NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 KA 0088

STATE OF LOUISIANA

VERSUS

DALE ORDENEAUX

DATE OF JUDGMENT: June 8, 2007

ON APPEAL FROM THE TWENTY-THIRD JUDICIAL DISTRICT COURT
(NUMBER 17,961 DIV. E), PARISH OF ASCENSION
STATE OF LOUISIANA

HONORABLE RALPH TUREAU, JUDGE

* * * * * *

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* * * * * *

BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

Disposition: CONVICTION AND SENTENCE AFFIRMED.

KUHN, J.

Dale Ordeneaux, defendant, was charged by bill of information with one count of manslaughter, a violation of La. R.S. 14:31. Defendant pled not guilty and was tried before a jury. The jury determined defendant was guilty. The trial court sentenced defendant to twenty years at hard labor.

Defendant's conviction and sentence are affirmed.

FACTUAL BACKGROUND

In the early afternoon of November 3, 2004, Deputy Reginald Falton, of the Ascension Parish Sheriff's Office, was dispatched to Louisiana Highway 431 and Black Bayou Road, in response to a report that a woman had fallen out of a truck and was lying on the side of the road.

After arriving at the scene, Deputy Falton noted that first responders were attending to the woman, Angela Ordeneaux. Defendant approached Deputy Falton and told him that the woman was his wife. Deputy Falton asked defendant what had happened and defendant responded that he could not believe his wife had jumped out of the truck. Deputy Falton took defendant to his unit and placed him in the back in an effort to get defendant to calm down. Defendant told Deputy Falton that his ten-year-old daughter, Briana, had witnessed what occurred and that the deputy might want to speak with her.

Deputy Falton located Briana at the scene and asked her what had happened. Briana told Deputy Falton that she was riding in the rear seat of the truck when defendant and her mother began arguing. Defendant began hitting and slapping her mother, who asked him to stop several times. Defendant ignored her

mother's requests that he stop hitting her. According to Briana, her mother jumped out of the truck to get away from defendant.

Deputy Falton returned to where defendant was seated and advised that he was going to be placed under arrest for simple battery, domestic violence. Deputy Falton then consulted the paramedics on the scene regarding the severity of Angela's injuries. Deputy Falton returned to defendant and told him that he would be charged with second degree battery. Defendant was arrested and transported to jail.

When Deputy Falton arrived at the jail in Donaldsonville, he again advised defendant of his ***Miranda*** rights. Defendant told Deputy Falton that he and his wife were arguing over her going to her family and telling them their personal business. Defendant claimed his wife shoved him and he shoved her back, but no further physical contact occurred. He claimed his wife told him that if he did not stop arguing, she would get out of the truck. Defendant told Deputy Falton that he continued to drive and heard the truck door open. Defendant stated that as his wife tried to get out of the truck, he tried to grab her, but the truck began swerving and there was nothing he could do; his wife fell out of the truck.

Deputy Falton was soon informed that Angela had died. He told defendant of Angela's death, and defendant broke down crying. Following Angela's death, the charge against defendant was upgraded to manslaughter.

At trial, Briana testified that on the afternoon in question, defendant planned to bring her mother to work and then to drive her to a doctor appointment. At the time of this incident, defendant and Angela had been separated for approximately four months. Briana testified that the defendant picked them up around noontime

on the day of the incident. Briana sat in the back seat and her mother sat in the passenger seat of the defendant's truck.

According to Briana, defendant began asking her mother where she was the previous night, and an argument ensued. Eventually, defendant started beating Angela in the truck. Briana described how her father slapped and punched her mother in the truck and pulled her hair and threw her around. After a while, Angela told defendant that if he did not stop hitting her she would jump out of the truck. Angela opened the passenger side door of defendant's truck and propped it open with her leg. Briana testified that defendant slapped his wife again and told her to go ahead, while continuing to slap her. Briana testified that defendant was punching her mother, and "then she was out of the truck." She did not see exactly how her mother had exited the truck.

Briana testified that her mother never struck defendant but only tried to defend herself. At one point Briana grabbed defendant's arm, and he swung back and hit her in the face. Defendant then hit his wife again, and Briana realized that her mother was no longer in the truck.

Defendant slammed on the brakes of his truck, got out, and ran toward his wife. Briana grabbed defendant's cell phone and called the police. She got out of the truck and ran toward the Gold Place Lounge because her uncle, Charles Rolls, worked there and she thought she would be able to find him. She also testified she was scared of her father.

After Briana ran into the bar, defendant, who had followed her in his truck, followed her in, and dragged her along the floor, and threw her back into his truck,

while threatening to kill her if she told anyone. Defendant then drove back to where his wife lay on the side of the road.

On cross-examination, Briana admitted that her custody was an issue between her parents in their separation. Briana also admitted that she did not initially tell the prosecutor that her mother smoked marijuana because she did not want her grandparents to find out. She denied that her mother had smoked marijuana on the day she died.

At trial, the State presented testimony from Marion Brignac, who was driving with his wife, Darlene, along La. Hwy. 431 on the date of this incident. Brignac was behind defendant's truck, and after noting that it was swerving so severely, he asked his wife to phone the police. When the truck straightened out, Brignac told his wife not to bother, but after the truck traveled about another fifty yards, it began swerving again. This time, his wife reported the driver to the police. According to Brignac, after the truck passed the intersection with Black Bayou, the passenger door opened, and he saw a tennis shoe sticking out of the truck. The back window to the truck was tinted, so he could not see anything going on inside the cab of the truck. The door opened wide, then partially closed, before Brignac saw a lady fall on the road. He described that she came "straight out down on feet and fell into the road and rolled over." When this occurred, Brignac estimated the truck was traveling at 25 miles per hour. Brignac and his wife stopped to check on the woman. Defendant stopped about fifty yards away, and he walked back to the scene. Defendant called his wife's name but did not try to help her, then went back to his truck when he saw a girl running from it.

Benny Bourgeois was also driving on La. Hwy. 431 on the date of this incident. Bourgeois noted an oncoming vehicle using its horn as it passed him. Bourgeois then observed through his rearview mirror a truck behind him "swerving all over the road." Bourgeois could see a scuffle going on inside the truck, where the driver had the passenger by her hair with his right hand and punched the passenger with his left hand. Bourgeois phoned the sheriff department.

Bourgeois stated he began driving very slowly, and after a short while, he noticed a person on the asphalt. Keith Delhommer, who was in the vehicle with Bourgeois, testified that he also observed the driver of the truck striking the victim. He stated that it did not look like the victim was fighting back; it looked like she was trying to pull away from the defendant.

Lane Perttelt, a bartender at the Gold Place Lounge, testified that on the day of this incident, he was removing Halloween decorations. Perttelt stated he heard a girl scream and saw Briana running toward the bar from the road. Defendant was driving his truck following Briana. Perttelt heard Briana scream, "You hit my mom." According to Perttelt, Briana entered the bar and was hysterical. Defendant followed her inside and dragged her out, while Briana was on her knees. The defendant physically put Briana back into his truck.

Dr. Dorothy Hayden, a forensic pathologist, performed the autopsy on the victim. According to Dr. Hayden, the victim died due to a skull fracture along the base of her skull that produced bleeding around the brain. Dr. Hayden also testified that the victim's urine tested positive for the presence of marijuana. Dr.

Hayden stated that a person could test positive for marijuana for up to three weeks after having used it.

Defendant did not testify. The defense proffered testimony from Leroy Laiche, a civil attorney, whom defendant had consulted in reference to divorcing the victim and obtaining custody of Briana.

SUFFICIENCY OF THE EVIDENCE

In defendant's first assignment of error, he argues the trial court erred in denying the motion for post-verdict judgment of acquittal or alternatively, for a new trial. Defendant specifically challenges the jury's determination that his actions caused the victim's death by arguing no reasonable person could have foreseen that the victim "would suddenly announce that she was going to jump out the vehicle and then do so almost immediately thereafter." Defendant argues he could not have reasonably foreseen that his wife would respond to his actions by jumping out of the vehicle.

In reviewing the sufficiency of the evidence to support a conviction, a Louisiana appellate court is controlled by the standard enunciated by the United States Supreme Court in ***Jackson v. Virginia***, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). That standard of appellate review, which was adopted by the Legislature in enacting La. Code Crim. P. art. 821, is whether the evidence, when 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. Brown***, 2003-0897, p. 22 (La. 4/12/05), 907 So.2d 1, 18.

La. R.S. 14:31 defines manslaughter in pertinent part as:

(2) A homicide committed, without any intent to cause death or great bodily harm.

(a) When the offender is engaged in the perpetration or attempted perpetration of any felony not enumerated in Article 30 or 30.1, or of any intentional misdemeanor directly affecting the person [.]

An intentional misdemeanor directly affecting the person includes simple battery. A battery is the intentional use of force or violence upon the person of another. La. R.S. 14:33. A simple battery is a battery committed without the consent of the victim. La. R.S. 14:35.

The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. Credibility determinations are a matter of weight of the evidence, not the sufficiency. ***State v. Williams***, 2001-0944, p. 6 (La. App. 1st Cir. 12/28/01), 804 So.2d 932, 939, ***writ denied***, 2002-0399 (La 2/14/03), 836 So.2d 135. The role of the court of appeal is not to assess credibility or reweigh evidence. ***State v. Smith***, 94-3116, p. 2 (La. 10/16/95), 661 So.2d 442, 443. In the absence of internal contradiction or irreconcilable conflict with physical evidence, one witness's testimony, if believed by the trier of fact, is sufficient support for a requisite factual conclusion. ***State v. Higgins***, 2003-1980, p. 6 (La. 4/1/05), 898 So.2d 1219, 1226, ***cert. denied***, __ U.S.__, 126 S.Ct. 182, 163 L.Ed.2d 187 (2005).

In the present case, the jury's verdict of guilty reflects that the jury found Briana's testimony of what occurred in the truck to be credible. Briana testified that defendant was hitting her mother at the time her mother left the truck. According to Briana, defendant would not stop hitting her mother and was aware that her mother had said she would jump from the truck if he continued to hit her.

Further, Briana's testimony indicated that defendant told his wife to jump from the truck and continued to hit her until she exited the truck.

Based on the evidence viewed in the light most favorable to the prosecution, we find it sufficiently supports the jury's verdict of manslaughter. Moreover, in light of defendant's actions, we find he could have reasonably anticipated the victim's response of exiting the moving truck.

This assignment of error is without merit.

EXCESSIVE SENTENCE

In defendant's second assignment of error, he contends the trial court imposed an excessive sentence. Defendant argues that his wife's death was not the result of any intentional act on his part and his conduct is less deserving of the heavier penalties associated with intentional homicides.

The Louisiana Code of Criminal Procedure sets forth items that must be considered by the trial court before imposing sentence. La. Code Crim. P. art. 894.1. The trial court need not recite the entire checklist of Article 894.1, but the record must reflect that it adequately considered the criteria. In light of the criteria expressed by Article 894.1, a review for individual excessiveness should consider the circumstances of the crime and the trial court's stated reasons and factual basis for its sentencing decision. ***State v. Hurst***, 99-2868, p. 10 (La. App. 1st Cir. 10/3/00), 797 So.2d 75, 83, ***writ denied***, 2000-3053 (La. 10/5/01), 798 So.2d 962.

Article I, section 20 of the Louisiana Constitution prohibits the imposition of excessive punishment. Although a sentence may be within statutory limits, it may violate a defendant's constitutional right against excessive punishment and is subject to appellate review. Generally a sentence is considered excessive if it is

grossly disproportionate to the severity of the crime or is nothing more than the needless imposition of pain and suffering. A sentence is considered grossly disproportionate if, when the crime and punishment are considered in light of the harm to society, it is so disproportionate as to shock one's sense of justice. A trial judge is given wide discretion in the imposition of sentences within statutory limits, and the sentence should not be set aside as excessive in the absence of manifest abuse of discretion. ***State v. Hurst***, 99-2868 at pp. 10-11, 797 So.2d at 83.

The applicable sentencing range for manslaughter is imprisonment at hard labor for not more than forty years. La. R.S. 14:31(B). The defendant in this case was sentenced to twenty years at hard labor.

In the written reasons for sentence, the trial court noted that defendant was a forty-four year old first-felony offender. The trial court stated that the Pre-Sentence Investigation (PSI), the prosecutor, and the representative of the Sheriff's Office recommended that defendant be sentenced to the maximum penalty of forty years for this crime.

The trial court explained that ordinarily it would follow such recommendations set forth in the PSI, but the facts and circumstances surrounding this case did not warrant such a harsh sentence.

We agree that while the evidence indicates the victim died as a result of sustaining a blow to her head after exiting the defendant's truck, we are not persuaded to view the defendant's twenty-year sentence as excessive. While the evidence raised some questions regarding whether the victim jumped or was shoved out of the truck by the defendant, the facts adduced at trial indicated that

the defendant was battering the victim as she exited the vehicle. Defendant physically beat his wife in front of his minor child. At no point, however, whether in speaking with the police during the investigation or while the investigator conducted the PSI did defendant ever express any remorse for his role in his wife's death, which occurred in front of his own daughter. Moreover, we note defendant's argument (that his unintentional act should be given a lesser sentence than an intentional homicide) had already been addressed by the trial court's significant departure from the recommended maximum sentence. Accordingly, we feel defendant has already been given the benefit of a more lenient sentence than what might have been reasonably imposed in this matter.

Under the facts and circumstances of this case, we cannot say the twenty-year sentence is excessive. This assignment of error is without merit.

JUROR CHALLENGES

In his third assignment of error, defendant argues that the trial court erred in denying defense challenges for cause regarding two prospective jurors.

Louisiana Constitution article I, § 17(A) guarantees to a defendant the right to a full *voir dire* examination of prospective jurors and to challenge jurors peremptorily. The number of peremptory challenges granted a defendant in a case involving an offense punishable by imprisonment at hard labor is twelve. La. Code Crim. P. art. 799. When a defendant uses all twelve of his peremptory challenges, an erroneous ruling of a trial court on a challenge for cause that results in depriving him of one of his peremptory challenges constitutes a substantial violation of his constitutional and statutory rights, requiring reversal of the conviction and sentence. Prejudice is presumed when a trial court erroneously

denies a challenge for cause and a defendant has exhausted his peremptory challenges. Therefore, to establish reversible error warranting reversal of a conviction and sentence, defendant need only demonstrate: (1) the erroneous denial of a challenge for cause; and (2) the use of all his peremptory challenges. ***State v. Juniors***, 2003-2425, pp. 7-8 (La. 6/29/05), 915 So.2d 291, 304, ***cert. denied***, __ U.S. __, 126 S.Ct. 1940, 164 L.Ed.2d 669 (2006).

In the instant case, defendant exhausted his peremptory challenges; therefore, we need only determine whether the trial court erred in denying defendant's challenges for cause.

Louisiana Code of Criminal Procedure article 797 provides, in pertinent part, that the State or the defendant may challenge a juror for cause on the ground that:

> (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 [.]

A 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 judgment according to law may be reasonably implied. The trial court is vested with broad discretion in ruling on challenges for cause and these rulings will be reversed only when a review of

the entire *voir dire* reveals an abuse of discretion. ***Juniors***, 2003-2425 at p. 9, 915 So.2d at 305.

Defendant argues that prospective juror, Barry Millien should have been excused for cause on the basis that his strong feelings about domestic violence would influence his decision in the case.

The record indicates that Millien stated he had a brother-in-law that worked for the East Baton Rouge Parish Sheriff's Office, and he was a good friend of a justice of the peace, but that neither of those relationships would affect him if selected as a juror. Millien also indicated he had an ex-sister-in-law who was murdered, although he knew nothing of the case, and a girl who he had coached had also been murdered, but neither of those events would affect him.

Millien stated that he had a "slight problem" with women being beaten and that he was "raised that you don't beat women." Millien then stated that he would have to hear the "whole thing" and see exactly what was at issue and what direction any abuse went. Millien was specifically asked if the cross-examination of a young girl, which may cause the girl to become upset, would influence him and he answered that it would not cause him any problems.

Although Millien expressed disapproval of violence toward women, he also stated that he would have to hear all of the evidence before making a decision. We find such a response did not make Millien appear so impartial as to justify the trial court's granting the defense challenge for cause to Millien.

Defendant also argues that the trial court erred in failing to grant his challenge for cause for prospective juror Ronald Lolley on the basis that Lolley had used the prosecutor in this case as his attorney in the past, had additional law

enforcement connections and thought he might have learned information about this case from his son-in-law, who worked for the fire department.

The law in Louisiana is clear that a relationship between a prospective juror and the district attorney does not automatically disqualify the prospective juror from service. The existence of a relationship, even one of blood or marriage, is not sufficient to disqualify a juror unless the facts reveal that the nature of the relationship is such that it is reasonable to conclude that it would influence the juror in arriving at a verdict. La. Code Crim. P. art. 797. The law does not require that a jury be composed of individuals who are totally unacquainted with the defendant, the person injured in the offense, the district attorney, or defense counsel. It requires that the jurors be fair and unbiased. However, a prospective juror's statement that he or she will be fair and impartial is not binding on the trial court. If the revealed details of the relationship are such that bias, prejudice, or impartiality may be reasonably inferred, a juror may be properly refused for cause. ***State v. Juniors***, 2003-2425 at p. 11, 915 So.2d at 306, 307.

Defendant's argument that Lolley should have been excused for cause is initially based on the fact that Lolley admitted that he had used the prosecutor once in the past for legal aid. No further details of this relationship were developed, but Lolley stated that such past relationship would not affect him if he were selected.

Defendant further contends that Lolley had close ties to law enforcement. Lolley's ties to law enforcement were a cousin employed as an Alabama State Trooper and an uncle who was a sheriff in Alabama. These relations had no

involvement in the present investigation, and Lolley further denied that such relationships would make him more favorable to law enforcement.

Finally, defendant argues that Lolley had learned information about this case from his son-in-law, who was a fireman who worked the accident scene. Lolley stated that he could not remember any details, but could only remember the fact of the accident. When pressed, Lolley stated that if he began to remember any details from his son-in-law, those details would not affect his decision of the case and that he would not prejudge defendant based on any information he might remember.

After reviewing Lolley's statements, we find there is no showing he held any bias. Lolley declared that these disclosed relationships would not affect his deliberation nor would any recollection about the accident affect his decision. Considering there was no evidence that such factors would impact Lolley's ability to act with impartiality, we find the trial court properly denied the defense challenge for cause regarding prospective juror Lolley.

This assignment of error is without merit.

DECREE

For these reasons, the defendant's conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED.