

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

No.2020-K-00561

VS.

DONALD P. LEMOINE

IN RE: Donald P. Lemoine - Applicant Defendant; Applying For Writ Of Certiorari,
Parish of Avoyelles, 12th Judicial District Court Number(s) 208108, Court of
Appeal, Third Circuit, Number(s) 19-468;

October 14, 2020

Writ application granted. See per curiam.

WJC

BJJ

JLW

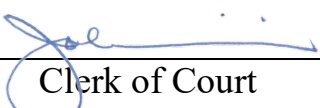
JDH

SJC

JTG

JHB

Supreme Court of Louisiana
October 14, 2020



Clerk of Court
For the Court

10/14/20

SUPREME COURT OF LOUISIANA

No. 2020-K-00561

STATE OF LOUISIANA

versus

DONALD P. LEMOINE

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
THIRD CIRCUIT, PARISH OF AVOYELLES**

PER CURIAM:

Writ granted. Defendant was charged with possession of stolen things, La.R.S. 14:69. The charging instrument alleged that defendant had taken three gun safes and their contents when he was aware, or should have been aware, that they were stolen. The State later attempted to clarify during the proceedings that one of the stolen items taken by defendant was a specific handgun, which the State identified by serial number. After a bench trial, the district court acquitted defendant of the charge. The district court found the State failed to prove that any of the items taken were stolen.

The State then charged defendant with illegal possession of a stolen firearm, La.R.S. 14:69.1. Specifically, the State charged defendant with the illegal possession of the same handgun, identified by serial number, and alleged again that it was stolen. Defendant filed a motion to quash the charging instrument, in which he contended the second prosecution violated double jeopardy protections. The district court granted defendant's motion to quash.

The court of appeal reversed the district court. *State v. Lemoine*, 19-0468 (La. App. 3 Cir. 3/11/20), 297 So.3d 76. Applying *Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932), the court of appeal found that the crime of

illegal possession of a stolen firearm requires the State to prove an element that illegal possession of stolen things does not: “These two crimes both require proof that the defendant intentionally possessed something he knew or should have known was stolen. Illegal possession of a stolen firearm, however, requires proof that the defendant intentionally possessed a stolen firearm.” *Lemoine*, 19-0468, p. 4, 297 So.3d at 79. One member of the appellate panel dissented. The dissenting judge found that double jeopardy protections prohibit defendant from being prosecuted again, after an acquittal, for the illegal possession of the same handgun from the same alleged theft. *Id.*, 19-0468, pp. 1–3, 297 So.3d at 81–82 (Cooks, J., dissenting).

To survive a double jeopardy challenge under *Blockburger*, each of the offenses must require proof of a different element. “The applicable rule is that, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether *each provision requires proof of a fact which the other does not.*” *Blockburger*, 284 U.S. at 304, 52 S.Ct. at 182 (emphasis added). In finding one of the crimes requires proof of an element that the other does not, and then reaching its conclusion, the court of appeal erred by conducting only one-half of the analysis under *Blockburger*.

Illegal possession of stolen things is the intentional possessing, procuring, receiving, or concealing of anything of value which has been the subject of any robbery or theft, under circumstances which indicate that the offender knew or had good reason to believe that the thing was the subject of one of these offenses. La.R.S. 14:69(A). Illegal possession of stolen firearms is the intentional possessing, procuring, receiving, or concealing of a firearm which has been the subject of any form of misappropriation. La.R.S. 14:69.1(A)(1). In addition, it is an affirmative defense to a prosecution for illegal possession of stolen firearms that the offender had no

knowledge that the firearm was the subject of any form of misappropriation. La.R.S. 14:69.1(A)(2). The district court acquitted defendant of the charge of illegal possession of stolen things, which things included a specific handgun. The State then sought to retry defendant for illegal possession of only the allegedly stolen handgun. While there may be minor differences between the two statutes, they do not each require proof of a fact that the other does not. Accordingly, we reverse the court of appeal. We reinstate the district court's ruling, which granted defendant's motion to quash.

REVERSED