

STATE OF LOUISIANA

*

NO. 2025-KA-0267

VERSUS

*

COURT OF APPEAL

JEFFREY DARLAK

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

* * * * *

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 562-113, SECTION "A"
Honorable Simone A. Levine

* * * * *

Judge Tiffany Gautier Chase

* * * * *

(Court composed of Judge Sandra Cabrina Jenkins, Judge Tiffany Gautier Chase,
Judge Monique G. Morial)

JENKINS, J., CONCURS IN RESULT

Jason R. Williams
District Attorney
Brad Scott
Assistant District Attorney
Parish of Orleans
619 South White Street
New Orleans, LA 70119

COUNSEL FOR STATE OF LOUISIANA/APPELLANT

Remy Voisin Starns
Holli Herrle-Castillo
LOUISIANA APPEALS AND WRIT SERVICE
P. O. Box 2333
Marrero, LA 70073-2333

COUNSEL FOR DEFENDANT/APPELLEE

**REVERSED AND REMANDED
JUNE 22, 2026**

TGC
MGM

The State of Louisiana (hereinafter “the State”) appeals the district court’s ruling granting defendant’s motion to quash. Specifically, the district court quashed counts 1-50; 52-94 and 97-100 of the bill of information. After consideration of the record before this Court, and the applicable law, the district court’s ruling is reversed and the matter remanded for further proceedings.

Facts and Procedural History

On March 19, 2022, a female acquaintance of Jeffrey Darlak (hereinafter “Defendant”) discovered numerous nude photographs of herself, and other women known to her, on Defendant’s laptop. She contacted the New Orleans Police Department and Detective Brandon McDonald opened an investigation into the matter. During the investigation, it was discovered that Defendant photographed and filmed seven unconscious women without their consent. Based on the dates reflected on the photographs, Detective McDonald was able to ascertain when the photographs were taken.

Initially the charges against Defendant were filed under two separate case numbers in Criminal District Court, for the Parish of Orleans: (1) in case number

557-607 Defendant was charged with seven counts of video voyeurism; and (2) in case number 558-038 he was charged with twelve additional counts of video voyeurism. These counts were grouped according to the identity of the victims. On May 2, 2024, Defendant filed a motion to quash under both case numbers, arguing that the charges against him were time barred and Orleans Parish was not the proper venue.¹ The State ultimately dismissed case numbers 557-607 and 558-038, and all counts against Defendant were re-filed under case number 562-113.

On May 29, 2024, a bill of information was filed charging Defendant with 124 counts of video voyeurism. Each count corresponded to an individual photograph. Two of the 124 counts related to a violation of La. R.S. 14:283(B)(1) and the remaining counts were charged under La. R.S. 14:283(B)(3).² The May 29, 2024 bill of information listed the dates of offense as follows:

- Counts 1-51 and count 95, January 1, 2003 to January 1, 2004;
- Counts 52-58, November 1, 2010 to November 1, 2011;

¹ The photographs of the victims were taken in various cities and states.

² The State charged Defendant with violations of La. R.S. 14:283(B)(1) and (B)(3), which provides, in pertinent part,

(1) [W]hoever commits the crime of video voyeurism shall, upon a first conviction thereof, be fined not more than two thousand dollars or imprisoned, with or without hard labor, for not more than two years, or both.

(3) Whoever commits the crime of video voyeurism when the observing, viewing, photographing, filming, or videotaping is of any vaginal or anal sexual intercourse, actual or stimulated sexual intercourse, masturbation, any portion of the female breast below the top of the areola or of any portion of the pubic hair, anus, cleft of the buttocks, vulva, or genitals shall be fined not more than ten thousand dollars and be imprisoned at hard labor for not less than one year or more than five years, without benefit of parole, probation, or suspension of sentence.

- Counts 59-76, May 1, 2011 to August 1, 2011;
- Counts 77-89, January 1, 2015 to December 31, 2015;
- Counts 90-94, January 1, 2016 to December 31, 2016;
- Count 96, April 1, 2016;
- Counts 97 and 101-124, April 1, 2016 to August 1, 2016; and
- Counts 98-100, January 1, 2016 to April 1, 2016.

On August 20, 2024, Defendant filed a second motion to quash, attacking the validity of the 124 counts listed in the bill of information and re-urged his arguments from the previously filed motion to quash.³ Defendant also argued that the time to institute prosecution of the alleged crimes is based on when the offense is committed, rather than when the victim discovers the crime. The State opposed the motion, arguing that the time to institute prosecution is triggered by the victim's discovery of the crime. On September 24, 2024, the State amended the dates on the bill of information as to counts 1-50 to reflect May 5, 2017 to December 26, 2021 as the dates the offense occurred; and as to counts 90-94 to reflect the date of the offense as on or about October 4, 2015. The dates for the other counts remained the same. On September 24, 2024, the district court granted Defendant's motion to quash finding that the time to institute prosecution is based on when the offense was committed and dismissed counts 1-100. This appeal followed.⁴

³ The August 20, 2024 motion to quash was incorrectly filed under the Magistrate's case number.

⁴ After the lodging of the appeal in this Court, Defendant was ordered to file an appellee brief no later than March 14, 2026. On March 16, 2026, this Court received correspondence from Defendant's trial counsel that he was not retained to represent Defendant in the current appeal. On April 20, 2026, this Court appointed the Louisiana Appeals and Writs Service office to represent Defendant in this appeal. Due to Defendant's newly appointed counsel, the matter was stayed pending submission of an appellee brief, which was filed on May 29, 2026.

Discussion

The State presents three assignments of error:

1. The district court was without authority to grant a motion to quash that was not filed in writing with specificity;
2. The district court incorrectly applied the law finding that 100 counts were prescribed, when only two counts prescribed; and
3. Using the district court's incorrect interpretation of the law, the district court still improperly quashed counts 1-50 where the offenses occurred in 2017.

We will discuss each argument under its relevant topic.

Standard of Review

“Although a [district] court’s ruling on a motion to quash will generally not be reversed absent an abuse of discretion, a [district] court’s legal findings are subject to a *de novo* standard of review.” *State v. Dixon*, 2013-0396, p. 5 (La.App. 4 Cir. 7/2/14), 146 So.3d 662, 666 (citations omitted). A court considering a motion to quash “must accept as true the facts contained in the bills of information and in the bill of particulars, and determine as a matter of law and from the face of the pleadings, whether a crime has been charged.” *State v. Landry*, 2013-1030, p. 4 (La.App. 4 Cir. 5/7/14), 144 So.3d 1078, 1081 (citations omitted). “The determination by the trial judge whether to grant or deny a motion to quash is solely a question of law and therefore any defenses on the merits are not valid grounds for quashal.” *State v. Brown*, 2015-0855, p. 3 (La.App. 4 Cir. 10/21/15), 176 So.3d 761, 764 (citations omitted).

Written Motion to Quash

In its first assignment of error, the State contends the district court did not have the authority to grant the motion to quash because the motion was not in

writing. The State’s position rests on the premise that the motion to quash was filed in case numbers 557-607 and 558-038, and both cases were dismissed. It maintains that because a written motion to quash was not filed under the pending case number, 562-113, the district court did not have the authority to rule on the motion. Conversely, Defendant asserts that a written motion to quash was filed, however the motion contained an incorrect case number. We find the State’s argument unpersuasive. La. C.Cr.P. art. 536 provides that “[a] motion to quash shall be in writing, signed by the defendant or his attorney, and filed in open court or in the office of the clerk of court. It shall specify distinctly the grounds on which it is based. The court shall hear no objection based on grounds not stated in the motion.”

Defendant filed two motions to quash—one date stamped May 2, 2024 seeking to quash the counts listed in case numbers 557-607 and 558-038; and a second motion to quash date stamped August 20, 2024, seeking to quash the 124 counts listed in the May 29, 2024 bill of information. However, the second motion to quash was filed utilizing case number “602-633” which is the Magistrate case number, not the Criminal Court case number. The record illustrates that “602-633” is scratched through and hand written in its place are case numbers 557-607 and 558-038. Both motions argue time limitations, venue and legal impossibility as the grounds for seeking to quash the bill of information. In its brief to this Court, the State acknowledges that the 124 counts of video voyeurism are under case number 562-113. Accordingly, we find the record contains a written motion to quash, signed by Defendant’s attorney, date stamped by the Office of the Clerk of Court and specifies the grounds to quash. The fact that the motion was filed under an incorrect case number is not fatal. This assignment of error lacks merit.

Time Limitations

In its second and third assignments of error, the State asserts the district court incorrectly interpreted the law in finding that counts 1-100 were time barred.⁵ It maintains that the prosecution was instituted within the relevant time period because the time limitations are contingent upon when the crime of video voyeurism is discovered by the victim. Specifically, the State contends that La. C.Cr.P art. 573.2 should be applied retroactively and can be applied to any offense committed prior to August 1, 2016, as long as the time for prosecution for the offense had not expired. Conversely, Defendant asserts that La. C.Cr.P. art. 573.2 does not apply retroactively and that the time to institute prosecution of the first one hundred counts is expired because under La. C.Cr.P. art. 572, the commission of the crime, not the discovery of the crime, triggers the time limitations.⁶ This Court has articulated the following legal standard regarding questions of time limitations in criminal matters:

Although the plea of prescription presented in a criminal case is a question of fact, it is not a question of fact relating to the guilt or innocence of the accused. The decision of the trial judge as to whether the offense charged is prescribed is reviewable by this [C]ourt on the same facts upon which the decision is based.

However, it is quite clear that in reviewing a trial judge's ruling on a preliminary motion this court attaches great weight to his factual determinations and will not disturb them unless they are clearly erroneous.

⁵ The State concedes that the time limitations to institute prosecution of counts 51 and 95 had expired. As such, this opinion only addresses counts 1-50; 52-94 and 96-100.

⁶ While Defendant essentially raises a constitutional *ex post facto* argument, which prohibits the government from enacting laws with certain retroactive effects, he did not raise this argument in the district court. *See State v. Taylor*, 2012-0345, p. 50 (La.App. 4 Cir. 6/26/13), 118 So.3d 65, 93 (“The general rules governing the procedural requisites for attacking the constitutionality of a state statute govern [defendant’s] *ex post facto* claims; therefore, [the] constitutional challenge had to be properly pled in the district court.”).

State v. Serigne, 2024-0107, pp. 2-3 (La.App. 4 Cir. 2/12/25), 409 So.3d 258, 260 (quoting *State v. Francis*, 2007-0480, p. 3 (La.App. 4 Cir. 1/30/08), 977 So.2d 187, 189). La. C.Cr.P. art. 572 provides, in pertinent part:

[N]o person shall be prosecuted, tried, or punished for an offense not punishable by death or life imprisonment, unless the prosecution is instituted within the following periods of time after the offense has been committed:

- (1) Six years, for a felony necessarily punishable by imprisonment at hard labor.
- (2) Four years, for a felony not necessarily punishable by imprisonment at hard labor.

La. C.Cr.P. art. 572(A)(1-2).

The State argues that under La. C.Cr.P. art. 572 it had six years to institute prosecution of counts 1-50; 52-94 and counts 97-100 where the Defendant is charged under La. R.S. 14:283(B)(3); and four years to institute prosecution of count 96 under La. R.S. 14:283(B)(1). The statute at issue, La. C.Cr.P. art. 573.2, became effective on August 1, 2016 and is entitled “Running of time limitations; exception, video voyeurism.” It provides:

The time limitations established by Article 572 shall not commence to run as to the crime of video voyeurism (R.S. 14:283) until the crime is discovered by the victim.

The State maintains that the time limitations provided for in La. C.Cr.P. art. 572(A)(1-2) applies irrespective of whether the offenses occurred prior to enactment of La. C.Cr.P. art. 573.2. Conversely, Defendant contends that because the dates of the offense of counts 1-50, 52-94 and 96-100 pre-date the enactment of La. C.Cr.P. art 573.2, those counts are time barred because the crime was committed more than four or six years prior to the State instituting prosecution.

The narrow issue presented in this assignment of error is whether the time limitation to institute prosecution, for the charge of video voyeurism, begins when the offense was committed or when the victim discovered the crime. The effective date of La. C.Cr.P. art. 573.2 was August 1, 2016. Thus, this Court must determine if La. C.Cr.P. art. 573.2 applies to crimes committed before August 1, 2016 but discovered after that date.

“[A] criminal statute, like all other statutes, should be interpreted so as to be in harmony with and to preserve and effectuate the manifest intent of the legislature; an interpretation should be avoided which would operate to defeat the object and purpose of the statute.” *Taylor*, 2012-0345, p. 30, 118 So.3d at 83 (quoting *State v. Shaw*, 2006-2467, pp. 14-15 (La. 11/27/07), 969 So.2d 1233, 1242). Where the words of a statute are clear and free from ambiguity, the words are not to be ignored “under the pretext of pursuing its spirit.” La. R.S. 1:4. Our Supreme Court has relied on La. C.C. art. 6 for a determination as to whether an amended provision of the Louisiana Criminal Code should be applied retroactively. *State v. Washington*, 2002-2196 (La. 9/13/02), 830 So.2d 288. “In the absence of contrary legislative expression, substantive laws apply prospectively only. Procedural and interpretative laws apply both prospectively and retroactively, unless there is a legislative expression to the contrary.” La. C.C. art. 6. “A two-fold inquiry is required by La. C.C. art. 6 in deciding whether a law should be applied retroactively.” *Washington*, 2002-2196, p. 2, 830 So.2d at 290. It must first be determined whether the enactment expresses legislative intent as to the retrospective or prospective application of the statute. *Id.* If such intent is expressed, the inquiry ends. *Id.*

La. C.Cr.P. art. 573.2 is silent as to whether the statute should be applied retroactively or prospectively. As such, our inquiry requires a determination of whether the La. C.Cr.P. art. 573.2 is substantive, procedural or interpretive. This Court has adopted the following framework for our analysis:

Substantive laws are laws that impose new duties, obligations or responsibilities upon parties, or laws that establish new rules, rights and duties or change existing ones. Interpretive laws are those which clarify the meaning of a statute and are deemed to relate back to the time that the law was originally enacted. Procedural laws prescribe a method for enforcing a substantive right and relate to the form of the proceeding or the operation of laws.

Washington, 2002-2196, p. 3, 830 So.2d at 290 (citation omitted). Prior to 2016, La. C.Cr.P. art. 573.2 did not exist. A review of H.B. 42, 2016 Reg. Sess., reflects the legislature's intent to add this provision as an exception to the general rule provided for in La. C.Cr.P. art. 572(A). La. C.Cr.P. art. 573.2 exempts the tolling of time for video voyeurism crimes "until the crime is discovered by the victim." This statute does not create a right, rather it governs the procedure by which the State may institute charges. "The general principle is that changes in criminal procedures apply to trials conducted subsequent to the date of the procedural amendments, not the procedural law in effect at the date of the crime." *State v. Martin*, 351 So.2d 92, 93 (La. 1977). Based upon our interpretation of the definition of what constitutes a procedural law, we find La. C.Cr.P. art. 573.2 to be procedural.

The record reflects that the first victim discovered the photographs on March 19, 2022 and the other victims discovered the photographs soon after that date. We find the district court erred in determining that in order to be timely, for prosecution purposes, the offense must have occurred prior to August 1, 2016, and as such the granting of the motion to quash was in error. If the counts were not

time barred prior to the effective date of La. C.Cr.P. art. 573.2, August 1, 2016, then its provisions apply and the State has four or six years from the date the victim discovered the crime to institute prosecution. The State instituted the prosecution against Defendant on May 29, 2024 with the filing of the bill of information charging Defendant with 124 counts of video voyeurism.⁷ Given the voluminous nature of the counts against Defendant, we group our findings as to the time limitations based on the counts and the date of occurrence of the crime:

- Counts 1-50 occurred between May 5, 2017 and December 26, 2021. As these counts were charged under La. R.S. 14:283(B)(3), the State had six years to institute prosecution, or until May 5, 2023, which is after the effective date of La. C.Cr.P. art. 573.2;
- Counts 52-58 occurred between November 1, 2010 and November 1, 2011. As these counts were charged under La. R.S. 14:283(B)(3), the State had six years to institute prosecution, or until November 1, 2016, which is after the effective date of La. C.Cr.P. art. 573.2;
- Counts 59-76 occurred between May 1, 2011 and August 1, 2011. As these counts were charged under La. R.S. 14:283(B)(3), the State had six years to institute prosecution, or until May 1, 2017, which is after the effective date of La. C.Cr.P. art. 573.2;
- Counts 77-89 occurred between January 1, 2015 and December 31, 2015. As these counts were charged under La. R.S. 14:283(B)(3), the State had six years to institute prosecution, or until January 1, 2021, which is after the effective date of La. C.Cr.P. art. 573.2;
- Counts 90-94 occurred on or about October 4, 2015. As these counts were charged under La. R.S. 14:283(B)(3), the State had six years to institute prosecution, or until October 4, 2021, which is after the effective date of La. C.Cr.P. art. 573.2;
- Count 96 occurred on or about April 1, 2016. As this count was charged under La. R.S. 14:283(B)(1), the State had four years to institute prosecution, or until April 1, 2020, which is after the effective date of La. C.Cr.P. art. 573.2;

⁷ The criminal prosecution of an offense, not punishable by death or life imprisonment, is instituted by the filing of an indictment or bill of information. La. C.Cr.P. art. 382(A).

- Count 97 occurred between April 1, 2016 and August 1, 2016. As this count was charged under La. R.S. 14:283(B)(3), the State had six years to institute prosecution, or until April 1, 2022, which is after the effective date of La. C.Cr.P. art. 573.2;
- Counts 98-100 occurred between January 1, 2016 and April 1, 2016. As the counts were charged under La. R.S. 14:283(B)(3), the State had six years to institute prosecution, or until January 1, 2022, which is after the effective date of La. C.Cr.P. art. 573.2.

After a *de novo* review of the record, we find the district court erred in granting the motion to quash and dismissing counts 1-50; 52-94 and 97-100 in the bill of information.

Decree

The district court's ruling is reversed and the matter remanded for further proceedings.

REVERSED AND REMANDED