

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Lefebure v. D'Aquila

No. No. 19-30702 c/w No. 19-30989, United States Court of Appeals for the Fifth Circuit (October 5, 2021)

SUMMARY

The Fifth Circuit held that a crime victim lacks Article III standing to sue a prosecutor for failing to investigate or prosecute her assailant, because the causal connection between non-prosecution and the victim's injury is too speculative under **Linda R.S. v. Richard D.** The court distinguished failure-to-prosecute claims (no standing) from failure-to-protect claims (standing may exist), but found the plaintiff's allegations of a conspiracy to shield her rapist from prosecution constituted a failure-to-prosecute claim. The dissent argued that the plaintiff had standing under a failure-to-protect theory based on allegations of a discriminatory policy of underenforcing sexual assault laws against women. The case reinforces the principle that private citizens lack a judicially cognizable interest in the prosecution of others, and that only the Supreme Court can overturn **Linda R.S.**

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	James C. Ho; Priscilla R. Owen; James E. Graves Jr.
JURISDICTION	Federal
DECIDED	October 5, 2021
DOCKET	No. 19-30702 c/w No. 19-30989
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the United States District Court for the Middle District of Louisiana, USDC No. 3:17-CV-1791. The district court denied in part and granted in part defendant's motion to dismiss, and certified the order for interlocutory appeal. The Fifth Circuit granted leave to appeal.
STANDARD OF REVIEW	De novo review of questions of subject matter jurisdiction.
PRECEDENTIAL VALUE	Published
PARTIES	Samuel D'Aquila v. Priscilla Lefebure

TOPICS

subject matter jurisdiction

equal protection

civil rights

appellate procedure

standard of review

motions to dismiss

civil procedure

PRACTICE AREAS

Civil Rights

Appellate Procedure

QUESTIONS PRESENTED

1. Whether a crime victim has standing under Article III to sue a prosecutor for failing to investigate or prosecute her assailant, particularly when the failure is alleged to be part of a discriminatory policy.
2. Whether the claim is properly characterized as a failure-to-prosecute claim (barred by *Linda R.S.*) or a failure-to-protect claim (cognizable under *Shipp v. McMahon*).

HOLDINGS

1. No. Under *Linda R.S. v. Richard D.*, a citizen lacks standing to challenge the policies of the prosecuting authority when she herself is neither prosecuted nor threatened with prosecution. The connection between non-prosecution and injury is too speculative to satisfy causation and redressability requirements. This rule applies even when the non-prosecution is allegedly based on a discriminatory policy, as the same was alleged in *Linda R.S.*
2. The claim is a failure-to-prosecute claim, not a failure-to-protect claim. The plaintiff does not allege that the police refused to protect her before future assault; she alleges that prosecutors refused to investigate or prosecute after the assault took place.

KEY QUOTATIONS

“If anyone deserves to have her day in court, it is Priscilla Lefebure.” (2)

“Supreme Court precedent makes clear that a citizen does not have standing to challenge the policies of the prosecuting authority unless she herself is prosecuted or threatened with prosecution.” (2)

“We have no choice but to reverse and remand with instructions to dismiss the complaint for lack of subject matter jurisdiction as to D’Aquila.” (24)

“Lefebure does not contend that the police refused to protect her before some future assault by her assailant. Instead, she contends that prosecutors refused to investigate or prosecute him after the assault took place.” (19)

FACTUAL BACKGROUND

Priscilla Lefebure was raped and sexually assaulted by Barrett Boeker, her cousin's husband, at his home on the grounds of the Louisiana State Penitentiary where he served as an assistant warden. Boeker then conspired with District Attorney Samuel D'Aquila (and his own counsel, a relative of D'Aquila) to avoid investigation and prosecution. Lefebure alleged that D'Aquila had a history of discriminating against women by failing to investigate or take seriously reports of sexual assault, and that this policy emboldened Boeker. She sued

D'Aquilla under 42 U.S.C. §§ 1983 and 1985 for equal protection and due process violations, as well as abuse of process.

PROCEDURAL HISTORY

The district court denied the motion to dismiss under Rule 12(b)(1), finding that Lefebure had standing, dismissed some claims, and certified the order for interlocutory appeal. This court granted leave to appeal. After the initial panel decision, the court granted rehearing and substituted this opinion.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Dismiss the complaint for lack of subject matter jurisdiction as to D'Aquilla.

CASES CITED

- Linda R.S. v. Richard D., 410 U.S. 614 (1973)
- Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)
- United States v. Nixon, 418 U.S. 683 (1974)
- Shipp v. McMahon, 234 F.3d 907 (5th Cir. 2000)
- Estate of Macias v. Ihde, 219 F.3d 1018 (9th Cir. 2000)
- Parkhurst v. Tabor, 569 F.3d 861 (8th Cir. 2009)
- Del Marcelle v. Brown Cnty. Corp., 680 F.3d 887 (7th Cir. 2012) (en banc) (Easterbrook, C.J., concurring)
- United States v. Grundhoefer, 916 F.2d 788 (2nd Cir. 1990)
- Sattler v. Johnson, 857 F.2d 224 (4th Cir. 1988)
- Oliver v. Collins, 914 F.2d 56 (5th Cir. 1990)
- Mitchell v. McNeil, 487 F.3d 374 (6th Cir. 2007)
- Sargeant v. Dixon, 130 F.3d 1067 (D.C. Cir. 1997)
- Jones v. United States, 625 F.3d 827 (5th Cir. 2010)
- Hager v. DBG Partners, Inc., 903 F.3d 460 (5th Cir. 2018)
- Town of Chester, N.Y. v. Laroe Ests., Inc., 137 S. Ct. 1645 (2017)
- Clapper v. Amnesty Int'l USA, 568 U.S. 398 (2013)
- Raines v. Byrd, 521 U.S. 811 (1997)
- Allen v. Wright, 468 U.S. 737 (1984)
- Arizona Christian Sch. Tuition Org. v. Winn, 563 U.S. 125 (2011)
- Steel Co. v. Citizens for a Better Env't, 523 U.S. 83 (1998)
- United States v. L.A. Tucker Truck Lines, Inc., 344 U.S. 33 (1952)

- *Robertson v. U.S. ex rel. Watson*, 560 U.S. 272 (2010) (Roberts, C.J., dissenting from dismissal of the writ of certiorari as improvidently granted)
- *Agostini v. Felton*, 521 U.S. 203 (1997)
- *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477 (1989)
- *Carter v. Derwinski*, 987 F.2d 611 (9th Cir. 1993) (en banc) (Kozinski, J.)
- *M.D. v. Abbott*, 977 F.3d 479 (5th Cir. 2020)
- *United States v. Taffaro*, 919 F.3d 947 (5th Cir. 2019) (Ho, J., concurring)
- *Pierre v. Vannoy*, 891 F.3d 224 (5th Cir. 2018)
- *Nader v. Saxbe*, 497 F.2d 676 (D.C. Cir. 1974)
- *Elliot-Park v. Manglona*, 592 F.3d 1003 (9th Cir. 2010)
- *Bailey v. Patterson*, 369 U.S. 31 (1962)
- *Leeke v. Timmerman*, 454 U.S. 83 (1981)

CITED IN

- *Lefebure v. D'Aquilla*, *Lefebure v. D'Aquilla*, 987 F.3d 446, 448 (5th Cir. 2021)
- *Lefebure v. D'Aquilla*, *Lefebure v. D'Aquilla*, 15 F.4th 650, 664 (5th Cir. 2021)