

Judgment rendered May 14, 2014.  
Application for rehearing may be filed  
within the delay allowed by Art. 922,  
La. C.Cr.P.

No. 49,036-KA

COURT OF APPEAL  
SECOND CIRCUIT  
STATE OF LOUISIANA

\* \* \* \* \*

STATE OF LOUISIANA

Appellee

versus

SHAWN FITZGERALD KENNEDY

Appellant

\* \* \* \* \*

Appealed from the  
First Judicial District Court for the  
Parish of Caddo, Louisiana  
Trial Court No. 308,175

Honorable Craig Owen Marcotte, Judge

\* \* \* \* \*

LOUISIANA APPELLATE PROJECT  
By: Douglas Lee Harville

Counsel for  
Appellant

CHARLES REX SCOTT, II  
District Attorney

Counsel for  
Appellee

KARELIA R. STEWART  
JESSICA DIANE CASSIDY  
CLOYCE CLARK, III  
Assistant District Attorneys

\* \* \* \* \*

Before CARAWAY, DREW and PITMAN, JJ.

**DREW, J.**

Shawn Fitzgerald Kennedy urges only one issue in this appeal. He attacks the constitutionality of La. R.S. 14:95.1<sup>1</sup> as being contrary to Const. Art. I, § 11, which was amended in 2012.<sup>2</sup> Defendant's challenge to the statute, however, is not properly before us.

The issue was not pled or litigated in the trial court, violating clear precedent. *See State v. Hatton*, 2007-2377 (La. 7/1/08), 985 So. 2d 709, and *Vallo v. Gayle Oil Co., Inc.*, 94-1238 (La. 11/30/94), 646 So. 2d 859.<sup>3</sup>

In addition, the Louisiana Attorney General has never been served and has not yet participated in any way. See La. R.S. 13:4448; La. R.S. 49:257(C); La. C.C.P. art. 1880.

We must remand this case to the trial court for further proceedings.

**DECREE**

REMANDED.

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<sup>1</sup>Possession of firearm or carrying concealed weapon by a person convicted of certain felonies

<sup>2</sup>The Louisiana Supreme Court is considering this same issue in the pending writ applications of *State v. Taylor*, 2014-0209, and *State v. Eberhardt*, 2013-2306.

<sup>3</sup>See also, *State in Interest of D.W.*, 13-114 (La. App. 5 Cir. 9/18/13), 125 So. 3d 1180, *writ denied*, 2013-2478 (La. 4/4/14), 2014 WL 1423628.