

06/07/2019 "See News Release 026 for any Concurrences and/or Dissents."

SUPREME COURT OF LOUISIANA

No. 2019-KD-0838

STATE OF LOUISIANA

VERSUS

GROVER CANNON

*ON SUPERVISORY WRITS TO
THE FIRST JUDICIAL DISTRICT COURT, PARISH OF CADDO*

PER CURIAM

Writ granted.

The defendant was indicted for the capital murder of a police officer in Caddo Parish. Pursuant to La. C.Cr.P. arts. 621, 622, and 623.1, the trial court transferred venue to East Baton Rouge for a jury to be selected. As further provided by La. C.Cr.P. art. 623.1, the venue order from the Caddo Parish district court provided that, after a jury had been selected by the East Baton Rouge Parish district court, the jurors would travel to Caddo Parish for the trial.

This court quashed a jury venire in East Baton Rouge Parish after it had been discovered that “persons born after June 2, 1993, otherwise qualified to serve on the jury, were never given an opportunity to serve because their names were excluded from the general venire as a result of a significant error in the process by which the general venire was composed.” **State v. Cannon**, 2019-0590, p. 1 (La. 4/18/19), 267 So.3d 585. We remanded the case with instructions “that a petit jury ... be chosen from a general venire that is selected according to law.” *Id.*

Six days after the remand instruction from this court, the state asked the Caddo Parish court to rescind its decision to transfer jury selection venue to the East

Baton Rouge court. In support of its request for a “reconsideration” of venue, the state explained that “publicity was attenuated by the passage of time as it has been approximately three years and nine months” since the alleged murder at issue. The state also urged that “the passage of time has attenuated any effect” caused by publicity about the subsequent homicide of another police officer in Caddo Parish. The Caddo Parish court granted the state’s request and ordered that venue for jury selection be transferred from East Baton Rouge Parish back to Caddo Parish.

We find the state failed to justify a transfer of jury selection venue from East Baton Rouge Parish back to Caddo Parish. The legislature intended a venue change to be difficult to obtain in the first instance: “Although all American jurisdictions contain change of venue statutes, the tests provided are in most cases not as strongly worded as in this article” Cmt (a) to La. C.Cr.P. art. 622. Logically, it follows that once a case has met a difficult standard to transfer venue, returning to an earlier venue should be at least as difficult to obtain and not something susceptible to a mere “reconsideration” of earlier facts. See State v. Mejia, 197 So.2d 73, 76 (La. 1967) (finding that captioning a pleading as a “Motion for Rehearing” of a venue transfer “did not alter its real character, which was a motion for a second change of venue.”).

Indeed, the legislature long ago removed a statutory restriction against a second transfer of venue. See La. Acts 1966 No. 310, Title XX, cmt. (c) to La. C.Cr.P. art. 623 (*inter alia* repealing former La. C.Cr.P. art. 294 of 1928).¹ The required procedure, therefore, for obtaining another transfer of venue is the same as the first transfer, *i.e.*, filing a motion pursuant to La. C.Cr.P. art. 621 (“A motion for a change of venue may be filed by either the state or the defendant.”) and proving the grounds for transfer described in La. C.Cr.P. art. 622 (“A change of venue shall be granted when ... a fair and impartial trial cannot be obtained in the parish”).

¹ In pertinent part, the later-rescinded Article 294 from the Code of 1928 provided: “After a cause shall have been removed as above provided for, it shall not be a second time removed under any pretense whatsoever.”

Consistent with the legislative changes just described, in **State v. Carlock**, 345 So.2d 892, 895 (La.1977), we noted a second motion for change of venue or appellate review of the ruling transferring the case from the original venue are the only procedures available when the state desires a transfer to an original venue. The defendant had been indicted in Calcasieu Parish, and the trial court there granted the defendant's motion for a change of venue and ordered the case transferred to Jefferson Parish. *Id.* at 893. Thereafter, the state *nolle prossed* (*i.e.*, dismissed) the indictments, but filed charges for the same alleged criminal incident again in Calcasieu Parish. *Id.* When the defendant moved for speedy trial in Jefferson Parish, the court there opined it could not try the matter because it had been divested of jurisdiction with the dismissal of the indictments. *Id.* Citing the constitutional guarantee of an impartial jury and finding the state had neither sought supervisory review nor filed a motion for transfer of venue from Jefferson Parish to Calcasieu Parish, this court nullified the state's *nolle prosequi* of the indictments and remanded the case to the Jefferson Parish court for further proceedings. *Id.* at 895-96.

Here, the Caddo Parish trial court ordered another transfer of jury selection venue without adhering to the filing and proof requirements of La. C.Cr.P. arts. 621 and 622. A review of the state's motion for reconsideration and the transcript of the trial court's hearing revealed that the state relied entirely on urging that Caddo Parish had become an acceptable venue. What was instead required, but was absent here, was proving that East Baton Rouge Parish was an unacceptable venue. Moreover, the state's present position contradicts its position just weeks earlier, in which the state vigorously urged this court that the jury must be drawn from East Baton Rouge Parish where, according to the state, "there was absolutely no evidence that Defendant/Applicant would be deprived of an impartial jury. There is no basis for quashing the petit jury venire [in East Baton Rouge Parish] and abandoning the jury-selection process in Defendant/Applicant's trial."

This matter is remanded for further proceedings consistent with this opinion.