

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

JONATHAN KELLY,

Defendant-Appellant.

Court of Appeals of New Mexico
Filed 1/25/2024 11:10 AM



Cynthia A. Hernandez-Madrid
Acting Chief Clerk

No. A-1-CA-40273

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY

Mary Marlowe Sommer, District Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM
Charles J. Gutierrez, Assistant Attorney General
Albuquerque, NM

for Appellee

Justine Fox-Young, P.C.
Justine Fox-Young
Albuquerque, NM

for Appellant

MEMORANDUM OPINION

WRAY, Judge.

{1} Defendant Jonathan Kelly appeals the jury's conviction for voluntary
manslaughter, contrary to NMSA 1978, Section 30-2-3(A) (1994), and argues that
the State did not prove beyond a reasonable doubt that Defendant did not act in self-
defense. Applying well-established standards of review, we conclude that sufficient

1 evidence supported Defendant’s conviction and affirm. *See State v. Montoya*, 2015-
2 NMSC-010, ¶¶ 52-53, 345 P.3d 1056.

3 **DISCUSSION**

4 {2} Because this memorandum opinion is issued solely for the benefit of the
5 parties, we limit our recitation of the facts to those necessary to resolve this appeal.
6 For our review, the “[j]ury instructions become the law of the case against which the
7 sufficiency of the evidence is to be measured.” *State v. Smith*, 1986-NMCA-089,
8 ¶ 7, 104 N.M. 729, 726 P.2d 883. In the present case, the jury was instructed on
9 second-degree murder and voluntary manslaughter as alternatives. For both charges,
10 the district court instructed that to find Defendant guilty, the jury would need to
11 determine that the State proved beyond a reasonable doubt that—in relevant part—
12 Defendant did not act in self-defense. *See* UJI 14-5171 NMRA use note 1 (providing
13 that self-defense language be added to elements instructions if the defendant asserts
14 a self-defense theory “based on necessary defense of self against any unlawful
15 action”). The district court further instructed that

16 [t]he killing [was] in self[-]defense if:

17 1. There was an appearance of immediate danger of death or
18 great bodily harm to . . . Defendant as a result of being struck with or
19 stabbed by a knife by [the victim]; and

20 2. . . . Defendant was in fact put in fear by the apparent danger of
21 immediate death or great bodily harm and killed [the victim] because
22 of that fear; and

1 3. A reasonable person in the same circumstances as
2 [D]efendant would have acted as [D]efendant did.

3 *See* UJI 14-5171. The instruction continued to place the burden “on the [S]tate to
4 prove beyond a reasonable doubt that [D]efendant did not act in self[-]defense.” *Id.*

5 {3} Based on these instructions, the jury acquitted Defendant of second-degree
6 murder but found that Defendant did not act in self-defense and convicted for
7 voluntary manslaughter. On appeal, Defendant only challenges, and we therefore
8 only address, whether the State failed to prove that Defendant did not act in self-
9 defense. Defendant argues that the version of events that “came into evidence mainly
10 through . . . admissions to crisis negotiators [CNT] in the hours after the stabbing
11 . . . was essentially uncontested.” Law enforcement witnesses testified at trial that
12 on the night of the stabbing, Defendant told CNT the following version of events. A
13 couple “came by [his house] to visit” and “had some drinks.” At some point during
14 the visit, the couple began to argue, and the victim threatened the other visitor.
15 Defendant told the couple to leave, and in response, the victim pulled out a knife and
16 lunged at Defendant. Defendant asserted that he stepped to the side, grabbed the
17 knife in the victim’s hand, and turned it around on the victim to push him away.
18 Defendant stated to CNT that the knife went into the victim “with his own force”
19 and may have cut the victim’s arm or shoulder. Based on this evidence, Defendant
20 maintains that the jury had no other version of events to accept and that “[t]here

1 [were] no facts in evidence whatsoever that would support the logical inference that
2 [Defendant] did not act in self-defense.”

3 {4} The State, however, presented sufficient evidence at trial to contradict the
4 version of events that Defendant relayed to CNT and to permit the jury to reject the
5 self-defense claim beyond a reasonable doubt. *See Montoya*, 2015-NMSC-010, ¶ 52
6 (explaining that on appeal, we “do not weigh the evidence or substitute our judgment
7 for that of the fact[-]finder so long as there is sufficient evidence [in the record] to
8 support the verdict” (alterations, internal quotation marks, and citation omitted));
9 *State v. Bent*, 2013-NMCA-108, ¶ 19, 328 P.3d 667 (describing our inquiry as
10 determining “whether a rational fact[-]finder could have found that each element of
11 the crime was established beyond a reasonable doubt” (internal quotation marks and
12 citation omitted)). First, the State offered the testimony of the medical examiner who
13 supervised the victim’s autopsy. The medical examiner testified that the trajectory
14 of the fatal injury made it “extremely unlikely” that the injury was self-inflicted and
15 required greater force than “gentl[e] pressing.” This testimony directly contradicts
16 the story Defendant told CNT—that the victim held the knife and effectively stabbed
17 himself when Defendant grabbed and turned the victim’s arm that held the knife—
18 and the jury was “free to reject Defendant’s version of the facts.” *See State v. Rojo*,
19 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829.

1 {5} Second, the evidence at trial established that Defendant's version of events
2 changed multiple times. Defendant initially told CNT that he had no idea why the
3 police were at the house, he had been asleep, and no one had been inside the house
4 other than himself and his dog. Later in the same recording, Defendant relayed to
5 CNT the events in the preceding paragraph. While awaiting trial, however,
6 Defendant also told several different versions of events on recorded jail calls,
7 including one in which he stated that the couple had robbed him while he slept and
8 the stabbing occurred when Defendant refused to give up his wallet.

9 {6} Third, further contradicting Defendant's version was the victim's partner, who
10 testified at trial that she was nearby Defendant and the victim when the stabbing
11 occurred, the atmosphere was calm, and Defendant and the victim were talking
12 within a foot of each other when suddenly the victim told her to "get your stuff let's
13 go." The witness also stated that she did not recall seeing the victim with a knife, but
14 she saw blood on her way out the door. The victim's partner also testified that
15 Defendant and the victim had a prior disagreement and were in contact by cell phone
16 in the days before the stabbing, and the couple had been invited to Defendant's house
17 to "smooth things over."

18 {7} On appeal, Defendant attacks the credibility of the victim's partner's
19 testimony and argues that she "appeared heavily intoxicated on the night of the
20 stabbing and that her story changed as she was repeatedly interviewed that night."

1 Defendant also argues that the victim’s partner was in shock and “had experienced
2 some memory issues since” the stabbing. We, however, view the sufficiency of the
3 evidence “in the light most favorable to the guilty verdict,” *Bent*, 2013-NMCA-108,
4 ¶ 19, leave witness credibility for the jury’s consideration, *see State v. Candelaria*,
5 2019-NMSC-004, ¶ 45, 434 P.3d 297, and do not “weigh the evidence or substitute
6 [our] judgment for that of the fact[-]finder,” *State v. Chavez*, 2009-NMSC-035, ¶ 11,
7 146 N.M. 434, 211 P.3d 891 (internal quotation marks and citation omitted); *see also*
8 UJI 14-5020 NMRA (instructing that the jury members “alone are the judges of the
9 credibility of the witnesses and the weight to be given to the testimony of each of
10 them”). Because the jury acquitted Defendant of second-degree murder, by
11 convicting Defendant of voluntary manslaughter, it necessarily concluded that
12 “[D]efendant acted as a result of sufficient provocation.” *See* UJI 14-220. Yet the
13 jury was free to conclude that whatever provocation Defendant faced was
14 insufficient to establish Defendant’s claim of self-defense.

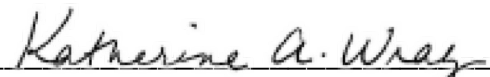
15 {8} Each change in Defendant’s story and each bit of contradictory evidence
16 provided a basis for the jury to doubt the credibility of the claim that Defendant acted
17 in self-defense due to “fear by the apparent danger of immediate death or great
18 bodily harm.” *See* UJI 14-5171; *Candelaria*, 2019-NMSC-004, ¶ 45
19 (“The jury alone is the judge of the credibility of the witnesses and determines the
20 weight afforded to testimony.” (internal quotation marks and citation omitted)).

1 Based on the evidence presented at trial, we conclude that a reasonable jury could
2 find beyond a reasonable doubt that the stabbing was motivated by something other
3 than fear. *See State v. Sutphin*, 1988-NMSC-031, ¶ 23, 107 N.M. 126, 753 P.2d 1314
4 (affirming a conviction after a trial in which “[t]he jury was instructed on [the]
5 defendant’s theory of self-defense, and although evidence conflicting with the state’s
6 theory of first degree murder was introduced, the jury resolved conflicts in the
7 evidence and questions of credibility in favor of guilt, thereby rejecting [the]
8 defendant’s version of the incident”).

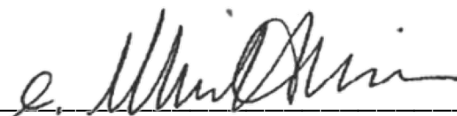
9 **CONCLUSION**

10 {9} For the above stated reasons, we affirm.

11 {10} **IT IS SO ORDERED.**

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13 _____
KATHERINE A. WRAY, Judge

14 **WE CONCUR:**

15 
16 _____
J. MILES HANISEE, Judge

17 
18 _____
SHAMMARA H. HENDERSON, Judge