

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

DECEMBER 1995 SESSION

FILED
March 13, 1996
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
)
 Appellee)
)
 V.)
)
 LAWRENCE SHELTON,)
)
 Appellant)

NO. 03C01-9505-CR-00138
GREENE COUNTY
HON. JAMES E. BECKNER
JUDGE
(Assault and Criminal Trespass)

FOR THE APPELLANT:

Greg W. Eichelman
Public Defender
1609 College Park Drive, Box 11
Morristown, Tennessee 37812-1618

FOR THE APPELLEE:

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

Michelle L. Lehmann
Assistant Atty. Gen. & Reporter
450 James Robertson Parkway
Nashville, Tennessee 37243-0493

C. Berkeley Bell
District Attorney General

Cecil C. Mills, Jr.
Assistant District Attorney General

Eric D. Christiansen
Assistant District Attorney General
113 West Church Street
Greeneville, Tennessee 37743

OPINION FILED: _____

AFFIRMED

William M. Barker, Judge

OPINION

The appellant, Lawrence Shelton, appeals as of right the judgment of convictions of assault and criminal trespass entered against him by the Criminal Court of Greene County. He argues on appeal that:

- (1) Count one of a two-count indictment brought against him was not endorsed as "a True Bill" and was therefore invalid.
- (2) The evidence adduced at trial was insufficient to support the jury's verdict.
- (3) The sentence imposed by the trial court was excessive.

We find the appellant's arguments to be without merit, and accordingly affirm the judgment of the trial court.

The appellant and his neighbor, Eddie Lynn King, were involved in a property dispute in Greeneville, Tennessee. There was apparently bad blood between the appellant and the victim for some time as a result of this property dispute.

On August 13, 1994, Mr. King and a neighbor's grandson were riding in Mr. King's truck on their way home from the store. Mr. King testified that he saw the appellant shaking his fist at Mr. King. Mr. King continued on his way home and noticed that the appellant was following him very closely in his pickup truck.

The appellant contends that while driving to work on that afternoon, the victim fired a gun at him. According to the appellant, there was some other skirmishing between the two men while in their vehicles and on the public roads of Greene County. In any event, the appellant either chased or followed the victim to the victim's home where the two began a physical brawl. Although at trial both parties claimed that the other man had started the fight, the jury accredited the victim's version of the events. The victim testified that the appellant shoved him backwards from the driveway into his yard and then knocked him unconscious. When the victim came to, the appellant was on top of him beating him, and the victim's wife was wielding a .22 caliber rifle, attempting to shoot the appellant. Unable to release the safety on the rifle, the victim's wife began beating the appellant on the back with the rifle barrel.

Mrs. King testified that the appellant beat the victim with a rock. Ultimately, the victim recovered and was able to get the rifle from his wife and aim it at the appellant. This sent the appellant back to his truck and on his way home.

The State charged the appellant with aggravated assault and aggravated criminal trespass. The jury found the appellant guilty of the lesser included offenses of assault and criminal trespass. The appellant was sentenced to eleven (11) months and twenty-nine (29) days in the county jail on the assault conviction and thirty (30) days on the criminal trespassing conviction. Additionally, the jury assessed a \$250.00 fine for the assault and a \$50.00 fine on the trespass conviction. The sentences were ordered to be served concurrently and the trial court set a thirty percent (30%) release eligibility date.

I. VALIDITY OF CHARGING INSTRUMENT

Both the state and the appellant refer to the charging instrument in this case as a two count indictment. However, the instrument is labeled both as an indictment and a presentment. The requirements for a valid presentment are different from those necessary for a valid indictment. In order to be considered valid, a presentment must, at a minimum, contain the signatures of all twelve grand jurors. Martin v. State, 127 Tenn. 324, 155 S.W. 129 (1912). Tennessee Code Annotated section 40-13-105 requires that a valid indictment must be endorsed “a true bill” and signed by the grand jury foreman.

The charging instrument in this case was signed by the grand jurors, returned as a True Bill, specifically endorsed by the grand jury foreman, and signed by the District Attorney General. Because the instrument contained more than the necessary endorsements to be a valid indictment and was signed by all the grand jurors, the instrument was valid. The appellant contends that because the true bill endorsement was contained only on the second count of the instrument, count one of the instrument

is invalid. In Janow v. State, 567 S.W.2d 483,485 (Tenn. Crim. App. 1978), this Court held that “[w]here the foreman of the grand jury endorses the second count of the indictment to indicate that the entire document is the action of the grand jury in returning a true bill ” the statutory endorsement requirements of the grand jury foreman are fulfilled. By analogy we conclude that grand jurors’ signatures on the second count of a two-count presentment indicate that the entire document, including the first count, is the action of the grand jury.

Based upon the foregoing, we conclude that the charging instrument, whether an indictment or a presentment, is valid and the trial court properly refused the appellant’s motion to dismiss the aggravated assault charge.

II. SUFFICIENCY OF THE EVIDENCE

The appellant contends that the evidence was insufficient to support the jury's finding him guilty of assault and criminal trespass. Where the sufficiency of the evidence is challenged, the relevant question for this Court is whether, after reviewing 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, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983); T.R.A.P. 13(e).

A guilty verdict, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves any conflicts in favor of the State's theory. State v. Hatchett, 560 S.W.2d 627, 630 (Tenn. 1978). On appeal, the State is entitled to the strongest legitimate view of the evidence and to all reasonable inferences which might be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 836 (Tenn. 1978).

In order to convict the appellant of assault, the State was required to prove that the appellant intentionally, knowingly or recklessly caused bodily injury to the victim or that he intentionally or knowingly caused the victim to reasonably fear

imminent bodily injury. Tenn. Code Ann § 39-13-101 (1991 Repl.). The appellant contends that the jury was outside its province when it disregarded the defense's theory that he acted in self-defense. While there certainly was evidence from which the jury could have concluded that the appellant struck the victim in self-defense, it chose not to credit this testimony. Questions concerning the credibility of witnesses, the weight and value to be given to the evidence are resolved by the trier of fact, not this Court. Cabbage, 571 S.W.2d 832, 835.

Secondly, the appellant contends that he never knowingly entered or remained on the property of the victim and was therefore not guilty of the crime of criminal trespass. The evidence at trial, which if believed by the jury, was that the appellant did deliberately enter and remain on the posted property of the victim in order to commit the assault on the victim. See Tenn. Code Ann. § 39-14-405(a) (1991 Repl.). The jury's verdict of guilt for the offense of trespass was more than adequately supported by the evidence.

A verdict against the defendant removes the presumption of innocence and replaces it with a presumption of guilt on appeal. State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973). The defendant has the burden of overcoming the presumption of guilt. State v. Brown, 551 S.W.2d 329,331 (Tenn. 1977). The appellant having failed to overcome the presumption of guilt on appeal, we find this issue to be without merit.

III. SENTENCING

Finally, the appellant contends that the sentence imposed by the trial court in this case was excessive. The appellant was sentenced to eleven (11) months twenty-nine (29) days on the assault conviction and thirty (30) days on the trespass conviction. The sentences were ordered to be served concurrently and the judge ordered a thirty percent (30%) release eligibility date.

When reviewing a misdemeanor sentence, this Court conducts a de novo review of the record with a presumption that the determinations of the trial court are correct. State v. Gilboy, 857 S.W.2d 884, 889 (Tenn. Crim. App. 1993); Tenn. Code Ann. § 40-35-401(d) (1990 Repl.). Tennessee Code Annotated section 40-35-302 requires that in misdemeanor sentencing cases the trial court shall impose a specific sentence "of [a] number of months, days or hours . . . consistent with the purposes and principles of [the Criminal Sentencing Reform Act of 1989]." Further, trial courts are required to determine the percentage of the sentence that a defendant must serve before becoming eligible for release. In misdemeanor sentencing the minimum sentence allowed by law is not presumed to be the appropriate sentence. However, trial courts are to weigh enhancing and mitigating factors as in any other case.

The trial court imposed the maximum sentence for each conviction based upon its finding that the appellant had a history of past criminal behavior and that he had used a deadly weapon during the commission of the offense. Specifically rejecting the defendant's assertion that he acted under strong provocation, the trial court found that there were no mitigating factors. Consistent with the purposes and principles of the Sentencing Reform Act of 1989, the trial court further determined that in light of the volatile situation giving rise to the criminal episode, a harsh sentence was in order. The trial court found that the offenses warranted the maximum sentences in order to specifically deter the appellant from further violent actions, as well as to avoid depreciating the seriousness of the offense. The trial court's finding that there was a potential for renewed hostilities between the appellant and the victim in this case supported its determination that a stiff sentence was particularly suited to provide an effective deterrence. We find no error with regard to the sentences imposed.

Accordingly, the judgment of the trial court is, in all respects, affirmed.

WILLIAM M. BARKER, JUDGE

CONCUR:

DAVID G. HAYES, JUDGE

JERRY L. SMITH, JUDGE