

SUPREME COURT OF LOUISIANA

No. 96-KA-2302

**STATE OF LOUISIANA
VERSUS
TIMOTHY G. BYRD, SR., ET AL.**

**ON APPEAL
FROM THE FIFTEENTH JUDICIAL DISTRICT,
FOR THE PARISH OF ACADIA
DON AARON, JR., JUDGE**

KNOLL, J., dissenting.

I find the trial court correctly found the statute unconstitutionally vague.

In the present case, the indictment charged that the defendants violated La.R.S. 30:2183(G)(1) by knowingly *storing* hazardous waste at their Acadia Parish facility without a permit or interim status for such storage. After the defendants were indicted, they filed a motion for a bill of particulars which requested as follows:

Upon what particular statute or statutes, is it that this prosecution is based, and more particularly, what section and/or subsections of said Statute is it contended that the defendant[s] violated?

In response to this query, the State responded, “See Indictment.” No other statute was cited nor was any regulation referenced.

La.R.S. 30:2183(G)(1), the statute at issue, provides:

Any person who willfully or knowingly *discharges, emits, or disposes* of any substance in contravention of any provision of this Chapter or any regulations or of any permit or license terms and conditions adopted in pursuance thereof, or any person who otherwise knowingly violates any provision of this Chapter, shall upon conviction be subject to a fine of not more than one hundred thousand dollars per day of violation and costs of prosecution, or imprisonment at hard labor for not more than ten years, or both.

(Emphasis added).

An indictment is a written accusation of a crime. La.Code Crim.P. art. 383. The indictment shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged. La.Code Crim.P. art. 464.

On its face La.R.S. 30:2183(G)(1) shows that the defendants were indicted on the charge of *storing* hazardous waste, a crime not prohibited in the statute charged. Notwithstanding, the majority finds that the defendants were charged with a constitutionally sanctioned crime because they were in violation of the catch-all section of La.R.S. 30:2803(G)(1) as persons who “knowingly violate[d] any provision of this Chapter” With this as a starting point, the majority makes a quantum leap and finds that under La.R.S. 30:2180, et seq., the Louisiana Department of Environmental Quality is authorized to promulgate rules and regulations for the management of hazardous wastes. Then, taking it a step further, finds that under 33:V.305 permits are required for the treatment, storage, and disposal of hazardous waste and that storage of hazardous waste without a permit is proscribed criminal conduct.

It is hornbook law that penal statutes “must be strictly construed and cannot be extended to cases not included within the clear import of their language, and that nothing is a crime which is not clearly and unmistakably made a crime.” La.R.S. 14:3; La.R.S. 14:7; *State v. Union Tank Car*, 439 So.2d 377, 385 (La. 1983). Likewise, a penal statute is unconstitutionally vague if it fails to notify persons of reasonable intelligence that certain, particular conduct is proscribed and legally punishable, or if it fails to provide measurable standards for persons to determine guilt or innocence. *State v. Davis*, 448 So.2d 645 (La. 1984); *State v. Dousay*, 378 So.2d 414 (La. 1979).

Applying this well established jurisprudence to the present case, I find that the trial court was eminently correct in finding La.R.S. 30:2183(G)(1) unconstitutionally vague. As pointed out herein, La.R.S. 30:2183(G)(1) does not proscribe the *storage*

of hazardous waste.¹ By utilizing an attenuated reference to a myriad of regulations to prop up the statute in question, the majority has expanded La.R.S. 30:2183(G)(1) beyond the provisions of the legislative enactment and has created a crime which does not exist. For these reasons, I respectfully dissent and would affirm the trial court's determination that La.R.S. 30:2183(G)(1) is unconstitutionally vague.

¹ Compare La.R.S. 30:1137(G)(2) which provides criminal sanctions where a “person who knowingly transports, treats, *stores*, disposes of or exports any substance . . .” when there is a threat of bodily harm. In the present case, there has been no charge of bodily harm.