IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
FEBRUARY SESSION, 1996

FILED

May 3, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,	)	
	)	No. 03C01-9412-CV-00455
Appellee	)	
	)	BLOUNT COUNTY
vs.	)	
	)	Hon. D. Kelly Thomas, Jr., Judge
CURTIS WARREN,	)	
	)	(Assault)
Appellant	)	

For the Appellant:

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OPINION FILED: _____

AFFIRMED, PURSUANT TO RULE 20

David G. Hayes
Judge

OPINION

The appellant, Curtis Warren, appeals as of right his conviction by a jury for the offense of assault, a class A misdemeanor, entered by the Circuit Court of Blount County. The trial court sentenced the appellant to eleven months and twenty-nine days in the county jail. The court then suspended all but fifteen days of the appellant's sentence and ordered the appellant to serve the balance on supervised probation. Additionally, the jury imposed the maximum fine of $1,000.00. The appellant presents two issues for our review. First, he challenges the sufficiency of the evidence to support the conviction. Second, he contends that the trial court erred in not granting total probation.

We affirm the judgment of the trial court.

The proof at trial revealed that, on July 13, 1993, the appellant and his wife had been living separately and apart for approximately two weeks. At around 4:00 a.m. on this date, the appellant drove to the wife's temporary residence and was informed that she had gone next door to her sister's mobile home. The appellant proceeded to the adjacent mobile home but was initially denied entrance. However, after several minutes of "hollering" and "banging on the door," his wife permitted him to enter. Once inside, he began searching each room, screaming, cursing, and demanding to know "who's here and what are you doing here?" Minutes later, he found Milton Suggs hiding in a small closet. The appellant immediately began to beat the victim in the face with his fists. The estranged wife's efforts to rescue her friend were unsuccessful. Finally, the hapless friend was able to extricate himself from the snare of the clothes and the punches of the appellant and flee the mobile home. The appellant, savoring victory, continued the pursuit of Mr. Suggs, all the while yelling at the victim, "I'm going to get you, I'm going to kill you." Once outside the mobile home, the victim

proved to be the superior of the two on foot, eluding the appellant in the darkness. Testimony established that there was blood "all over [the victim's] face, nose and mouth." Suggs was admitted to a hospital later that morning, resulting in hospital and medical expenses of approximately $3,500.00.

The appellant testified at trial that he acted in self defense. The appellant related to the jury that he was pushed by the victim as the victim exited the closet. In rebuttal, the State offered the testimony of the deputy sheriff who took the appellant's statement following the incident. The deputy testified that the appellant told him "that he had found a man in the closet and punched him." The appellant never indicated to the deputy that he had been pushed by the victim.

In arguing the sufficiency of the evidence, the appellant contends that the jury improperly rejected his claim of self defense. The appellant contends that the jury gave too much weight to the testimony of the prosecuting witnesses, ignoring their total lack of credibility. When the sufficiency of the evidence is challenged on appeal, our standard of review is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of the 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, 2789 (1979). In determining the sufficiency of the evidence, this court does not reweigh or reevaluate the evidence. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). It was within the province of the jury to determine whether the state had carried its burden of proof with regard to self-defense. State v. Story, 608 S.W.2d 599, 601 (Tenn. Crim. App.), perm. to appeal denied, (Tenn. 1980). We conclude that the evidence contained in this record is sufficient to support the conviction of the appellant beyond a reasonable doubt. Tenn. R. App. P. 13(e).

The appellant also contends that the trial court erred by not granting total probation. If the record demonstrates that the trial court properly considered relevant sentencing principles, we afford the sentence imposed by the trial court a presumption of correctness. State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991). The record reveals that, in accordance with State v. Palmer, 902 S.W.2d 391, 393 (Tenn. 1995), the trial court considered the principles, purposes, and goals of the Criminal Sentencing Reform Act of 1989. The appellant has the burden of establishing suitability for total probation. State v. Bingham, 910 S.W.2d 448, 455 (Tenn. Crim. App.), perm. to appeal denied, (Tenn. 1995). We find no error of law requiring reversal of the judgment of the trial court.

Accordingly, pursuant to Ct. of Crim. App. Rule 20, we affirm the judgment of the trial court in all respects.

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DAVID G. HAYES, JUDGE

CONCUR:

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JOHN H. PEAY, JUDGE

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WILLIAM M. BARKER, JUDGE