IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

NOVEMBER 1995 SESSION

FILED

March 6, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,	)	
	)	
Appellee,	)	No. 03C01-9503-CR-00094
	)	
	)	Hamilton County
v.	)	
	)	Hon. Stephen M. Bevil, Judge
	)	
TRACY LAMAR BELLE,	)	(Second Degree Murder and
	)	Attempted Second Degree Murder)
	)	
Appellant.	)	

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OPINION FILED:_____

AFFIRMED

Joseph M. Tipton
Judge

O P I N I O N

The defendant, Tracy Lamar Belle, was convicted in a jury trial in the Hamilton County Criminal Court of second degree murder, a Class A felony, and attempted second degree murder, a Class B felony. As a Range I, standard offender, he received a twenty-five-year sentence for second degree murder and a concurrent twelve-year sentence for the attempted second degree murder. In this appeal as of right, the defendant challenges the sufficiency of the evidence.

Our standard of review when the sufficiency of the evidence is questioned on appeal is "whether, after viewing 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." Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979). Given this standard, we conclude that the evidence summarized below is sufficient to support both of the defendant's convictions and that it is unnecessary for us to recount all the evidence presented at the trial.

In the light most favorable to the state, the proof at the defendant's trial established that during the early morning hours of September 19, 1993, the defendant and three other men were in the defendant's blazer when Aaron Russell rode past them on a bicycle. One of the defendant's passengers had been involved in a shooting incident with a friend of Russell's. Upon seeing Russell, the passenger told the defendant to turn around and said, "Let's get him." Another of the passengers in the defendant's blazer said, "Let's kill him." The defendant turned around and pursued Russell. Russell recognized that at least one of the passengers had a gun. He jumped off his bike and ran. He jumped over the fence that surrounded the home of Earlene and Herman McNealy and ran onto their front porch where he began knocking on the door and begging for the McNealys to open the door. At his wife's insistence,

Herman McNealy opened the door and allowed Russell to enter the house. Seconds after Russell entered the house, the McNealys' son looked out a window that was near the door Russell had entered. As he looked out the window, the defendant fired three shots into the house. One of the shots went through the window and struck and killed Earlene McNealy, who was standing behind her son.

In his challenge to the sufficiency of the evidence, the defendant argues that the state failed to prove malice. However, since 1989, second degree murder is not defined in terms of malice, although malice could be inherent in such a murder. See State v. Smith, 119 Tenn. 521, 105 S.W. 68, 70 (1907) (Malice involves a state of mind to do a wrongful act without legal justification or excuse.). Second degree murder requires proof that the defendant committed an unlawful, knowing killing. T.C.A. §§ 39-13-201(a) and -210(a)(1). It is distinguished from voluntary manslaughter in that the killing must be done absent a state of passion produced by adequate provocation which is sufficient to lead a reasonable person to act in an irrational manner. See T.C.A. § 39-13-211, Sentencing Commission Comments. Similarly, attempted second degree murder is not defined in terms of malice. The defendant is guilty of attempted second degree murder if he knowingly attempted to kill Russell without adequate provocation and with the belief that his conduct would result in Russell's death without further conduct on his part. See T.C.A. § 39-12-101(a)(2).

As previously noted, the proof at trial established that passengers in the defendant's blazer threatened to kill Aaron Russell. The defendant then chased Russell and fired three shots into the house Russell had entered. The defendant fired the shots seconds after Russell went into the house and while the McNealys' son was looking through the window near the door Russell had entered. Although the defendant testified that he fired the shots aimlessly and out of fear, we conclude that ample proof existed to allow a rational trier of fact to conclude that the defendant

knowingly attempted to kill Russell. Likewise, through the doctrine of transferred intent, sufficient evidence supported his conviction for second degree murder. See State v. Ronald Summerall, No. 02C01-9412-CR-00263, Shelby Co., slip. op. at 5-6 (Tenn. Crim. App. Dec. 28, 1995); State v. George Henry, No. 02C01-9212-CR-00266, Shelby Co., slip op. at 5 (Tenn. Crim. App. Oct. 20, 1993), app. denied (Tenn. Feb. 28, 1994) (upholding the sufficiency of the evidence based upon the doctrine of transferred intent).

In consideration of the foregoing and the record as a whole, the judgments of conviction are affirmed.

_____
Joseph M. Tipton, Judge

_____
Gary R. Wade, Judge

_____
Joe D. Duncan, Special Judge