

**STATE OF LOUISIANA**  
**COURT OF APPEAL, FIRST CIRCUIT**

STATE OF LOUISIANA

NUMBER 2010 KW 1174

VERSUS

ROBERT KENT

MAR 04 2011

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In Re: Robert Kent, applying for supervisory writs, 19th  
Judicial District Court, Parish of East Baton  
Rouge, No. 10-09-0868.

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**BEFORE: PARRO, GUIDRY AND HUGHES, JJ.**

**WRIT GRANTED.** The defendant's conviction of negligent injuring is reversed, the sentence is vacated, and the defendant is ordered discharged. Defendant was convicted under La. R.S. 14:39(A)(2), which was not in effect at the time the incident occurred.

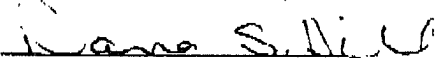
**JMG**

**Hughes, J. concurs.** I respectfully concur. The defendant was tried pursuant to La. R.S. 14:39(A)(2), but found guilty pursuant to 14:39(A)(1). I therefore believe that Cole v. Arkansas, 333 U.S. 196, 68 S.Ct. 514 (1948) applies.

Even under the original statute, the defendant must be guilty of a "gross deviation", La. R.S. 14:12. These were not dogs running wild, but rather were fenced and chained. The defendant was not at home when the incident occurred. The trial testimony was conflicted and the only adult present when the victim was attacked was not called to testify. There are many possibilities for the dogs getting loose other than the defendant's gross negligence. I therefore believe the evidence was insufficient to support the conviction.

**Parro, J., dissents and would deny the writ application.** The bill of information in the instant case charged relator under La. R.S. 14:39. Although the bill did set forth language that was also contained in subsection (A)(2) of the statute as amended effective August 15, 2009, the bill itself did not charge relator under that specific section of the statute. While the answer to the motion for bill of particulars indicated that relator was being charged under "paragraph 2: (as stated in the bill of information)," a bill of particulars is not part of an indictment or information. Additionally, it is noted that relator failed to file a motion to quash the bill of information prior to trial as set forth in La. Code Crim. P. art. 535(A)(1). Nonetheless, according to the information provided to this Court, the charges at issue appeared to have been properly charged under La. R.S. 14:39, as it read at the time the instant crime occurred.

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DEPUTY CLERK OF COURT  
FOR THE COURT