Louisiana Law Review

Volume 20 | Number 4
June 1960

Criminal Procedure - Venue Requirements for the Prosecuting Parish

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robber could be guilty of murder when his partner in the crime was killed by their victim, shows what hard results a court thinking in terms of "proximate cause" may reach. In the writer's opinion the "act or constructive act" rule furnishes adequate protection to the public and is the wiser rule for a case that does not fall into the "shield" category.

Now that the instant case has been added to Louisiana jurisprudence, the result reached in subsequent cases in Louisiana should be the same as that reached by a common law court following the "act or constructive act" rule.[15] The case does not, however, make clear what result would be reached in a "shield" situation. It might be logically held that a felon who intentionally forced an innocent person into a position where there was a high danger of his death at the hand of one resisting the felony was as much an "actual killer" as was the person who inflicted the lethal injury. Considerations of social policy would seem to dictate such a conclusion.

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CRIMINAL PROCEDURE — VENUE REQUIREMENTS FOR THE PROSECUTING PARISH

Defendant, a member of the Board of Commissioners of the Pontchartrain Levee District, which is domiciled in St. James Parish, was indicted for public bribery[1] in that parish. Upon a stipulation of facts by the district attorney admitting that no offer, acceptance, receipt, or deposit of anything of value was made in the parish, the defense moved to quash the information because of improper venue. It was argued that the offense was not committed in St. James Parish and, moreover, that the pro-

ground that the killing of an escaping robber by his victim or a police officer was "justifiable," while the accidental killing of one policeman by another engaged in a gun battle with robbers was "excusable." This seems a poor basis for distinction. The court might have done better to hold the felony murder rule not applicable to a case where the deceased was a felon, justifying this conclusion on the ground that the doctrine developed as a means of protecting the innocent public.

15. If the defendant inflicts the fatal injury himself, he is covered by the phrase "actual killer." If his accomplice does the killing, he can still be held for the homicide under LA. R.S. 14:24 (1950). It should be noted that the phrase "when the offender is engaged in the perpetration or attempted perpetration" appears in both the murder and manslaughter articles, so the result reached in the instant case should also be reached in a murder case.

1. LA. R.S. 14:118 (1950) provides that the "acceptance of, or the offer to accept, directly or indirectly, anything of apparent present or prospective value [from named persons with the intent to influence the person's conduct in relation

vision of R.S. 15:13[2] establishing venue in any one of the various parishes where a "substantial element" of the crime was committed was not satisfied. The state argued that the defendant's conduct in relation to his official position held in the prosecuting parish made the offense complete in that parish. However, the district court held that it was without venue over the crime. On appeal to the Louisiana Supreme Court, *held,* affirmed. The offense of public bribery is complete upon the giving or acceptance of a thing of value, or an offer thereof, when accompanied with the requisite intent. Since none of these elements occurred in St. James Parish, the district court did not have venue over the crime. *State v. Bloomenstiel,* 235 La. 860, 106 So.2d 288 (1958).

In accordance with the requirement of Article I, Section 9, of the Louisiana Constitution of 1921,[3] R.S. 15:13 provides that a trial shall be held in the parish where the offense was committed, unless the venue be changed. The statute was amended in 1942[4] to provide, in addition, that where several acts constituting a crime have been committed in more than one parish, the offender may be tried in any parish where a *substantial element* of the crime was committed. Prior to the amending of the present venue article, there was no provision for multi-element crimes which spread over several parishes.[5] Offenses against the person and those composed of a single criminal ele-

to his position, employment, or duty] shall also constitute public bribery." LA. CONST. art. XIX, § 12, further defines bribery and provides for disqualification from public office upon conviction. Section 13 provides that any person may be compelled to testify in such proceedings and the privilege against self-incrimination will not apply. However, such testimony shall only be used against the witness in perjury proceedings. For history of prior statutes, see Bennett, *The Louisiana Criminal Code,* 5 LOUISIANA LAW REVIEW 6, 45 (1942).

2. Formerly La. Acts 1928, No. 2, as amended, La. Acts 1942, No. 147.

3. Wherein it is stated that "all trials shall take place in the parish in which the offense was committed, unless the venue be changed."

4. This amended article was preceded by La. Acts 1855, No. 121, later incorporated into LA. R.S. § 988 (1870), which provided for prosecution in either parish when the offense was begun in one parish and ended in another. However, in State v. Montgomery, 115 La. 155, 38 So. 949 (1905), a section of the act relating to crimes committed within 100 yards of the parish line was held unconstitutional under the 1864 provision that trials shall be held in the parish where the offense was committed. See La. Const. art. 105 (1864); La. Const. art. 6 (1868); La. Const. art. 7 (1879); La. Const. art. 9 (1898); La. Const. art. 9 (1913); LA. CONST. art. 1, § 9 (1921). The provision relating to crimes beginning and ending in different parishes was held objectionable in State v. Moore, 140 La. 281, 72 So. 965 (1916). This decision was questioned, however, in State v. Hart, 195 La. 184, 196 So. 62 (1940), with the resulting enactment of La. Acts 1942, No. 147.

5. An exception was made in LA. CONST. art. I, § 9, to allow the legislature to provide for the prosecution and venue of offenses committed within one hundred feet of the boundary line of a parish.

ment are often completed in one parish and the venue rules are easily satisfied. Offenses involving fraudulent schemes and the use of modern communication and transportation devices are often spread over several parishes and states. This gives rise to the problem of pointing to the exact situs of the crime and thus determining the district court of proper venue. Numerous cases reached the Louisiana Supreme Court in 1940 involving crimes of a political nature and this tribunal, faced with the constitutional directive, was hard put to find the parish where the "gist" of the offense was committed. In a prosecution for violation of the "dead-head" statute, the defendant could only be tried in the parish where he received and cashed his check from the public treasury.[6] Where a state senator accepted a second public office and continued receiving payment for the first office, East Baton Rouge Parish (where it was held that the duties of state senator were performed and the emoluments therefor received) was vested with venue over the crime to the exclusion of the parish where the defendant was domiciled and cashed the check representing payment for the first office.[7] Operation of a confidence game to receive money or property was found analogous to obtaining a gain through false pretenses and the parish where the money or property was received was the parish in which the defendant could be correctly prosecuted for the offense, although the fraudulent scheme was devised and overt acts in its commission were accomplished elsewhere.[8] Thus, it is readily perceived that in attempting to determine where the "gist" of the crime was committed, the courts were confronted with uncertain criteria and as the number of elements going to make up the completed crime increased, the determination became frustrating.

The Louisiana Supreme Court has construed the liberal venue provision of 1942 in several cases, each involving the question of whether a "substantial element" of the offense was committed in the parish initiating the action and thus, whether the constitutional mandate has been satisfied. In *State v. Pollard*,[9] the defendant was alleged to have perpetrated a theft of public highway funds which were allocated for road construction in Caldwell Parish. The state, urging venue in that parish, asserted that the road was wholly within the parish; that the materials

6. State v. Matheny, 194 La. 198, 193 So. 587 (1940).
7. State v. Terzia, 194 La. 583, 194 So. 27 (1940).
8. State v. Hart, 195 La. 184, 196 So. 62 (1940).
9. 215 La. 655, 41 So.2d 465 (1949).

were omitted and the shortage resulted therein; that the project engineer's records, alleged to be falsified, were kept there; and that the partial estimate, under which the alleged fraud was perpetrated, was made in and sent from that parish. In denying venue for the prosecuting parish, the Louisiana Supreme Court stressed the fact that the Department of Public Highways' offices were located in Baton Rouge and thus the false estimates were received, and the check was issued on and drawn from accounts in East Baton Rouge Parish. It was stated that the offense was consummated in Baton Rouge and that the facts relied upon by the state were "merely the preparation of a fraudulent scheme"[10] which did not meet the requirements of R.S. 15:13, as amended. This venue rule was not satisfied even with evidence of acts committed in Caldwell Parish which were indispensable to the completion of the alleged offense. Thus, no substantial element of the crime was found to have existed in the parish most concerned with correcting the mis-appropriation. In *State v. Ellerbe*,[11] the problem was whether a prosecution for receiving stolen things could be effected in the parish into which the goods were taken after having been received elsewhere. In sustaining a motion by the defense, the court pointed out that in the absence of a showing that there was concealment and possession in the second parish, it would not be vested with venue over the crime.[12] The operation of a motor vehicle by an individual while under the influence of an intoxicant was held to be a continuing offense when the uninterrupted journey was commenced in one parish and ended in another.[13] A substantial element of the offense was supplied in each parish, thus vesting both with venue. It should be noted that under these circumstances, the "substantial element" test was unnecessary because the continuing offense of drunken driving was complete in both of the parishes. R.S. 15:13, as amended, was also found useful in determining the parish of proper venue in another case where the defendant, under prosecution for criminal neglect of family, resided elsewhere and his children were domiciled in the prosecuting parish under the care of their maternal grandmother.[14]

10. 215 La. 655, 665, 41 So.2d 465, 468 (1949).
11. 217 La. 639, 47 So.2d 30 (1950).
12. The court refused to apply the legal concept of a continuing crime which has enjoyed varied application in theft cases. Originating in England, this fiction has been accepted by a majority of American courts. In State v. McCoy, 42 La. Ann. 228, 7 So. 330 (1890), the court said: "When the larceny has been committed in one county (animo furandi) the offender is, in the eye of the law, guilty of larceny in every county into which the goods may have been carried."
13. State v. Sawyer, 220 La. 932, 57 So.2d 899 (1952).
14. State v. Maxie, 221 La. 518, 59 So.2d 706 (1952).

Although the decision turned largely upon the application of a special venue provision,[15] the court mentioned the general venue article in support of its holding and found a substantial element of the offense to have been committed in the parish asserting venue.

In the instant case no "substantial element" of the charged offense was committed in the prosecuting parish. The state's argument that the official position held by the defendant in St. James Parish gave rise to an element of the crime in that parish was termed "nebulous" by the court. This was merely a relationship existing in the parish and could not be considered an act or element going to make up the completed crime. The court stated that corruption of the mind resulting from the offer might, and most likely would, lead to official misconduct in the future, and hence the first step is made criminal, without waiting for the results.

It is submitted that no other disposition of the case was possible even under a most liberal application of the statute. Future cases will doubtless further clarify the substantial element requirement and define the distinction between substantial elements on the one hand, and incidental or collateral elements on the other. This will necessarily depend upon the complexity of the elements going to make up the completed offense. A preliminary draft of the Louisiana State Law Institute's Revised Code of Criminal Procedure eliminates the term "substantial" from the article, and makes "any act or element" of the crime sufficient to vest the parish where it was committed with venue.[16] Nevertheless, it is submitted that the holding in the instant case would be sustained even under a rule requiring "any act or element" of the crime in the prosecuting parish. The offense of public bribery was complete upon the offer being made, when coupled with the required intent.

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15. LA. R.S. 15:16.1 (1950) provides for prosecution "(1) in the parish where the person owing the duty of support resides or is found, or (2) in the parish where the last matrimonial domicile was established, or (3) in the parish where the person (or persons) to whom the duty of support is owed establishes a bona fide residence, provided that this provision shall be effective only if the person to whom the duty of support was owed was justified in establishing a separate residence."

16. Title XIX, Art. 1 (October 1959 draft). A constitutional amendment may also be necessary in order that the proposed change will not conflict with LA. CONST. art. I, § 9.