

SUPREME COURT OF LOUISIANA

State v. Thomas

891 So. 2d 1233 (La. 2005) · No. 2004-KA-0559 · Decided January 19, 2005

SUMMARY

The Supreme Court of Louisiana held that *Lawrence v. Texas* did not render Louisiana Revised Statutes § 14:89(A)(2) unconstitutional as applied to solicitation of unnatural carnal copulation for compensation. The court concluded that the statute addresses prostitution-related conduct, that its solicitation provision is severable from § 14:89(A)(1), and that the defendant lacked standing to challenge the latter provision. The court reversed the trial court's grant of the motion to quash and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Louisiana
JURISDICTION	Louisiana
DECIDED	January 19, 2005
DOCKET	2004-KA-0559
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State appealed directly to the Louisiana Supreme Court after the trial court granted the defendant's motion to quash on the ground that Louisiana Revised Statutes § 14:89(A)(2) was unconstitutional as applied.
STANDARD OF REVIEW	De novo review of the constitutional challenge and motion to quash; statutes are presumed constitutional, and the challenger bears the burden of proving unconstitutionality.
PRECEDENTIAL VALUE	Published Louisiana Supreme Court opinion; binding precedent in Louisiana.
PARTIES	State of Louisiana v. Tina Thomas

TOPICS

criminal procedure

substantive due process

equal protection

statutory interpretation

appellate jurisdiction

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether *Lawrence v. Texas* rendered La. Rev. Stat. § 14:89(A)(2) unconstitutional as applied to a person charged with soliciting unnatural carnal copulation for compensation.
2. Whether the separate prohibitions in La. Rev. Stat. § 14:89(A)(1) and (A)(2) are severable, such that a defendant charged under subsection (A)(2) lacks standing to challenge subsection (A)(1).
3. Whether imposing a felony penalty for soliciting unnatural carnal copulation for compensation, when solicitation of vaginal intercourse for compensation would constitute misdemeanor prostitution, violates equal protection or due process.

HOLDINGS

1. *Lawrence v. Texas* does not render La. Rev. Stat. § 14:89(A)(2) unconstitutional as applied to solicitation of unnatural carnal copulation for compensation because *Lawrence* expressly excluded public conduct and prostitution from its holding.
2. La. Rev. Stat. § 14:89(A)(1) and (A)(2) proscribe separate, severable offenses, and a defendant charged only under subsection (A)(2) lacks standing to challenge the constitutionality of subsection (A)(1).
3. The fact that solicitation of unnatural carnal copulation for compensation carries a more severe penalty than solicitation of vaginal intercourse for compensation does not, by itself, establish an equal protection or due process violation.

KEY QUOTATIONS

“Finding that nothing in Lawrence, the United States Constitution, the Louisiana Constitution, or this state’s jurisprudence supports the trial court’s grant of a motion to quash on the ground that LSA-R.S. 14:89(A)(2) is unconstitutional as applied to this particular charge against this particular defendant, we reverse and remand.” (1233)

“The present case does not involve minors. It does not involve persons who might be injured or coerced or who are situated in relationships where consent might not easily be refused. It does not involve public conduct or prostitution.” (1236)

“Although the parameters of the state constitutional right to privacy in the sexual area have not been determined, ... there is no protected privacy interest in public, commercial sexual conduct. The legislature has the authority to prohibit such activity.” (1237)

FACTUAL BACKGROUND

The State alleged that Tina Thomas solicited an undercover police officer on April 10, 1995, to engage in unnatural oral copulation for compensation. The charge was brought under La. Rev. Stat. § 14:89(A)(2), which criminalizes solicitation to engage in unnatural carnal copulation for compensation. Thomas argued that *Lawrence v. Texas* invalidated the statute and that the distinction between prostitution and crime against nature violated constitutional protections.

PROCEDURAL HISTORY

The State charged Tina Thomas by bill of information with soliciting an undercover officer to engage in unnatural oral copulation for compensation, in violation of La. Rev. Stat. § 14:89. After Thomas pleaded not guilty, she moved to quash, asserting privacy, due process, vagueness, and constitutional arguments based on *Lawrence v. Texas*. The trial court granted the motion to quash, and the State took an appeal authorized by the Louisiana Constitution because a law had been declared unconstitutional. The Supreme Court of Louisiana reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The matter was remanded to the trial court for further proceedings after reversal of the order granting the motion to quash.

CASES CITED

- *Lawrence v. Texas*, 539 U.S. 558, 123 S. Ct. 2472, 156 L. Ed. 2d 508 (2003)
- *State v. Griffin*, 495 So. 2d 1306 (La. 1986)
- *State v. Brennan*, 99-2291 (La. 5/16/00), 772 So. 2d 64
- *State v. Baxley*, 93-2159 (La. 2/28/94), 633 So. 2d 142
- *State v. Smith*, 99-0606 (La. 7/6/00), 766 So. 2d 501
- *State v. Baxley*, 94-2982 (La. 5/22/95), 656 So. 2d 973
- *State v. Neal*, 500 So. 2d 374 (La. 1987)
- *Bowers v. Hardwick*, 478 U.S. 186, 106 S. Ct. 2841, 92 L. Ed. 2d 140 (1986)