

Fifth Circuit Court of Appeal
State of Louisiana

No. 26-KH-326

STATE OF LOUISIANA

versus

RAYMOND HAROLD KIMBLE, III

IN RE RAYMOND HAROLD KIMBLE, III
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT
COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE
RAYMOND S. STEIB, JR., DIVISION "A", No. 16-3781

TRUE COPY

August 31, 2026



LINDA TRAN
DEPUTY CLERK

Panel composed of Judges Jude G. Gravois,
Marc E. Johnson, and Stephen J. Windhorst

WRIT DENIED

Relator, Raymond Harold Kimble, III, seeks review of the 24th Judicial District Court's May 19, 2026 order denying his Application for Post Conviction Relief (APCR).

In 2021, Relator was found guilty by a jury of simple burglary of an inhabited dwelling (eight counts), theft valued between \$5,000 and \$25,000, and aggravated flight from an officer. In February 2022, Relator was sentenced to six years imprisonment at hard labor for each of the eight counts of burglary, eight years imprisonment at hard labor for theft, and five years imprisonment at hard labor for aggravated

flight from an officer. On the same date, the State filed a multiple offender bill of information. Relator stipulated to being a fourth-felony offender as to the aggravated flight from an officer count. The trial court then vacated the original five-year sentence and imposed a sentence of twenty years imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. The enhanced sentence was ordered to run consecutively with the burglary counts and concurrently with the sentence for theft, making Relator's sentence a total of sixty-eight years.

On May 8, 2024, this Court affirmed Relator's convictions and amended sentences. *State v. Kimble*, 22-373 (La. App. 5 Cir. 5/8/24), 389 So.3d 902. On December 27, 2024, the Louisiana Supreme Court denied Relator's writ application. *State v. Kimble*, 24-882 (La. 12/27/24), 397 So.3d 1219.

Relator filed his APCR with the district court on October 2, 2025. In it, Relator made claims of ineffective assistance of counsel and perjured testimony. The State filed its response at the beginning of 2026, arguing that Relator's claims were without merit; Relator subsequently filed an Opposition to the State's response. On May 19, 2026, the district court denied relief, finding that Relator "has not met his heavy burden of proof in connection with any of his claims," citing La. C.Cr.P. art. 930.2.

Relator timely filed a notice of intent with the district court and writ application with this court. Relator's application re-urges his

claims of ineffective assistance of counsel and perjured testimony, specifically:

ASSIGNMENT OF ERROR NO. 1: The district court erred by adopting the State's severance mischaracterization and denying the burglary IAC claim without addressing counsel's failures to use the DNA evidence, DeRoche reports, expert testimony, and Verizon records under *Strickland* and *Thomas*.

ASSIGNMENT OF ERROR NO. 2: The district court erred by treating counsel's aggravated-flight omissions as trial strategy and failing to analyze omitted evidence on the statutory audible-signal element.

ASSIGNMENT OF ERROR NO. 3: The district court erred by denying Kimble's *Napue* claim without applying falsity, knowledge, and materiality to the specific record evidence pleaded in the PCR and Reply.

ASSIGNMENT OF ERROR NO. 4: Alternatively, if the *Napue* claim is deemed record based and subject to direct-appeal review, the district court erred by denying Kimble's appellate-IAC claim.

A summary of the case, including the investigation leading to Relator's arrest, is provided from this Court's opinion in *State v. Kimble*, 389 So.3d at 911.

In the spring of 2016, eight homes in Metairie, Louisiana were burglarized over three separate days in March and April (2016 Metairie burglaries). Additionally, a car belonging to the daughter of a burglary victim was stolen from outside her residence. Defendant was arrested for the burglaries and theft. He was also charged with aggravated flight from an officer based on the events preceding his arrest. Also arrested for these crimes was Brian Ernst (Ernst). During this time, defendant lived with his girlfriend, Lauren Malbrough (Malbrough), who is Ernst's sister. Evidence was presented at trial that

in 2016, defendant and Ernst were involved in burglaries of homes in East Baton Rouge Parish (Baton Rouge burglaries). Further, evidence was presented at trial that defendant was involved in other Metairie home burglaries occurring in 2015 (2015 Metairie burglaries) and a 2015 Mandeville home burglary (Mandeville burglary) with an individual named Dustin Johnson.

Ineffective Assistance of Counsel Claims

In Relator's first claim, he contends that counsel rendered ineffective assistance by failing: (1) to call a DNA expert as a witness; and (2) to introduce Relator's girlfriend, Lauren Malbrough's Verizon cell phone records—evidence which Relator claims would have exonerated him of the April 16, 2013 burglaries.¹ In Relator's view, if counsel had properly challenged the testimonial evidence of the five counts of burglary committed on April 13, 2016, then the entirety of the State's case against Relator would have been undermined, thereby leading the jury to acquit him on all of the charges.

Under the Sixth Amendment to the United States Constitution and Article I, § 13 of the Louisiana Constitution, a defendant is entitled to effective assistance of counsel. *State v. Casimer*, 12-678 (La. App. 5 Cir. 3/13/13), 113 So.3d 1129, 1141. To prove ineffective assistance of counsel, a defendant must satisfy the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674

¹ In the instant application, Relator asserts that the district court mischaracterized this claim as a complaint that counsel failed to file a motion to sever the April 13, 2016 burglary counts from the other burglary counts. *See* writ application at 9. On the other hand, Relator's ineffectiveness claim raised in his APCR referenced severing the counts and contained the following statement: "The April 13 burglaries are distinct form [sic] those alleged on March 7 and March 9 and must be severed." *Id.* at 51. Nevertheless, despite Relator's claim to the contrary, the district court's ruling denying his APCR addressed Relator's claims regarding counsel's alleged failures as to the DNA evidence and the police siren. *Id.* at 317-18.

(1984). *Casimer*, 113 So.3d at 1141. Under the *Strickland* test, the defendant must show: (1) that counsel's performance was deficient, that is, that the performance fell below an objective standard of reasonableness under prevailing professional norms; and (2) that the deficient performance prejudiced the defense. *Id.* An error is considered prejudicial if it was so serious as to deprive the defendant of a fair trial, or "a trial whose result is reliable." *Id.* (quotations omitted). To prove prejudice, the defendant must demonstrate that, but for counsel's unprofessional conduct, the outcome of the trial would have been different. *Id.* (citing *Strickland v. Washington*).

As an initial matter, the decision to call or not to call a particular witness is a matter of trial strategy and not, *per se*, evidence of ineffective assistance of counsel. *State v. Allen*, 06-778 (La. App. 5 Cir. 4/24/07), 955 So.2d 742, 751, *writ denied sub nom. State ex rel. Allen v. State*, 08-2432 (La. 1/30/09), 999 So.2d 754. Throughout the cross-examination of Jefferson Parish Sheriff's Office (JPSO) Sergeant David DeRoche, counsel repeatedly questioned him regarding the absence of any physical evidence connecting Relator to the burglaries. Sergeant DeRoche testified that DNA analysis of a glove found at the scene of one of the burglaries did not match Relator's, or his co-defendant Brian Ernst's, genetic profile and a latent fingerprint and boot print found at the other burglarized homes also did not belong to Relator. Counsel appears to have made the strategic choice to challenge the State's lack of physical evidence connecting Relator to the burglaries. Further Sergeant DeRoche also testified that DNA evidence belonging to

Relator and co-defendant Ernst were found on a water bottle connected to an aggravated burglary committed in Baton Rouge involving the same gray, late-model Ford-F150 associated with the subject Metairie burglaries. Thus, Relator's assertion that a DNA expert's testimony would have bolstered his defense is speculative at best. *See* La. C.Cr.P. art. 930.2; *see also Day v. Quarterman*, 566 F.3d 527, 538 (5th Cir. 2009) (“[T]o prevail on an ineffective assistance claim based on counsel's failure to call a witness, the petitioner must name the witness, demonstrate that the witness was available to testify and would have done so, set out the content of the witness's proposed testimony, and show that the testimony would have been favorable to a particular defense.”).

Relator also maintains that counsel should have introduced the cell phone location records for Ms. Marlborough, his former girlfriend, to support his claims that he likely spent the day with Ms. Marlborough on April 13, 2016, and not burglarizing homes with co-defendant Ernst. According to Relator, the cell phone records show that on April 13, 2016, Ms. Marlborough's phone did not “ping” in Hammond, the location of her workplace.

At trial, both Relator and Ms. Marlborough testified that they spent almost all their free time together. Relator further explained that when she was working, they often talked on the phone. When counsel asked Relator if Ms. Marlborough was working on April 13, 2016, he indicated that she was off because the phone records did not show they spoke on the phone that day. During counsel's cross-

examination of Ms. Marlborough, she verified that her work schedule indicated that she was not working on April 13, 2016. However, she explained that the pre-printed schedule would not indicate whether she picked up a shift that day. She further stated that she could not recall if she worked on April 13, 2016.

Given that counsel introduced Ms. Marlborough's work schedule showing that she was not working on April 13, 2016, we find that the introduction of the cell phone records would have been cumulative. *See State v. Dressner*, 18-0828, p. 8 (La. 10/29/18), 255 So.3d 537, 544 ("Therefore, to the extent that trial counsel might have elected not to present cumulative evidence, [the Defendant] has not made an adequate showing either of deficient performance or prejudice."). Furthermore, even assuming any deficiency in counsel's representation, this Court specifically addressed the State's reliance on testimonial evidence linking Relator to the April 13, 2016 burglaries, stating:

Witness testimony in this case did not contradict any physical evidence. Ernst testified that he committed each burglary with defendant. Items from two of the homes - Aurora and Beverly Gardens - were found in defendant's home. A gray F-150 truck connected to defendant and Ernst was linked to the burglaries at Dorrington, Aurora, and Poinsettia home. Items from the homes on Aurora, Ridgeway, Beverly Gardens, Metairie Heights, and Elmeer were found in Ernst's residence. The presence of the items in Ernst's residence supports testimonial evidence that Ernst and defendant committed the

burglaries together. Malbrough, defendant's live-in girlfriend at the time, also testified that defendant committed burglaries with Ernst. Additionally, Plaisance and Meserole connected defendant to items taken from the residences. Finally, surveillance connected a truck stolen by Defendant to several of the burglaries. The record reflects that the testimonial evidence supported all eight burglary convictions. *Kimble*, 389 So.3d at 916. Therefore, we find Relator has not met his post-conviction burden of proof that under the prejudice prong of the *Strickland* analysis, the outcome of the trial would have been different.

Lastly, Relator also faults counsel for failing to impeach the State's witnesses who testified that the police siren was activated during his and Ms. Marlborough's flight from law enforcement on April 20, 2016. However, counsel's choices of which questions to ask on cross-examination fall well within the ambit of trial strategy. *See State v. Brooks*, 94-2438 (La. 10/16/95), 661 So.2d 1333, 1337. Despite Relator's claim to the contrary, counsel conducted a painstaking cross-examination of Sergeant Dupuis by playing numerous segments from the audio recording of the sergeant's radio conversation with other officers. After each segment, the sergeant reiterated that his lights and siren were on the entire pursuit but conceded that his siren could not be heard in the audio recording. Sergeant Dupuis also admitted that he did not know when he turned the siren on and the siren and lights were not activated during the entire pursuit; also, none of his written reports indicate that his sirens were turned off. While Relator complains that counsel failed to object when Sergeant Dupuis

explained that the siren can be turned on and off via a toggle switch to allow other units to hear his transmissions, Relator presents no viable grounds for an objection. Furthermore, “[t]he time and manner of making objections is part of the trial strategy decision-making of the trial attorney.” *State v. Moore*, 16-644 (La. App. 5 Cir. 3/15/17), 215 So.3d 951, 968, *writ not considered*, 18-495 (11/14/2018), 256 So.3d 283, and *habeas corpus dismissed*, *Moore v. Mc.Cain*, 18-13611 (E.D. La. 7/1/2020), 2020 WL 3577499.

Relator also faults counsel for failing to challenge Agent Pat DiGiovanni’s credibility by pointing out the alleged inconsistencies in his testimony on direct examination and the dispatch communications between JPSO and U.S. Marshals during the joint pursuit with respect to “suspect identity.” However, Relator is hard-pressed to show how Agent DiGiovanni’s initial inquiry about whether the Lexus driver was male or female casts doubt on his testimony that Sergeant Dupuis’s lights and sirens were activated. As such, we find that counsel made a strategic decision not to cross-examine the witness. *See State v. Mitchell*, 44,008 (La. App. 2 Cir. 2/25/09), 4 So.3d 320, 326-27, *writ denied*, 09-718 (La. 2/12/10), 27 So.3d 841, and *writ denied sub nom. State ex rel. Mitchell v. State*, 09-1570 (La. 4/30/10), 34 So.3d 285 (“[T]he choice to ask no questions can be a reasonable trial strategy that will not render trial counsel’s assistance ineffective.”).

In his final ineffectiveness claim, Relator maintains that counsel failed to question Ms. Marlborough about her prior statements to the police that he claims contradicted her trial testimony on speed, stop

signs, and whether the lights and sirens were activated when the police were in hot pursuit of the pair. But, counsel did present Ms. Marlborough with her prior statements and jail calls in which she indicated that she was willing to lie, cooperate, and do whatever was necessary to get herself out of trouble. Thus, counsel apparently chose to discredit Ms. Marlborough by exposing her inclination to be dishonest to protect herself rather than singling out alleged inconsistencies regarding the details of the chase. Consequently, on the showing made, we do not find counsel's cross-examination was deficient, and Relator has not "overcome the presumption that, under the circumstances [counsel's decisions] 'might be considered strong trial strategy.'" *Strickland*, 466 U.S. at 689, 104 S.Ct. at 2065 (quoting *Michel v. Louisiana*, 350 U.S. 91, 101, 76 S.Ct. 158, 164, 100 L.Ed.2d 83 (1955)).

Accordingly, we find no merit in Relator's ineffective assistance of counsel claim.

Napue v. Illinois Claim

Next, Relator claims that the State elicited false testimony in violation of *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959).

The Supreme Court held that where a prosecutor allows a State witness to give false testimony without correction, a reviewing court must reverse the conviction if the witness's testimony reasonably could have affected the jury's verdict, even if the testimony goes only to the credibility of the witness. *Id.* at 269; *State v. Broadway*, 96-2659 (La.

10/19/99), 753 So.2d 801, 814, *cert. denied*, 529 U.S. 1056, 120 S.Ct. 1562, 146 L.Ed.2d 466 (2000). Our supreme court has held “[t]o prove a *Napue* claim, the accused must show that the prosecutor acted in collusion with the witness to facilitate false testimony.” *Broadway*, *supra*. Furthermore, fundamental fairness, *i.e.*, due process, is offended “when the State, although not soliciting false evidence, allows it to go uncorrected when it appears.” *Napue*, 360 U.S. at 269, 79 S.Ct. at 1177.

According to Relator, the State knowingly used or failed to correct false or materially misleading testimony from Sergeant Dupuis, Agent DiGiovanni, and Ms. Malbrough regarding the activation of the police siren during the pursuit.

However, standing alone, conflicting testimony from the State’s witnesses concerning their recollection of the pursuit does not appear to establish that the witnesses lied or the State suborned perjury. *See Kutzner v. Cockrell*, 303 F.3d 333, 337 (5th Cir. 2002), *cert. denied*, *stay denied*, 536 U.S. 978, 123 S.Ct. 14, 153 L.Ed.2d 877 (2002) (“Importantly, due process is not implicated by the prosecution’s introduction or allowance of false or perjured testimony unless the prosecution actually knows or believes the testimony to be false or perjured; it is not enough that the testimony is challenged by another witness or is inconsistent with prior statements.”). As such, we find that Relator has failed to meet his post-conviction burden of proof under La. C.Cr.P. art. 930.2 that a *Napue* violation occurred.

As part of this claim, Relator complains that appellate counsel also failed to raise the claim of perjured testimony on appeal. We have previously observed “the rights to counsel on appeal is the right to effective assistance of counsel” and if “the assignments which the defendant alleged should have been argued on appeal [, and were without merit, then] the result of his appeal would not have been different had counsel argued the assignments.” *See State ex rel. Cockerham v. Butler*, 515 So.2d 1134, 1138 (La. App. 5th Cir. 1987), *citing Evitts v. Lucey*, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985) (adopting the *Strickland* standard as a measure in determining effectiveness of appellate counsel). Here, Relator fails to show prejudice under the second prong of *Strickland* by appellate counsel’s failure to raise a *Napue* claim on appeal. *See State v. Francois*, 13-616 (La. App. 5 Cir. 1/31/14), 134 So.3d 42, 59, *writ denied*, 14-431 (La. 9/26/14), 149 So.3d 261 (“When the substantive issue that an attorney has not raised is without merit, then the claim that the attorney was ineffective for failing to raise the issue also has no merit.”).

Considering the foregoing, the writ application is denied.

Gretna, Louisiana, this 31st day of August, 2026.

MEJ
JGG
SJW

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **08/31/2026** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

26-KH-326

E-NOTIFIED

24th Judicial District Court (Clerk)
Hon. Raymond S. Steib, Jr. (DISTRICT JUDGE)
Thomas J. Butler (Respondent)

MAILED

Raymond Harold Kimble, III #503830
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