IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

SEPTEMBER 1995 SESSION

STATE OF TENNESSEE,	)	NO. 02C01-9503-CC-00091
	)	
	)	HAYWOOD COUNTY
Appellee	)	
	)	Hon. Dick Jerman, Jr.
v.	)	
	)	(aggravated kidnapping; aggravated
ERIC FLEMING EVANS,	)	assault; reckless endangerment;
	)	carrying a weapon with intent to go
	)	armed)
Appellant	)	

For the Appellant:

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(on appeal)

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(at trial)

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OPINION FILED _____

AFFIRMED

John K. Byers
Senior Judge

O P I N I O N

The appellant was convicted of aggravated kidnapping, aggravated assault, reckless endangerment and carrying a weapon with intent to go armed. He was fined $5,000 for aggravated kidnapping and $2,500 for aggravated assault. He was sentenced to serve nine years for aggravated kidnapping, four years for aggravated assault, and two years for reckless endangerment. All felony sentences were at 30% and ran concurrent with one another.

The appellant, through counsel, alleges that he was sentenced to 11 months and 29 days for the misdemeanor conviction, which was to run concurrent with the felony sentences. Nothing in the record supports this contention.

On June 28, 1993, the appellant tried to call the victim, Carolyn Perry, twice. He then came to the store where she worked, grabbed her, pointed a gun at her head, and pulled her into the bathroom. They remained in the bathroom for some fifty minutes to an hour. At one point, he hit Ms. Perry in the head with the gun. The police arrived shortly after the appellant took Ms. Perry into the bathroom. The appellant requested that his brother and his cousin be brought to the store. He threatened to kill himself, Ms. Perry, and anyone who approached the door. Eventually, he put the gun on the toilet lid, Ms. Perry grabbed it, the two scuffled, and she pushed the pistol out the bathroom door. At that time, the police rushed the bathroom and placed the appellant under arrest.

The following issues are raised on appeal:

I. Whether the evidence is insufficient to support the convictions because the State failed to meet its burden of proving sanity beyond a reasonable doubt at the time the offenses occurred once the burden of proving sanity shifted to the State.

II. Whether the trial judge erred in adding a statement to the jury instructions requested by the appellant and whether the statement was unfairly prejudicial to the appellant .

III. Whether the trial court should have granted the motion for acquittal and the motion for a new trial.

IV. Whether the fines and sentences imposed were excessive in view of the appellant's indigence and the criteria respectively.

We cannot rule on issue II because it was not raised in a motion for a new trial. Issue III is but a general allegation which is without merit as it is raised in the other issues. Also, our record does not contain a transcript of the sentencing hearing. Therefore, we must conclusively presume the judgment of the trial court was correct on the issue of sentencing. *State v. Matthews*, 805 S.W.2d 776, 784 (Tenn. Crim. App. 1990).

As to the remaining issues, we affirm the judgment of the trial court.

The state's proof on the issue of insanity included the testimony of a psychiatrist. The psychiatrist, Dr. Roger White, participated in the evaluation of the defendant while he was hospitalized for evaluation and treatment in Western Mental Health Institute from September 29, 1993 to October 22, 1993, some three to four months following the incident. Dr. White testified that there was no evidence that the appellant suffered from a mental illness that might have prevented him from being able to understand what he was doing. He testified that the appellant had the substantial capacity to appreciate the wrongfulness of his conduct at the time he committed the offenses and that he also had the substantial capacity to conform his conduct to the requirements of the law at that time. Dr. White's testimony was based upon a review of the appellant's medical records from a brief prior hospitalization at Western Mental Health Institute in 1991, arrest reports, psychological test results, social histories obtained by social workers, and observations of nursing staff and others who attended the appellant. He also met with the appellant and the rest of the evaluating team for about half an hour.

The State also produced lay witnesses' observations on the issue of insanity. Dan Zartman, a sergeant with the Brownsville Police Department, testified that the

appellant furnished all information asked of him, followed all instructions and never indicated that he didn't understand what was going on. Lewis Crider, an officer with the Brownsville Police Department, testified that the appellant made sense when talking with his brother and cousin during the incident and that he called them by name. He further testified that after the arrest, the appellant apologized several times "for what he had done."

The appellant's proof included the testimony of a psychologist who also examined the plaintiff under a court order. The psychologist, Dr. Richard Drewry, evaluated the defendant on August 9, 1993, less than six weeks after the incident. He interviewed the defendant for 45 to 60 minutes, but did not conduct any tests or review the arrest reports. Dr. Drewry testified that the defendant was showing the "pretty typical clinical picture" of paranoid schizophrenia. He further testified that it was his opinion that the appellant was suffering from a mental illness at the time of the incident and that the illness prevented him from knowing the wrongfulness of his actions.

The appellant also produced lay witnesses' observations as to the issue of insanity. The appellant's brother, who works for the Haywood County Sheriff's Department, testified that the appellant was not "at himself" during the incident and that he wasn't making much sense. The appellant testified that he did not remember the events of the night of June 28, 1993 very well. He further testified that he was hearing voices at the time of the incident. Ms. Perry also testified that the appellant seemed confused on the night of the incident, but that he was able to carry on a normal conversation with her while she was being held in the bathroom by him.

When the sufficiency of the evidence is challenged, the standard of review is whether, after considering the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Duncan*, 698 S.W.2d 63 (Tenn. 1985),

cert. denied, 475 U.S. 1031 (1986).

The issue of sanity is an issue solely and exclusively for the jury to decide; they must decide whether or not under the facts and circumstances in the proof, including the medical opinions, the defendant was sane or insane at the time the offense was committed. *Brooks v. State*, 489 S.W.2d 70, 72 (Tenn. Crim. App. 1972). "[T]he jury is not bound to accept expert testimony in preference to other testimony, and must determine the weight and credibility of each in the light of all the facts shown in case." *Edwards v. State*, 540 S.W.2d 641, 647 (Tenn. 1976).

Here, the jury accepted the State's evidence over that of the defense on the issue of sanity. "A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State" *State v. Grace*, 493 S.W.2d 474, 476 (Tenn. 1973). From the evidence in the record, a rational trier of fact could have found the defendant to be sane beyond a reasonable doubt at the time of the commission of the crime.

The only other issue is whether the fines are excessive in consideration of the appellant's indigence. The maximum fines allowable for aggravated kidnapping and aggravated assault are $25,000 and $10,000 respectively. TENN. CODE ANN. § 40-35-111(b)(2)&(3). The fines of $5,000.00 and $2,500 imposed on the appellant are well within the statutory limits. Considering the high possibility of serious bodily injury in the appellant's actions and his use of a deadly weapon, we find no error in the fines imposed by the jury.

We affirm judgment of the trial court.

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John K. Byers, Senior Judge

CONCUR:

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Joseph B. Jones, Judge

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Joseph M. Tipton, Judge