

NO. 46,927-KA

**DISSENT FROM THE DENIAL OF REHEARING
RENDERED ON MAY 10, 2012.**

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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STATE OF LOUISIANA

Appellee

versus

CRAIG OLIPHANT

Appellant

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Originally appealed from the
Fourth Judicial District Court for the
Parish of Morehouse, Louisiana
Trial Court No. 2009-151 F

Honorable Robert C. Johnson, Judge

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Before WILLIAMS, STEWART, DREW, LOLLEY
and SEXTON (Pro Tempore), JJ.

DREW, J., dissents from the denial of application for rehearing and assigns reasons.

DREW, J., dissenting:

Respectfully, I must dissent from the denial of rehearing.

In La. R.S. 14:2 (B), there is no requirement that crimes of violence must involve the *intentional* use of force against a victim.

The crime of vehicular homicide is a **defined** crime of violence, in that it is “an offense that has, as an element, **the use**, attempted use, or threatened use **of physical force against the person** or property of another, and that, by its very nature, involves a **substantial risk that physical force against the person** or property of another may be used in the course of committing the offense or an offense that involves the possession or use of a dangerous weapon.” (Emphasis added.)

At the time of the commission of this crime, February 8, 2009, there were 41 **listed** crimes of violence, plus dozens, if not hundreds of **defined** crimes of violence. Several of these offenses at that time did not require that a defendant intentionally use physical force against a victim.¹

The sentence is harsh for a first offender, but these are horrific facts.

The trial court’s sentence should be affirmed for several reasons, including:

- the defendant’s extremely high BAC,
- two injured victims, one of whom died, plus a host of bereaved family members,
- the fact that the defendant fled the scene, and

¹Examples: Second degree murder, La. R.S. 14:30.1 (A) (3) and (4); Manslaughter, La. R.S. 14:31 (A)(2)(a); Extortion, La. R.S. 14:66; and Stalking, La. R.S. 14:40.2.

- the benefit accruing to the defendant by the dismissal of the other charge, in exchange for the plea of guilty.

My appraisal of this sad case is buttressed to a great extent by a recent ruling of the Louisiana Supreme Court, *State v. LeBlanc*, 2009-1355 (La. 7/6/10), 41 So. 3d 1168.²

Accordingly, and with respect, I dissent from the denial of rehearing.

²A comparison of some of the facts of the instant case, as compared with the facts in *State v. LeBlanc, supra*:

- LeBlanc had 12 initial charges, but was allowed to plead guilty to vehicular homicide and three misdemeanor counts of vehicular negligent injury;
- Oliphant was originally charged with vehicular homicide and hit and run, but was allowed to plead to vehicular homicide, with the hit and run being dismissed;
- LeBlanc was sentenced to the maximum 30 years at hard labor, with three years of the sentence to be served without benefits;
- Oliphant was sentenced to 25 years at hard labor, with 15 years to be served without benefits, plus a \$10,000 fine or one year of default jail time;
- Each defendant fled the scene of his accident; and
- There was no agreement as to sentence in either case.