

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

No. 2021-OK-01362

VS.

VINCENT SIMMONS

IN RE: State of Louisiana - Applicant Plaintiff; Applying For Supervisory Writ,
Parish of Avoyelles, 12th Judicial District Court Number(s) 1977-CR-037596, Court
of Appeal, Third Circuit, Number(s) 21-562;

December 21, 2021

Writ application granted. See per curiam.

JLW

JDH

SJC

JTG

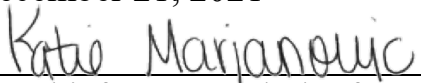
WJC

JBM

Griffin, J., would deny.

Supreme Court of Louisiana

December 21, 2021



Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 2021-OK-01362

STATE OF LOUISIANA

VS.

VINCENT SIMMONS

On Supervisory Writ to the 12th Judicial District Court, Parish of Avoyelles

PER CURIAM

The Louisiana Constitution gives the District Attorney “charge of every criminal prosecution by the state in his district,” La. Const. Art. 5, § 26. Code of Criminal Procedure art. 680 provides mandatory grounds for recusal of the District Attorney.¹¹ The trial court found that the first ground provided in Article 680 is implicated because the District Attorney indicated that he intends to assert procedural objections rather than waive them and agree to set the application for post-conviction relief for an evidentiary hearing, which exercise of prosecutorial discretion the trial court found to reveal a personal interest in the cause. The trial court erred.

Prosecutors “need not be entirely neutral and detached.” *State v. Ortiz*, 2011–2799, p. 6 (La.1/29/13), 110 So.3d 1029, 1033 (quoting *Marshall v. Jerico, Inc.*, 446 U.S. 238, 248–49, 100 S.Ct. 1610, 64 L.Ed.2d 182 (1980)). Rather, they are “necessarily permitted to be zealous in their enforcement of the law.” *Id.* Of course, this zealousness is not without limits, because prosecutors are public officials who must “serve the public interest.” *Id.* With respect to the prosecutor’s public duty, this court previously explained that a prosecutor “represents the State, and the State demands no victims. It seeks justice only, equal and impartial justice, and it is as much the duty of the district attorney to see that no innocent man

suffers as it is to see that no guilty man escapes.” *State v. Tate*, 185 La. 1006, 1020, 171 So. 108, 112 (1936).

We note that any consideration of the merits of the underlying claims for post-conviction relief would be premature at this stage and those claims are not before the court. The circumstances presented here do not suggest that the district attorney has any personal interest in the cause that would impair his ability to act fairly and impartially. *See generally State v. Edwards*, 420 So.2d 663, 673 (La. 1982). Instead, the circumstances reflect only zealous enforcement of the law in pursuit of justice. Furthermore, it is not clear at this time that the District Attorney will be called to testify as a witness in these post-conviction proceedings. The constitutional violations alleged preceded the District Attorney’s election, and no evidence presented at the hearing on the motion to recuse suggests that the District Attorney has any direct or independent knowledge pertinent to the claims for post-conviction relief other than as the custodian of the file. *See generally State v. Tunesno*, 408 So.2d 1269, 1272–73 (La. 1982) (collecting annotations).

Accordingly, we grant the State’s application. We vacate the district court’s ruling, which recused the District Attorney and his entire office and appointed the Attorney General to represent the State in this matter. We remand for further proceedings consistent with the views expressed here.

REVERSED AND REMANDED