

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON
MAY 1996 SESSION

FILED
June 28, 1996
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
) C.C.A. No. 02C01-9602-CC-00063
 Appellee,)
) Gibson County
 V.)
) Honorable Dick Jerman, Jr., Judge
)
 KENNY BONDS,) (Aggravated Assault)
)
 Appellant.)

FOR THE APPELLANT:

Jan R. Patterson
Attorney at Law
225 West Baltimore, Suite B
Jackson, TN 38301

Tom W. Crider
District Public Defender
107 S. Court Square
Trenton, TN 38382
(at trial and of counsel
on appeal)

FOR THE APPELLEE:

Charles W. Burson
Attorney General & Reporter

Kathy Morante
Deputy Attorney General
450 James Robertson Parkway
Nashville, TN 37243-0493

Clayburn Peeples
District Attorney General

Larry Hardister
and
Sarah Levy
Asst. Dist. Attorneys General
109 E. First Street
Trenton, TN 38382

OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
Judge

OPINION

The appellant, Kenny Bonds, was convicted of aggravated assault. He was sentenced to six years confinement. He raises three issues on appeal challenging: (1) the sufficiency of the evidence, (2) the sentence, and (3) the trial judge's exercise of his duty as thirteenth juror. We affirm.

FACTS

On the night of the incidents in question, both the appellant and the victim were at a tavern called the "Big House." Upon leaving the Big House, the victim saw the appellant in the parking lot waving a pool cue in the air. The appellant then struck the victim across the face with the pool cue. As a result, the victim received more than 100 stitches in his eyelids, nose, and ear. He incurred \$1,618.50 in medical expenses.

SUFFICIENCY OF THE EVIDENCE

The appellant's first assignment of error is that the evidence was insufficient to sustain his conviction. He argues that the state failed to prove that he possessed the requisite culpable mental state for the offense of aggravated assault. He contends that although his conduct may have been reckless, aggravated assault requires an intentional mens rea.

The appellant testified at trial. He stated that the victim came at him with a knife. He said that he felt his life was in danger. He, therefore, claimed the blow was in self-defense. In the alternative, he suggested that the victim, not he, was reckless for walking into the path of a swinging pool cue.

We find that the state's proof at trial set forth the essential elements of aggravated assault.¹ From the proffered evidence, the jury could have reasonably inferred that: (1) the appellant intentionally struck the victim with a

¹The aggravated assault verdict was a general, as opposed to a specific, verdict.

pool cue,² (2) by striking the victim on the head with a pool cue, the appellant intended to inflict serious bodily injury, and (3) the victim sustained serious bodily injuries. That the jury discredited the appellant's version of the events is a matter of witness credibility. Assessing witness credibility is exclusively "the purview of the jury." State v. Banes, 874 S.W.2d 73, 78 (Tenn. Crim. App. 1993). We will neither reweigh the evidence nor supplant the jury's inferences with those of our own. This issue is devoid of merit.

SENTENCING

The appellant's second assignment of error challenges his sentence. It was incumbent upon the appellant, however, to prepare a record that included materials relevant to his sentencing on appeal. The appellant's presentencing report, although admitted into evidence, is not present in the record before us. Accordingly, this issue is waived; and we must presume that the trial court ruled correctly.³ State v. Miller, 737 S.W.2d 556, 559 (Tenn. Crim. App. 1987); Tenn. R. App. P., Rule 24(b).

13th JUROR

The appellant's last assignment of error argues that the trial judge failed to properly discharge his duty as thirteenth juror. The trial judge stated that "I hereby accept" and the "[c]ourt adopts" the jury's findings. The appellant maintains that the trial court's use of "accept" and "adopt," as opposed to "approve," shows that the trial court improperly deferred to the jury's findings.

The appellant's argument is misguided. The proper inquiry is not the use of any magical verbiage, but is whether the trial court unequivocally found the evidence sufficient to support the conviction. In this case, the trial judge neither

²The appellant conceded that he intentionally struck the victim. He, however, claimed self-defense.

³The trial judge apparently had aggravators to place the appellant's sentence in the high end of the range. The appellant had "a long history of problems with the law and violent behavior." He was also on probation when he committed this aggravated assault. Appellant submitted no evidence at the hearing.

equivocated on whether the evidence was sufficient nor expressed dissatisfaction with the judgment. See State v. Dankworth, 919 S.W.2d 52 (Tenn. Crim. App. 1995). Accordingly, this issue is without merit.

AFFIRMED

PAUL G. SUMMERS, Judge

CONCUR:

JOE B. JONES, Presiding Judge

DAVID G. HAYES, Judge