

No. PD-0503-17

**TO THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS**

GEORGE DELACRUZ, PETITIONER
v.
THE STATE OF TEXAS, RESPONDENT

From the Court of Appeals for the
Third Judicial District of Texas at Austin,
Cause No. 03-15-00302-CR

On appeal from the 147th Judicial District Court of Travis County,
Cause Number D-1-DC-13-900252

THE STATE'S REPLY TO THE APPELLANT'S PDR

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THE STATE'S REPLY TO THE APPELLANT'S PDR

Pursuant to Rule 68.9 of the Texas Rules of Appellate Procedure, the State of Texas, by and through the District Attorney for Travis County, hereby replies to appellant George Delacruz's petition for discretionary review.

In his PDR, the appellant seeks this Court's review of the ruling, of the Austin Court of Appeals, that the evidence is legally sufficient to support the appellant's conviction for the offense of murder. The appellant's PDR addresses, *inter alia*, the testimony of Justin Stewart, a witness who testified at trial regarding statements made by the appellant about the appellant's altercation with a woman. The appellant's argument is based, in large part, upon the erroneous notion that "there was no evidence adduced that the woman he [i.e., the appellant] struggled with was the alleged victim." PDR at 11. The appellant also suggests, incorrectly, that there is no evidence that the altercation occurred at his home. Because his claim rests heavily upon these flawed premises, this Court should reject the appellant's argument and refuse his petition for discretionary review.

1. Stewart's testimony about the appellant's altercation with a woman

The appellant and Justin Stewart initially met in late 2013 when both men attended a prayer circle while in jail. The appellant showed Stewart a drawing from a magazine and said something about "the things that women can make men do." 7

RR 10; *see id.* at 9-10, 12. Stewart testified that the appellant then told him about an altercation between the appellant and a woman:

Q. And then what happened as part of that argument?

A. I know she tried to leave at one point, and he tried to stop her, and I mean things got physical. I know -- I know they had a fight, basically.

Q. A physical fight?

A. Yes, sir. I mean, yeah. I mean, he didn't say he punched her or nothing like that. He just talked about wrestling around with her.

Q. Did he say what happened while he was wrestling around with her?

A. Yeah. At one point she had -- they fell, and she hit her head. I don't remember what he said, whether it was the table or counter. I think he said the counter or something. I don't remember where he said this altercation happened inside the home. Like I said, this is a conversation that happened, you know, three years ago -- two years ago, and I wasn't really taking notes. But an altercation happened. She fell. She hit her head. She was apparently bleeding. At that point, I guess she, like any female would -- most females would in that situation was going to call. I don't know if she was going to call the cops or her dad or her brother, whoever. And, I mean, I guess he tried to stop her.

7 RR 15-16.

Later in his testimony, Stewart clarified the sequence of events described to him by the appellant:

Q. So they -- they had a struggle. First they have an argument about a guy that she's talking to, then they have a struggle as she's trying to leave; is that correct?

A. Yes, sir.

Q. And then she's threatening to call somebody. And then he stops her from calling anybody?

A. Yeah. I mean, apparently the second time around -- I know -- I know she became unconscious. She was knocked out. And I know he freaked out. He didn't know what to do. I mean, that's not -- I mean, I don't know. He didn't really go much further after that. That's pretty

much all he told me.

Q. He told you about there being blood.

A. Yeah.

Q. He told you about her being unconscious.

A. Yeah. I mean, the reason -- I didn't really even -- really even think too much of it then because I'll be honest I've -- I've had, you know -- I've been in some pretty bad relationships myself where there's been altercations, and there's been blood. I didn't -- I figured maybe he just felt bad about having a fight with his wife or his girlfriend.

7 RR 16-17. The appellant told Stewart that “he wrestled with her and caused her to bump her head” and that “she was unconscious at the end of their struggle.” 7 RR 32, 34.

2. The appellant's characterization of Stewart's testimony

In his petition for discretionary review, the appellant makes the following argument:

In its opinion the Court of Appeals uses Stewart's testimony as a key piece of the evidence incriminating Petitioner but it repeatedly erroneously describes the evidence in ways that make it sound far more definite and incriminating than it actually was. For example the Court of Appeals wrote in its opinion a heading that reads: “32. Delacruz described a violent altercation with Julie to a fellow inmate”. The opinion goes on to say that Petitioner “described an altercation that occurred between Julie and himself in which she hit her head, was bleeding and became unconscious.” Delacruz v. State, supra at *68. A review of Stewart's testimony shows that **Stewart never testified that Petitioner told him the girl in the story was Julie**. Again under the heading “4. Other incriminating evidence”, the Court of Appeals wrote:

“Finally, Stewart testified that Delacruz had admitted to an act of physical violence against Julie ‘over some other guy that she was talking to’ at his home that had left her bloodied and unconscious.” Delacruz v. State, supra at 77.

This statement is erroneous on two important points. First, **Stewart never testified that Petitioner named the girl in the altercation as Julie.** Second, **Stewart never testified that Petitioner told him the incident occurred at his home.** These are two crucial misstatements that the opinion uses as inferences to support Petitioner's conviction. But they are erroneous because **Stewart, the jailhouse snitch, never testified to those two key items.**

PDR at 18-19 (emphasis in original omitted, other emphasis added).

3. The evidence is legally sufficient to support the challenged inferences

The appellant's argument lacks merit. In light of the testimony of Justin Stewart and the applicable standard of review, the Court of Appeals was required to find the evidence legally sufficient to support the inference that Julie Ann Gonzalez was the woman involved in the altercation and also legally sufficient to support the inference that the altercation occurred at the appellant's home.

a. The standard governing legal-sufficiency review

Under *Jackson v. Virginia*, the reviewing court must consider all of the evidence in the light most favorable to the verdict and then determine whether, based on that evidence and reasonable inferences therefrom, any rational juror could have found the essential elements of the crime beyond a reasonable doubt. *See Jackson v. Virginia*, 43 U.S. 307 (1979); *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007).

When performing a legal-sufficiency review, the task of the appellate court is

to “determine whether the necessary inferences are reasonable based upon the combined and cumulative force of all the evidence when viewed in the light most favorable to the verdict.” *Hooper v. State*, 214 S.W.3d 9, 16-17 (Tex. Crim. App. 2007). Circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor, and circumstantial evidence alone can be sufficient to establish guilt. *Guevara v. State*, 152 S.W.3d 45, 49 (Tex. Crim. App. 2004). The appellate court is required to presume that the factfinder resolved any conflicting inferences in favor of the prosecution and defer to that resolution. *Jackson*, 443 U.S. at 326; *Clayton*, 235 S.W.3d at 778.

b. The record supports a reasonable inference that Julie Ann Gonzalez was the woman involved in the altercation

Viewed in the light most favorable to the State, the evidence supports a reasonable inference that Julie Ann Gonzalez was the woman who was knocked unconscious by the appellant during the altercation. Stewart’s testimony indicates that the woman was someone whom the appellant had been dating, that she was the mother of the appellant’s child, and that the appellant and the woman argued during the altercation about another man whom the woman had been dating:

He just felt bad about -- I mean, he was almost in tears. I mean, he felt bad about something. He just told me about an altercation he had with a girl that he had been seeing that, I guess, he had his child with. They had an argument. I believe it was over some guy that she was talking to or something.

7 RR 14.

Stewart clarified that the appellant said that the appellant and “his girl” “had an argument about her romantic interest in some other guy.” 7 RR 14. At trial, Stewart expressly referred to the woman as “his [i.e., the appellant’s] wife or his girlfriend.” *Id.* at 17. Indeed, Julie Ann Gonzalez—who was often referred to at trial simply as “Julie”—and her daughter were explicitly addressed *by name* during Stewart’s testimony:

Q. The other thing I want to ask you: Do you recall telling Detective Sanchez that [the appellant] and **Julie** had a daughter and that after he assaulted **Julie** she told him she was not going to let him see [**L.D.**] again and that he was going to jail?

A. Yes. He did mention that.

7 RR 35 (emphasis added); *see also id.* at 36.

It was undisputed at trial that Julie Ann Gonzalez and the appellant had been married and divorced and that she was the mother of the appellant’s daughter, L.D. *See, e.g.,* 3 RR 223. In addition, the record contains ample evidence that, at the time of her disappearance, Julie Ann Gonzalez was involved in a romantic relationship with a man named Aaron Breaux. *See generally* State’s Brief at 17-20, 27-30. On the night before her disappearance, Julie Ann and Aaron went to dinner at a restaurant and were joined by her close friend Amanda Hays. According Amanda, Julie Ann was “excited” and “overjoyed” that night. 3 RR 291. Amanda

had not previously met Aaron. Julie Ann wanted them to meet that night because she wanted Amanda's opinion and approval. 3 RR 291-92. Amanda testified, "She and Aaron, that night when we had dinner, were talking about actually looking at places to live, like, permanently, like, houses. I know they were staying in an apartment. They were actually planning on looking at houses and talking about having kids and getting married." 3 RR 292.

That same night, Julie Ann went to Aaron's home, watched a movie there, and stayed there overnight. 2 RR 256-57. Before leaving Aaron's home the following morning, she left him a love note. *See* 2 RR 264-69; State's Exh. 4. She disappeared later that same morning. *See, e.g.,* 2 RR 262-64; *see generally* State's Brief at 27-30.

This Court should reject the appellant's challenge to the sufficiency of the evidence to support the inference that Julie Ann Gonzalez was the woman who was involved in the altercation. Such an inference is "reasonable based upon the combined and cumulative force of all the evidence when viewed in the light most favorable to the verdict." *Hooper*, 214 S.W.3d at 16-17.

4. **The record supports a reasonable inference that the altercation occurred in the appellant's home**

This Court should likewise reject the appellant's argument that "Stewart never testified that Petitioner told him the incident [i.e., the altercation] occurred at his home." PDR at 19. Viewed in the requisite light, the evidence does support a reasonable inference that the altercation occurred at the appellant's home.¹ The record includes the following testimony from Justin Stewart regarding the altercation:

Q. Did he describe this as taking place – whose house did he describe this as taking place at?

A. I believe it was his house. I'm assuming it was a place where he stayed.

7 RR 17.

Stewart also testified as follows:

Q. Do you recall if she was unconscious at the end of their struggle?

A. He -- yes.

Q. He did tell you that?

A. Yeah.

Q. And your recollection is that this took place in his house?

A. Yes, sir.

7 RR 34 (emphasis added); *see also* 7 RR 15 ("At one point she had -- they fell, and she hit her head. I don't remember what he said, whether it was the table or counter.

¹ The appellant's house at 5809 Garden Oaks Drive is located in Travis County, Texas. 3 RR 108; *see* 3 RR 122; 6 RR 57.

I think he said the counter or something. I don't remember where he said this altercation happened inside the home.”).

In light of this testimony and the applicable standard of review, this Court should reject the appellant's challenge to the sufficiency of the evidence to support the inference that the altercation occurred at the appellant's home. Such an inference is “reasonable based upon the combined and cumulative force of all the evidence when viewed in the light most favorable to the verdict.” *Hooper*, 214 S.W.3d at 16-17.

5. Conclusion

In short, the appellant's PDR is predicated upon an erroneous characterization of evidence from which the jury could reasonably have inferred that the appellant—at the very least—knocked Julie Ann Gonzalez unconscious during an altercation at his home. Viewed in the light most favorable to the State, this evidence, when combined with all of the evidence presented at trial (which is addressed at length in the State's brief), supports a reasonable conclusion that the acts described by Justin Stewart were the ones that resulted in Julie Ann's death.

Prayer

WHEREFORE, the State respectfully requests that the Court refuse the appellant's petition for discretionary review.

Respectfully submitted,

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Certificate of Compliance

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/s/ M. Scott Taliaferro
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Certificate of Service

I hereby certify that, on the 6th day of June, 2017, the foregoing State's Reply to the Appellant's PDR was sent, via U.S. mail, electronic mail, facsimile, or electronically through the electronic filing manager, to the following attorney for the appellant:

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