

Supreme Court of Louisiana

FOR IMMEDIATE NEWS RELEASE

NEWS RELEASE #023

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **5th day of May, 2023** are as follows:

PER CURIAM:

2022-KP-01506 STATE OF LOUISIANA VS. CHARLES CHANDLER (Parish of St. Mary)

REVERSED. SEE PER CURIAM.

Hughes, J., dissents and would affirm the court of appeal.
Crichton, J., additionally concurs and assigns reasons.
McCallum, J., additionally concurs and assigns reasons.
Griffin, J., dissents and assigns reasons.

SUPREME COURT OF LOUISIANA

No. 2022-KP-01506

STATE OF LOUISIANA

VS.

CHARLES CHANDLER

On Writ of Certiorari to the Court of Appeal,
First Circuit, Parish of St. Mary

PER CURIAM

We granted the State’s application to determine whether the court of appeal erred in reversing the district court’s denial of post-conviction relief. The court of appeal found trial counsel’s representation fell below an objective standard of reasonableness under prevailing professional norms when a prospective juror was not challenged for cause for her employment with the district attorney. The court of appeal also found respondent suffered prejudice when that juror, initially an alternate, was then seated on the jury. We pretermitted the question of counsel’s deficient performance or error, finding legal error in the court of appeal’s prejudice determination under the *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

Shortly before midnight on April 28, 2013, officers of the St. Mary Parish Sheriff’s Office were dispatched to Columbus Avenue in Bayou Vista to investigate reports of gunshots. Officers found a crowd gathered around Wade Blackburn, Jr., who was shot and not responsive. He died at the scene. Eyewitnesses stated respondent had appeared on the scene agitated, looking for Mr. Blackburn, angrily confronted him, then shot him as they argued. Respondent fled the scene and climbed into the back of a truck. The truck’s owner drove off unaware respondent was hiding

in the back. Police apprehended respondent. A search of his bedroom revealed the weapon used in the shooting.

A unanimous St. Mary Parish jury found respondent guilty of second degree murder, La. R.S. 14:30.1, and possession of a firearm by a convicted felon, La. R.S. 14:95.1. Pursuant to respondent's motion for judgment of acquittal, the district court modified the second degree murder conviction, reducing it to manslaughter. The court of appeal reversed, reinstated the second degree murder conviction, and remanded for sentencing. *State v. Chandler*, 2015-1493 (La. App. 1 Cir. 2/24/16) (unpub'd), available at 2016 WL 759165, writ denied, 2016-0561 (La. 3/31/17), 217 So.3d 359. On remand, respondent was sentenced to life imprisonment for the murder and 18 years for the firearm violation. The court of appeal affirmed. *State v. Chandler*, 2017-0962 (La. App. 1 Cir. 12/21/17), 240 So.3d 950.

Respondent timely applied for post-conviction relief. Among other arguments, respondent claimed a juror was not impartial, and trial counsel provided ineffective assistance for failing to challenge this juror for cause. The district court found the juror partiality complaint was waived when trial counsel neither objected nor exercised a challenge and that respondent's related claim of ineffective assistance of counsel required an evidentiary hearing. Respondent's writ application regarding the juror bias claim (distinct from the ineffective assistance claim) was denied. *State v. Chandler*, 2019-01750 (La. 9/27/21), 324 So.3d 88.

The district court then held an evidentiary hearing on the ineffective assistance claim. The juror testified she worked in various capacities for the district attorney's office for 25 years, eventually becoming the district attorney's secretary. She denied that her employment made her apprehensive about voting to acquit respondent. The prosecutor testified he had few voir dire questions for this juror because he believed,

based on his familiarity with her, she would decide the case on the evidence and the instructions provided by the court. Defense counsel testified to his longstanding familiarity with this juror, including having coffee with her at least 50 times, and that he had a “gut feeling” she would be fair. The district court denied the post-conviction relief application. The court of appeal reversed. Judge Penzato dissented finding respondent failed to show prejudice as required by *Strickland*. We agree.

The United States Supreme Court provided the following standard for determining whether a conviction must be reversed because of ineffective assistance of counsel:

A convicted defendant’s claim that counsel’s assistance was so defective as to require reversal of a conviction or death sentence has two components. First, the defendant must show that counsel’s performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the “counsel” guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel’s errors were so serious as to deprive the defendant of a fair trial, *a trial whose result is reliable*. Unless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.

Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984). Except for unusual circumstances not present here,¹ to obtain relief under *Strickland*, both deficient performance and prejudice must be established. The failure to prove either one is fatal to an ineffective assistance of counsel claim. Here, because we find no prejudice, we do not address whether respondent proved deficient performance.

Strickland provides the following standard for determining prejudice:

¹ See *United States v. Cronin*, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984) (presuming prejudice when “counsel entirely fails to subject the prosecution’s case to meaningful adversarial testing”); *Cuyler v. Sullivan*, 446 U.S. 335, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980) (presuming prejudice when counsel “actively represented conflicting interests” and that conflict adversely affected counsel’s performance).

The 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.

In making the determination whether the specified errors resulted in the required prejudice, a court should presume, absent challenge to the judgment on grounds of evidentiary insufficiency, that the judge or jury acted according to law. An assessment of the likelihood of a result more favorable to the defendant must exclude the possibility of arbitrariness, whimsy, caprice, "nullification," and the like. A defendant has no entitlement to the luck of a lawless decisionmaker, even if a lawless decision cannot be reviewed. The assessment of prejudice should proceed on the assumption that the decisionmaker is reasonably, conscientiously, and impartially applying the standards that govern the decision. It should not depend on the idiosyncracies of the particular decisionmaker, such as unusual propensities toward harshness or leniency. Although these factors may actually have entered into counsel's selection of strategies and, to that limited extent, may thus affect the performance inquiry, they are irrelevant to the prejudice inquiry. Thus, evidence about the actual process of decision, if not part of the record of the proceeding under review, and evidence about, for example, a particular judge's sentencing practices, should not be considered in the prejudice determination.

The governing legal standard plays a critical role in defining the question to be asked in assessing the prejudice from counsel's errors. When a defendant challenges a conviction, the question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt.

Strickland, 466 U.S. at 694–95, 104 S.Ct. at 2068–69. The following guidance is particularly pertinent here:

In making this determination, a court hearing an ineffectiveness claim must consider the totality of the evidence before the judge or jury. Some of the factual findings will have been unaffected by the errors, and factual findings that were affected will have been affected in different ways. Some errors will have had a pervasive effect on the inferences to be drawn from the evidence, altering the entire evidentiary picture, and some will have had an isolated, trivial effect. Moreover, a verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with *overwhelming* record support. Taking the unaffected findings as a given, and taking due account of the effect of the errors on the remaining findings, a court making the prejudice inquiry must ask if the defendant has met the burden of showing that the decision reached would reasonably likely have been different absent the errors.

Strickland, 466 U.S. at 695–96, 104 S.Ct. at 2069.

The totality of evidence against respondent was overwhelmingly in favor of guilt. Respondent actively sought out the unarmed victim and angrily confronted him with a gun that was loaded, racked, and ready to fire. Witnesses also testified that after arriving at the scene, and before shooting the victim, respondent stated: “I’m going to catch a murder charge tonight”. While there was some conflicting testimony from eyewitnesses over both the extent the victim resisted and any struggle over the gun, “the bulk of the testimony supported a finding that the shooting was intentional and that the defendant was in control of the weapon when he fired three shots.” *Chandler*, 2015-1493, p. 14, 2016 WL 759165 *8. The verdict was unanimous.² Applying the *Strickland* standard, we find no basis to conclude the decision reached would reasonably likely have been different if trial counsel had challenged the juror for cause under La.C.Cr.P. art. 797(3).³

The seating of the juror alone does not establish prejudice under *Strickland*.

² Respondent committed the crimes and was tried before January 1, 2019. Thus, the jury was correctly instructed in accordance with the law at the time of trial that they could return a non-unanimous verdict.

³ Code of Criminal Procedure art. 797 provides:

The state or the defendant may challenge a juror for cause on the ground that:

- (1) The juror lacks a qualification required by law;
- (2) The juror is not impartial, whatever the cause of his partiality. An opinion or impression as to the guilt or innocence of the defendant shall not of itself be sufficient ground of challenge to a juror, if he declares, and the court is satisfied, that he can render an impartial verdict according to the law and the evidence;
- (3) The relationship, whether by blood, marriage, employment, friendship, or enmity between the juror and the defendant, the person injured by the offense, the district attorney, or defense counsel, is such that it is reasonable to conclude that it would influence the juror in arriving at a verdict;
- (4) The juror will not accept the law as given to him by the court; or
- (5) The juror served on the grand jury that found the indictment, or on a petit jury that once tried the defendant for the same or any other offense.

The court of appeal essentially presumed prejudice, effectively treating this situation as one where there is a total deprivation of the right to counsel or an active conflict of interest impairing counsel's performance. Such a departure from *Strickland* is not consistent with the jurisprudence, which has consistently analyzed the decision not to exercise a cause challenge under *Strickland*'s prejudice standard. See, e.g., *Virgil v. Dretke*, 446 F.3d 598 (5th Cir. 2006);⁴ see also *State v. Fussell*, 2006-0324, pp. 37–39 (La. App. 3 Cir. 9/27/06), 941 So.2d 109, 135–37, writ granted, 2006-2595 (La. 6/22/07), 959 So.2d 482, rev'd on other grounds, 2006-2595 (La. 1/16/08), 974 So.2d 1223. Thus, under La.C.Cr.P.art. 930.2 it was the respondent's burden to prove prejudice. He failed to make that showing.

Just as cause challenges against potential jurors are evaluated case-by-case,⁵ prejudice from not exercising a cause challenge must be evaluated case-by-case. Here, the record does not establish prejudice. The verdict is neither unreliable nor would it have likely been different absent the alleged error. The court of appeal

⁴ While only persuasive authority, *Virgil v. Dretke*, 446 F.3d at 612 (footnotes omitted) is particularly cogent and helpful in the present case:

Strickland's prejudice inquiry is process-based: Given counsel's deficient performance, do we have confidence in the process afforded the criminally accused? "The purpose of the Sixth Amendment guarantee of counsel is to ensure that a defendant has the assistance necessary to justify reliance on the outcome of the proceeding." Prejudice is presumed in a narrow category of cases, none of which are present here. Absent mechanical rules, "the ultimate focus of the inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." We focus on ferreting out "unreliable" results caused by "a breakdown in the adversarial process that our system counts on to produce just results." Guiding our prejudice inquiry, the Supreme Court requires lower federal courts to "presume" that "the judge or jury acted according to law." Most importantly for our purposes, "The assessment of prejudice should proceed on the assumption that the decisionmaker is reasonably, conscientiously, and impartially applying the standards that govern the decision."

Virgil found prejudice, in part, because the jurors who were not challenged had "unequivocally expressed that they could not sit as fair and impartial jurors." *Id.*, 445 F.3d at 613.

⁵ See La.C.Cr.P. art 797; see also *State v. Manning*, 2003-1982, pp. 32–34 (La. 10/19/04), 885 So.2d 1044, 1078–80.

ruling is reversed and the ruling of the district court denying respondent's application for post-conviction relief is reinstated.

REVERSED

SUPREME COURT OF LOUISIANA

No. 2022-KP-01506

STATE OF LOUISIANA

VS.

CHARLES CHANDLER

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIRST CIRCUIT, PARISH OF ST. MARY**

Crichton, J., additionally concurs and assigns reasons.

I agree with the per curiam that there was an inadequate showing of prejudice under *Strickland*. I write separately to express concern that the ultimate holding here may raise the bar too high—and indeed, could make it nearly impossible—for an applicant for post-conviction relief to lodge a successful ineffective assistance of counsel claim when counsel fails to exercise a cause challenge against a potentially biased juror. Other than in the extreme scenario presented in *Virgil v. Dretke*, 446 F.3d 598 (5th Cir. 2006), discussed by the majority, today’s opinion does not make clear how an applicant could ever prove prejudice from the seating of a potentially-biased juror if the juror herself expressly denies any bias.¹ The impact of one juror upon the others during the solemn time of deliberations is unknowable by design, and I believe we should leave the door open to the possibility that, in the right case, the seating of one biased juror might destroy the impartiality of the impartial jury guaranteed by the Sixth Amendment—even though the defendant is unable prove that the verdict probably would have been different. Here, however, I concur in the

¹ The majority opinion could be interpreted as requiring for establishing *Strickland* prejudice, in every case, a showing that the verdict would likely have been different without the presence of the potentially-biased juror. To the extent it does so, that implication is dicta. In my view, in another case—though not the one before us today—the impartiality of the juror could be extreme enough alone to establish prejudice insofar as the verdict would be unreliable.

finding that prejudice was not proved because I find the evidence of guilt is overwhelming.

I also write separately to express alarm at the casual, almost flippant, manner in which both counsel conducted voir dire. At the outset, the judge noted that the juror at issue knew both the district attorney, assistant district attorney, and defense counsel. The court inquired of the prospective juror: “[D]o you really think you could give [defendant] a fair trial?” She responded: “I’m not saying nothing.” Then, instead of probing into that equivocation, the prosecutor informed the prospective juror: “I’m not going to have any questions for you. But please tell my boss I love my job and I’m doing a wonderful job.” While the prosecutor proceeded to pose questions to the other members of the venire, that brief statement was only interaction during voir dire between the prosecutor and the prospective juror.

The following colloquy later took place between defense counsel and the prospective juror, which was likewise the only interaction between them during voir dire:

Q: Okay. And you’re actually the secretary for the big cheese, the district attorney.

A: Correct.

Q: Is that right? And that’s [the prosecutor’s] boss?

A: Correct.

Q: And you see him every day, obviously.

A: Correct.

Q: You see him talk to [the prosecutor] on a regular basis?

A: Yes.

Q: I’m in and out of your office on a regular basis.

A: Yes, sir.

Q: Would any of these relationships make you feel like you could not apply the law to the facts and return a fair verdict in this case?

A: No. I can do it, yeah.

Q: You can do it?

A: Right.

Q: You could be fair to Mr. Chandler?

A: Um-hmm.

Q: And you don’t feel that there would be any funny feelings about going back to the office if you returned a verdict of not guilty and [the

District Attorney or the prosecutor] saying, “What are you doing?” You could handle that?

A: Maybe so. Maybe some funny feelings.

Q: Would that – would worrying about those funny feelings cause you to – affect your ability to return a fair verdict in this case?

A: No.

Q: Okay.

A: I can get over that.

The informality of these interactions is jarring in a court proceeding. I am troubled that the prospective juror indicated that she might have “some funny feelings” if she returned a verdict of not guilty. Most importantly, I am concerned about the lack of detailed questioning of this prospective juror by either counsel to find whether she is biased and the extent of any bias. The parties must develop the record so that it can be carefully reviewed by an appellate court. The prosecutor, in particular, has an obligation to protect the record in the event that a conviction results and is challenged on appeal. *See generally State v. Hoff*, 2019-0475 (La. 6/26/19), 275 So. 3d 871, 872 (Crichton, J., additionally concurring) (“A well-developed record will greatly aid in the important function of appellate review, should it become necessary, and the administration of justice.”). Despite these concerns, for the reasons expressed by the majority, I ultimately agree that the present record does not contain an adequate showing of prejudice.

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McCALLUM, J., additionally concurs and assigns reasons.

This case raises quite the paradox. Defendant seeks to exclude from jury duty those whose job it is to uphold the laws of the state, when the legislature now allows those who have been convicted of felonies to serve. To disqualify individuals from jury service based on their employment status alone paints with too broad a brush.

There is no dispute that all parties were well aware that the juror in question has long been employed by the district attorney's office and responded to *voir dire* questions in a manner that reflected her ability to be impartial.¹ The defendant's suggestion that she should not have been allowed to serve on the jury based upon her employment status is wholly without merit. After all, in 2021, our legislature amended our laws, as noted, to allow *convicted felons* to serve on juries. La. C.Cr.P. art. 401 now allows those who are not "under an order of imprisonment, or on probation or parole for a felony offense within the five-year period immediately preceding the person's jury service" to serve on a jury. One does not need to oppose this legislative policy determination to see the irony; one who works to uphold the

¹ See *State v. Dotson*, 2016-0473, p. 5 (La. 10/18/17), 234 So. 3d 34, 39 (where a "prospective juror has demonstrated a willingness and ability to decide the case impartially according to the law and the evidence," there is no abuse of discretion in a trial court's denial of a cause challenge on the basis that the juror is not impartial).

criminal laws may not serve as a juror while those who have broken the same laws may.

Moreover, as a reviewing court, we must give deference to an attorney's trial strategy and tactical decisions. *See, e.g., State v. Joshua*, 50,566 (La. App. 2 Cir. 8/10/16), 201 So. 3d 284; *State v. Batiste*, 2015-1008 (La. App. 3 Cir. 4/6/16), 189 So. 3d 590, *writ denied*, 2016-1180 (La. 9/6/17), 224 So. 3d 980. "A reviewing court 'does not sit to second-guess strategic and tactical choices made by counsel.' " *State v. Paulson*, 2015-0454, p. 11 (La. App. 4 Cir. 9/30/15), 177 So. 3d 360, 368, *writ denied*, 2015-2009 (La. 5/26/17), 221 So. 3d 79 (quoting *State v. Myles*, 389 So.2d 12, 31 (La.1979)). Thus, matters of trial strategy are left to the sound abilities of trial counsel, as reviewing courts "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. . . ." *State v. Jenkins*, 2014-1148, p. 9 (La. App. 4 Cir. 5/6/15), 172 So. 3d 27, 35 (quoting *Strickland v. Washington*, 466 U.S. 668, 689).

It is neither our duty nor our policy to second-guess trial counsels' decision to allow a particular person to serve on a jury. To do otherwise would render the *voir dire* process meaningless.

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GRIFFIN, J., dissents and assigns reasons.

I echo the concerns expressed by Justice Crichton that the majority’s opinion could make a defendant’s post-conviction ineffective assistance of counsel claim, as relates to a failure to exercise a cause challenge against a potentially biased juror, nearly impossible to establish. The dialogue between both counsel and the juror during voir dire coupled with the juror’s employment relationship as secretary for the district attorney at the very least warranted further questioning. *See State v. Hallal*, 557 So.2d 1388, 1389-90 (La. 1990) (“challenge for cause should be granted, even when a prospective juror declares his ability to remain impartial, if the juror’s responses as a whole reveal facts from which bias, prejudice, or inability to render a judgment according to law may be reasonably implied”). These facts and circumstances are such that bias, prejudice, and impartiality may be reasonably inferred, and that a showing of actual bias is unnecessary to provide grounds for a cause challenge against the juror. *See Smith v. Phillips*, 455 U.S. 209, 224, 102 S.Ct. 940, 949, 71 L.Ed.2d 78 (1982) (O’Connor, J., concurring); *State v. Juniors*, 03-2425, pp. 13-14 (La. 6/29/05), 915 So.2d 291, 307-08 (collecting cases wherein employment relationships “were such that it was reasonable to infer the juror would be influenced by that relationship, the juror’s statement to the contrary

notwithstanding”). I therefore respectfully dissent and find a sufficient showing has been made that renders the verdict unreliable.