

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2005-KA-0125**
VERSUS * **COURT OF APPEAL**
SCHEVELLIE V. ROBERTSON * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
*
*
*
* * * * *

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 450-198, SECTION "I"
Honorable Raymond C. Bigelow, Judge
* * * * *
Judge Edwin A. Lombard
* * * * *

(Court composed of Judge James F. McKay III, Judge David S. Gorbaty,
Judge Edwin A. Lombard)

Eddie J. Jordan, Jr.
District Attorney
Meri M. Hartley
Assistant District Attorney
619 South White Street
New Orleans, LA 70119
COUNSEL FOR PLAINTIFF/APPELLEE

William R. Campbell, Jr.
LOUISIANA APPELLATE PROJECT
700 Camp Street

New Orleans, LA 701303702
COUNSEL FOR DEFENDANT/APPELLANT

AFFIRMED

The defendant, Schevellie Robertson, appeals her conviction for attempted second-degree murder. After review of the record in light of the applicable law and arguments of the parties, we affirm the judgment of the trial court.

Relevant Facts and Procedural History

On June 13, 2004, Officer Randy Garrison of the New Orleans Police Department (“NOPD”) responded to a call of aggravated battery by cutting at 3434 Lowerline Street. At the scene, Officer Garrison observed a trail of bloodstains on the ground leading from the front of the apartment complex to the victim’s apartment in the back of the complex, as well as bloodstains on the front door and doorframe of the Joane and Robert Hawkins’ apartment. Mr. Hawkins told Officer Garrison that his wife and the defendant had a verbal confrontation in the over a television which became physical and spilled into the hallway of the apartment complex. Upon hearing his wife call, Mr. Hawkins went to the door of the apartment where, having been stabbed in the back, Mrs. Hawkins collapsed in his arms. Mr. Hawkins called for emergency assistance.

The resident of an adjoining apartment, James Smith, witnessed portions of the incident. Smith told Officer Garrison that the defendant had been staying with him for a few days and that, on the morning of the incident, he heard the two women arguing. Peering out his door, Smith observed Mrs. Hawkins hit the defendant with the lid of a cooking pot. The defendant then entered Smith's apartment, walked into the kitchen, and then left the apartment. She knocked on Smith's door a few moments later and he admitted her, carrying a knife that she had taken from Smith's kitchen. After returning the knife to the kitchen, the defendant went to take a shower. Smith told the defendant she would have to leave because he did not want any trouble. Officer Garrison noticed blood on the doorframe and door handle of Smith's apartment. Smith allowed officers into his apartment and directed them to the bloody knife. Officer Garrison seized the knife and the pot lid.

NOPD Officer George Brown assisted in the investigation of the incident, locating the defendant in a house next to the victim's apartment. The owner allowed the officers to enter his residence, where they located the defendant, who identified herself as Schevellie Robertson. Officer Brown handcuffed the defendant and read her the *Miranda* rights. The defendant asked officers if they were there because she "stabbed that b----."

On July 13, 2004, the defendant was charged with the attempted second-degree murder of Joane Hawkins. She pleaded not guilty to the charge at her arraignment on July 16, 2004.

At the defendant's trial on October 12, 2004, the State presented the testimony of the two police officers, the victim's neighbor, and the victim. Officer Garrison and Officer Brown testified as to their investigation of the incident. James Smith testified, corroborating Officer Garrison's testimony and identifying the knife the defendant used to stab the victim.

Mrs. Hawkins testified that a week before the incident the defendant threatened to kill her as a result of an argument Mrs. Hawkins had with the defendant's friend. On the day of the incident, the defendant entered her apartment while she was tending her laundry and accused her of stealing her television. The ensuing argument escalated into a shoving match and, in response to being hit by the defendant, Mrs. Hawkins struck her with the lid of one of her kitchen pots. The defendant left the Hawkins' apartment but, as Mrs. Hawkins was sweeping her alley a half hour later, the defendant returned and stabbed her twice in the back, saying, "I told you I was going to kill you." Mrs. Hawkins called to her husband that she had been stabbed and, upon coming to her aid, Mr. Hawkins told the defendant, "Please don't kill my wife."

The knife seized by Officer Garrison and identified by Mrs. Hawkins was admitted into evidence along with photographs of the scene, the pot lid seized by Officer Garrison, and Mrs. Hawkins' medical records.

The defendant testified in her own defense that she argued with Mrs. Hawkins because Mrs. Hawkins accused her of stealing her television and that, after Mrs. Hawkins tried to hit her with an iron, she ran into Smith's apartment to escape the beating Mrs. Hawkins was inflicting upon her. According to the defendant, Mrs. Hawkins followed her into the apartment threatening to get a gun to shoot her and so she picked up a knife from the kitchen table and stabbed Mrs. Hawkins once in the back in self-defense.

Discussion

In her sole assignment of error, the defendant argues the evidence is insufficient to sustain her conviction because the State failed to prove that she possessed the specific intent to kill.

In reviewing the sufficiency of the evidence to support a conviction, an appellate court must determine that the evidence, viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that the State proved the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307 (1979). When the

conviction is based on circumstantial evidence, La. Rev. Stat. 15:438 provides that such evidence must exclude every reasonable hypothesis of innocence. *State v. Camp*, 446 So.2d 1207 (La.1984). La. Rev. Stat. 15:438, however, does not establish a stricter standard of review than the more general rational juror's reasonable doubt formula; it is merely an evidentiary guide for the jury when considering circumstantial evidence. *State v. Porretto*, 468 So.2d 1142 (La.1985). All evidence, direct and circumstantial, must meet the *Jackson* reasonable doubt standard. *State v. Jacobs*, 504 So.2d 817 (La.1987). Finally, the fact finder's discretion will be impinged upon only to the extent necessary to guarantee the fundamental protection of due process of law. *State v. Mussall*, 523 So.2d 1305 (La.1988). A reviewing court is not called upon to decide whether it believes the witnesses or whether the conviction is contrary to the weight of the evidence. *State v. Smith*, 600 So.2d 1319 (La.1992).

To sustain a conviction for attempted second-degree murder, the state must prove that the defendant: (1) intended to kill the victim; and (2) committed an overt act tending toward the accomplishment of the victim's death. La. Rev. Stat. 14:27; 14:30.1; *State v. Bishop*, 2001-2548 (La. 1/14/03), 835 So.2d 434. Although the statute for the completed crime of second-degree murder allows for a conviction based on "specific intent to

kill or to inflict great bodily harm," La. Rev. Stat. 14:30.1, attempted second-degree murder requires specific intent to kill. *State v. Huizar*, 414 So.2d 741 (La.1982). Specific intent may be inferred from the circumstances surrounding the offense and the conduct of the defendant. La. Rev. Stat. 14:10(1); *Bishop*, 835 So.2d at 437.

In this case, Mrs. Hawkins testified that the defendant threatened to kill her on a prior occasion. Mrs. Hawkins testified that, as the defendant was stabbing her twice in the back, the defendant told her that she was going to kill her. According to Mrs. Hawkins, it was only her husband's intervention that stopped the attack. Mrs. Hawkins' medical records indicate that the wounds caused her lungs to fill with blood and that, but for prompt emergency aid, the wounds would have been fatal. Thus, the facts of this case support the jury's conclusion that the defendant had the specific intent to kill the victim.

Conclusion

The defendant's appeal has no merit. Accordingly, we affirm the defendant's conviction and sentence.

AFFIRMED.

