is no proof of anything in this relationship other than a business transaction. There is nothing in the circumstances that shows the defendant was taking advantage of his position.

The discovery provided by the state (filed in the record in this court) reflects nothing that would indicate the existence of wrongful, culpable, criminal intent so this Bill of Information should be quashed.

Double Jeopardy

The allegations in this Bill of Information are almost identical to the allegations in Docket Number 334,067, wherein the defendant is charged with one (1) count of Malfeasance in Office in violation of La. R.S. 14:134A(1).

The Double Jeopardy clause of the Constitution of the United States in the Fifth Amendment provides -

“Amendment V (1791)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

The Louisiana Constitution of 1974, as amended, also contains a prohibition

on double jeopardy in Article 1, Section 15, which provides -

“§15. Initiation of Prosecution

Section 15. Prosecution of a felony shall be initiated by indictment or information, but no person shall be held to answer for a capital crime or a crime punishable by life imprisonment except on indictment by a grand jury. No person shall be twice placed in jeopardy for the same offense, except on his application for a new trial, when a mistrial is declared, or when a motion in arrest of judgment is sustained.”

The effect of prosecution of the defendant for both offenses is to place him twice in jeopardy, which is prohibited by law.

This Bill of Information charging Abuse of Office or the other charging Malfeasance in Office must be quashed in accordance with Article 532 of the Louisiana Code of Criminal Procedure.

ASSIGNMENT OF ERROR NO. 2
(Filing False Public Documents)

The Defendant, **STACY L. BENDER**, is charged by Bill of Information with one (1) count of Filing False Public Documents in violation of La. R.S. 14:133 (A)(3) this Court.

That statute provides as follows:

§133. Filing or maintaining false public records

A. Filing false public records is the filing or depositing for record in any public office or with any public official, or the maintaining as required by law, regulation, or rule, with knowledge of its falsity, of any of the following:

- (1) Any forged document.
- (2) Any wrongfully altered document.
- (3) Any document containing a false statement or false representation of a material fact.

B. The good faith inclusion of any item of cost on a Medical Assistance Program cost report which is later determined by audit to be nonreimbursable under state and federal regulations shall be an affirmative defense to a violation of this Section.

C.(1) Whoever commits the crime of filing false public records shall be imprisoned for not more than five years with or without hard labor or shall be fined not more than five thousand dollars, or both.

(2) In addition to the penalty provided for in Paragraph (1) of this Subsection, a person convicted of the provisions of this Section may be

ordered to pay restitution to the state if the state suffered a loss as a result of the offense. Restitution shall include the payment of legal interest at the rate provided in R.S. 13:4202.

Amended by Acts 1980, No. 454, §1; Acts 1982, No. 676, §1; Acts 1992, No. 539, §1; Acts 1995, No. 787, §1; Acts 2010, No. 811, §1, eff. Aug. 15, 2011.

Lack of Essential Element

The Bill of Information states that the defendant committed this offense “in that he filed and deposited for record with the Rapides Parish Sheriff’s Office a record required by law and regulation to be filed, to-wit: a time card verifying that on May 25, 2015, he worked an 8 hour day for which he was paid with public funds, this time card containing a false statement of material fact, the said Stacy Bender having spent from 1 to 3 hours that date during his work hours having sexual intercourse with Heather Garland, a prostitute,”

As was stated in *State v. Reason*, 15-KA-695, (La. App. 5 Cir. 12/7/2016), 206 So. 3d 419, 423 -

“The elements of the crime of filing or maintaining false public records are: (1) the defendant files or deposits for record in any public office or with any public official, *or* the defendant maintains as required by law, regulation, or rule, (2) with knowledge of its falsity, (3) any document containing a false statement or false representation of a material fact. La. R.S. 14:133 ; *State v. King* , 47,207 (La.App. 2 Cir. 06/27/12), 94 So.3d 203, 211, *writ denied* , 12–2694 (La. 05/17/13), 117 So.3d 1260 ; *State v. Odom* , 07–0516 (La.App. 1 Cir. 7/31/08), 993 So.2d 663 ; *State v. L e fear* , 07–621 (La.App. 3 Cir. 10/31/07), 970 So.2d 98.”

The information filed in this court by the state in response to discovery requests does not indicate the Sheriff of this jurisdiction requires the filing of “time cards.” As a result, the state cannot show that the ‘time card’ was a document “required by law, regulation, or rule.” Accordingly, one of the essential elements of this crime cannot be proven.

Further, there can be no showing made that the alleged “material fact” that was falsely stated was in fact a “material fact.” More plainly stated, even if the allegation as to his activities were correct and he had spent all day with a known

prostitute, that activity could easily be considered to be in the course of his employment as an undercover narcotics officer and thus not a ‘material misrepresentation.’

It takes almost no imagination or familiarity with law enforcement to know that an undercover narcotics officer is not going to be required to keep a timesheet. To think otherwise is laughable.

As a result of the fact the state cannot prove one of the essential elements of the offense charged, this Bill of Information must be quashed in accordance with Article 485 of the Louisiana Code of Criminal Procedure.

ASSIGNMENT OF ERROR NO.3
(Statutory Immunity under State and Federal Law)

The Defendant, **STACY L. BENDER**, is charged by Bill of Information with one (1) count of Malfeasance in Office (Docket No. 334,067), one (1) count of Abuse of Office (Docket No. 334,068), and one (1) count of Filing False Public Documents (Docket No. 334,069), in this Court.

Course of Employment

There is no real argument that the defendant was acting in the course and scope of his duties as a duly commissioned law enforcement officer in the narcotics investigation section of the Sheriff’s Office when he is alleged to have committed the acts for which he is now being prosecuted. In fact it is alleged in the Bill of Information charging Abuse of Office exactly that he was at the pertinent time – “a commissioned Deputy Sheriff with the Rapides Parish Sheriff’s Office.”

Further, there is no question that this defendant was in the course of working undercover as a narcotics officer at the time of these acts. The documents filed by the prosecution in this case in response to discovery requests reflect that his office was located at the RPSO narcotics office (see Affidavit of Lt. Ledet requesting search warrant).

As a duly authorized state law enforcement officer investigating narcotics traffic the defendant is entitled to the immunity granted to him under the law.

He is entitled to the protection of a number of statutes designed to protect law enforcement officers from prosecution in the course of their duties. These include:

- (a.) La. R.S. 14:18,
- (b.) La. R.S. 40:990 C. and
- (c.) 21 U.S.C. 885(d)

Justification

The defendant sought a determination from the trial court that his actions were justified by applicable law under the provisions of La. R.S. 14:18.

Section 18 of the Louisiana Criminal Code Provides as follows

“§18. Justification; general provisions

The fact that an offender's conduct is justifiable, although otherwise criminal, shall constitute a defense to prosecution for any crime based on that conduct. This defense of justification can be claimed under the following circumstances:

- (1) When the offender's conduct is an apparently authorized and reasonable fulfillment of any duties of public office; or
- (2) When the offender's conduct is a reasonable accomplishment of an arrest which is lawful under the Code of Criminal Procedure; or
- (3) When for any reason the offender's conduct is authorized by law; or
- (4) When the offender's conduct is reasonable discipline of minors by their parents, tutors or teachers; or
- (5) When the crime consists of a failure to perform an affirmative duty and the failure to perform is caused by physical impossibility; or
- (6) When any crime, except murder, is committed through the compulsion of threats by another of death or great bodily harm, and the offender reasonably believes the person making the threats is present and would immediately carry out the threats if the crime were not committed; or
- (7) When the offender's conduct is in defense of persons or of property under any of the circumstances described in Articles 19 through 22.”

If it were not for the provisions of this statute any police officer would be guilty of multiple crimes during the course of their workday, e.g. (a.) speeding any time they chased a speeder to issue them a citation or (b.) Possession of Stolen

Things when they recovered stolen property, or (c.) accessory after the fact when they encountered a ‘snitch’ who had information concerning a crime. The trial court erred in not finding that his actions were justified under the circumstances of this case.

Immunity

As a duly authorized state law enforcement officer investigating narcotics traffic the defendant is entitled to the immunity granted to him under the law.

State law is set forth in La. R.S. 40:990 which states as follows:

§990. Burden of proof; liabilities

A. It shall not be necessary for the state to negate any exemption or exception set forth in this Part in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this Part, and the burden of proof of any such exemption or exception shall be upon the person claiming its benefit.

B. In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this Part, he shall be presumed not to be the holder of such registration or form, and the burden of proof shall be upon him to rebut such presumption.

C. No liability shall be imposed by virtue of this Part upon any duly authorized law enforcement officer, the Louisiana Board of Pharmacy or its employees as provided in R.S. 40:984 engaged in the enforcement of any law, regulation, or municipal ordinance relating to controlled dangerous substances.

Added by Acts 1972, No. 634, §1; Acts 2006, No. 834, §1; Acts 2018, No. 206, §4.”

In particular, Subsection C contains the provision providing for state law immunity for Det. Bender. At all times he was a ‘duly authorized law enforcement officer . . . engaged in the enforcement of law(s) . . . relating to controlled dangerous substances.”

Federal law also contains a similar provision in 21 U.S.C. §885(d) which states as follows:

“(d) Immunity of Federal, State, local and other officials

Except as provided in sections 2234 and 2235 of title 18, no civil or criminal liability shall be imposed by virtue of this subchapter upon any duly

authorized Federal officer lawfully engaged in the enforcement of this subchapter, or upon any duly authorized officer of any State, territory, political subdivision thereof, the District of Columbia, or any possession of the United States, who shall be lawfully engaged in the enforcement of any law or municipal ordinance relating to controlled substances.”

The exceptions stated in 21 USC 885(d) are set forth as follows:

“§2234. Authority exceeded in executing warrant

Whoever, in executing a search warrant, willfully exceeds his authority or exercises it with unnecessary severity, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 803; Pub. L. 104–294, title VI, §601(a)(8), Oct. 11, 1996, 110 Stat. 3498; Pub. L. 107–273, div. B, title III, §3002(a)(3), Nov. 2, 2002, 116 Stat. 1805.)”

And

“Sec. 2235 Search warrant procured maliciously

Whoever maliciously and without probable cause procures a search warrant to be issued and executed, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 803; Pub. L. 104–294, title VI, §601(a)(8), Oct. 11, 1996, 110 Stat. 3498; Pub. L. 107–273, div. B, title III, §3002(a)(3), Nov. 2, 2002, 116 Stat. 1805.)”

Since neither of the exceptions apply, the defendant is clothed with the immunity granted him by federal law.

The rationale behind this grant of immunity by both the state and federal governments is obvious. If it were not for this grant of immunity, all law enforcement officer enforcing the narcotics laws could be prosecuted just as Detective Bender is being prosecuted. That is once he took possession of a controlled dangerous substance, he would be subject to prosecution for that act. Further, no law enforcement officer would be very effective in enforcement of these laws if he had to concern himself with criminal prosecution any time he made a decision in his attempt to pursue drug traffickers. This work is difficult and dangerous enough without having to worry that you could be prosecuted for doing your job, as is the

case here.

The defendant was acting in the course and scope of his duties as a duly commissioned law enforcement officer when he committed the acts for which he is now being prosecuted and this prosecution should be quashed in accordance with Article 532 of the Louisiana Code of Criminal Procedure.

ASSIGNMENT OF ERROR NO.4
(State's Other Crimes Motion)

The State filed a Notice of Introduce Other Crimes Evidence in each case with the stated intent to use evidence from one docket number or charge in the prosecution of the others. For example, the State desired to use evidence of Filing False Public Documents and Malfeasance in Office in the trial of the Abuse of Office charge. This request was granted by the trial court.

The State has announced it intends to proceed to trial first on the charge of Abuse of Office. It intends to use evidence of the other charges filed against the Defendant, **STACY L. BENDER**, at that trial. That is, it will use evidence of his supposed Malfeasance in Office as well as evidence of Filing False Public Documents at the trial on the offense of Abuse of Office.

The defendant has stated above that it believes the Filing False Public Documents and the Malfeasance in Office charge are wholly unsupported by the evidence. The Malfeasance in Office charge is for his supposed failure to report child abuse or neglect in another state to authorities in Louisiana. While the Filing False Public Documents charge is based upon the supposition of a job requirement that does not exist.

Detective Bender is aware that the jurisprudence under Article 404(b) of the Louisiana Code of Evidence is quite broad, but to allow evidence of acts that are not criminal extends the area too far.

ASSIGNMENT OF ERROR NO. 5
(Malfeasance in Office)

The Trial Court erred in denying **DETECTIVE BENDER**'s Motion TO Quash the bill of information charging Malfeasance in Office.

The written order denying this Motion was dated March 15, 2019. It states that no evidence was introduced at the hearing. This is not true. The defense offered the copy of the State's entire file which it filed in this proceeding in response to defense request for discovery. That evidence reflects that the charge of Malfeasance is based upon the alleged failure of Detective Bender to report possible child abuse or neglect which is alleged to have been present or occurred in the State of Mississippi.

The State's file reflects that there is no hint of any part of this alleged neglect or abuse which is supposed to have occurred anywhere in the State of Louisiana.

The Defendant believes the Indictment should be quashed as the same does not state an offense which is punishable under the statutes charged. This is provided in Louisiana Code of Criminal Procedure Article 532, which states:

“A motion to quash may be based on one or more of the following grounds:

- (1) The indictment fails to charge an offense which is punishable under a valid statute.
- (2) The indictment fails to conform to the requirements of Chapters 1 and 2 of Title XIII. In such case the court may permit the district attorney to amend the indictment to correct the defect.
- (3) The indictment is duplicitous or contains a misjoinder of defendants or offenses. In such case the court may permit the district attorney to sever the indictment into separate counts or separate indictments.
- (4) The district attorney failed to furnish a sufficient bill of particulars when ordered to do so by the court. In such case the court may overrule the motion if a sufficient bill of particulars is furnished within the delay fixed by the court.
- (5) A bill of particulars has shown a ground for quashing the indictment under Article 485.
- (6) Trial for the offense charged would constitute double jeopardy.
- (7) The time limitation for the institution of prosecution or for the commencement of trial has expired.
- (8) The court has no jurisdiction of the offense charged.

(9) The general venire or the petit jury venire was improperly drawn, selected, or constituted.”

The provisions of Louisiana Code of Criminal Procedure Article 523

A(1), (4), and (5) provide the basis for this Motion.

This Article must be interpreted along with other provisions of our law, specifically, Louisiana Code of Criminal Procedure Article 485, which states:

“If it appears from the bill of particulars furnished under Article 484, together with any particulars appearing in the indictment, that the offense charged in the indictment was not committed, or that the defendant did not commit it, or that there is a ground for quashing the indictment, the court may on its own motion, and on motion of the defendant shall, order that the indictment be quashed unless the defect is cured. The defect will be cured if the district attorney furnishes, within a period fixed by the court and not to exceed three days from the order, another bill of particulars which either by itself or together with any particulars appearing in the indictment so states the particulars as to make it appear that the offense charged was committed by the defendant, or that there is no ground for quashing the indictment, as the case may be.”

In *State v. Mulvihill*, 03-691, p. 3 (La.App. 5 Cir. 10/28/03), 860 So.2d

266, 267- 68, an appeal by the state from the granting of a motion to quash,

the court explained the use of the motion to quash:

“In *State v. Perez*, 464 So.2d 737 (La.1985), the Louisiana Supreme Court discussed the nature of a motion to quash and stated:

The motion to quash is essentially a mechanism by which to raise pre-trial pleas of defense, i.e., those matters which do not go to the merits of the charge. La.C.Cr.P. art. 531-534.[I]t is treated much like an exception of no cause of action in a civil suit. *State v. Gerstenberger*, 260 La. 145, 255 So.2d 720 (1971).”

The trial court could and did consider the evidence which came before it in the trial of the other party charged in this tragic case.

As was stated in *State v. Turnbo*, 2007-270 (La. App. 3 Cir. 10/3/2007) 966 So. 2d 1220 –

“In considering a motion to quash, a court must accept as true the facts contained in the bill of information and in the bills of particulars, and determine as a matter of law and from the face of the pleadings, whether a crime has been charged. While evidence may be adduced, such may not include a defense on the merits. *State v. Gerstenberger*, 260 La. 145, 150, 255 So.2d 720 (1971); *State v. Ponthieux*, 254 La. 482, 224 So.2d 462 (1969).”

This principal of our law was discussed in *State v. Nguyen*, 14-639 (La. App. 3 Cir. 11/5/2014), 150 So. 3d 562, where this Court quoted the above and further stated -

“In *State v. Advanced Recycling, Inc.*, 02-1889, pp. 9-10 (La.4/14/04), 870 So.2d 984, 989, the supreme court found:

An exception exists for cases in which the state cannot establish an essential element of the offense under any set of facts conceivably provable at trial. *See State v. Legendre*, 362 So.2d 570, 571 (La.1978—quashing of bill of information for aggravated battery proper when state alleged that the dangerous weapon used was a concrete parking lot).”

PRAYER FOR RELIEF

This defendant should not be subjected to trial on the current charges when the law provides immunity to him as the result of his employment. Further, when the State has no evidence of essential elements of these crimes, he should not be subjected to the possibility of arbitrary factors infecting the verdict of the jury. The possibility of a jury finding a law enforcement officer guilty in our current society will not require proof beyond a reasonable doubt.

Detective Bender is entitled to the protection of the law just as much as those criminals and drug dealers he has arrested over the course many years as a commissioned deputy in Rapides Parish.

FOR THE ABOVE AND FOREGOING reasons it is respectfully submitted that this Writ of Certiorari should be granted.

**RESPECTFULLY SUBMITTED,
HIGGINS LAW OFFICE**

BY: _____
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ATTORNEY FOR DEFENDANT STACY L. BENDER

AFFIDAVIT/CERTIFICATE OF SERVICE

BEFORE ME, the undersigned authority, personally came and appeared George L. Higgins, III, after being duly sworn, deposed, and said that they are the attorney for the applicant; that all of the allegations in the application are true and correct; that copies of this application have been served upon all parties by means equal to the means used to effect filing with the Appellant Court; and that the Trial Court and all counsel have been notified that said Writ Application is about to be filed.

**Honorable Mary L. Doggett
Rapides Parish District Judge
P.O. Drawer 7357
Alexandria, LA 71306**

**Mr. Hugo A. Holland, Jr.
Assistant District Attorney
P.O. Box 5974
Shreveport, LA. 71135**

by United States Mail on this ____ day of April, 2019.

GEORGE L. HIGGINS, III

SWORN TO AND SUBSCRIBED before me, this _____ day of April, 2019.

Notary Public

COURT OF APPEAL

THIRD CIRCUIT

STATE OF LOUISIANA

DOCKET NUMBER: _____

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***REQUEST FOR EXPEDITED CONSIDERATION
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CERTIORARI AND REVIEW AND REQUEST FOR STAY ORDER***

REQUEST FOR STAY ORDER

PREMISES CONSIDERED, it is

ORDERED that this Honorable Court issue a Stay Order for any and all
proceedings in this matter.

The request for Stay Order is hereby:

_____ GRANTED

_____ DENIED

JUDGE - THIRD CIRCUIT COURT OF APPEAL