IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

APRIL 1996 SESSION

STATE OF TENNESSEE,	*	C.C.A. # 03C01-9506-CR-00182
Appellee,	*	KNOX COUNTY
VS.	*	Hon. Ray L. Jenkins, Judge
PARKER LEE BUNTING,	*	(Two Counts of Aggravated Assault)
Appellant.	*	

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OPINION FILED: _____

AFFIRMED

GARY R. WADE, JUDGE

OPINION

The defendant, Parker Lee Bunting, was convicted in a bench trial on two counts of aggravated assault. The trial court imposed Range I, consecutive sentences of five years on each count. In this appeal of right, the defendant challenges the sufficiency of the evidence. We find no error and affirm the judgment of the trial court.

On the evening of December 17, 1992, the victims, Patrick Mulroy and Rob Eichholtz, were celebrating the last day of classes at Hawkeye's Restaurant, located near the University of Tennessee campus. A little after 10:00 P.M., Mulroy observed a manager of the restaurant order the defendant to leave the restaurant premises. Because the defendant and his girlfriend, Jan Murray, continued to argue outside in the parking lot, an employee of the restaurant called the police.

Meanwhile, Mulroy, Eichholtz, and Lincoln Speece went into the parking lot, observed the altercation between the defendant and his girlfriend, and directed the defendant to "cool out a little bit" and to "settle down and leave her alone." The defendant told the victims to mind their own business, yelled that he "was going to kick everybody's butt" and stated that the victims "needed to kick his ass...." Mulroy replied, "No one's going to kick your ass." According to the victims, the defendant pushed Eichholtz who then pushed the defendant. At that point, the defendant pulled a knife, grabbed Eichholtz by the wrist and stabbed him in the back. The defendant then stabbed Mulroy in the chest, puncturing his lung, and ran towards a nearby dormitory. Eichholtz, Mulroy, and Speece were unsuccessful in their pursuit.

At trial, the defendant acknowledged that he had argued with his

girlfriend and had been directed to leave by the manager. He recalled that he and his girlfriend had told the victims to stay away. The defendant claimed that Eichholtz had knocked him to the ground before he pulled the knife and told the victims to stay away. He contended that Eichholtz threw another punch and that Mulroy had started to join in the fray before the knife was used in defense.

A defense witness, Ms. Murray testified that she had informed the victims that she did not need their help. She claimed that one of the two men knocked the defendant down and several other men had rushed towards the altercation when she and her friend, Heather Boston, "followed to see what happened." Ms. Murray contended that she had attempted to deter the victims by telling them that the defendant had a knife.

Ms. Boston also testified for the defense. She claimed that by the time she joined the defendant and Murray, their argument has ceased. She stated that she saw the two victims approach the defendant and heard the defendant say, "Do you want a piece of me?" She said the victims acted "like they wanted to start something with [the defendant]." Ms. Boston was talking with Murray when she noticed the defendant on the ground. She could not be sure of what happened between the defendant and the victims. After the defendant ran away with the victims in pursuit, Ms. Boston left with Ms. Murray.

In order to sustain an attack upon the sufficiency of the evidence, the defendant must show that a rational trier of fact could not have found the elements of a particular offense beyond a reasonable doubt. State v. Hatchett, 560 S.W.2d 627, 630 (Tenn. 1978). A verdict of guilt removes the presumption of innocence and raises a presumption of guilt on appeal. State v. Grace, 493 S.W.2d 474, 476

(Tenn. 1973). The findings of a trial judge on questions of fact are to be given the weight of a jury verdict and those findings are conclusive on appeal unless the evidence preponderates against the judgment. Clenny v. State, 576 S.W.2d 12, 14 (Tenn. Crim. App. 1978). The state, of course, 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, 836 (Tenn. 1978). Finally, a guilty verdict serves to accredit the testimony of the state's witnesses. State v. Hatchett, 560 S.W.2d at 630.

In essence, the defendant claims that he established his right of self-defense and that the state had failed to overcome the defense. He insists that the victims were the aggressors.

Our scope of review, as stated, is limited. An aggravated assault occurs when one "[i]ntentionally or knowingly commits an assault ... and ... [c]auses serious bodily injury to another ... or ... [u]ses or displays a deadly weapon ... or ... [when one r]ecklessly commits an assault ... and ... [c]auses serious bodily injury to another ... or ... [u]ses or displays a deadly weapon." Tenn. Code Ann. § 39-13-102(a). Self-defense is a question of fact. The defendant would have been "justified in threatening or using force against another person when and to the degree the person reasonably believes the force is immediately necessary to protect against the other's use or attempted use of unlawful force...." Tenn. Code Ann. § 39-11-611(a). Moreover, the "person must have a reasonable belief that there is imminent danger of death or serious bodily injury ... [and] [t]he danger creating the belief of imminent death or serious bodily injury must be real, or honestly believed to be real at the time, and must be founded upon reasonable grounds...." Id.

Obviously, the evidence was contested in this case. The trial judge observed the demeanor of the witnesses firsthand, made determinations as to credibility favorable to the state, and concluded that the defendant was guilty, beyond a reasonable doubt, of two counts of aggravated assault. The trial court discounted the testimony of Murray and Boston as not helpful and rejected the theory of self-defense. In our view, those findings were the prerogative of the trier of fact. There was proof of the essential elements of the crimes. There was evidence to support those determinations. Thus, the defendant has failed to overcome the presumption of guilt.

Accordingly, the judgment is affirmed.

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Gary R. Wade, Judge

CONCUR:

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David H. Welles, Judge

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William M. Barker, Judge