

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

No. 2023-K-00862

VS.

DAVID BOURGEOIS

IN RE: David Bourgeois - Applicant Defendant; Applying For Writ Of Certiorari,
Parish of Jefferson, 24th Judicial District Court Number(s) 22-3418, Court of
Appeal, Fifth Circuit, Number(s) 23-KP-140;

April 09, 2024

Writ application granted. See per curiam.

SJC

JDH

JTG

PDG

Weimer, C.J., dissents and would grant and docket.
Crain, J., dissents.
McCallum, J., dissents in part and assigns reasons.

Supreme Court of Louisiana
April 09, 2024

Katio Marjanovic
Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 2023-K-00862

STATE OF LOUISIANA

VS.

DAVID BOURGEOIS

On Writ of Certiorari to the Court of Appeal, Fifth Circuit, Parish of Jefferson

PER CURIAM:

Writ granted. Defendant was convicted of four violations of a protective order, La.R.S. 14:79. The court of appeal, with one dissent, found the evidence was sufficient under the due process standard of *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), to prove that defendant violated the protective order on four occasions by parking within 100 yards of the protected person's residence. *State v. Bourgeois*, 23-140 (La. App. 5 Cir. 5/31/23), 367 So.3d 133. Judge Regan (pro tempore) dissented and would find the evidence presented at trial necessarily left reasonable doubt as to whether defendant came within 100 yards of the residence. We agree with the dissent that the State's proof with regard to defendant's distance from the home was lacking. As the dissent found, a deputy testified that he did not know how long the driveway was or if it was more than 100 yards, and he did not know if defendant was closer than 100 yards to the house. In addition, the dissent noted, the distance cannot be determined from the pictures.

However, the State now contends that defendant also violated the protective order in another manner, unrelated to the distance he maintained from the protected person's residence, by stalking, following, harassing, or threatening her. The underlying conduct remain the same, i.e. that on four occasions defendant parked near the end of the protected person's driveway or across the street from her

residence. Defendant responds to the State's argument by contending that the finder of fact, the trial judge in this bench trial, made statements while ruling that only addressed defendant's distance from the home and did not make any explicit findings with regard to this alternative theory of guilt.

While defendant is correct that the trier of fact, the judge in this bench trial, commented about his assessment of distance and did not make an explicit finding with respect to the second way the protective order can be violated, the State is correct that in applying the due process standard of *Jackson v. Virginia* the pertinent inquiry in a bench trial remains, as it does in jury trials, on the rationality of the result and not on the thought processes of the particular fact finder. *See State v. Marshall*, 2004-3139, pp. 6–7 (La. 11/29/06), 943 So.2d 362, 367–8 (describing how to apply the *Jackson v. Virginia* standard to bench trials). Nonetheless, when we apply the *Jackson v. Virginia* standard to the evidence presented at this trial (rather than confine review to the reasons expressed by the fact finder), we find the evidence insufficient to support the convictions under the State's alternative theory as well. Viewing the evidence in the light most favorable to the prosecution, we find it insufficient to prove that defendant violated the protective order on four occasions by stalking, following, harassing, or threatening the protected person.

Accordingly, we grant defendant's application to reverse the ruling of the court of appeal, which affirmed the convictions for four counts of violating a protective order. We vacate the four convictions and sentences at issue here, and we acquit defendant of the charges.

REVERSED