

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 KA 0885

STATE OF LOUISIANA

VERSUS

JESSICA KELLY



**On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, Louisiana
Docket No. 05-03-0802, Section VIII
Honorable Wilson Fields, Judge Presiding**

**Doug Moreau
District Attorney
Kory J. Tauzin
Assistant District Attorney
Baton Rouge, LA**

**Attorneys for
State of Louisiana**

**Thomas C. Damico
Baton Rouge, LA**

**Attorney for
Defendant-Appellant
Jessica Kelly**

BEFORE: PARRO, KUHN, AND DOWNING, JJ.

Judgment rendered November 2, 2007

PARRO, J.

The defendant, Jessica Kelly, was charged by bill of information with manslaughter, a violation of LSA-R.S. 14:31. She pled not guilty and waived her right to a jury trial. Following a bench trial, the defendant was convicted as charged. Subsequently, the defendant was sentenced to imprisonment at hard labor for fifteen years. The defendant now appeals, challenging the sufficiency of the state's evidence. Finding the evidence sufficient to support the manslaughter conviction, we affirm.

FACTS

On May 12, 2003, the victim, fifteen-year-old D.R.,¹ was visiting with eighteen-year-old Trikee Kelly in his parents' home on Hollywood Street in Baton Rouge. They were in an upstairs bedroom. At approximately 4:00 a.m., when Trikee's sister, seventeen-year-old Fatima Kelly, came home after a night out, she noticed D.R. and Trikee in her bedroom. Fatima, the defendant's sister, became very upset because she and D.R. did not get along and had been involved in a physical altercation earlier that week. Shortly thereafter, a verbal confrontation ensued between Fatima and D.R. Eventually, the confrontation escalated into a physical altercation. Lateefah Johnson, the defendant's best friend, joined Fatima in the fight against D.R. The defendant, who had been downstairs, heard the noise caused by the fight and ran upstairs to see what was going on. At some point thereafter, D.R. brandished a knife. When D.R. attempted to swing the knife towards Fatima, the defendant also joined in the fight. By the time the altercation ended, D.R. was covered in blood. She had sustained stab wounds to her right shoulder, right hand, left chest, and the right side of her face. D.R. walked downstairs and collapsed on the kitchen floor. Lateefah Johnson transported D.R. to Earl K. Long Hospital and dropped her off. The wound to D.R.'s left chest pierced her heart. D.R. later died while being transferred to Baton Rouge General Medical Center for surgery.

¹ Pursuant to LSA-R.S. 46:1844(W)(1)(a), we reference the victim, a minor, only by her initials.

ASSIGNMENT OF ERROR

In her sole assignment of error, the defendant contends that the evidence presented at the trial was insufficient to support the manslaughter conviction. Specifically, she asserts the state failed to prove that she was the individual who inflicted the wound that caused D.R.'s death. She argues that the evidence presented at trial showed only that D.R. died as a result of a stabbing, but the evidence failed to conclusively prove who inflicted the fatal wound.

The standard of review for the sufficiency of the evidence to uphold a conviction is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could conclude that the state proved the essential elements of the crime and the defendant's identity as the perpetrator of that crime beyond a reasonable doubt. **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979); see LSA-C.Cr.P. art. 821; **State v. Johnson**, 461 So.2d 673, 674 (La. App. 1st Cir. 1984). The **Jackson v. Virginia** standard of review, incorporated in Article 821, is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. In conducting this review, we also must be expressly mindful of Louisiana's circumstantial evidence test, i.e., "assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence." LSA-R.S. 15:438; see **State v. Northern**, 597 So.2d 48, 50 (La. App. 1st Cir. 1992). The reviewing court is required to evaluate the circumstantial evidence in the light most favorable to the prosecution and determine if any alternative hypothesis is sufficiently reasonable that a rational juror could not have found proof of guilt beyond a reasonable doubt. **State v. Fisher**, 628 So.2d 1136, 1141 (La. App. 1st Cir. 1993), writs denied, 94-0226 and 94-0321 (La. 5/20/94), 637 So.2d 474 and 476.

The **Jackson v. Virginia** standard of review, in particular the requirement that the evidence be viewed in the light most favorable to the prosecution, obliges the reviewing court to defer to the actual trier of fact's rational credibility calls, evidence weighing, and inference drawing. **State v. Mussall**, 523 So.2d 1305,

1308-11 (La. 1988). Thus, the reviewing court is not permitted to decide whether it believes the witnesses or whether the conviction is contrary to the weight of the evidence. **State v. Marcantel**, 00-1629 (La. 4/3/02), 815 So.2d 50, 56. It is not the function of an appellate court to assess the credibility of witnesses or reweigh the evidence to overturn a factfinder's determination of guilt. See **State v. Houston**, 98-2658 (La. App. 1st Cir. 9/24/99), 754 So.2d 256, 259. When a case involves circumstantial evidence and the trier of fact reasonably rejects the hypothesis of innocence presented by the defendant's own testimony, that hypothesis falls, and the defendant is guilty unless there is another hypothesis which raises a reasonable doubt. **State v. Captville**, 448 So.2d 676, 680 (La. 1984).

As previously noted, the defendant was convicted of manslaughter. LSA-R.S. 14:31 defines manslaughter, in pertinent part, as follows:

A. Manslaughter is:

(1) A homicide which would be murder under either Article 30 (first degree murder) or Article 30.1 (second degree murder), but the offense is committed in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his self-control and cool reflection. Provocation shall not reduce a homicide to manslaughter if the jury finds that the offender's blood had actually cooled, or that an average person's blood would have cooled, at the time the offense was committed; or

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

In support of her sufficiency argument, the defendant notes that none of the state's eyewitnesses testified that they observed the defendant stab D.R. She points out that all of the eyewitnesses specifically testified that they did not see the defendant with a knife. The defendant further asserts the state failed to negate the reasonable hypothesis that one of the other girls stabbed D.R. during the struggle.

The testimony and evidence presented at trial was as follows.

Dr. Edgar Shannon Cooper, Coroner for East Baton Rouge Parish, testified that the cause of D.R.'s death was, "sharp force injury to her heart which caused bleeding into the sack around the heart, which is called the pericardium." Dr.

Cooper explained that the bleeding from the stab wound eventually stopped D.R.'s heart from beating. He further explained that a person with this particular type of injury would not live longer than one-half hour. D.R. also sustained three other nonfatal stab wounds. According to Dr. Cooper, the number of injuries D.R. sustained is inconsistent with an accidental stabbing. D.R.'s death was ruled a homicide.

Baton Rouge City Police Corporal Douglas Barron testified that he was dispatched to Earl K. Long Hospital to investigate the homicide. At the hospital he learned that the fifteen-year-old victim had been stabbed through the heart. An unidentified female had dropped her off at the hospital.

Baton Rouge City Police Detective Ross Williams testified that further investigation revealed that D.R. was last seen on Hollywood Street with Trikee Kelly. Russell Carter, D.R.'s boyfriend, told the police that he saw D.R. going to Trikee's home on Hollywood Street.² The police later received information indicating that the stabbing that led to D.R.'s death occurred inside the Kelly residence and was witnessed by several individuals, including Lateefah Johnson, Fatima Kelly, Nevina Kelly, and Catina Kelly. The police also learned from Lateefah's mother that Lateefah had been present in the Kelly residence, she had witnessed the incident, and she was the individual who transported D.R. to the hospital. A BOLO (be on the lookout) was issued for Lateefah's vehicle. Shortly thereafter, the police stopped Lateefah, Fatima, and another female riding in Lateefah's vehicle.³ Fatima and Lateefah were taken to the police station for questioning. At the station, Lateefah admitted that she drove D.R. to the hospital. However, she initially denied having any knowledge of the stabbing. She claimed she was asleep at the Kelly residence when she was awakened and asked to take D.R. to the hospital. Later, Lateefah and Fatima both indicated that they had information regarding the stabbing. Both girls told the police that D.R.

² The police also learned that Russell Carter had been involved in a fight with Trikee Kelly earlier that day.

³ At trial, the other female was identified only as "Gloria." She was not involved in the incident.

had sustained the injuries outside of the Kelly residence during the fight between Russell Carter and Trikee Kelly. They claimed D.R. ran into the residence seeking assistance after being stabbed.

Meanwhile, Sergeant Dennis Moran and other Baton Rouge City Police Officers went to the Kelly residence to execute a search warrant. While there, Sgt. Moran separately questioned the fourteen-year-old twin girls, Catina and Nevina Kelly. The police had already received information indicating that the twins had information regarding D.R.'s stabbing. They witnessed the incident, but were not involved. In response to questioning, Catina and Nevina (like Fatima and Lateefah) initially indicated that D.R. had been stabbed outside, and when she came into their residence for help she collapsed on the kitchen floor. Later, both girls provided taped statements, which were introduced at trial, indicating that they witnessed the incident in an upstairs bedroom in their home. They both provided detailed accounts of the events leading up to the stabbing. Catina and Nevina both explained that D.R. had been stabbed with her own knife after she pulled it out and attempted to use it during the fight with Fatima. They unequivocally identified the defendant as the individual who stabbed D.R. Neither girl denied being present when D.R. was injured.

Lateefah and Fatima were subsequently transported from headquarters to the Kelly's residence. When confronted with the information obtained from the twins, Lateefah admitted that she witnessed the incident, which occurred inside the Kelly residence. Lateefah also provided a taped statement describing what had transpired. She also identified the defendant as the person responsible for D.R.'s injuries. Detective Ross Williams testified that Fatima told him that she did not want to tell the truth at first because "she didn't want to get her sister in trouble."

In her taped statement, Lateefah stated that she, Fatima, and the defendant returned to the Kelly residence at approximately 4:00 a.m. When Fatima went upstairs and saw D.R., a fight started. According to Lateefah, D.R. then got a knife off of the dresser and swung it at Fatima. The defendant came

running up the stairs. Fatima ducked to avoid being cut with the knife and D.R. dropped it. The defendant picked up the knife. Lateefah unequivocally stated that she saw the defendant with the knife in her hand. Lateefah explained that she tried to push the defendant back. The defendant told Lateefah, "move out of my way." The defendant then "came over [Lateefah] swinging" at D.R. The defendant proceeded to repeatedly strike D.R. Lateefah explained that she thought the defendant had dropped the knife because she did not see the knife. She saw the defendant striking D.R., but she did not see the knife in the defendant's hand. She did not realize that D.R. had been stabbed until D.R. got up and was covered in blood. D.R. went downstairs and collapsed in the kitchen. Lateefah stated that she put D.R. in her vehicle and drove her to the hospital. Lateefah's taped statement was introduced into evidence and played for the court during the trial.

Catina Kelly also identified the defendant as the person who stabbed D.R. In her taped statement to the police, Catina stated that she was asleep when she heard Fatima say, "if she comes down we are gonna fight." Fatima was referring to D.R., who was upstairs braiding Trikee's hair. Catina explained that the fight between Fatima and D.R. started upstairs. The defendant, who had been downstairs, handed her baby to Catina and went upstairs. Catina followed the defendant. According to Catina, D.R. grabbed the knife and the defendant took it from her. The defendant then used the knife to stab D.R. Catina stated that the defendant stabbed D.R. once in the face. Catina further explained that she and Nevina both walked upstairs during the fight.

Nevina Kelly, in her taped statement, also told the officers that she witnessed the incident. She explained that she was downstairs when she heard fighting upstairs. The defendant told their mother to hold her baby. The defendant went up the stairs. In the upstairs bedroom, Fatima and D.R. were fighting. Lateefah joined in the fight, striking D.R. in her mouth. D.R. had a knife, but she dropped it. The defendant picked up the knife and stabbed D.R. in the head, back, and chest. Nevina stated the defendant later said she thought

she dropped the knife. Nevina's taped statement was introduced into evidence and played for the court during the trial.

Based upon the information gathered during the investigation, a warrant was issued for the defendant's arrest. The defendant later turned herself in to the police. Trikee Kelly, who had also witnessed the incident, could not be located at the time.

Although the eyewitnesses eventually cooperated with the officers during the investigation, they were not so cooperative at the defendant's trial. During the trial, the state called Fatima, Lateefah, Catina, and Nevina as witnesses. Lateefah testified that after the fight started and D.R. picked up the knife, she and Fatima wrestled with her for the knife. Meanwhile, the defendant came up the stairs. During the struggle, the knife fell and the defendant picked it up. Lateefah stated that she did not see the knife in the defendant's hand any time thereafter. She only saw the defendant swinging her fist and fighting. Lateefah stated that Fatima and D.R. were still fighting during that time. On cross-examination, Lateefah stated that she was not sure when D.R. was stabbed. She stated that it was possible that D.R. could have gotten stabbed when all three of them (herself, Fatima, and the defendant) were involved in the fight and wrestling over the knife.

Catina and Nevina both testified that they were not upstairs and did not witness the incident. Both girls testified that they were asleep throughout the entire incident. They slept all night and were awakened the next day by the detectives. When asked how they were able to provide detailed taped statements regarding the stabbing, each girl indicated that the detectives told her what to say.

Fatima Kelly testified that during the fight D.R. pulled a knife out of her pocket. When D.R. came at her with the knife, the defendant and Lateefah joined in. According to Fatima, the three of them struggled extensively with D.R. over the knife, but D.R. maintained possession of the knife. D.R. was "going crazy" with the knife, trying to stab her. Fatima claimed D.R. never dropped the knife.

She denied that the defendant ever had the knife. Fatima stated she was unsure exactly when the stabbing occurred, but suggested that it possibly occurred as they tumbled over the floor trying to get the knife from D.R. Fatima further testified that approximately four days earlier, D.R. pulled a knife out on her and her friends during another fight.

Trikee Kelly testified on behalf of the defense. Trikee claimed he had made contact with D.R. outside approximately thirty to forty minutes earlier as he returned home. He claimed D.R. was upset and indicated that she and Russell Carter "got into it." According to Trikee, D.R. was already bleeding. She had blood on her shirt and pants before she entered the residence.

Trikee testified that he was upstairs when the altercation occurred between Fatima and D.R. Like the state's witnesses, Trikee claimed D.R. pulled out a knife during the fight. D.R. was about to come down on Fatima with the knife when the defendant jumped in. The defendant, Fatima, Lateefah, and D.R. struggled over the knife, but the knife never fell to the ground. Trikee denied ever seeing the defendant with the knife or seeing anyone get stabbed.

The defendant testified on her own behalf. She admitted that she attempted to disarm D.R. after D.R. pulled out the knife, but claimed she was unsuccessful. The defendant testified that she, Lateefah, Fatima, and D.R. got into a tumble for the knife. The defendant stated that she was afraid that D.R. would stab Fatima because she was aware that D.R. had pulled a knife on Fatima and her friends before. However, the defendant stated that she did not stab D.R. She claimed she was never able to gain possession of the knife. According to the defendant, "[n]o one person had control of the knife." The defendant denied ever saying she thought she dropped the knife.

Based upon the aforementioned evidence and trial testimony, we find that the record in this case clearly demonstrates that the state carried its burden of proving beyond a reasonable doubt that the defendant was guilty of the offense of manslaughter. Although the trial testimony of the eyewitnesses alone would have likely been insufficient to support a conviction, ample proof of the circumstances

surrounding the commission of the offense was gathered in the police investigation immediately following the killing and presented to the court at trial. Insofar as the trial testimony is concerned, we note, and the state correctly points out in its brief, each of the eyewitnesses was either a family member or friend of the defendant. The trial court apparently determined these witnesses were reluctant and/or refused to provide testimony during the trial that would incriminate the defendant. Despite having previously provided statements to the contrary, Fatima, Lateefah, Catina, and Nevina all denied seeing the defendant strike D.R. after picking up the knife. In fact, Catina and Nevina denied seeing anything. Based upon the inconsistencies between the witnesses' statements to the police shortly after the offense and their trial testimony three years later, the trial court was justified in accepting either version of the events as true and rejecting the other. From the guilty verdict returned, it is obvious that the trial court gave weight to the statements provided to the police specifically inculcating the defendant and rejected the trial testimony to the contrary. The court likewise rejected the hypothesis that one of the other girls (Fatima or Lateefah) was responsible for D.R.'s injuries. We find no error or abuse of discretion by the trial court in this case. The record before us clearly supports the court's ruling. There was sufficient evidence presented to support each of the essential elements of the offense of manslaughter and the defendant's identity as the perpetrator beyond a reasonable doubt.

This assignment of error lacks merit.

Accordingly, the defendant's conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED.