IN THE COURT OF CRIMINAL APPEALS

AT JACKSON

OCTOBER 1995 SESSION

STATE OF TENNESSEE,	)	NO. 02C01-9503-CC-00083
	)	
Appellee	)	CARROLL COUNTY
	)	
V.	)	HON. C. CREED McGINLEY
	)	JUDGE
TERESA ANN COLEMAN,	)	
	)	(Second-Degree Murder)
Appellant	)	

FOR THE APPELLANT:

Guy T. Wilkinson
District Public Defender

Billy R. Roe, Jr.
Assistant Public Defender
P.O. Box 663
Camden, Tennessee 38320

FOR THE APPELLEE:

Charles W. Burson
Attorney General and Reporter
450 James Robertson Parkway
Nashville, Tennessee 37243-0493

John Patrick Cauley
Assistant Attorney General
450 James Robertson Parkway
Nashville, Tennessee 37243-0493

Robert Radford
District Attorney General

Eleanor Cahill
Assistant District Attorney General
P.O. Box 686
Huntingdon, Tennessee 38344

OPINION FILED: _____

AFFIRMED

William M. Barker, Judge

OPINION

The appellant, Teresa Ann Coleman, was indicted by a Carroll County Grand Jury of murder in the first degree. She was found guilty of second-degree murder by a jury of her peers. It is from that conviction that she appeals pursuant to Rule 3(b) of the Tennessee Rules of Appellate Procedure.

On appeal the appellant's sole contention is that the evidence presented at trial was not sufficient to support the jury's finding of guilt of murder in the second degree.

There is no dispute that the appellant did shoot and kill her husband, Kenneth Coleman, with a single gunshot. The State's primary evidence against the appellant was the statement she gave to police on the night of the shooting. The statement was introduced through the testimony of Buck Gately, an investigator with the Carroll County Sheriff's Department. The substance of the statement was that the appellant shot her husband after they quarrelled, but that it was an "accident" and she did not mean to shoot him.

The appellant's testimony at trial was substantially the same as the statement she gave police on the night she shot her husband. She testified that she and the victim got into a verbal argument that began inside a grocery store in Camden, Tennessee, on October 26, 1993, and continued until after they arrived home at approximately 7:50 p.m.

The appellant testified that once inside the house the argument escalated and the victim threw her against the bedroom wall and then walked into the kitchen. The appellant retrieved a gun from the bedroom, walked into the kitchen, held the gun next to her husband's head and pulled the trigger. She testified that she did not know that the gun was loaded and that she only wanted to scare the victim and make him leave her alone.

Immediately after the shooting, the appellant called 911 and told them that she had shot her husband, that she did not mean it, and she was afraid that she would

be arrested. The appellant was questioned and ultimately placed under arrest for the murder of her husband.

The defense proof at trial presented the jury with alternate theories of the case which, if believed, would have negated the intent element of the crime. They were: 1) the shooting was accidental, and 2) the appellant acted in self defense. In support of the self-defense theory, the appellant sought to have the jury believe that at the time of the shooting, she suffered from what is known as battered spouse syndrome.

The defense painted a picture of a marriage marred by emotional and physical abuse. As part of her defense that she was suffering from battered spouse syndrome, Mr. Gary Smithson, a licensed psychological examiner, testified that after the shooting, he had begun treating the appellant for major depression with mild psychotic features and post-traumatic stress disorder, specifically battered spouse syndrome. Mr. Smithson also testified that in his opinion the appellant did not have the mental capacity to form the intent to murder the victim in this case. He testified that the appellant's IQ is 72 and that a score of 69 is considered mildly retarded. Besides her own testimony, there was very little evidence presented to support the appellant's claim that the victim abused the appellant. Two (2) employees from a bank located directly across from the appellant's home testified that the appellant spent almost all of her day outside holding her baby. The appellant's testimony was that the victim, a local truckdriver, ordered her to stay outside with the baby while he was at work so that he could drive by any time during the day to determine that the baby was okay. One of the bank employees testified that on one occasion she witnessed a conversation between the victim and the appellant in which it appeared as though the victim attempted to strike the appellant but she jumped back and avoided the blow. Additionally, one of the victim's ex-wives testified that during her marriage to the victim, he was abusive towards her.

Dr. Bernard Hudson, a psychiatrist with the Carey Counseling Center in Huntington, Tennessee, testifying as a rebuttal witness for the State, said the defendant was not insane at the time of the crime and that she was competent to stand trial.

When an accused challenges the sufficiency of the convicting evidence, we must review the evidence in the light most favorable to the prosecution in determining whether "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, 61 L. Ed. 2d 560 (1979). We do not reweigh or reevaluate the evidence and are required to afford the State the strongest legitimate view of the proof contained in the record as well as all reasonable and legitimate inferences which may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). As the challenger of the sufficiency of the proof, the appellant has the burden of illustrating to this Court why the evidence is insufficient to support the verdict returned by the trier of fact in her case. This Court will not disturb a verdict of guilt for lack of sufficient evidence unless the facts contained in the record and any inferences which may be drawn from the facts are insufficient, as a matter of law, for a rational trier of fact to find the appellant guilty beyond a reasonable doubt. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

The appellant contends that the evidence was, at most, sufficient to sustain a conviction for voluntary manslaughter and was as a matter of law insufficient to find her guilty of second-degree murder. In order to lawfully convict the appellant of second-degree murder, the State was required to prove that the appellant knowingly killed the victim. Tenn. Code Ann. § 39-13-210(a)(1) (1995 Supp.) Criminal intent is a matter to be determined by the jury from all of the surrounding facts and circumstances of the case. See Webster v. State, 544 S.W.2d 922, 924 (Tenn. Crim. App. 1976).

It appears after our full review of the record that the jury did not believe much of the testimony presented by the defense in its case. It is well-settled that questions concerning the credibility of witnesses, the weight and value to be given to the evidence, as well as factual issues raised by the evidence are resolved by the trier of fact, not this Court. Cabbage, 571 S.W.2d 832, 835.

As the trier of fact, the jury was entitled to completely disregard the appellant's contention that she did not mean to shoot the victim, that she did not know the gun was loaded. As this court has consistently stated, "one's actions are circumstantial evidence of his [her] intent." State v. Barker, 642 S.W.2d 735, 737 (Tenn. Crim. App. 1982) (emphasis added); see also Poag v. State, 567 S.W.2d 775, 778 (Tenn. Crim. App. 1978). If the jury disregarded the appellant's testimony as to her intent, there was sufficient evidence that the appellant knowingly killed her husband. The undisputed proof in this case is that the appellant and the victim were engaged in an argument. The victim left the appellant in the bedroom adjoining the kitchen, turned his back to the appellant, and while the victim stood at the kitchen sink eating a bowl of spaghetti, the appellant walked up behind him, held the gun inches from his head and pulled the trigger.

A person acts knowingly "when he or she is aware of the conduct or is practically certain that the conduct will cause the result... ." Tenn. Code Ann. § 39-11-302(b) Sentencing Commission Comments (1991 Repl.).

The jury could properly have concluded that despite her testimony otherwise, the appellant was aware that by holding a gun to her husband's head and pulling the trigger his death would be a practically certain event. See State v. Rutherford, 876 S.W.2d 118, 120 (Tenn. Crim. App. 1993).

The appellant argues that the jury was not justified by law in disregarding the "unrefuted" testimony of the expert witness who testified on behalf of the defense that the appellant was suffering from battered woman syndrome and that she did not have

the mental capacity necessary to form the requisite intent to commit second degree murder. It is entirely possible that the jury believed that the appellant suffered from battered spouse syndrome but did not accept the theory that she acted in self defense. In State v. Elizabeth Smith, No. 01C01-9211-CC-00362 (Tenn. Crim. App., At Nashville, March 2, 1995), perm. to appeal denied, (Tenn. 1995), our Court stated that,

> [t]his court does not discredit the existence of the battered spouse syndrome described by the defense expert. The existence of such a syndrome, however, does not, by definition, exculpate one who suffers from its symptoms. Nor is one who is diagnosed as suffering from battered spouse syndrome automatically entitled to an acquittal on the basis of self-defense or defense of others. Those defenses are factual ones. In this case, after hearing the facts, having the benefit of psychological opinions, and being advised of applicable law, the jury rejected appellant's defense. The facts support that decision.

It is clear however, that the jury did not accredit the expert's testimony concerning the appellant's ability to form the intent required for second degree murder. We conclude that the jury acted within the law in disregarding that testimony. The appellant misapprehends the law with regard to expert witness testimony in this State. The trial court correctly instructed the jury that it was under no obligation to accept as true the testimony of any expert testifying at the trial. In State v. Goode, No. 01C01-9108-CR-00221 (Tenn. Crim. App., at Nashville, January 31, 1992), perm. to appeal denied, (Tenn. 1992), this Court stated that "the evaluation and accreditation of expert testimony are matters within the sole province of the jury as triers of fact." The jury was free to disregard the testimony of Mr. Smithson. We hold that the jury was presented with sufficient evidence to support its finding that the appellant was guilty of the crime of murder in the second degree.

Accordingly, the judgment of the trial court is affirmed.

WILLIAM M. BARKER, JUDGE

CONCUR:

JOE B. JONES, PRESIDING JUDGE

PAUL G. SUMMERS, JUDGE