

SUPREME COURT OF LOUISIANA

No. 2017-K-1670

STATE OF LOUISIANA

versus

NUNZIO MARCHIAFAVA

**ON WRIT OF CERTIORARI TO THE FOURTH CIRCUIT
COURT OF APPEAL, PARISH OF ORLEANS**

PER CURIAM:

Writ granted. The rulings of the courts below improperly focused upon defendant's alleged pre-fire conduct, upon which the state does not rely as a basis for this prosecution. Further, the court of appeal majority too narrowly construed the state's argument as briefed on appeal. The bill of information and the state's responses to defendant's motion for a bill of particulars sufficiently charge the offense of malfeasance in office—including the underlying affirmative duties in support of that allegation—based on claims concerning defendant's alleged post-fire acts. *See State v. Petitto*, 10-0581, p. 11 (La. 3/15/11), 59 So.3d 1245, 1252 (“[C]ivil statutes may serve as the source of the duty, the knowing and intentional violation of which may constitute [malfeasance].”); *see also State v. Perez*, 464 So.2d 737, 742 (La. 1985) (“To intentionally interfere with the execution of any law would be a failure to perform a duty lawfully required of them under their oath and would constitute malfeasance.”). Additionally, defendant's claim of double jeopardy is premature. *See State v. Hall*, 12-0601 (La. 6/29/12), 91 So.3d 302. The judgments of the lower courts are reversed, defendant's motion to quash is denied, and the matter is remanded for further proceedings.

REVERSED AND REMANDED