**In The**

***Court of Appeals***

***Ninth District of Texas at Beaumont***

---

**NO. 09-14-00458-CR**

---

**SYBIL LEA DOYLE, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

---

**On Appeal from the 359th District Court**
**Montgomery County, Texas**
**Trial Cause No. 12-03-02583 CR**

---

**MEMORANDUM OPINION**

A jury convicted Sybil Lea Doyle of voting in a May 2010 election to select the directors of the board of The Woodlands Road Utility District No. 1 when she knew she was not eligible to vote in that election. *See* Tex. Elec. Code Ann. § 64.012(a)(1) (West Supp. 2015).[1] Doyle elected to have the trial court assess her punishment. Following Doyle's sentencing hearing, the trial court assessed a three-

[1] We cite to the current version of the statute, as the 2011 amendment to section 64 of the Election Code does not affect the issues that we resolve in this appeal.

year prison sentence and a fine of $5,000. However, the trial court then suspended Doyle's sentence, and placed her on probation for five years.

Doyle presents five issues in her appeal, arguing (1) that a vague definition of "residence" in the Texas Election Code violated her right to due process; (2) that the evidence is legally insufficient to overcome the presumption given to Doyle's intent on questions regarding her residence; (3) that the evidence is legally insufficient to support the jury's finding that she voted illegally; (4) that the evidence established Doyle's affirmative defense of mistake, a defense that Doyle used at trial to argue that she thought she could legally vote in the election even though she never intended, while within the District, to make a home there; and (5) that she received ineffective assistance of counsel during her trial. We conclude that Doyle's issues are without merit, we uphold the jury's verdict, and we affirm the trial court's judgment.

## Background

Shortly before the May 2010 primary election, a group of ten persons,[2] which included Doyle and her daughter, Roberta Cook, filed voter registration

[2] The group included James Jenkins, Adrian Heath, Thomas Curry, Bill Berntsen, Peter Goeddertz, Richard McDuffee, Sybil Doyle, Roberta Cook, Benjamin Allison, and Robert Allison. Doyle, Cook, Jenkins, and Heath were convicted by a jury of voting illegally in the same election that is at issue in Doyle's appeal. *See generally*, *Cook v. State*, No. 09-14-00461-CR, 2015 WL

applications with the Elections Administrator of Montgomery County. In them, the ten voters identified their residences as 9333 Six Pines Drive or as 9333 Six Pines. A Marriott Residence Inn is located at the Six Pines address these ten voters used to identify their respective places of residence. The Marriott lies within the District's election boundaries.

A total of twelve individuals voted in the May 2010 District's election. Ten voters, all members of the group claiming the Marriott as their residence, voted for Peter Goeddertz, Bill Berntsen, and Richard McDuffee, who were challenging the District's incumbent directors in the election. Two other voters cast ballots in the May 2010 election, and these two voters cast their ballots in favor of the District's incumbent directors.

After the election, the incumbent directors contested the results of the May 2010 election regarding the District's directors. Following the trial of the election contest, the judge presiding over the contest found that the voters who had listed their residences at 9333 Six Pines Drive or 9333 Six Pines did not cast legal votes because none of them resided within the boundaries of the District. The presiding judge over the election contest case also found that the two votes cast for the

---

7300664 (Tex. App.—Beaumont Nov. 18, 2015, pet. filed) (mem. op., not designated for publication); *Jenkins v. State*, 468 S.W.3d 656 (Tex. App.—Houston [14th Dist.] 2015, pet. granted).

incumbent directors were valid, and it declared the incumbent directors to have won the May 2010 election. Richard McDuffee, Peter Goeddertz, Bill Berntsen, Adrian Heath, James Jenkins, Thomas Curry, Benjamin Allison, and Robert Allison filed an appeal challenging the judgment overturning the election of Goeddertz, Berntsen, and McDuffee. We affirmed the judgment rendered in the election contest case, given the trial court's resolution of the facts involved in that dispute. *See McDuffee v. Miller*, 327 S.W.3d 808, 811 (Tex. App.—Beaumont 2010, no pet.).

In 2012, the grand jury indicted Doyle for voting illegally in the May 2010 road utility district election. Subsequently, Doyle and Cook were tried before a jury in one proceeding. At the conclusion of their trial, the jury found both Doyle and Cook guilty of voting illegally in the District's May 2010 election.

Doyle and Cook filed appeals complaining of the jury's findings that they were guilty of voting illegally. We previously affirmed Cook's conviction, and we discussed in some detail the evidence introduced during the trial that involved both Cook and Doyle. *See Cook v. State*, No. 09-14-00461-CR, 2015 WL 7300664, at *1 (Tex. App.—Beaumont Nov. 18, 2015, pet. filed) (mem. op., not designated for publication).

## Indictment

In issue one, Doyle challenges the trial court's denial of her motion seeking to quash her indictment for voting illegally in the District's May 2010 election. On appeal, Doyle argues that the trial court should have quashed her indictment because the Texas Election Code employs an indefinite and circular standard to determine a voter's residence. We review challenges to rulings on motions to quash indictments on appeal using a de novo standard. *Lawrence v. State*, 240 S.W.3d 912, 915 (Tex. Crim. App. 2007).

In evaluating Doyle's argument that the Election Code's residence requirements are so uncertain they cannot be enforced, we "construe a statute according to its plain language, unless the language is ambiguous or the interpretation would lead to absurd results that the legislature could not have intended." *Williams v. State*, 253 S.W.3d 673, 677 (Tex. Crim. App. 2008). A statute is unconstitutionally vague when a person of "'common intelligence must necessarily guess at its meaning and differ as to its application[.]'" *Baker v. State*, 478 S.W.2d 445, 449 (Tex. Crim. App. 1972) (quoting *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926)). When a statute is not ambiguous, we assume the Legislature meant what it has expressed, and a court should not add or subtract

from the meaning of the statute. *Tapps v. State*, 294 S.W.3d 175, 177 (Tex. Crim. App. 2009).

Under the Election Code, an eligible voter must "be a resident of the territory covered by the election for the office or measure on which the person desires to vote[.]" Tex. Elec. Code Ann. § 11.001(a)(2) (West 2010). Section 1.015 of the Texas Election Code provides meaning to what is required to be a "resident" under section 11.001, as it provides:

> (a) In this code, "residence" means domicile, that is, one's home and fixed place of habitation to which one intends to return after any temporary absence.
>
> (b) Residence shall be determined in accordance with the common-law rules, as enunciated by the courts of this state, except as otherwise provided by this code.
>
> (c) A person does not lose the person's residence by leaving the person's home to go to another place for temporary purposes only.
>
> (d) A person does not acquire a residence in a place to which the person has come for temporary purposes only and without the intention of making that place the person's home.
>
> (e) A person who is an inmate in a penal institution or who is an involuntary inmate in a hospital or eleemosynary institution does not, while an inmate, acquire residence at the place where the institution is located.

*Id.* § 1.015 (West 2010).

Relying on *Mills v. Bartlett*, 377 S.W.2d 636, 637 (Tex. 1964), Doyle suggests that the Texas Supreme Court recognized that the definition of "residence" is unclear. Doyle concludes that the meaning of the term "residence,"

as used in in section 1.015 of the Texas Election Code, is so vague that it "fails to pass constitutional muster in violation of the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution."

However, the Texas Supreme Court in *Mills* was not asked to address a due process challenge to the Election Code based on the meaning of the term "residence." *Id*. at 636-37. Instead, the issue addressed by the *Mills* court concerned one candidate's challenge that claimed another candidate was not a resident of the County for the purpose of an election to a county office. *Id.* And, while the *Mills* court noted that "[v]olition, intention and action are all elements to be considered in determining where a person resides[,]" the Court allowed the factfinder to draw the inferences that were available from the evidence to decide whether the candidate who was being challenged had become a resident of the county in which he sought election to office. *Id.* at 637-38. In summary, the *Mills* court did not hold that any of the provisions in the Texas Election Code were unenforceable on the grounds that the requirement that a candidate be a resident of the county where the election occurred were unclear. *Id*.

Although several factors are used under the Election Code to determine whether an individual has established "residence" within an election district, the fact that several factors are used does not demonstrate that persons of ordinary

intelligence cannot determine whether they are eligible (or ineligible) to vote in an election when they reside outside an election district's boundaries. The plain language of section 1.015 makes it clear that a voter cannot establish residence by being in a place temporarily while at the same time never intending to make that place her home. Tex. Elec. Code Ann. § 1.015(a), (d). The provision is not vague, and reasonable voters would not be misled by the Election Code's requirement that the voter both be present within the election boundaries of the entity holding the election and while there, the voter must also have the intent to make a home within the district to cast a legal vote in the entity's election. Because the residence requirements of the Election Code regarding residence are not ambiguous and they do not subject voters like Doyle to absurd results, we overrule her first issue. *See Tapps*, 294 S.W.3d at 177; *see also Williams*, 253 S.W.3d at 677.

Sufficiency of the Evidence

In issues two through four, Doyle challenges the trial court's denial of her motion for directed verdict. According to Doyle, the evidence is legally insufficient to support the jury's verdict, and the jury could not reasonably have rejected her defense that she was mistaken about her ability to register and vote in the District's election. Doyle contends the State failed to present sufficient evidence that she voted knowing that she was ineligible to do so, and she argues that when she

decided to register and vote, she reasonably relied on statements of the Attorney General and Secretary of State regarding her eligibility. We address two through four together.

Doyle's second and third issues complain that the evidence is insufficient to support the jury's finding that she was guilty of voting illegally in the District's election. Therefore, we note the standard of review that applies to the sufficiency arguments that Doyle raises in issues two and three. When an appellant challenges the sufficiency of the evidence supporting a conviction in a criminal case, appellate courts consider all of the evidence in the light most favorable to the verdict, and decide, after reviewing the evidence in that light, whether a rational trier of fact could have found the appellant guilty of the essential elements of the crime beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Temple v. State*, 390 S.W.3d 341, 360 (Tex. Crim. App. 2013). In reaching a verdict, juries are entitled to view circumstantial evidence as evidence that is just as probative as direct evidence in deciding whether the defendant is guilty of the crime charged in the indictment. *Temple*, 390 S.W.3d at 359. With respect to whether a defendant acted with the required intent to violate a criminal statute, evidence relevant to the defendant's intent is reviewed using the same standard that is used to review whether the evidence is sufficient to prove any of the other elements of the crime

that is being challenged by the appellant. *Laster v. State*, 275 S.W.3d 512, 520-21 (Tex. Crim. App. 2009). In reviewing sufficiency challenges, appeals courts are required to give the jury's findings and its conclusions deference, as it was the jury's responsibility to fairly resolve all conflicts in the testimony, the jury's responsibility to weigh the evidence, and the jury's responsibility to draw reasonable inferences from the basic facts to resolve whether the defendant is guilty of violating the criminal provision that is at issue in the trial. *See Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007).

Doyle's challenge in issue four to the jury's rejection of her affirmative defense of mistake is reviewed using a somewhat different standard than the one used to review issue two and three. When reviewing legal sufficiency issues that challenge a jury's rejection of an affirmative defense, an appellate court "should first assay the record for a scintilla of evidence favorable to the factfinder's finding and disregard all evidence to the contrary unless a reasonable factfinder could not." *Butcher v. State*, 454 S.W.3d 13, 20 (Tex. Crim. App. 2015). The jury's rejection of an affirmative defense is legally insufficient only when the evidence conclusively proves the affirmative defense, and no reasonable factfinder would reasonably conclude otherwise. *Matlock v. State*, 392 S.W.3d 662, 670 (Tex. Crim. App. 2013). When reviewing a factual-sufficiency challenge to the jury's rejection

of a defendant's affirmative defense, the appellate court examines the evidence in a neutral light. *Butcher*, 454 S.W.3d at 20. A defendant's factual-sufficiency challenge may be sustained "only if, after setting out the relevant evidence and explaining precisely how the contrary evidence greatly outweighs the evidence supporting the verdict, the court clearly states why the verdict is so much against the great weight of the evidence as to be manifestly unjust, conscience-shocking, or clearly biased." *Matlock*, 392 S.W.3d at 671.

In issues two, three, and four, Doyle's arguments focus on the requirements under the Election Code that a person establish a residence within the election district to cast a legal vote in an election that is conducted by an entity within those boundaries. *See* Tex. Elec. Code Ann. § 1.015. Doyle suggests the evidence is insufficient to show that she violated the Election Code, given her difficulty in understanding the law. Under Texas law, a person votes illegally by voting or attempting "to vote in an election in which the person knows the person is not eligible to vote[.]" Tex. Elec. Code Ann. § 64.012(a)(1). A person alleging a mistake of law must show that she reasonably believed the charged conduct did not constitute a crime, and that she acted in reasonable reliance upon one of the following:

> (1) an official statement of the law contained in a written order or grant of permission by an administrative agency charged by law with responsibility for interpreting the law in question; or
>
> (2) a written interpretation of the law contained in an opinion of a court of record or made by a public official charged by law with responsibility for interpreting the law in question.

Tex. Penal Code Ann. § 8.03(b) (West 2011).

Whether Doyle could establish that she was a resident within the boundaries of the road utility district to vote in the road utility district election without ever intending to make the Marriott her home was an issue on which the jury heard conflicting testimony. Given the jury's finding of guilt, the jury may have inferred from the evidence that Doyle never intended to make the Marriott or any other place within the boundaries of the District her home on the occasions that she was temporarily within the District's election boundaries. Or, the jury may have decided that Doyle subjectively believed she could vote in the election without ever having intended to make her home within the District's boundaries, but then found that Doyle's subjective belief that she could vote without ever intending to make her home there unreasonable. Under the standard of review that applies to her legal sufficiency challenges, we are required to view the evidence in the light that most favors the jury's finding that she was guilty of voting illegally, and we must give the jury's findings deference when the jury's inferences from the evidence were reasonable. *See Hooper*, 214 S.W.3d at 13. Although there were

conflicts in the testimony about Doyle's motives for casting a vote in the District's election, the jury was entitled to "use common sense and apply common knowledge, observation, and experience gained in ordinary affairs" in resolving them. *Acosta v. State*, 429 S.W.3d 621, 625 (Tex. Crim. App. 2014). We also note that the law does not require that "every fact and circumstance 'point directly and independently to the defendant's guilt; it is enough if the conclusion is warranted by the combined and cumulative force of all the incriminating circumstances.'" *Id*. (quoting *Johnson v. State*, 871 S.W.2d 183, 186 (Tex. Crim. App. 1993)).

There was testimony before the jury that related specifically to Doyle's knowledge of the law and her motives for voting in the District's election. Doyle's husband testified during the trial that he and Doyle reside at an address outside the road utility district. Doyle's husband explained that the day before the District's election, he took Doyle and Cook to a one and a half hour long meeting at the Marriott, where they talked about an Attorney General Opinion and a Secretary of State opinion that addressed the residency requirements under the Texas Election Code. Doyle's husband acknowledged that Doyle and Cook did not spend the night before the election at the Marriott; instead, after the meeting, they returned to their homes, and the next day, Doyle and Cook voted in the District's election. It was undisputed that Doyle and Cook never spent a single night at the Marriott.

Moreover, the Election Code specifically indicates that a person cannot become a "resident" for purposes of an election by spending an evening at a location on a temporary basis without having the intent to make that place the person's home. *See* Tex. Elec. Code Ann. § 1.015(d).

Doyle testified in her own defense during the trial. According to Doyle, for over forty years she lived on Bending Oaks and had registered to vote at that address because "that's where we live." Doyle admitted during the trial that she has never moved from her address on Bending Oaks. In April 2010, Doyle signed a voter registration form that lists 9333 Six Pines Drive as her residence; on the same form, Doyle listed her address on Bending Oaks as the address where she received her mail. Doyle's voter registration application contains the following statement: "I understand that giving false information to procure a voter registration is perjury, and a crime under state and federal law." During the trial, Doyle indicated that she lived with her husband at their house located on Bending Oaks. During her testimony, Doyle acknowledged that she went to the Marriott on the day before the election, and the day of the election, but she never spent a night at the Marriott on Six Pines Drive.

James Stilwell, the attorney who represented the incumbent directors in the election contest case, also testified during Doyle's trial. He identified photographs

of Doyle's home on Bending Oaks, which were taken approximately two weeks after the May 2010 election. He explained that the photographs show a home that appeared to be lived-in. The jury also heard testimony that none of the group of ten individuals associated with Doyle who registered and voted in the District's election ever made homes within the election boundaries for the District, and the jury was entitled to consider the fact that Doyle was part of an organized effort by individuals that did not have homes within the District's boundaries to oust the District's incumbent directors in deciding whether Doyle acted intentionally. Given the evidence admitted during the trial allowing the jury to infer that Doyle never intended to make her home within the District, the jury's conclusions that Doyle's presence in the district was for a temporary purpose that was unaccompanied by any intent to make a home there is supported by substantial evidence that the trial court admitted before the jury during Doyle's trial. *See id.* § 1.015(a), (d).

The jury could use the same evidence to reject Doyle's claim that she made a legal mistake by deciding that she could cast a legal vote in the District's election. When viewed either in a neutral light or in the light that most favors the jury's verdict, the jury could conclude either that Doyle did not ever believe she could cast a legal vote in the District's election, or that if she subjectively thought

she could vote legally, her subjective belief was unreasonable. *See Butcher*, 454 S.W.3d at 20; *Hooper*, 214 S.W.3d at 13. According to Doyle, she reviewed an Attorney General opinion and a Secretary of State opinion at a meeting before the election that addressed the requirements to vote in a Texas election. However, the opinions on which Doyle testified she examined alert the reader to the Election Code's prohibition against acquiring "a residence in a place to which the person has come for temporary purposes only and without the intention of making that place the person's home." Tex. Elec. Code Ann. § 1.015(d); *see* Tex. Sec'y State Op. No. GSC-1 (2004); *see also* Tex. Att'y Gen. Op. No. GA-0141 (2004). In discussing the requirement of residency, the Secretary's opinion that Doyle testified she reviewed notes:

> A removal to divest one of his right to vote must be accompanied by an intent to make a new domicile and quit the old. Mere removal, coupled with an intent to retain the original domicile and return to it, will not constitute a change.

Tex. Sec'y State Op. No. GSC-1 (quoting *Guerra v. Pena*, 406 S.W.2d 769, 776 (Tex. Civ. App.—San Antonio 1966, no writ)). The Attorney General's opinion that Doyle reviewed clearly explains that "[b]oth bodily presence and current intention on the part of the applicant or voter are necessary to establish residence." Tex. Att'y Gen. Op. No. GA-0141. Additionally, the Attorney General's opinion indicates that the State might investigate and prosecute a voter if credible evidence

were brought to the office's attention or if a complaint were to be filed alleging an Election Code violation. *Id*.

By reading the information on which Doyle claimed she relied to vote, the jury could have concluded that a reasonable person would have understood that a person cannot vote in an election by going within the district's election boundaries for a temporary purpose without ever having, when there, the intent to make a home within the District's boundaries. *See id*.; *see also* Tex. Sec'y State Op. No. GSC-1. We conclude that the evidence before the jury was legally and factually sufficient to allow it to reasonably reject Doyle's defense that she made a mistake of law. *See Acosta*, 429 S.W.3d at 625; *see also* Tex. Penal Code Ann. § 8.03(b). We further hold that the evidence was legally sufficient to allow the jury to infer, beyond a reasonable doubt, that Doyle voted illegally. *See Jackson*, 443 U.S. at 318-19; *see also* Tex. Elec. Code Ann. § 64.012(a)(1); *Hooper*, 214 S.W.3d at 13. We overrule issue two through four.

Ineffective Assistance

In issue five, Doyle contends that she received ineffective assistance from her counsel during her trial. In support of her argument, Doyle criticizes her trial attorney for not offering a letter from the voter registrar into evidence. Doyle contends the registrar's letter shows that she was one of the voters that the registrar

registered for the District's May 2010 election, and she suggests that the letter would have supported her claim that she thought she could vote legally in the District's election. Additionally, Doyle contends that trial counsel should have offered into evidence various voter registrations that she claims would have shown that some voters listed addresses where offices, not residences, are located. Doyle suggests that such evidence would have undercut the State's argument that a person must vote where they live, and supported her claim that the State was selectively enforcing the election laws. Doyle also suggests that her trial counsel was ineffective because he failed to file a detailed motion for new trial, but she does not identify the issues that she claims her counsel should have raised in such a motion.

The documents Doyle uses to support her argument on appeal were never marked as exhibits and given to the trial court during the trial, nor were they made part of the record as part of her motion seeking a new trial. *See* Tex. R. App. P. 34.1 (indicating "[t]he appellate record consists of the clerk's record and, if necessary to the appeal, the reporter's record[]"). While the documents on which Doyle relies to support her issue five arguments were included with her brief, the evidence used to support a post-trial motion must be admitted into evidence in a hearing conducted by the trial court before it may properly be considered by the

appeals court in a direct appeal. *Rouse v. State*, 300 S.W.3d 754, 762 (Tex. Crim. App. 2009) (holding that the appeals court erred in relying on matters that were never offered into evidence at a hearing on a motion for new trial). We decline Doyle's request asking that we consider documents that are not part of the clerk's or reporter's record in deciding her appeal. *See James v. State*, 997 S.W.2d 898, 901 n.5 (Tex. App.—Beaumont 1999, no pet.) ("An appellate court must determine a case on the record as filed and cannot consider documents attached as exhibits or appendices to briefs or motions.")

Ineffective assistance of counsel claims are generally unsuccessful in a direct appeal because the trial court record is rarely developed sufficiently to support such claims. *Ex parte Torres*, 943 S.W.2d 469, 475 (Tex. Crim. App. 1997). In her motion for new trial, Doyle did not raise an ineffective assistance claim, and the trial court did not conduct a hearing to consider Doyle's claim that she received ineffective assistance. In summary, Doyle's appeal does not present "the rare case where the record on direct appeal is sufficient to prove that counsel's performance was deficient[.]" *Robinson v. State*, 16 S.W.3d 808, 813 n.7 (Tex. Crim. App. 2000). Given the fact that the record does not show that Doyle's counsel had the opportunity to explain his strategy as related to the evidence Doyle now claims should have been introduced during her trial, we hold that Doyle failed

to overcome the strong presumption that she received reasonable professional assistance. *See Thompson v. State*, 9 S.W.3d 808, 813-14 (Tex. Crim. App. 1999). In the absence of a proper record that supports Doyle's ineffective assistance claim, the proper procedure is to overrule Doyle's ineffective assistance claim without prejudice to her right to raise a claim of ineffective assistance in a post-conviction writ. *See Robinson*, 16 S.W.3d at 813 n.7.

Having overruled all of Doyle's issues, the trial court's judgment is affirmed.[3]

---

[3] The trial court's written judgment states:

> . . . The Defendant, in person and by and through her attorney, waived the right of trial by jury in writing; the Assistant District Attorney approved and consented in writing to the waiver of a jury; and, the Court approved and consented to same. The Defendant, having been duly arraigned, entered her plea of Guilty. It appeared to the Court that the Defendant was mentally competent and that her plea was free and voluntary. The Court admonished the Defendant as to the consequences of such plea and the Defendant persisted in entering her plea of Guilty. Therefore, the Court accepted the Defendant's plea.
>
> The Court, having heard the Indictment read and the Defendant's plea thereto, postponed a finding of guilt and ordered that a Pre-Sentence Investigation be conducted by the Community Supervision and Corrections Department.
>
> And, the Court on this date, MAY 22, 2014, after reviewing the evidence submitted and determining that it was sufficient to show the guilt of the Defendant, and having considered the Pre-Sentence Investigation Report and arguments of counsel, is of the opinion and,

AFFIRMED.

HOLLIS HORTON
Justice

Submitted on October 29, 2015
Opinion Delivered March 9, 2016
Do Not Publish

Before McKeithen, C.J., Horton and Johnson, JJ.

---

> therefore, finds the Defendant guilty of the offense as charged and that the offense was committed on May 08, 2010.

These recitals are largely incorrect, as the reporter's record demonstrates that Doyle rejected the State's plea bargain offer, entered a plea of Not Guilty, and did not waive her right to a jury trial on her guilt or innocence. Because the trial court can correct these clerical mistakes by entering a judgment nunc pro tunc, as it does not need plenary power to sign a judgment correct these clerical errors, we need not remand the case for the correction of these portions of the judgment. *See State v. Bates*, 889 S.W.2d 306, 309 (Tex. Crim. App. 1994); *Alvarez v. State*, 605 S.W.2d 615, 617 (Tex. Crim. App. 1980).