

## *SELF-DEFENSE IN DELINQUENCY PROCEEDING*

The Supreme Court of Louisiana recently reversed a Second Circuit decision in which that court overturned the adjudication of a juvenile defendant charged with manslaughter on the basis of insufficient evidence. In *State of Louisiana in the Interest of D.P.B.*, 02-1742 (La. 5/20/03), 846 So.2d 753, *rehearing denied*, 6/20/03, the Supreme Court, finding sufficient evidence to support the adjudication, reversed the appellate court and reinstated the juvenile court's adjudication.

One evening, defendant D.P.B and his best friend, J.P.R, engaged in an evening of alcohol consumption and joyriding with two other companions, during which time defendant and J.P.R. engaged in their usual behavior of verbal sparring and wrestling. Defendant was brought to his home, and subsequently J.P.R. and his vehicle were left in the driveway of J.P.R.'s house, with J.P.R, so inebriated that he refused to exit the vehicle.

Thereafter, J.P.R. telephoned defendant and purportedly exchanged words again, after which J.P.R. proceeded to the defendant's home and entered through an unlocked door. Defendant, anticipating J.P.R, told his friend to get out of the house or he would be shot. Defendant then retrieved a hunting rifle and loaded two rounds. The defendant's statements to the police indicated that J.P.R. grabbed for the barrel of the weapon and the two engaged in a struggle, during which the weapon discharged, inflicting a fatal abdominal wound to J.P.R.

At trial, defendant asserted justification as a defense to homicide pursuant to La. R.S. 14:20(4) "shoot the intruder" provision. The lower court found that the state met its burden of proof in establishing that the killing was not justified. Defendant was charged and adjudicated a delinquent for manslaughter under La. R.S. 14:31.

On appeal, the Second Circuit reversed, citing insufficient evidence to support that conviction. *State ex. Rel. D.P.B.* 36,082 (La.App. 2 Cir. 5/8/02) 817 So.2d 1195. The appellate court agreed with the lower court's findings of fact, that "based on the overall evidence presented, a rational fact-finder might have reasonably concluded that defendant could not have believed the use of deadly force was necessary to compel his best friend to leave the home."

The Supreme Court disagreed, finding that the Court of Appeal "substituted its own judgment for that of the juvenile court judge when it reversed defendant's conviction." Noting the great deference that reviewing courts should afford to trier of fact in making determinations of credibility, the Supreme Court affirmed the Trial Court's findings based on the testimony of the other youths present for the earlier altercation, the investigating officer, the defendant's statements to the officers, the absence of evidence of forced entry into the domicile and the victim's intoxicated state. Given the facts of the case, as well as the juvenile court judge's assessment of evidence and testimony, the Supreme Court found that the State established beyond a reasonable doubt that the defendant did not act in self-defense and that the State adequately negated the self-defense theory.

## POST-TRAUMATIC STRESS DISORDER AS EVIDENCE OF ABUSE

The Supreme Court recently upheld a First Circuit decision limiting the admissibility of expert testimony regarding the Post-Traumatic Stress Disorder (PTSD) of a sexually abused victim as substantive evidence of abuse in *State v. Chauvin*, 02-1188 (La. 5/20/03) 846 So.2d 697.

At trial, the State introduced evidence the expert testimony of a clinical social worker, over defendant's objection. The State wanted to use this as substantive evidence of sexual abuse and was allowed to do so without conducting a Daubert hearing to assess the reliability of PTSD in diagnosing whether sexual abuse, in fact, occurred. The defendant was convicted of two counts of indecent behavior with a juvenile.

On appeal, the First Circuit reversed and remanded for new trial, finding that the trial court "abdicated its responsibility to 'act as a gatekeeper' in its failure to apply Daubert and Foret factors to the test the reliability of the theory of PTSD in the diagnosis of sexual abuse." *State v. Chauvin*, 01-2000 (La.App. 1 Cir. 3/28/02), 818 So.2d 323 (unpublished).

The Supreme Court noted that expert testimony regarding PTSD has been found to be admissible by Louisiana courts in some contexts, but also recognized that the courts of most states have treated PTSD as admissible only in showing a victim's behavior to be inconsistent with having been sexually abused. Those jurisdictions are split as to the admissibility of PTSD evidence when used to establish whether sexual abuse occurred. The Court cited a Maryland case, *Hutton v. State*, 339 Md. 480, 663 A.2d 1289 (1995), for its analysis of PTSD symptomatology: "Thus, there is no particular stressor that triggers PTSD; it can be caused by any number of stressful factors... (T)he symptoms, in other words, are not reliable identifiers of the specific cause of the disorder."

The Court also looked to the DSM-IV which cautions that diagnostic criteria for PTSD are "thus not intended to provide clinical or forensic tools for determining whether child sexual abuse has occurred but for dealing with the aftermath of severe traumatic events that have occurred in a variety of contexts. As such, the Court found the admission of expert testimony as to the diagnosis of PTSD to substantively prove that sexual abuse occurred fails the *Daubert* threshold test of scientific reliability.

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