

SUPREME COURT OF LOUISIANA

No. 96-C-2388

GORDON J. TRENTECOSTA

Versus

ROBERT BECK, RONNIE JONES, KERMIT SMITH AND
THE STATE OF LOUISIANA, DEPARTMENT OF
PUBLIC SAFETY AND CORRECTIONS, ET AL

TRAYLOR, J., dissenting.

I would find that the plaintiff is an involuntary public figure and, as such, must prove, by clear and convincing evidence, actual malice on the part of Officer Smith. The United States Supreme Court, in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), identified involuntary public figures as those who are directly affected by the action of public officials. Defendants in criminal cases, as was Mr. Trentecosta, are limited public figures with respect to news items concerning that case. See LAWRENCE TRIBE, AMERICAN CONSTITUTIONAL LAW 880 (2d ed. 1988).

“The burden of proving “actual malice” requires a plaintiff to demonstrate with clear and convincing evidence that the defendant realized that his statement was false or that he subjectively entertained serious doubt as to the truth of his statement.” *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, n. 30 (1984) (emphasis added), citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 280 (1964); *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342 (1974). The focus then is not, as the majority claims, “whether the publisher had a reasonable basis for believing that the statements were true.” Op. at 16. In fact, the Supreme Court has expressly rejected that proposition. *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968). The focus should instead be whether Officer Smith seriously doubted the truth of his statement concerning the plaintiff. Because the plaintiff has not proved by clear and convincing evidence that Officer Smith made his statement with actual malice - i.e., that he knew his statement was not true or that he seriously doubted the truth of his statement - the plaintiff should not prevail in this matter.