

STATE OF LOUISIANA

\*

NO. 2017-KA-0126

VERSUS

\*

COURT OF APPEAL

YOLANDA J. KING

\*

FOURTH CIRCUIT

\*

STATE OF LOUISIANA

\*\*\*\*\*

APPEAL FROM  
CRIMINAL DISTRICT COURT ORLEANS PARISH  
NO. 519-592, SECTION "K"  
Honorable Michael E. Kirby, Judge

\*\*\*\*\*

**Judge Paula A. Brown**

\*\*\*\*\*

(Court composed of Judge Rosemary Ledet, Judge Regina Bartholomew Woods,  
Judge Paula A. Brown)

**LEDET, J., CONCURRING IN PART AND DISSENTING IN PART WITH  
REASONS**

Jeff Landry  
ATTORNEY GENERAL, STATE OF LOUISIANA,  
DEPARTMENT OF JUSTICE  
Soncere Smith Clark  
ASSISTANT ATTORNEY GENERAL  
Winston E. White  
ASSISTANT ATTORNEY GENERAL  
1885 North 3rd Street  
P.O. BOX 94005  
BATON ROUGE, LA 70804

COUNSEL FOR APPELLEE, STATE OF LOUISIANA

Christopher A. Aberle  
LOUISIANA APPELLATE PROJECT  
P.O. Box 8583  
Mandeville, LA 70470-8583

COUNSEL FOR DEFENDANT/APPELLANT

**REMANDED WITH INSTRUCTIONS**  
**October 27, 2017**



Defendant, Yolanda J. King (“Ms. King”), appeals her conviction on one count of executing a false affidavit, a violation of La. R.S. 18:1461.3, and one count of filing a false public record, a violation of La. R.S. 14:133, for falsely claiming an erroneous domicile in documents for her candidacy for juvenile court judge in Orleans Parish. Ms. King contends that the evidence was insufficient to convict her of the crimes charged, and that she received ineffective assistance of counsel. For the reasons that follow, we remand for an evidentiary hearing on Ms. King’s claim of ineffective assistance of counsel, reserving her right to re-urge her appeal and raise all assignments of error. We instruct the district court to grant Ms. King a new trial in the event the district court determines that her ineffective assistance of counsel claim has merit.

#### **STATEMENT OF THE CASE**

Ms. King qualified to run for juvenile court judge in Orleans Parish on February 13, 2013, and was elected on May 4, 2013. On March 20, 2014, Ms. King was indicted by a grand jury. The indictment charged that she violated La.

R.S. 18:1461.3<sup>1</sup> by executing a false affidavit with the Orleans Parish Clerk's Office, wherein she attested that she was a domiciliary of the Parish of Orleans when, in fact, she was a domiciliary of the Parish of St. Tammany.<sup>2</sup> The indictment also charged that she violated La. R.S. 14:133(A)(3)<sup>3</sup> by knowingly filing a false public record. Ms. King entered a plea of not guilty. After a one-day, six-person jury trial, she was found guilty on both counts.

---

<sup>1</sup> Throughout the record, the minute entries and docket master erroneously indicate that Ms. King was charged and sentenced pursuant to La. R.S. 18:1461(14). The minute entries also erroneously indicate that Ms. King was charged and sentenced pursuant to La. R.S. 14:133 with respect to count one and pursuant to La. R.S. 18:1461 with respect to count two, when, in fact, it is the reverse.

However, the applicable statute, La. R.S. 18:1461.3, is correctly listed on the indictment, and the sentencing transcript evidences that the trial court sentenced Ms. King pursuant to La. R.S. 18:1461.3 with respect to count one. It is well-settled that "where a conflict exists between a minute entry and a transcript, the transcript controls." *State v. Fortenberry*, 2011-0022, p. 5 (La. App. 4 Cir. 7/27/11), 73 So.3d 391, 394.

<sup>2</sup> La. R.S. 18:1461.3 provides in pertinent part:

A. No person shall knowingly, willfully, or intentionally:

(1) Being an election official, permit fraudulent votes to be cast, or knowingly count votes not entitled to be cast.

(2) Fail, refuse, or neglect to discharge any duty imposed upon him, either individually or in an official capacity, by any provision of this Title.

(3) Supply a false answer or statement to an election official or in any document required by this Title, or execute an affidavit knowing it to contain false or incorrect information.

<sup>3</sup> La. R.S. 14:133(A)(3) provides in pertinent part:

A. Filing false public records is the filing or depositing for record in any public office or with any public official, or the maintaining as required by law, regulation, or rule, with knowledge of its falsity, of any of the following:

\* \* \*

(3) Any document containing a false statement or false representation of a material fact.

On count one, violation of La R.S. 18:1461.3, Ms. King was sentenced to one year without hard labor, suspended, and two years of inactive probation. The trial court also assessed a \$1,000.00 fine, court costs, and imposed the following special conditions: (1) she must be employed; (2) she must perform one hundred community service hours; and (3) she must refrain from criminal conduct. As to count two, violation of La. R.S. 14:133, Ms. King was likewise sentenced to one year without hard labor, suspended, and two years of inactive probation, to run concurrently with the sentence imposed in count one. The trial court also assessed court costs, required one hundred hours of community service, and imposed the same special conditions provided in count one.

The trial court granted Ms. King's *pro se* motion for an out-of-time appeal and this appeal followed.

### **FACTS**

The following testimony was adduced at trial:

Mary Claire Trimble, a Deputy Clerk for the Clerk's Office of Criminal District Court in Orleans Parish and a notary, identified Ms. King's Notice of Candidacy form, which the State introduced into evidence. Ms. Trimble testified that she notarized the document and that the candidacy form indicated Ms. King's domicile was 5336 Stillwater Drive, New Orleans, Louisiana, 70128. Ms. Trimble confirmed on cross-examination that she had no personal knowledge of the information contained in the candidacy form and that she did not verify whether Ms. King was actually domiciled at the Stillwater Drive residence.

Troy Dugas, the Chief Deputy Assessor for St. Tammany Parish, testified that the mortgage and conveyance records of St. Tammany Parish showed that Ms. King purchased a home at 1638 Chancer Lane, Slidell, Louisiana, 70461, in 2006. On September 8, 2006, she filed for a homestead exemption for that residence. Mr. Dugas explained that an individual must own and occupy the residence as a principal place of domicile in order to qualify for a homestead exemption in St. Tammany Parish. He stated the owner's signature on the qualifying documents meant the owner did not claim a homestead exemption on any other property in the State of Louisiana.

Mr. Dugas testified that in St. Tammany Parish, once an individual files for a homestead exemption, it is not necessary to re-file each year—the exemption is a perpetual homestead. Mr. Dugas said Ms. King claimed a homestead exemption for the Slidell residence every year from 2007 through 2013. He testified that in April 2013, Ms. King requested that the assessor retroactively remove the homestead exemption only for the years 2011, 2012, and 2013. The homestead exemption application and real estate property transfer forms were admitted into evidence and published to the jury.

John Carroll, a private investigator, testified that he was asked to by a client to investigate Ms. King. Mr. Carroll's investigation revealed that Ms. King had two driver's licenses—one issued in Georgia and another issued in Louisiana. The background check showed that Ms. King changed her driver's license address from 5535 Bundy Road, New Orleans, Louisiana, to the Stillwater Drive address on April 22, 2013. Mr. Carroll went to the Bundy Road address and discovered that it was an empty lot.

Mr. Carroll testified that he interviewed neighbors on Chancer Lane in Slidell, Louisiana. After running the license plate numbers, he learned that a vehicle parked in the driveway of 1638 Chancer Lane was registered to Yvette King and that another vehicle, a champagne-colored Nissan Murano, was registered to Ms. King. Each vehicle was registered to a Georgia address.

Mr. Carroll also conducted surveillance of Ms. King at the Chancer Lane residence from May 14 through May 28, 2013. He documented Ms. King's departure and arrival times. He noted that on Mondays through Fridays, Ms. King entered the Nissan Murano and departed from Chancer Lane between 6:30 a.m. and 7:30 a.m. each morning.<sup>4</sup> Mr. Carroll took photographs of the Nissan Murano while it was parked in the private parking lot for judges and city officials behind New Orleans City Hall, and he verified that the license plate number of the Nissan Murano matched the vehicle he observed Ms. King enter. Mr. Carroll said he interviewed some additional neighbors on Chancer Lane—all of whom wished to remain anonymous—who identified Ms. King as the person who lived at the Chancer Lane residence. Based on his investigation, Mr. Carroll was convinced that Ms. King lived at the Chancer Lane residence with her sister.

On cross-examination, Mr. Carroll stated that he met with Gerald Bayer and other agents from the Attorney General's Office on May 28, 2013. At that meeting, he turned over the findings from his investigation of Ms. King. Mr. Carroll acknowledged that Ms. King's Orleans Parish home address before Hurricane Katrina was the empty Bundy Road lot. He also admitted that he never investigated Ms. King's domicile before she qualified for juvenile court judge, but rather, after she was elected. With regards to the Chancer Lane neighbors, Mr.

---

<sup>4</sup> Mr. Carroll testified that he identified Ms. King by one of her campaign photos.

Carroll testified that he did not obtain any video, audio, or sworn statements from any of them.

Mr. Bayer—a criminal investigator for the Louisiana Department of Justice, Office of the Attorney General—testified that in May of 2013, he assisted the Secretary of State’s Office in an investigation of Ms. King. Mr. Bayer said his contact with the Orleans Parish Assessor’s Office determined that Jimmie Bobb and Grace King were the owners of the residence at 5336 Stillwater Drive in New Orleans and that the residence had been purchased on September 25, 1987.

Mr. Bayer said that he interviewed a neighbor, Michael Barwell, who resided at 5346 Stillwater Drive. According to Mr. Bayer, Mr. Barwell told him that Jimmie Bobb had lived at the residence for twenty-five years and that Grace King had lived with Mr. Bobb at that residence until Hurricane Katrina. Mr. Barwell also told Mr. Bayer that after Hurricane Katrina, Ms. Grace King visited periodically. Mr. Bayer testified that Mr. Barwell confirmed that only Mr. Bobb and Grace King lived at the Stillwater Drive residence, not Ms. King. Mr. Bayer further testified that although he was unable to speak with other neighbors, he did attempt to speak with Mr. Bobb. According to Mr. Bayer, Mr. Bobb not only failed to appear for a scheduled appointment with him, Mr. Bobb also refused to speak with him, even though he had been subpoenaed.

Mr. Bayer testified that he also spoke to Mr. Carroll, the private investigator who had investigated Ms. King. Mr. Bayer said that Mr. Carroll voluntarily told him that Mr. Carroll’s investigation revealed Ms. King lived at 1638 Chancer Drive in Slidell. At the end of his investigation, Mr. Bayer concluded Ms. King did not reside at the Stillwater Drive residence.



On cross-examination, Mr. Bayer confirmed that, after Ms. King's election, his office received a package from the Secretary of State, which had been submitted by Cynthia Samuel, another candidate in the election. He represented that the package included a complete investigation with witness statements and letters regarding Ms. King's domicile. Mr. Bayer spoke to the Registrar of Voters in Orleans Parish after he received the package from the Secretary of State, but he admitted he never spoke to Ms. King. Mr. Bayer also acknowledged that he was unable to secure a sworn statement from Mr. Barwell, the Stillwater neighbor, stating that Mr. Barwell "really didn't want to get involved."

Sandra L. Wilson, Registrar of Voters for Orleans Parish, testified that Ms. King was a registered voter in Orleans Parish from 2006 through the date of trial. Specifically, she stated Ms. King was a registered Orleans Parish voter in February 2013. According to Ms. Wilson, the only change in Ms. King's voting record was a change of address from Bundy Road to Stillwater Drive or vice versa.

Ms. Wilson testified that in April 2013, she received a letter stating that Ms. King was not eligible to vote in Orleans Parish based on her St. Tammany Parish homestead exemption. She notified Ms. King of the challenge and allowed her twenty-one days to respond. Ms. Wilson testified that Ms. King was removed from the Orleans Parish voter registration rolls on June 13, 2013, but was reinstated on June 17, 2013. The reinstatement was based on information she received that Ms. King had removed her St. Tammany Parish homestead exemption.

Mr. Bobb testified that he and Ms. Grace King owned the home at 5336 Stillwater Drive, New Orleans, Louisiana, 70128. He has resided in the residence for over twenty years, and Ms. Grace King no longer lived at the residence. When

asked who lived at the Stillwater Drive residence on February 13, 2013, Mr. Bobb responded that Ms. King lived there “for a minute, for a while.” Mr. Bobb could not recall exactly how long Ms. King lived at the Stillwater Drive residence; however, he stated she might have lived there “[p]ossibly, possibly a year, maybe more.” Mr. Bobb also could not recall when Ms. King moved in or out of his Stillwater Drive residence.

Mr. Bobb acknowledged that he went to the Attorney General’s Office with his attorney to discuss whether Ms. King lived at his Stillwater Drive residence. Although he was aware that he was not under investigation, he did not want to tell the investigators who was living in his home. According to Mr. Bobb, he was exercising his Fourth Amendment right to privacy and he felt that there was no need to reveal that information to anyone. Mr. Bobb testified that he did not have a grudge against Ms. King or her sisters and reaffirmed it was not a secret as to whether Ms. King lived at his Stillwater Drive residence. Mr. Bobb also denied any knowledge of Ms. King’s ownership of a residence in St. Tammany Parish.<sup>5</sup>

Malcolm Bezet, a special agent for the Federal Bureau of Investigation (“FBI”), testified for the defense. He stated that Ms. King contacted him in May 2013 and indicated that “people were trying to get her out of the election.”<sup>6</sup> Mr. Bezet said his investigation included surveillance and wiring Ms. King with audio or video equipment to verify the alleged threats. Mr. Bezet testified that Ms. King identified the other candidates in the juvenile court race as the individuals who

---

<sup>5</sup> The State then rested and defense counsel made an oral motion for dismissal based on a lack of evidence. However, the trial court noted that, pursuant to La. C.Cr.P. art. 778, there is no directed verdict in a jury case, and accordingly, denied Defendant’s motion.

<sup>6</sup> Mr. Bezet testified that initially campaign workers or volunteers reported the incident to the FBI and that Ms. King came to the FBI afterwards.

made the threats. Mr. Bezet did obtain some investigative documents, but his investigation ended after the election. Mr. Bezet added that neither he, nor anyone from the FBI investigated Ms. King regarding her residency challenge. Furthermore, no one from the Attorney General's Office contacted him regarding the pending charges.

### **ERRORS PATENT**

Appellate courts review all criminal appeal records for the existence of a patent error. *See* La. C.Cr.P. art. 920(2).<sup>7</sup> Here, we have reviewed the record and have found no error patent.

### **DISCUSSION**

Ms. King raises two assignments of error. In her first assignment of error, she contends the evidence was insufficient to support the convictions. In her second assignment of error, Ms. King asserts that her trial attorney rendered ineffective assistance of counsel by his failing to lodge an objection to critical and inadmissible hearsay testimony. We will first address the sufficiency of the evidence.

#### ***Sufficiency of the Evidence***

Ms. King contends that the State failed to meet its burden of proof that she was not domiciled in Orleans Parish when she executed and filed her qualifying documents as a candidate for juvenile court judge on February 13, 2013.

In support of her argument, Ms. King notes that her Louisiana driver's license has always listed an Orleans Parish address; she works in Orleans Parish; and she has always been registered to vote in Orleans Parish. She argues her New

---

<sup>7</sup> La. C.Cr.P. art. 920(2) provides that the scope of appellate review includes: “[A]n error that is discoverable by a mere inspection of the pleadings and proceedings and without inspection of the evidence.”

Orleans home was destroyed during Hurricane Katrina, and, like others, she was involuntarily displaced from New Orleans after the hurricane. Ms. King maintains that while she may have lived in various places—such as, the State of Georgia and St. Tammany Parish—the State failed to present evidence that she *habitually* resided in St. Tammany Parish or outside of Orleans Parish at the time she qualified for judge on February 13, 2013. Ms. King points to Mr. Bobb’s testimony that she resided with him for a time in his New Orleans home and her documented ties to the City of New Orleans as conclusive evidence of her physical residence and intent to remain an Orleans Parish domiciliary.

As to her purchase of the St. Tammany Parish home, Ms. King discounts her failure to remove the homestead exemption claimed for the years from 2006 through 2013 as evidence of her intent to make St. Tammany Parish her domicile. Rather, she contends the homestead exemption was no more dispositive that she was domiciled in St. Tammany Parish than a Georgia car registration and driver’s license was dispositive that she was domiciled in the state of Georgia. Ms. King argues that neither the St. Tammany Parish home nor the Georgia car registration should be afforded greater weight than her Orleans Parish driver’s license and voter registration as proof of an Orleans Parish domicile.

Ms. King further asserts that Mr. Carroll’s testimony regarding her departures to and from the St. Tammany Parish address is likewise not conclusive proof of a domicile in St. Tammany Parish. Ms. King notes that Mr. Carroll’s observations covered only a few days in May 2013; they occurred after she filed her Notice of Candidacy form; and they occurred after the election. Furthermore, Ms. King highlights Mr. Carroll’s admission that he had no other information to determine her domicile on February 13, 2013, the date she signed the Notice of

Candidacy form. Ms. King maintains that the State primarily relied on neighbors' unsworn, inadmissible hearsay statements to secure a conviction.

For these reasons, Ms. King argues there was insufficient evidence to convict her and that her convictions should be overturned.

In general, Louisiana jurisprudence provides that “[w]hen issues are raised on appeal as to the sufficiency of the evidence and as to one or more trial errors, the reviewing court should first determine the sufficiency of the evidence.” *State v. Miner*, 2014-0939, p. 5 (La. App. 4 Cir. 3/11/15), 163 So.3d 132, 135 (quoting *State v. Hearold*, 603 So.2d 731, 734 (La. 1992)).

The reason for reviewing sufficiency first is that the accused may be entitled to an acquittal under *Hudson v. Louisiana*, 450 U.S. 40, 101 S.Ct. 970, 67 L.Ed.2d 30 (1981), if a rational trier of fact, viewing the evidence in accordance with *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979) in the light most favorable to the prosecution, could not reasonably conclude that all of the essential elements of the offense have been proved beyond a reasonable doubt. When the entirety of the evidence, including inadmissible evidence which was erroneously admitted, is insufficient to support the conviction, the accused must be discharged as to that crime, and any discussion by the court of the trial error issues as to that crime would be pure dicta since those issues are moot.

On the other hand, *when the entirety of the evidence, both admissible and inadmissible, is sufficient to support the conviction*, the accused is not entitled to an acquittal, and the reviewing court must then consider the assignments of trial error to determine whether the accused is entitled to a new trial. If the reviewing court determines there has been trial error (which was not harmless) in cases in which the entirety of the evidence was sufficient to support the conviction, then the accused must receive a new trial, but is not entitled to an acquittal even though the admissible evidence, considered alone, was insufficient. *Lockhart v. Nelson*, 488 U.S. 33, 109 S.Ct. 285, 102 L.Ed.2d 265 (1988).

*Hearold*, 603 So.3d at 734. (Emphasis added)

This Court has also observed that “[w]hen circumstantial evidence is used to prove the commission of the offense [,] La. R.S. 15:438 requires that ‘assuming

every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence.” *State v. Hickman*, 2015-0817, p. 9 (La. App. 4 Cir. 5/16/16), 194 So.3d 1160, 1165. (quoting *State v. Brown*, 2003-0897, p. 22 (La. 4/12/05), 907 So.2d 1, 18 (in turn quoting *State v. Neal*, 2000-0674 (La. 6/29/01), 796 So.2d 649, 657)). “Ultimately, all evidence, both direct and circumstantial must be sufficient under *Jackson* to prove guilt beyond a reasonable doubt to a rational jury.” *Hickman*, 2015-0817, p. 9, 194 So.3d at 1166 (quoting *Neal*, 2000-0674, p. 9, 796 So.2d at 657) (citing *State v. Rosiere*, 488 So.2d 965,968 (La.1986)).

Thus, “[i]f rational triers of fact could disagree as to the interpretation of the evidence, the rational trier’s view of all of the evidence most favorable to the prosecution must be adopted.” *State v. Green*, 588 So.2d 757, 758 (La. App. 4 Cir. 1991) (citing *State v. Mussall*, 523 So.2d 1305 (La. 1988)). It is not the function of the appellate court to assess the credibility of witnesses or reweigh the evidence. *State v. Scott*, 2012-1603, p. 11 (La. App. 4 Cir. 12/23/13), 131 So.3d 501, 508 (citing *State v. Johnson*, 619 So.2d 1102, 1109 (La. App. 4 Cir. 1993)). Credibility determinations, as well as the weight attributed to the evidence, are soundly within the province of the fact finder. *Scott*, 2012-1603, p.4, 121 So.3d at 508 (citing *State v. Brumfield*, 93-2404 (La. App. 4 Cir. 6/15/94), 639 So.2d 312, 316). Moreover, conflicting testimony as to factual matters is a question of weight of the evidence, not sufficiency. *State v. Jones*, 537 So.2d 1244, 1249 (La. App. 4 Cir. 1989). Absent internal contradiction or irreconcilable conflicts with physical evidence, a single eyewitness’ testimony, if believed by the fact finder, is sufficient to support a factual conclusion. *State v. Marshall*, 2004-3139, p. 9 (La. 11/29/06), 943 So.2d 362, 369.

Ms. King was convicted of executing a false affidavit and filing a false public record—the Notice of Candidacy form—at the time she qualified as a candidate for juvenile court judge.

La. Const. art. V., § 24 provides:

(A) A judge of the supreme court, a court of appeal, district court, family court, parish court, or court having solely juvenile jurisdiction shall have been domiciled in the respective district, circuit, or parish for one year preceding election and shall have been admitted to the practice of law in the state for at least the number of years specified as follows:

(1) For the supreme court or a court of appeals - ten years.

(2) For a district court, family court, parish court, or court having solely juvenile jurisdiction - eight years.

(B) He shall not practice law.

This Court discussed the principles regarding residence and domicile in *Graham v. Prevost*, 2015-1033, p. 2 (La. App. 4 Cir. 9/29/15), 176 So.3d 1142, 1144-45, as follows:

The domicile of an individual is the place of that individual's habitual residence. La. C.C. art. 38. An individual may have several residences but only one domicile. La. C.C. art. 39. If one lacks a habitual residence, any place of residence may be considered one's domicile at the option of “persons whose interests are affected.” *Id.* One's domicile remains unchanged until a new one is acquired. La. C.C. art. 44. An individual changes his domicile when he moves his residence with the intent to make the new location his habitual residence. *Id.* The intent to establish or change one's domicile depends upon the circumstances, such as a sworn declaration. La. C.C. art. 45. In the absence of a sworn declaration, other evidence is required.

One qualifies for a public office by filing a Notice of Candidacy. La. R.S. 18:461A(1). By law, a Notice of Candidacy form requires the candidate for Louisiana public office to state his domicile therein. *Id.*

The *Graham* Court further opined:

Because domicile requires a physical residence plus intent to remain, a party's uncontroverted testimony regarding his intent “may be sufficient to establish domicile, in the absence of any documentary or

other objective evidence to the contrary.” *Landiak [v. Richmond]*, [20]05-0758, p. 10 [(La. 3/24/05)], 899 So.2d [535,] 543.

When documentary or other objective evidence casts doubt on a person's statements regarding intent, it is incumbent on courts to weigh the evidence presented in order to determine domicile in fact. Otherwise, the legal concept of domicile is meaningless and every person would be considered legally domiciled wherever he says he is domiciled. Some of the types of documentary evidence commonly considered by courts to determine domicile in fact include such things as voter registration, homestead exemptions, vehicle registration records, driver's license address, statements in notarial acts, and evidence that most of the person's property is housed at that location. Obviously, the more of these items presented by a party opposing candidacy in a given case to show lack of domicile in the district, the more difficult it will be for the candidate to overcome the plaintiff's evidence.

*Id.*, 2005-0758, pp. 10-11, 899 So.2d at 543-544 (footnotes omitted).

*Graham*, 2015-1033, p. 3, 176 So.3d at 1145.

In the case *sub judice*, review of the evidence shows that Ms. King owned a home at 1638 Chancer Lane in St. Tammany Parish, for which she claimed a 2006 recurring homestead exemption. Ms. King indicated on the homestead exemption form that her St. Tammany Parish home was her primary residence. In April 2013, after qualifying to run for juvenile court judge, Ms. King requested a three-year retroactive retraction of her St. Tammany Parish residence homestead exemption. There was un rebutted testimony from investigator Mr. Bayer that Ms. King's Louisiana Driver's License listed an empty lot as her address. Mr. Bayer also testified that Mr. Bobb's neighbor, Mr. Barwell, confirmed that Ms. King did not live at 5336 Stillwater Drive in Orleans Parish. Moreover, there was uncountervailing testimony from Mr. Carroll, the investigator who observed Ms. King every morning for two weeks coming from and going to a home she owned in



St. Tammany Parish. Mr. Carroll likewise testified that he spoke to neighbors who resided on Chancer Lane in St. Tammany Parish who confirmed that Ms. King resided in the St. Tammany home.

Although Mr. Bobb testified that Ms. King resided at his Stillwater Drive residence, he could not recall when Ms. King moved in or moved out or the duration of time she lived at his residence. It is well settled that “[w]ithin the bounds of rationality, the trier of fact may accept or reject, in whole, or in part, the testimony of any witness.” *State v. Casey*, 99-0023, p. 14 (La. 1/26/00), 775 So.2d 1022, 1034. It is evident that the jury rejected part, if not all, of Mr. Bobb’s testimony.

Based on the totality of the evidence presented at trial—tax records, real estate transaction records, testimony from government officials, testimony from investigators, and testimony from Mr. Bobb—when viewed in the light most favorable to the prosecution, the State introduced sufficient evidence from which the trier of fact could reasonably conclude beyond a reasonable doubt that Ms. King filed an affidavit falsely attesting that she was domiciled in Orleans Parish.

This assignment of error is unpersuasive.

***Ineffective Assistance of Counsel***

In her second assignment of error, Ms. King alleges that her convictions resulted from inadmissible hearsay statements from neighbors that came in through the testimony of Messrs. Carroll and Bayer.

Ms. King cites to Mr. Bayer’s testimony, wherein he testified that the Orleans Parish Stillwater Drive neighbor, Mr. Barwell, informed him that Ms. King did not reside at the Stillwater Drive residence. She likewise points to Mr. Carroll’s testimony, wherein he stated the St. Tammany Parish residents residing

on Chancer Lane told him that Ms. King resided at the Chancer Lane address. Prodded further, Mr. Carroll's testimony failed to confirm the identity of these anonymous St. Tammany residents.

Ms. King also submits that the State embellished Mr. Bayer's testimony regarding Mr. Barwell's residency comments during closing argument when the prosecutor argued as follows:

Next, I called Mr. Gerald Bayer. Mr. Bayer told you he received some information. He conducted an investigation and the first part of his conduction [*sic*] of his investigation was to go to the Stillwater address in Orleans Parish and see what was going on. He knocked on the door of the address on Stillwater Drive. Nobody answered, so he instead talked to some neighbors. One neighbor in particular that he talked to was Mr. Michael Barwell. Mr. Michael Barwell said, Yeah, I know that house. That house is owned by Jimmie Bobb, his girlfriend, Grace King. [*sic*] Who else lives there? Nobody. How long have you lived here? Over 20 years. Does Yolanda King live here? Nope. Had Yolanda King ever lived here? Nope.

Ms. King avers that the testimony of Messrs. Carroll and Bayer, regarding the neighbors' statements on her residency status, was inadmissible hearsay evidence<sup>8</sup> offered by the State to prove the truth of the matter asserted—that Ms. King resided in St. Tammany Parish and not Orleans Parish on the date she qualified for juvenile court judge. As such, Ms. King asserts that inasmuch as the strength of the State's case lies in these inadmissible hearsay statements, her trial counsel was ineffective based on his failure to lodge an objection.

Before we address this error, we acknowledge that, generally, ineffective-assistance-of-counsel claims are more properly raised in an application for post-conviction relief, where the district court can conduct a full evidentiary hearing on the matter, if one is warranted. *State v. Leger*, 2005-0011, p. 44 (La. 7/10/06), 936

---

<sup>8</sup> La. C.E. 801(C) provides that “[h]earsay” is a statement, other than one made by the declarant while testifying at the present trial or hearing, offered in evidence to prove the truth of the matter asserted.”

So.2d 108, 142. However, there is no law or jurisprudential rule that prohibits a defendant from raising the issue of ineffective assistance of counsel on appeal, nor is there a mandate for reviewing courts to only consider this issue during post-conviction relief. We conclude the interests of justice and judicial economy will be best served by considering Ms. King's ineffective assistance of counsel claim at this time.

In *Strickland v. Washington*, the U.S. Supreme Court established a two-pronged test to attain relief in an ineffective assistance of counsel claim as follows: 1) the defendant must show that counsel's performance was deficient; and 2) that this deficiency prejudiced the defense. 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984). As to the first prong, "judicial scrutiny of counsel's performance must be highly deferential." *Id.* at 689, 104 S.Ct. at 2065. "The object of an ineffectiveness claim is not to grade counsel's performance." *Id.* at 697, 107 S.Ct. at 2069. Thus, when reviewing a claim of ineffective assistance of counsel, an appellate court "does not sit to second-guess strategic and tactical choices made by trial counsel." *State v. Myles*, 389 So.2d 12, 31 (La. 1980) (on rehearing).

In determining whether counsel's deficiency prejudiced the defendant, the defendant must show that more than counsel's errors had some conceivable impact on the outcome of the proceeding. *Strickland*, 466 U.S. at 693, 104 S.Ct. at 2067. But rather, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694, 104 S.Ct. at 2068. Nevertheless, "even if testimony is inadmissible hearsay, if it is merely cumulative or corroborative of

other testimony adduced at trial, then the admission is harmless.” *State v. Hamdalla*, 2012-1413, p. 12 (La. App. 4 Cir. 10/2/13), 126 So.3d 619, 625 (quoting *State v. McIntyre*, 381 So.2d 408, 411 (La. 1980)).

Ms. King argues that she meets the “deficiency” prong of *Strickland’s* ineffective assistance of counsel criteria due to her counsel’s failure to object to undisputed inadmissible hearsay testimony. Ms. King further argues that she satisfies *Strickland’s* “prejudice” prong because the State’s most compelling, substantive evidence—that she was a habitual resident of St. Tammany Parish—was elicited from the neighbors’ unsworn, out-of-court hearsay statements. Ms. King avers that the other evidence introduced by the State—the Notice of Candidacy form, the homestead exemption, and the investigators’ testimony as to where she lived after the qualifying date—were not sufficient to prove she had a *habitual* residence outside of Orleans Parish. Ms. King emphasizes the neighbors’ out-of-court hearsay statements may have also undermined the credibility of Mr. Bobb, the only person who provided sworn testimony that Ms. King lived at the Stillwater residence for possibly a year. Therefore, but for the jury’s consideration of inadmissible hearsay evidence, Ms. King asserts the trial would have likely had a different result.

In opposition, the State does not contest the neighbors’ statements constitute inadmissible hearsay; but rather, the State argues that defense counsel failed to object because it was his trial strategy. Specifically, the State claims defense counsel’s failure to lodge an objection was deliberate in that it was his intention to use the hearsay statements to impeach the investigators’ credibility—and support the defense’s argument that Ms. King’s prosecution was politically motivated.

The State argues that the neighbors' out-of-court statements were merely corroborative of the other extensive evidence presented in demonstrating Ms. King's guilt. The State maintains that, absent the hearsay statements, it provided the jury with sufficient evidence to convict Ms. King—such as, records of her ownership and a homestead exemption claim on the Chancer Street residence, the investigators' testimony and observations as to where she lived, and documentation that Mr. Bobb owned the New Orleans home that Ms. King claimed as her domicile. The State further argues that introduction of the hearsay evidence was harmless error, as it was merely cumulative and corroborative of the other evidence produced at trial that established Ms. King's guilt.

In the instant case, when we apply *Strickland*'s two-pronged “deficiency and prejudice” test, Ms. King's ineffective assistance of counsel claim may have merit. The facts show defense counsel failed to lodge an objection to clearly inadmissible hearsay evidence that the State recited in its closing argument to the jury. As such, the jury's consideration of those statements may be sufficiently prejudicial to undermine confidence in the verdict in that a different outcome might have resulted had defense counsel lodged an objection to the admissibility of the statements.

However, regardless of whether Ms. King was prejudiced by defense counsel's failure to object, she cannot maintain an ineffective assistance of counsel claim in the event, as argued by the State, that the failure to object was a part of defense trial strategy. As the State properly notes, appellate courts do not second-guess tactical choices made by trial counsel. *See Myles, supra.*

In *State v. Hunter*, 563 So.2d 291 (La. App. 4 Cir. 1990), on direct appeal, this Court reviewed the defendant's claim of ineffective assistance of counsel,

among other assignments of errors, and found the defendant was not afforded effective assistance of counsel.<sup>9</sup> This Court reversed the defendant's conviction and ordered the defendant be granted a new trial. *Id.* at 295. After granting the State's application for rehearing, this Court, again, reversed and remanded the case for a new trial. *Id.* at 296-97. On the State's petition for writ of certiorari, the Supreme Court reversed the Fourth Circuit and remanded the case for an evidentiary hearing on the ineffective assistance of counsel claim. *State v. Hunter*, 567 So.2d 1112 (La. 1990). In the instant matter, resolution of this dispute requires a more comprehensive record to evaluate the reasons and the propriety of defense counsel's failure to lodge an objection to inadmissible hearsay statements. Therefore, we remand to the trial court for a full evidentiary hearing on Ms. King's ineffective assistance of counsel claim.

### **DECREE**

This case is remanded to the trial court for an evidentiary hearing on Ms. King's claim of ineffective assistance of counsel. If the trial court finds merit to this error, it should set aside the conviction and grant a new trial. *See State v. Addison*, 94-2745, p. 3 (La. 6/23/95), 657 So.2d 974, 975. In the event the trial court does not find ineffective assistance of counsel, Ms. King's right to appeal and re-urge all assignments of error is reserved. *See State v. Hunter*, 567 So.2d 1112 (La. 1990).

### **REMANDED WITH INSTRUCTIONS**

---

<sup>9</sup> The Court based its finding on trial counsel's failure to produce the police report at trial or use the report to impeach the identification testimony of the prosecution's key witness. *Id.* at 294-295.