

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1998-CA-001621-MR

COMMONWEALTH OF KENTUCKY

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE SHEILA ISAAC, JUDGE  
INDICTMENT NO. 98-CR-00467

THOMAS THOMPSON

APPELLEE

OPINION  
AFFIRMING  
\*\* \*\* \* \* \* \* \*

BEFORE: BUCKINGHAM, DYCHE, AND KNOX, JUDGES.

DYCHE, JUDGE. The Commonwealth appeals pursuant to Kentucky Revised Statute (KRS) 22A.020(4) from an order of the Fayette Circuit Court that granted Thomas Thompson's (Thompson) motion to dismiss or transfer venue under Kentucky Rules of Criminal Procedure (RCr) 8.26. We affirm.

On January 18, 1997, Thompson was struck by broken glass when an air hose disconnected and broke the rear window of the semi-tractor he was operating. On January 31, 1997, a "Workers' Compensation-First Report of Injury or Illness" form was completed in Transcraft Corporation's personnel office and sent to Kentucky Employer's Mutual Insurance Company (KEMI) in

Lexington, Kentucky. KEMI paid Thompson temporary disability benefits from May 9, 1997, through October 20, 1997.

In April 1998, a Fayette County Grand Jury returned an indictment charging Thompson with Insurance Fraud (KRS 304.47-020). On June 24, 1998, the Fayette Circuit Court granted Thompson's motion to dismiss or transfer for improper venue and ordered venue transferred to Montgomery Circuit Court. This appeal followed.

Section 11 of the Kentucky Constitution provides that in all criminal prosecutions the accused "shall have a speedy public trial by an impartial jury of the vicinage. . . ." The vicinage is "the area surrounding a particular place, specifically the place where the cause of action is alleged to have arisen or where a crime is alleged to have been committed." Commonwealth v. Cheeks, Ky., 698 S.W.2d 832, 835 (1985). The proper venue for the prosecution of a case is in the county in which the alleged offense has been committed. Id. at 834; and KRS 452.510.

The Commonwealth argues that Thompson committed a fraudulent insurance act in Fayette County by making misrepresentations in a claim that was filed in KEMI's Lexington office. In addition, the Commonwealth contends that Fayette County is a proper venue because the disability checks were issued and mailed from KEMI's Lexington office.

The Commonwealth incorrectly relies on Hodges v. Commonwealth, Ky. App., 614 S.W.2d 702 (1981), and Commonwealth v. Evans, Ky. App., 645 S.W.2d 350 (1982), for the proposition

that venue is proper in Fayette County. In Hodges, the defendant filed false expense claims and was charged with theft by deception (KRS 514.040). In Evans, the defendants were charged with theft by deception (KRS 514.040) (repealed 1998), scheming to obtain medical assistance program benefits by means of false or fraudulent representations (KRS 194.505), and presentation of fraudulent claims for benefits (KRS 205.850) (repealed 1994). The court, in both cases, found that venue was proper in either the county where the claims were submitted or in the county wherein each defendant had prepared the false claims.

The Commonwealth fails to recognize that Hodges and Evans are not controlling on the issue of venue for insurance fraud (KRS 304.47-020). In Hodges and Evans, the defendants were charged with theft by deception (KRS 514.040), a crime which required the Commonwealth to prove that the defendants actually received property or services by deception. Based on this element, the Commonwealth could prosecute the defendants in the county where the property or services were issued. Here, Thompson has been charged with the crime of insurance fraud (KRS 304.47-020). As a result, the Commonwealth does not have to prove that Thompson acquired any property or services. The benefit checks issued from Fayette County are not relevant to KRS 304.47-020 and do not form a proper basis for venue.

Determining the proper venue for the prosecution of Thompson requires the resolution of the question: where was the crime of insurance fraud (KRS 304.47-020) committed? The

insurance fraud statute, KRS 304.47-020(1)(a), provides:

[A] person or entity commits a "fraudulent insurance act" if he: Knowingly and with the intent to defraud or deceive presents, causes to be presented, or prepares with the knowledge or belief that it will be presented to an insurer, Board of Claims, Special Fund or any agent thereof, 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 the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim.

The phrase, "presents, causes to be presented, or prepares with the knowledge or belief that it will be presented to an insurer" is the key to resolving the query. At what point did Thompson present the "Workers' Compensation-First Report of Injury or Illness" form, cause the form to be presented, or prepare the form with the knowledge or belief that it would be presented to KEMI? The facts indicate that Thompson filled out the form in Transcraft Corporation's personnel office in Montgomery County. Any false, incomplete, or misleading information in the form stems from Thompson preparing it in Montgomery County. When these facts are applied to KRS 304.47-020 it is clear that Thompson was in Montgomery County when he caused the form to be presented and/or prepared the form with the knowledge and belief that it would be presented to KEMI. The mere fact that the form was then sent to KEMI's Lexington office is not sufficient to subject Thompson to prosecution in Fayette County.

For the reasons stated above, the order of the Fayette

Circuit Court transferring venue to Montgomery Circuit Court is hereby affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

A. B. Chandler, III  
Attorney General  
Frankfort, Kentucky

Special Assistant Attorney  
General  
Erwin Roberts  
Lexington, Kentucky

BRIEF FOR APPELLEE:

Jerry L. Wright  
Lexington, Kentucky