

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

NOVEMBER 1995 SESSION

FILED
March 12, 1996
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,

Appellee,

VS.

GENEVA BROYLES,

Appellant.

*
*
*
*
*

C.C.A. # 03C01-9502-CP-00055
COCKE COUNTY
Hon. J. Kenneth Porter, Judge
(First Degree Murder)

For Appellant:

John S. Anderson
Attorney
205 Highway 66, Suite 102
Rogersville, TN 37857

For Appellee:

Charles W. Burson
Attorney General & Reporter

Amy L. Tarkington
Assistant Attorney General
Criminal Justice Division
450 James Robertson Parkway
Nashville, TN 37243-0493

Al Schmutzer, Jr.
District Attorney General
and
James Dunn
Asst. District Attorney General
Sevier County Courthouse
Suite 301
Sevierville, TN 37862

OPINION FILED: _____

AFFIRMED

GARY R. WADE, JUDGE

OPINION

The defendant, Geneva Broyles, was convicted of first degree murder. The trial court imposed a sentence of life imprisonment. In addition to her challenge to the sufficiency of the evidence, the defendant raises the following issues for appellate review:

- (1) whether the trial court erred by denying the defendant's motion for a continuance;
- (2) whether the trial court erred by allowing into evidence a photograph of the victim; and
- (3) whether the trial court erred by allowing into evidence a syringe found in the victim's car.

We affirm the trial court's judgment.

The body of the victim, Irene Nelson, was discovered on March 12, 1993, but was not identified until several days thereafter. The cause of death was massive bleeding. The body had three stab wounds and three .20 gauge shotgun wounds, all in the head, neck, and chest area.

The defendant's boyfriend and codefendant, Denny Etherton, testified for the state.¹ He claimed that around noon on the day of the murder, the defendant and her brother Ricky Arwood, and Barbara James met him at his mother's house. Eventually, all went to Ms. James' house, where the victim had been staying since her separation from her boyfriend. All shot pool, drank, and used drugs at Ms. James' house until the

¹The state originally sought the death penalty against Etherton, but in exchange for his testimony he pled guilty and received a life sentence.

victim arrived with a man named Roy Belcher. Because the victim claimed someone in Greeneville wanted to kill her, the defendant, who had known the victim since high school, and Ms. James tried to change her appearance by cutting and dying her hair.

Etherton testified that the defendant wanted to kill the victim "over a pot deal that went bad, and she wa[s]n't going to screw over her no more"; He claimed that the defendant "[s]aid this was her last time, and she's going to take care of it." Etherton testified that on the previous day, the defendant had said that she intended to inject the victim with insulin and then get rid of the body. Although his testimony was contradictory about whether they had been with the victim the night before the murder, Etherton also stated that on the night before the murder the defendant had poured liquid morphine in the victim's beer but that it had not harmed her.

Later in the evening, the group informed the victim that they knew a cabin where she would be safe. Just before they left, Ms. James gave Etherton a .20 gauge shotgun and Ricky Arwood gave the defendant a knife. The defendant, the victim, and Ms. James were in the victim's Volkswagen following Etherton and Ricky Arwood, who were in the defendant's truck. The Volkswagen stopped and Etherton turned around to check. When he saw that the victim and the defendant were arguing and fighting, Etherton took the gun from the truck and fired three shots into the victim's chest

and head. He described the last two shots as an attempt to prevent the identification of the body. Etherton claimed that he killed the victim only because the defendant wanted her dead.

The body was left at the scene. The group took the Volkswagan to a residence belonging to one of Etherton's friends. The defendant and Ms. James got rid of the victim's belongings. Later, the victim's brother, Buddy King, discovered a syringe in the victim's car.

Detective Robert Caldwell testified that the victim was identified by fingerprints. Two .20 gauge shotgun shell casings found near the victim's body matched a shell found at the home of Ms. James. A .20 gauge shotgun was under a bed at the James' residence. Testing established that the two shells found near the body were fired from the shotgun.

Ricky Arwood also testified for the state. He remembered that Etherton had a shotgun but he thought they were driving a brown car, rather than a truck, at the time of the shooting. Arwood, who claimed that he was on medication and under the influence of alcohol, remembered Etherton getting out of their vehicle and then hearing three loud bangs.

The defendant testified that she had experienced domestic problems of her own, that she and the victim were looking for a safe place, and that she had no idea where they

were going on the night of the murder. The defendant acknowledged that Ms. James had been telling her that the victim was setting her up on something to do with drugs. The defendant admitted that when they stopped the car, she had tried to frighten the victim with the syringe of insulin, claiming it was truth serum. She testified that the victim knocked the syringe out of her hand at which point, Etherton ordered her out of the car and fired three shots. She acknowledged that they got rid of the Volkswagen and that she had helped Ms. James dispose of the victim's personal effects. She claimed that Etherton threatened her and that she had maintained a relationship with him out of fear.

I

The defendant first asserts that there was insufficient corroboration to support the conviction of first degree murder.

On appeal, of course, the state is entitled to the strongest legitimate view of the evidence and all reasonable inferences which might be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). The credibility of the witnesses, the weight to be given their testimony, and the reconciliation of conflicts in the proof are matters entrusted to the jury as triers of fact. Byrge v. State, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978). When the sufficiency of the evidence is challenged, the relevant question is whether, after reviewing the evidence in the light most favorable to the state, any rational trier of fact could have found the

essential elements of the crime beyond a reasonable doubt. State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983), cert. denied, 465 U.S. 1073 (1984); Tenn. R. App. P. 13(e). A crime may also be established by the use of circumstantial evidence. State v. Tharpe, 726 S.W.2d 896, 899-900 (Tenn. 1987); Marable v. State, 203 Tenn. 440, 451-52, 313 S.W.2d 451, 457 (1958).

A defendant cannot be convicted upon the uncorroborated testimony of accomplices. Sherrill v. State, 204 Tenn. 427, 433-35, 321 S.W.2d 811, 814-15 (1959); Prince v. State, 529 S.W.2d 729, 732 (Tenn. Crim. App. 1975). An accomplice is defined as a person who knowingly, voluntarily, and with common intent with the principal offers to unite in the commission of a crime. Clapp v. State, 94 Tenn. 186, 194-95, 30 S.W. 214, 216 (1895); Letner v. State, 512 S.W.2d 643, 647 (Tenn. Crim. App. 1974).

The rule is that there must be some fact testified to which is entirely independent of an accomplice's testimony; that fact, taken by itself, must lead to an inference that a crime has been committed and that the defendant is responsible therefor. State v. Fowler, 213 Tenn. 239, 245-46, 373 S.W.2d 460, 463 (1963). This requirement is met if the corroborative evidence fairly and legitimately tends to connect the accused with the commission of the crime charged. Marshall v. State, 497 S.W.2d 761, 765-66 (Tenn. Crim. App. 1973). Only slight circumstances are required to furnish the necessary corroboration. Garton v. State, 206 Tenn. 79, 91, 332 S.W.2d

169, 175 (1960). To be corroborative, the evidence need not be adequate in and of itself to convict. See Conner v. State, 531 S.W.2d 119, 125 (Tenn. Crim. App. 1975).

The codefendant Etherton testified that the defendant wanted to kill the victim because she thought the victim was setting her up on a drug deal. He claimed that the defendant had planned to kill the victim by injecting her with insulin and then get rid of the body. That the defendant acknowledged having insulin and a syringe on the night of the murder served as corroborating evidence. Later, the syringe was discovered in the victim's car. Moreover, Etherton had testified that the defendant had a knife on the evening of the murder and had struggled with the victim before he returned to their automobile. The medical examiner testified that the three stab wounds occurred prior to the gunshot wounds. That, in part, corroborated Etherton's claim that he had shot the victim only after the other attempts had failed.

Under these circumstances, the defendant's statements and the medical testimony provide sufficient corroboration of the accomplice's testimony. In our opinion, a rational trier of fact could have found that the evidence was sufficient to support the offense of first degree murder. See Jackson v. Virginia, 443 U.S. 307 (1979).

II

Next, the defendant claims that the trial court erred when it denied her motion for a continuance made just

before the beginning of the trial. The defendant argues she was too ill to assist counsel in her defense.

The law is well settled. The grant or denial of a continuance rests within the sound discretion of the trial court. State v. Seals, 735 S.W.2d 849, 853 (Tenn. Crim. App. 1987). Its determination will not be overturned unless there is "a clear showing of an abuse of discretion, to the prejudice of the defendant." Woods v. State, 552 S.W.2d 782, 784 (Tenn. Crim. App. 1977); Frazier v. State, 3 Tenn. Crim. App. 696, 702, 466 S.W.2d 535, 537 (1970).

It is not disputed that the defendant suffered from physical disabilities at the time of the trial. At the time of trial, she needed to have a liver transplant. She had recently had an eye removed. Her course of treatment at the time of trial included antibiotics taken intravenously. The case had been continued on several occasions due to the continuing nature of her medical problems. At the last continuance, the trial judge informed the defendant that absent compelling necessity, she was expected to be ready for trial at this setting.

At the hearing on the motion for a new trial, the trial court made the following statement concerning the defendant's competency:

[S]he was in far better shape than I thought she would be, she really was. She had a good day, not only just a good day but she was alert, she was able, she was competent, she was aware, she was conversive with counsel, she conferred with counsel throughout the trial at

critical points and not disruptive at all in any fashion. She demeaned herself in proper fashion. She was hooked up to an IV. That could not prejudice her, if anything it engendered whatever sympathy you could engender for someone who had committed the odious offenses detailed by the proof.

Based upon our own review of the record, we cannot conclude that the trial court abused its discretion by determining that a continuance was not required by the defendant's physical condition. See, e.g., State v. Robinson, 622 S.W.2d 62, 74 (Tenn. Crim. App. 1980). That there had been several prior continuances suggested that the trial court had been sensitive about the defendant's medical condition. The continuing nature of the illness indicates that she would have likely been expected to have some problems at any time the trial was set. Finally, the record does not support her claim that she could not assist her counsel. She appears to have been able to testify competently on her own behalf.

III

The defendant also claims that the trial court should have excluded a color photograph of the victim because it was "gruesome in nature and served no purpose but to inflame the jury." The state responds that the photograph gave the jury a better understanding of the type of wounds inflicted and the manner in which they occurred.

The admissibility of photographs from the scene of the crime is governed by Tennessee Rule of Evidence 403 and State v. Banks, 564 S.W.2d 947 (Tenn. 1978). The evidence

must be relevant and its probative value must outweigh any prejudicial effect. Tenn. R. Evid. 403; State v. Banks, 564 S.W.2d at 950-51. Whether to admit the photographs is within the discretionary authority of the trial court and will not be reversed absent a clear showing of an abuse. State v. Allen, 692 S.W.2d 651, 654 (Tenn. Crim. App. 1985).

While the photograph of the deceased was unpleasant, it demonstrated the close proximity of two shotgun shell casings to the victim's body. It also may have been probative as to whether the stab wounds preceded the shotgun wounds. Under these circumstances, we hold that the trial court did not abuse its discretionary authority by admitting the single photograph of the victim at the scene.

IV

The defendant's final contention of error is that there was an inadequate chain of custody for the admission of the syringe. Tenn. R. Evid. 901(a) requires that tangible evidence be authenticated and provides as follows:

The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to the court to support a finding by the trier of fact that the matter in question is what its proponent claims.

Identification of evidence may be by a witness or by the demonstration of an unbroken chain of custody; the identification need not be absolutely certain. State v. Woods, 806 S.W.2d 205, 212 (Tenn. Crim. App. 1990); State v. Ferguson, 741 S.W.2d 125, 127 (Tenn. Crim. App. 1987). It is

sufficient if the circumstances shown establish a reasonable assurance of the identity of the item. Ritter v. State, 3 Tenn. Crim. App. 372, 378, 462 S.W.2d 247, 249-50 (1970). Whether tangible evidence has been properly authenticated is left to the discretion of the trial court. Tenn. R. Evid. 901(a); see also Ritter v. State, 3 Tenn. Crim. App. 372, 462 S.W.2d 247 (1970). The trial court's decision will not be disturbed absent a clearly mistaken exercise of that discretion. State v. Baldwin, 867 S.W.2d 358, 361 (Tenn. Crim. App. 1993).

At trial, the defendant acknowledged that she had intended to inject the victim with insulin, but explained it was only to frighten her. The syringe was admitted through Agent Morrell's testimony. The victim's brother, Buddy King, testified that he had found the syringe under the back seat as he was cleaning the car. He stated that he immediately turned the syringe over to Agent Morrell.

The defendant argues that the chain of custody is inadequate because the T.B.I. had the car for a substantial length of time without finding the syringe before turning the car over to King. That, however, addresses only the credibility of the evidence, not the admissibility.

Accordingly, the judgment of the trial court is affirmed.

Gary R. Wade, Judge

CONCUR:

Joseph M. Tipton, Judge

Joe D. Duncan, Special Judge