

SUPREME COURT OF LOUISIANA

No. 99-KK-1004

STATE OF LOUISIANA

Versus

DAVID JOSHLIN

LEMMON, J., Dissenting

The majority decision starts with the faulty premise that the issue is whether the Legislature, in enacting La. Rev. Stat. 22:1243 (the penal statute under which defendant was charged), “intended to punish” acts preliminary to the written or oral statement presented in support of the insurance claim. In my view, the issue is whether the Legislature (regardless of its intent) criminalized such preparatory acts in the express words of the penal statute.

The majority refers to Section 1242, which includes, in the definition of “fraudulent insurance act,” the preparation with intent to defraud of a written or oral statement, knowing that it will be presented in support of an insurance claim. However, the Legislature did not provide a criminal penalty for committing a “fraudulent insurance act,” as defined in Section 1242. The analysis must focus on Section 1243, which provides the penalty only for the conduct expressly proscribed by that section, and that conduct does not include Section 1242(1)(a)’s words “prepares with knowledge or belief that it will be presented.”

When the focus is on the correct statute, La. Rev. Stat. 22:1243, defendant is entitled to have the charges quashed if the prosecutor did not charge him with conduct in Louisiana in which he “present[ed]” or “cause[d] to be presented” a written claim. The prosecutor concedes that defendant did not present such a statement in Louisiana.

The sole issue is whether defendant caused such a statement to be presented in Louisiana.

Generally, one presents something by bringing the thing to someone's notice or introducing the thing into someone's presence, and one causes something to be presented by acting indirectly and having another person make the presentation or submission of the thing. It is a far stretch of the English language to say that one causes a statement to be presented to an insurance company by performing acts that lead up to the preparation of the statement which may (or may not) be presented to the insurance company at a later date (at which time the crime is committed). At the very least, Section 1243 is ambiguous as to whether defendant's conduct in obtaining an alleged fraudulent death certificate in Louisiana falls within the purview of the statute, and the doctrine of lenity requires the statute to be construed in favor of defendant. See State v. Becnel, 93-2536 (La. 5/31/96), 674 So. 2d 959; State v. Piazza, 596 So. 2d 817 (La. 1992).

The Legislature arguably could have criminalized the obtaining of a fraudulent death certification for the purpose of making a false life insurance claim.¹ However, the Legislature did not make such conduct criminal in Section 1243, and no other conduct prohibited by the charged statute has been shown to have occurred in Louisiana.²

Accordingly, the motion to quash should have been granted.

¹Such conduct, if proved, is reprehensible and should be punished under some statute.

²Under the discovery responses, La. Rev. Stat. 22:1243 was violated in Texas and perhaps in Illinois, but not in Louisiana.