

Supreme Court of Louisiana

FOR IMMEDIATE NEWS RELEASE

NEWS RELEASE #020

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the 13th day of May, 2021 are as follows:

PER CURIAM:

2020-K-00883

STATE OF LOUISIANA VS. JAMES BOURGEOIS (Parish of Lafourche)

REVERSED AND REMANDED. SEE PER CURIAM.

Weimer, C.J., dissents and assigns reasons.

Hughes, J., dissents for the reasons assigned by Weimer, C.J.

Griffin, J., dissents for the reasons assigned by Weimer, C.J.

05/13/21

SUPREME COURT OF LOUISIANA

No. 2020-K-00883

STATE OF LOUISIANA

versus

JAMES BOURGEOIS

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIRST CIRCUIT, PARISH OF LAFOURCHE**

PER CURIAM:

Defendant, an elected member of the Lafourche Parish Council, was found guilty by a unanimous jury of filing or maintaining false public records, La. R.S. 14:133(A). The charge arose from the allegation that defendant had falsely asserted in his Parish Council election qualifying form that he was domiciled in Lafourche Parish. The trial court sentenced him to a suspended sentence of three years imprisonment at hard labor with two years of probation.

The court of appeal reversed the conviction and vacated the sentence because it found the evidence insufficient to prove that defendant falsely represented his domicile on his qualifying form. *State v. Bourgeois*, 2019-0426 (La. App. 1 Cir. 6/17/20), 306 So.3d 465. The court found the evidence, when viewed according to the due process standard of *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), insufficient for a jury to reasonably conclude defendant changed his domicile from his residence in Lafourche Parish to his wife's home in Jefferson Parish, where he resided after they married in April 2014 until they separated in May 2018. Judge Welch dissented. Judge Welch found that the jury could reasonably conclude from the

evidence presented that defendant had changed his domicile to Jefferson Parish when he attested that his domicile remained in Lafourche Parish. Judge Welch stated, “Based on the totality of the evidence presented at trial—the testimony of his family members, combined with the observations of law enforcement—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 the defendant filed an affidavit falsely attesting that he was domiciled in Lafourche Parish.” *Bourgeois*, 2019-0426, p. 21, 306 So.3d at 479 (Welch, J., dissenting).

“In reviewing the sufficiency of the evidence to support a conviction, an appellate court in Louisiana is controlled by the standard enunciated by the United States Supreme Court in *Jackson v. Virginia*. . . . [T]he appellate court must determine that the evidence, viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that all of the elements of the crime had been proved beyond a reasonable doubt.” *State v. Captville*, 448 So.2d 676, 678 (La. 1984).

The offense of filing false public records is defined by La. R.S. 14:133(A) as:

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:

- (1) Any forged document.
- (2) Any wrongfully altered document.
- (3) Any document containing a false statement or false representation of a material fact.

There is no dispute that the election qualifying form is a public record and that defendant filed it. The sole question is whether the evidence, when viewed under the due process standard of *Jackson v. Virginia*, is sufficient to prove the form contained a false statement with regard to defendant’s domicile.

The State contends that it presented substantial evidence showing defendant had abandoned his domicile in Lafourche Parish and established a new domicile in Jefferson Parish by the time he submitted his qualifying form. Defendant responds that his domicile was presumed to continue in Lafourche Parish unless there was positive and satisfactory proof that he had established a new domicile and had abandoned the former domicile. Therefore, defendant asserts that the State failed to rebut that presumption.

This court addressed the legal requirements of domicile in *Landiak v. Richmond*, 05-0758 (La. 3/24/05), 899 So.2d 535, stating:

The terms “residence” and “domicile” are legal terms that are not synonymous. The most oft-cited difference between the two concepts is that a person can have several residences, but only one domicile. Domicile is an issue of fact that must be determined on a case-by-case basis. Civil Code art. 38 provides generally that “the domicile of each citizen is in the parish wherein he has his principal establishment.” Concerning “principal establishment,” Civil Code art. 38 states as follows:

The principal establishment is that in which he makes his habitual residence; if he resides alternately in several places, and nearly as much one as in another, and has not declared his intention in the manner hereafter prescribed, any one of the said places where he resides may be considered as his principal establishment, at the option of the persons whose interests are hereby affected.

Applying the above article, Louisiana case law has traditionally held that domicile consists of two elements, residence and intent to remain. When a party has not declared his intention in the manner prescribed by Civil Code art. 42, proof of a person’s intention regarding domicile shall depend upon circumstances. Thus, determination of a party’s intent to change his or her domicile must be based on the actual state of the facts, not simply on what the person declares them to be. The expressed intent of the party may be at variance with the intent as evidenced by conduct. Each case is unique and the courts attempt to arrive at the true intent, whether express or implied.

Every person has a domicile of origin that he retains until he acquires another. Because the case law recognizes a legal presumption against change of domicile, a party seeking to show that domicile has been changed must overcome that presumption by presenting positive and

satisfactory proof of establishment of domicile as a matter of fact with the intention of remaining in the new place and of abandoning the former domicile. Of course, because domicile and residence are two different legal concepts the facts could indicate that one has abandoned the former domicile in favor of a new domicile even if the person continues to have a place of residence at the former domicile.

Landiak, 05-0758, pp. 9–10, 899 So.2d at 542–43 (citations, brackets, and internal quotation marks omitted; edited for consistency).

As noted in Judge Welch’s dissent, the State presented evidence that defendant had abandoned his former domicile in Lafourche Parish and had established a new domicile in Jefferson Parish. Specifically, defendant registered a 2015 Dodge truck in his and his wife’s names, listing their Jefferson Parish address. In addition, police surveillance captured defendant driving across the parish line at least 190 times, with defendant’s route originating eastbound from Jefferson Parish and traveling into Lafourche Parish. A detective further testified that it appeared defendant was driving from Jefferson Parish to Lafourche Parish and switching vehicles before returning to Jefferson Parish.

The detective also obtained defendant’s utility bills for the Lafourche Parish property pursuant to a warrant. These records showed that approximately one month before defendant’s wedding in 2014, electricity usage at the Lafourche Parish property decreased to one-half of what it had been previously. Water consumption, in contrast, increased significantly between November 2015 and November 2016, and the water company had tried to contact defendant about a likely leak at the property.

Defendant reported a burglary at the Lafourche Parish property in August 2015, in which he claimed some of his guns had been stolen. Defendant was uncertain when the burglary occurred. The investigating officer testified that it did not appear that anyone was living in the residence, the grass was uncut, and the interior of the house was very dusty. Defendant told the investigating officer that “he wasn’t living at the

house for a while and was thinking about having it demolished.” After the burglary, defendant moved the majority of his guns to the Jefferson Parish residence.

Defendant’s children from a previous marriage moved to the Jefferson Parish home and attended school in Jefferson Parish. On the school application for defendant’s son, defendant provided the Jefferson Parish address as his own. Defendant’s ex-wife testified that the majority of their exchanges of custody occurred in Jefferson Parish and that their children spent holidays at the Jefferson Parish home. She further testified that their children refused to live in the Lafourche Parish property because of its “deplorable” condition.

Although testimony revealed that defendant occasionally slept at the Lafourche Parish residence, several witnesses testified that after the 2014 marriage, defendant spent a majority of his nights in Jefferson Parish. In his statement to the officer investigating the August 2015 burglary, defendant admitted that he had not been living in the Lafourche Parish home for an extended amount of time. Importantly, defendant told the investigating officer that he was considering having the Lafourche Parish home demolished.

Accordingly, defendant’s daily routine before and at the time he filed his qualifying form supports the jury’s conclusion that defendant intended to abandon his Lafourche Parish domicile in favor of living with his family in the Jefferson Parish home. Further, although Monica Bourgeois testified that he “never fully moved in[to]” the Jefferson Parish residence, other testimony and evidence supported the jury’s conclusion that the Jefferson Parish home was defendant’s new domicile, and he intended to abandon the former domicile. That is, defendant “surround[ed] himself with his family and the comforts of domestic life,” as he regularly slept in Jefferson Parish, his children resided in Jefferson Parish when defendant exercised physical

custody, and his children attended schools in Jefferson Parish during 2015 until 2018. *See In re Succession of Cannata*, 14-1546, p. 4 (La. App. 1 Cir. 7/10/15), 180 So.3d 355, 361,

The *Jackson* standard does not permit a reviewing court to substitute its own appreciation of the facts for that of the factfinder. *See State v. Robertson*, 96-1048, p. 1 (La. 10/4/96), 680 So.2d 1165, 1166. It is not the province of a reviewing court to assess witness credibility or reweigh evidence. *State v. Smith*, 94-3116, p. 2 (La. 10/16/95), 661 So.2d 442, 443. As explained in *State v. Mussall*,

If *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. Thus, *irrational* decisions to convict will be overturned, *rational* decisions to convict will be upheld, and the actual fact finder's discretion will be impinged upon only to the extent necessary to guarantee the fundamental protection of due process of law.

523 So.2d 1305, 1310 (La. 1988) (emphasis in original, footnote omitted).

A court charged with reviewing whether the evidence was sufficient to convict under the *Jackson* standard must largely defer to rational conclusions of the factfinder. The *Jackson* standard "leaves juries broad discretion in deciding what inferences to draw from the evidence presented at trial, requiring only that jurors draw reasonable inferences from basic facts to ultimate facts." *Coleman v. Johnson*, 566 U.S. 650, 655, 132 S.Ct. 2060, 2064, 182 L.Ed.2d 978 (2012) (internal citations and quotation marks omitted). "Sufficiency review essentially addresses whether the government's case was so lacking that it should not have even been submitted to the jury." *Musacchio v. United States*, 577 U.S. 237, 243, 136 S. Ct. 709, 715, 193 L.Ed.2d 639 (2016) (internal quotation marks omitted).

Here, the State's case was not so lacking that it should not have even been submitted to the jury. The State introduced evidence from which the jury could rationally find that defendant had abandoned his domicile in Lafourche Parish and

established a new domicile in Jefferson Parish by the time he filed his election qualifying form. The jury was not forced to speculate to reach this conclusion, as the court of appeal found. Rather, the jury could reasonably draw the inference from the evidence presented, as the dissenting judge in the court below found.

Accordingly, we reverse the decision of the court of appeal. We reinstate defendant's conviction and sentence. We remand to the court of appeal to consider any assignments of error that were pretermitted by the court of appeal's determination that the evidence was insufficient.

REVERSED AND REMANDED

05/13/21

SUPREME COURT OF LOUISIANA

No. 2020-K-00883

STATE OF LOUISIANA

VS.

JAMES BOURGEOIS

*ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIRST CIRCUIT,
PARISH OF LAFOURCHE*

WEIMER, C.J., dissenting.

While I certainly trust the combined wisdom and judgment of the jury, after review of the record, I am compelled to find the state failed to present sufficient evidence to convict the defendant beyond a reasonable doubt.

Mr. Bourgeois' conviction is predicated on the definition of "domicile," which is not defined in our Criminal Code. Rather, a person's "domicile" is generally defined in our Civil Code as "the place of his habitual residence." La. C.C. art. 38. Jurisprudence has traditionally held that domicile consists of two elements, residence and intent to remain. **Landiak v. Richmond**, 05-0758, at p. 9 (La. 3/24/05), 899 So.2d 535, 542. A person's intent regarding domicile is often not apparent and proof of one's intent to establish or change domicile will depend on the circumstances. La. C.C. art. 45.

As properly acknowledged by the majority, "residence" and "domicile" are not synonymous. A person can have several residences, but only one domicile. La. C.C. art. 39 ("A natural person may reside in several places but may not have more than one domicile.") Mr. Bourgeois admits that he maintained more than one residence, but asserted Lafourche Parish was his only domicile at the time he signed the

qualifying form on December 2, 2015. Legal determinations of domicile have been addressed in Louisiana courts on multiple occasions. The issue of “domicile” relative to an elected official typically arises in a civil context as a challenge to candidacy. In such cases, once an objector to the candidacy makes a *prima facie* showing of grounds for disqualification, such as lack of proper domicile, the burden shifts to the defendant candidate to rebut the showing. See Landiak, 05-0758 at 7-8, 899 So.2d at 541-42. The defendant in a civil case would then be obligated to prove his intent regarding domicile. However, it is challenging to import these civil law concepts regarding domicile into the criminal law arena, where the burdens of proof are so different. Here, Mr. Bourgeois is entitled to a presumption of innocence and, thus, a presumption that his stated domicile of Lafourche Parish on December 2, 2015, was truthful. Mr. Bourgeois was not required to testify regarding his intent, nor was he required to put on any evidence whatsoever to prove he was domiciled in Lafourche Parish on December 2, 2015. The burden was on the state alone to prove otherwise. Based on the record before us, I agree with the majority of the court of appeal that the state did not meet that burden.

Absent a sworn declaration of intent to change domicile, as allowed by La. C.C. art. 45, proof of this intent depends on circumstances, and there is a legal presumption against change of domicile. **Russell v. Goldsby**, 00-2595 at p. 5 (La. 9/22/00), 780 So.2d 1048, 1051. Thus, a party seeking to show that domicile has been changed must overcome that presumption by presenting positive and satisfactory proof of establishment of domicile as a matter of fact with the intention of remaining in the new place and of abandoning the former domicile. **Becker v. Dean**, 03-2493, at p. 11 (La. 9/18/03), 854 So.2d 864, 871. While there is no definitive test to determine domicile, courts have considered various types of documentary evidence

such 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.” **Landiak**, 05-0758 at 10-11, 899 So.2d at 543-544. The state introduced only one piece of such documentary evidence reflecting a Jefferson Parish address—a vehicle registration for a truck registered to both Mr. Bourgeois and his wife. However, a review of the record in its entirety demonstrates that all other similar types of evidence support a finding that Mr. Bourgeois was domiciled in Lafourche Parish. His driver’s license, voter registration, and marriage license application all reflect his Lafourche Parish address. Mr. Bourgeois also maintained a homestead exemption on his Lafourche Parish house, as well as maintained an active post office box in Lafourche Parish where he continued to receive mail even after he was married. Further, the investigating detective testified that he only searched for the vehicle registration on Mr. Bourgeois’ truck and did not do a general search for all vehicles owned by Mr. Bourgeois. However, the detective did admit under cross examination that Mr. Bourgeois owned a 2000 Volvo that was registered to the Lafourche Parish address and he could not dispute that Mr. Bourgeois owned several other vehicles, including a boat and a plane, that were all registered at the Lafourche Parish address.

There is no “smoking gun” in this case demonstrating Mr. Bourgeois falsely stated his domicile as Lafourche Parish on December 2, 2015. Undoubtedly, Mr. Bourgeois established a residence in Jefferson Parish when he married in 2014 and, as a result, necessarily spent less time at the Lafourche Parish home. However, spouses may have separate domiciles. La. C.C. art. 40. “Courts must be cognizant of the realities of modern life, in which the demands of a career and other factors often require people to spend a large amount of time at different locations.” **Russell**,

00-2595 at 7, 780 So.2d at 1052. Further, the Civil Code recognizes that if a person does not have a habitual residence, “any place of residence may be considered one’s domicile at the option of persons whose interests are affected.” La. C.C. art. 39. In this criminal case, the person whose interest is affected is Mr. Bourgeois, and he has stated his domicile to be Lafourche Parish. In fact, his intent to remain domiciled in Lafourche Parish is evidenced by the very fact that he qualified to run for office in Lafourche Parish.

Because Mr. Bourgeois was not required to testify in this case, all evidence regarding his intent relative to domicile was necessarily circumstantial. “In all cases where an essential element of the crime is not proven by direct evidence, La. R.S. 15:438 applies. As an evidentiary rule, it restrains the factfinder in the first instance, as well as the reviewer on appeal, to accept as proven all that the evidence tends to prove and then to convict only if every reasonable hypothesis of innocence is excluded.” **State v. Shapiro**, 431 So.2d 372, 384 (La. 1982). Based on this standard, the court of appeal correctly vacated defendant’s conviction.

Unlike a civil election case challenging a candidate’s domicile where the consequence is disqualification, requiring the jury to make a legal determination of domicile in the context of a criminal charge placed Mr. Bourgeois’ liberty at stake. Mr. Bourgeois offered himself as a public servant and he was elected by the voters. I find it problematic that an elected official can be placed at risk of criminal conviction for making a statement as to his domicile—a civil law concept that is fact intensive and often requires a legal determination. Moreover, a finding that a statement regarding domicile is legally incorrect does not necessarily require a finding that a candidate knowingly made a false statement. When one untrained in

the nuances of domiciliary law has so many indicia of domicile in Lafourche Parish, the state had a demanding burden to prove otherwise.

In sum, I find the state failed to prove Mr. Bourgeois falsely stated his domicile as Lafourche Parish when he signed the election qualifying form on December 2, 2015. Based on the facts of this case and the evidence in the record, I would affirm the ruling of the court of appeal.