IN THE COURT OF CRIMINAL APPEALS

AT JACKSON

OCTOBER 1995 SESSION

STATE OF TENNESSEE,	)	NO. 02C01-9503-CC-00328
	)	
Appellee	)	FAYETTE COUNTY
	)	
V.	)	HON. JON KERRY BLACKWOOD
	)	JUDGE
HENRY LEWIS HESTER, JR.,	)	
	)	(Second Degree Murder)
Appellant	)	

FOR THE APPELLANT:

Shana McCoy-Johnson
Senior District Public Defender
P.O. Box 700
Somerville, Tennessee 38068

FOR THE APPELLEE:

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

Clinton J. Morgan
Asst. Attorney General and Reporter
450 James Robertson Parkway
Nashville, TN 37243-0493

Elizabeth Rice
District Attorney General

Christopher Marshburn
Asst. District Attorney General
302 Market Street
Somerville, Tennessee 38068

OPINION FILED_____

Affirmed

William M. Barker, Judge

OPINION

Following a jury trial in the Circuit Court of Fayette County, the appellant, Henry Lewis Hester, Jr., was convicted of the offenses of second-degree murder, a Class A felony, and possession of a firearm on the premises of a public place where alcoholic beverages are served, a Class A misdemeanor. He was sentenced to fifteen (15) years in the Department of Correction for the second-degree murder offense, and to six (6) months for his misdemeanor conviction, both sentences to be served concurrently. The sole issue raised by the appellant on this appeal as of right is the sufficiency of the evidence to support the murder conviction.

After a careful review of the record in this cause, we affirm the judgment of the trial court.

The evidence adduced at trial revealed that the victim, Emma Goss, went with her aunt, Deborah Coleman, to the Galloway Diner at about 9:00 p.m. on the evening of March 11, 1994. While there, the two women consumed approximately two beers each. At about 1:45 a.m. on March 12, 1994, the appellant came to the Galloway Diner and found Emma Goss, his girlfriend, dancing with Bobby Shaw. Mr. Shaw attempted to talk with the appellant, but the appellant refused to talk with him. Instead, the appellant requested that Emma Goss step outside the diner to speak with him. Once outside, he told Ms. Goss, "You know we don't slow dance with anybody." An argument ensued, and the appellant slapped the victim. Then the appellant and the victim began "tussling." At that point, the appellant took his .38 caliber pistol out of his pocket and the victim threw a cup of beer or whiskey in the appellant's face. The pistol discharged, struck the victim, and thereby caused the fatal injury. After the shooting, the appellant got in his car and drove to his mother's house and advised his mother of what had happened. The appellant and his mother then went to his aunt's house and told her of the shooting. His aunt advised him that he needed to go back to the diner, but before returning to the diner the appellant put his pistol inside a barbeque grill.

After returning to the Galloway Diner, the appellant met with Captain Bobby Riles of the Fayette County Sheriff's Department, who, along with other police officers, had arrived at the scene during the absence of the appellant. After being advised of his rights against self-incrimination, the appellant told the officers that he had indeed shot the victim, but contended that it was an accident.

When asked about the location of the pistol, the appellant stated that he had left the gun at his aunt's house in a barbeque grill. The pistol was later retrieved from the barbeque grill. Officer Riles testified that the weapon was a double action revolver, which meant that the pistol could be fired by either pulling the hammer back before squeezing the trigger or by exerting substantial pressure on the trigger thereby causing the hammer to go back into the cocked position before falling forward striking the rear of the shell casing. Officer Riles testified that the pistol did not have a "hair trigger" but that instead it had a hard trigger pull. Therefore, it would be easier to fire the weapon if it were cocked before the trigger was pulled.

Juanita Bond, an adult daughter of the victim, testified that the appellant was the father of the victim's two younger children, ages five and six. Bond further testified that approximately a month before the victim was killed, the appellant had threatened the victim with the revolver in a dispute regarding another man. Additionally, the appellant had previously threatened the victim with a shotgun.

The appellant did not present any evidence.

Hester contends that the evidence is insufficient to sustain his conviction for second-degree murder. When this Court considers the sufficiency of the evidence, we are governed by the rule that upon a conviction in the trial court, all conflicts are resolved in favor of the State. Upon appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable or legitimate inferences which may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). In determining the sufficiency of the convicting evidence, this Court does not reweigh or

reevaluate the evidence. State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Nor may this Court substitute its inferences for those drawn by the trier of fact from circumstantial evidence. Liakas v. State, 199 Tenn. 298, 305, 286 S.W.2d 856, 859, cert. denied, 352 U.S. 845, 77 S. Ct. 39, 1 L. Ed. 2d 49 (1956).

In reviewing the evidence in the light most favorable to the State, as we are required to do upon appeal, we conclude that the evidence was indeed sufficient to support the defendant's conviction for second-degree murder. The evidence, together with the reasonable and legitimate inferences, revealed that the appellant armed himself with a pistol and went to the diner looking for the victim, his girlfriend. He found her slow dancing with another man and became angry. Once outside the diner with the victim, he slapped her, tussled with her, and after she threw her drink in his face, he removed the pistol from his jacket pocket and either intentionally cocked the weapon before firing it or pulled on the trigger hard enough so that the weapon cocked itself and then fired. The jury was justified in reasonably concluding from the evidence that the appellant knowingly killed the victim, and was therefore guilty of murder in the second degree. See Tenn. Code Ann. § 39-13-210 (1991 Repl.).

Accordingly, the judgment of the trial court is affirmed.

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WILLIAM M. BARKER, JUDGE

CONCUR BY:

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PAUL G. SUMMERS, JUDGE

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JOE B. JONES, JUDGE