

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

JUNE 1996 SESSION

FILED

August 22, 1996

Cecil W. Crowson
Appellate Court Clerk

STATE OF TENNESSEE,

Appellee,

VS.

JERMAINE HUNTER,

Appellant.

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C.C.A. NO. 01C01-9506-CR-00176

DAVIDSON COUNTY

HON. J. RANDALL WYATT, JR.,
JUDGE

(First-Degree Murder)

FOR THE APPELLANT:

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OPINION FILED: _____

AFFIRMED

JOHN H. PEAY,
Judge

OPINION

The defendant was indicted for first-degree murder and found guilty by a jury. He was sentenced to life imprisonment. In this appeal as of right, he challenges the sufficiency of the evidence and contends that the trial court erred when it ruled admissible evidence about an altercation between the defendant and the victim's father four days before the murder. After a review of the record, we find no merit in the defendant's issues and affirm the judgment below.

The victim in this case was Ne-Sheryl Hughes, a twenty-year-old woman. She and the defendant had been living together until two weeks before her death. At that time, she broke up with the defendant and moved into her grandmother's house. She began dating someone else. Following her move, the defendant tried repeatedly to see and talk with her, which the victim resisted. On November 4, 1993, the defendant got into the victim's car while she was at a gas station. He rode with her to her grandmother's house and followed her inside. Her grandmother came downstairs and ordered the defendant to leave. When he did not, she called her son, William Hughes, the victim's father.

When Hughes arrived he told the defendant to leave. The defendant left the house and Hughes followed him outside. The victim told her father that the defendant had her pager, and to get it from him. Hughes asked for the pager repeatedly but the defendant would not return it. Hughes reached for the pager, the defendant pushed him away, and Hughes struck the defendant in the face, knocking him down. Hughes also fell to the ground. As the defendant got up, he pulled a gun and pointed it at Hughes stating, "She'll pay." Hughes ran into the next yard and the defendant left the scene. The

police were called and arrived shortly thereafter.

After he left the victim's grandmother's house, the defendant went to see Wanda Story whom he had known for many years. He put the gun in Story's washing machine and told her that he had almost shot the victim's father with it. Story told the defendant he had to leave, and she drove him to his apartment. She then went to the defendant's mother's house to explain what had happened and to suggest that the defendant "was out of control and needed help." Story then drove by the victim's grandmother's house and saw the police there. She told them about the gun and two officers accompanied her home and retrieved the gun from the washing machine. The next day the defendant returned to Story's house to get the gun. Story explained that she had turned it over to the police.

On November 6, 1993, Don Duncan received a call from a person identifying himself as Jermaine Hunter. This call was in response to an advertisement that Duncan had placed for the sale of two handguns. Duncan arranged to meet with the caller for him to see the guns. Duncan, accompanied by his father, took both guns to the meeting place and waited in his truck for the potential buyer. A man approached on foot, identified himself as Jermaine Hunter, and sat with Duncan in his truck. The man handled both guns and decided to purchase the second one, a Dan Wesson .44 magnum. The man paid Duncan in cash for the gun and stated that he was going to see if he could get the money to also purchase the other gun. The man walked back towards a car, and another individual started walking in Duncan's direction. The two men met about fifty feet from where Duncan was now standing. Duncan testified that he had seen this second man's face clearly. The two men then walked back towards the car and got in, with the man who had purchased the gun sitting in the passenger seat. Two other

men were also in the car. They drove close by Duncan, and the man in the passenger seat leaned out the window and stated he would not be buying the other gun. The men then drove off. Although Duncan had requested to see some identification from the man who purchased the gun, none was ever produced.

Duncan later heard about the victim's murder on the radio and that Jermaine Hunter was the suspect. He contacted the police and informed them about the gun sale. He also told them that he had previously fired some bullets from that gun into the ground near his house. The police were able to retrieve some of these bullets. Expert testimony adduced at trial established that the bullets which killed the victim had been fired from the same gun as the bullets retrieved from Duncan's yard. Duncan was also able to identify the man who had purchased the gun from photographs shown to him by the police. This man was Ricky Caruthers, whom the defendant knew. Duncan was also able to identify from photographs the defendant as the man who had walked up to and met with Caruthers and then left in the same vehicle.

Rodney A. Farmer testified that he had been a close friend of the defendant's in 1992 and 1993. He testified that he had spoken with the defendant about his break-up with the victim, and that during the week preceding her death, the defendant had told him that "he was going to kill her." Farmer testified that the defendant had repeated this to him on the evening of November 7, 1993, adding that he was also going to kill the victim's new boyfriend and then kill himself.

Vonda Mack testified that the victim had planned to spend the night with her on November 7, 1993. They and three other girlfriends decided to go to a nightclub that evening. While they were there, the victim became "scared." When they left the club at

approximately 2:30 a.m. on November 8, 1993, the other women surrounded the victim as they walked to the victim's car. They then left the club and drove to several destinations, including two fast food restaurants. Mack and the victim reached Mack's residence at approximately 4:20 a.m. They got out of the car and started toward the back door with Mack four or five steps ahead of the victim. Mack testified that she had heard the victim scream and that she had turned around immediately to see the victim "falling to the ground." She testified that, at the same time she heard the scream, she heard the first gunshot. She testified that she saw the defendant standing over the victim with "the gun pointed down." She heard three more gunshots. She testified that there were street lights and that she had seen clearly the right side of the defendant's face. She also testified that she had known the defendant approximately fifteen years.

Medical testimony established that the victim had been killed by gunshot wounds. The victim suffered gunshots to her forehead, torso, leg and hands. The forehead wound was described as a "contact gunshot wound," that is, the gun had "probably" been touching the skin when it was fired. The murder weapon was not recovered.

The defendant offered alibi proof from his mother and sister, a half-brother and a friend. All of these people testified that the defendant had been moving his furniture to his mother's house on the night of November 7, 1993, and that he had been with one or more of them at the time the murder occurred. In support of this appeal, the defendant also points to Farmer's testimony that he had spoken with Mack after the shooting and she had told him she had not seen the shooter's face but knew it was the defendant from "[t]he way his body was built." On cross-examination, Mack denied telling Farmer this.

When an accused challenges the sufficiency of the convicting evidence, we must review the evidence in the light most favorable to the prosecution in determining whether "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, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). We do not reweigh or re-evaluate the evidence and are required to afford the State the strongest legitimate view of the proof contained in the record as well as all reasonable and legitimate inferences which may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978).

Questions concerning the credibility of witnesses, the weight and value to be given to the evidence, as well as factual issues raised by the evidence are resolved by the trier of fact, not this Court. Cabbage, 571 S.W.2d 832, 835. A guilty verdict rendered by the jury and approved by the trial judge accredits the testimony of the witnesses for the State, and a presumption of guilt replaces the presumption of innocence. State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973).

In order to support a conviction for first-degree murder, the State had to prove beyond a reasonable doubt that the defendant killed the victim, and that he did so intentionally, deliberately and with premeditation. T.C.A. § 39-13-202 (1991 Repl.). The evidence in this case was more than sufficient for a rational trier of fact to conclude that all of these elements had been proved beyond a reasonable doubt. The questions regarding the identification of the defendant, and his location at the time of the murder, were clearly questions for the jury. By its verdict, the jury plainly rejected the defendant's version of the events at issue and accepted the State's version. This, the jury had the right to do. This issue is without merit.

The defendant next contends that the trial court erred when it ruled admissible testimony about the altercation between the defendant and the victim's father four days before the victim was shot. The defendant contends that the defendant's statement "she'll pay" was irrelevant and that the prejudicial effect of this evidence outweighs its probative value and it should therefore have been excluded.

It has long been accepted in Tennessee that prior threats by the defendant to the victim may be admissible if relevant to prove a material issue such as motive, intent, identity, absence of mistake or accident (if such are defenses to the charged offense), or existence of a common scheme or plan. State v. Parton, 694 S.W.2d 299, 302 (Tenn. 1985). With the exceptions noted above, evidence of other crimes or prior bad acts wholly independent of the crime for which the defendant is on trial is generally irrelevant and inadmissible. State v. Burchfield, 664 S.W.2d 284, 286 (Tenn. 1984). We agree with the trial court that the evidence at issue was relevant to prove intent.

Moreover, this Court will not disturb a trial court's ruling on the probative value of evidence absent an abuse of discretion. State v. Hayes, 899 S.W.2d 175, 183 (Tenn. Crim. App. 1995). No such abuse occurred here. Upon the defendant's motion in limine on this issue, the trial court ruled

that the probative value of this evidence under Rule 403 would outweigh any prejudicial effect to the defendant. . . . [T]he State's required to show intent. They're required to show a deliberate and premeditated act. And I think this testimony has to do with going to the intent and as to what was going on immediately before the death. When I say 'immediately before,' I mean within the last three or four days. So I think it's relevant. And I do not believe that the prejudice would outweigh the probative effect on -- on this issue.

We see no abuse of discretion by the trial court in making this ruling. This issue is without merit.

The defendant having demonstrated no reversible error in the trial below,
the judgment is affirmed.

JOHN H. PEAY, Judge

CONCUR:

DAVID G. HAYES, Judge

WILLIAM M. BARKER, Judge