

STATE OF LOUISIANA

versus

C. HUNTER KING

No. 05-KK-1054

ON WRIT OF REVIEW TO THE FOURTH CIRCUIT COURT OF APPEAL,
PARISH OF ORLEANS

JOHNSON, J, would grant the writ application for the following reasons:

In *Garrity v. State of New Jersey*, several police officers were purportedly involved in a ticket fixing scheme. *Garrity v. State of New Jersey*, 385 U.S. 493 (1967). During the course of the Attorney General’s investigation, each officer was questioned and warned

(1) that anything he said might be used against him in any state criminal proceeding; (2) that he had the privilege to refuse to answer if the disclosure would tend to incriminate him; but (3) that if he refused to answer he would be subject to removal from office.

Garrity, 385 U.S. 493, 494.

The officers cooperated with the investigation, and thereafter, some of the answers given were used in the subsequent conspiracy prosecutions. *Id.* at 495. The U.S. Supreme Court found that the threat of job forfeiture, a “subtle pressure,” amounted to coercion which vitiated the voluntariness of the confession. *Id.* at 496. The State argued that the defendants’ actions, in choosing to cooperate and not forfeit their positions, amounted to a waiver. *Id.* at 498. The Court found that,

where the choice is ‘between the rock and the whirlpool,’ duress is inherent in deciding to ‘waive’ one or the other. ‘It is always for the interest of a party under duress to choose the lesser of two evils. But the fact that a choice was made according to interest does not exclude duress.’

Thus, since the officers succumbed to compulsion, their statements were not voluntary and could not be used against them in subsequent criminal proceedings. *Id.* at. 500.

Here, defendant C. Hunter King entered into a “Statement of Stipulated Uncontested Material Facts and Stipulated Conclusions of Law” with the Judiciary Commission on December 16, 2002. The document consists of excerpts of King’s denials, by letter dated November 20, 2001 and sworn statement taken on April 2, 2002, contrasted with statements attributed to him in audio tapes recorded by Barbara Wallace. King submits that the Stipulation is a confession; and that the document must be suppressed because it was not voluntarily made. The most incriminating of the stipulations provides:

D. MATERIAL FACTS RELATIVE TO CHARGE 0189

24. Judge King authorized statements in the letter of response to the Commission dated November 20, 2001, and **made statements during his sworn statement of April 2, 2002, which he knew or should have known were false or misleading** and which were pertinent and material to the issues under investigation in File No. 01-2672 then pending before the commission.

Even though Petitioner did not explicitly state “I committed perjury and public salary extortion,” this document, in my mind, is a confession. King admitted to making sworn statements which he knew or should have known were false. Thus, the trial court erred in holding that the statements were merely an acknowledgment of facts tending to establish guilt. Since the Stipulation contained a confession regarding his making false statements under oath, the trial court had a duty to conduct an evidentiary hearing to determine whether the confession was voluntarily made without the influence of fear, duress, intimidation, menaces, threats, inducements or promises.

Petitioner asserts that the voluntariness of the Stipulation was vitiated by the

threat inherent in Rule VII(D) of the Rules of the Louisiana Judiciary Commission, which provides:

Rule VII. SUBPOENAS, PRODUCTION OF EVIDENCE; OATHS, FILINGS MADE WITH THE COMMISSION; BENCHBOOKS AND PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW; AND A JUDGE'S DUTY TO COOPERATE

D. The failure or refusal of a judge to cooperate in an investigation, or the use of dilatory practices, frivolous or unfounded responses or arguments, or other uncooperative behavior may be considered by the Commission in determining whether or not to recommend a sanction to the Louisiana Supreme Court and may bear on the severity of the sanction actually recommended.

King argues that the Office of Special Counsel and the Commission made clear to him that if he did not sign the Stipulation, the Commission would charge him with a violation of Rule VII(D) (failure to cooperate) and that he would be subject to additional penalties. The threat of additional sanctions or increased penalties, in my view, is duress contemplated by the *Garrity* decision.

For these reasons, I believe that an evidentiary hearing regarding Petitioner's motion to suppress is appropriate to ascertain the facts and circumstances surrounding the Stipulation, and whether the document should be suppressed.