

SUPREME COURT OF LOUISIANA

99-KK-1004

STATE OF LOUISIANA

versus

DAVID E. JOSHLIN

On Writ of Certiorari to the First Circuit Court
of Appeal, Parish of East Feliciana

KIMBALL, J., Dissenting

Article I, § 16 of the Louisiana Constitution guarantees the right of the accused to a fair trial “in the parish where the offense or elements of the offense occurred.” *See also* La. C. Cr. P. art. 611 (“[a]ll trials shall take place in the parish where the offense has been committed. . .”). In some instances, a crime may consist of a succession of identifiable acts or occurrences, which, in turn, are susceptible of commission in more than one place, in or out of the parish or state. In such instances, a defendant may be brought to trial in any such place where any one act occurred.

In my view, the majority in this case mistakenly reasons that a showing of fraudulent activity meets the requirement of La. R.S. 22:1243(A), and thus enables the State to charge the defendant with insurance fraud for his actions in obtaining a death certificate for his brother in East Feliciana Parish. However, the crime of insurance fraud under this subsection does not require a showing of fraudulent activity nor is the intent to defraud, which is required by the statute, a distinguishable or severable act or element of the offense. By the clear language of the statute, the crime of insurance fraud consists of the presentment of the insurance claim with the accompanying state of mind, the intent to defraud and knowledge the claim is false. In this case, these actions did not occur in Louisiana. The defendant mailed the insurance claim from his home in Texas to the CNA office in Chicago, Illinois. Thus, assuming he is guilty of insurance fraud, the elements of the crime occurred in Texas and/or Illinois because that is where he “present[ed] or caus[ed] to be presented any written or oral statement . . . as part of or in support of. . . a claim for payment or other benefit pursuant to an insurance policy, knowing that such statement contain[ed] any false, incomplete or fraudulent information concerning any fact or thing material to such claim.” The defendant in this matter obtained a judgment declaring his brother deceased in a Louisiana court. Although that act was certainly preparatory to committing the alleged crime

of insurance fraud, it is not an element of the crime itself. The actual crime of insurance fraud did not take place until the defendant submitted the insurance claim containing information he knew to be false, with intent to defraud, to CNA. Thus, I would affirm the judgment of the court of appeal.

For the above reasons, I respectfully dissent.