

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

SEPTEMBER SESSION, 1994

FILED

July 11, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE)
)
 APPELLEE)
)
 V.)
)
)
)
 ELLA MAY SHELFER)
)
 APPELLANT)

NO. 03C01-9311-CR-00370

POLK COUNTY

HON. MAYO L. MASHBURN
JUDGE

(Attempt to Commit
First Degree Murder)

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AFFIRMED

OPINION FILED: _____

JERRY SCOTT, PRESIDING JUDGE

OPINION

The defendant, Ella Mae Shelfer, was indicted for conspiracy to commit first degree murder and for attempt to commit the first degree murder of her husband, Andy Shelfer. The case was initially set for trial on February 16, 1993, at which time the trial court granted the state's request for a continuance on the ground that an essential witness had failed to appear. Beginning on May 17, 1993, the defendant was tried before a jury, found to be guilty of the offense of attempted first degree murder, and sentenced to twenty years in the Department of Correction. On appeal, the defendant raises the following issues:

I.

Whether the trial court erred in granting a continuance to the state on the grounds that the state failed to comply with the necessary requirements for obtaining a continuance?

II.

Whether the defendant was placed in jeopardy by the proceedings at the initial trial date on February 17, 1993 thereby, causing the trial and conviction on May 17, 1993 to be a violation of double jeopardy?

III.

Whether the trial court erred in allowing the in-court identification of the defendant by the witness, Marie Martin, subsequent to Ms. Martin's out-of-court identification in an impermissibly permissive photographic show up?

IV.

Whether the trial court erred in admitting statements made by the defendant to a Tennessee Bureau of Investigation agent because they were inadmissible hearsay?

V.

Whether the trial court erred by holding the marital privilege inapplicable and, thereby, compelling the defendant's husband to testify against his will regarding a conversation he had had with the defendant?

VI.

Whether the evidence was sufficient to support the jury verdict?

FACTS

On August 20, 1992, Andy Shelfer was driving home around 11:30 p.m. after getting off duty at the Polk County Sheriff's Office when he noticed a vehicle approaching him from behind travelling in an erratic manner. A gun was fired from the vehicle, which Mr. Shelfer identified as an International Scout, and the bullet hit the driver's door of Mr. Shelfer's automobile. Mr. Shelfer recognized Tommy Lee Dockery inside the Scout with a gun. After a high speed chase, he was able to see the Scout's license plate number which was later confirmed to be registered to Mr. Dockery. After returning to his home where he lived with his wife, the defendant, and their two children, Mr. Shelfer observed that his wife came home on foot some fifteen minutes later. Mr. Dockery was arrested that evening, and, on the following day, after Mr. Dockery confessed to the attempted murder and implicated the defendant as his accomplice, the defendant was also arrested.

At trial, Mr. Shelfer testified regarding the shooting as detailed above. He said that it looked like two or three people were in the Scout and it seemed as if they were scuffling. Against his will, he also testified that his wife had called him from jail and explained to him that she was driving the Scout on the night of the crime. She had told him that Mr. Dockery had coerced her into the vehicle and that she had attempted to escape once and struggled with Mr. Dockery in an attempt to stop him from shooting. However, after the state referred to certain prior inconsistent statements of Mr. Shelfer's, he acknowledged telling an officer on the night of his wife's arrest that he thought she was driving but did not want to believe it. At the preliminary hearing, he claimed not to know who was driving the Scout, but he did say that whoever it was had saved his life by driving back and forth on the road.

Though Mr. Shelfer thought that Mr. Dockery was infatuated with his wife, he said that he did not believe his wife was having an affair with Mr. Dockery. He said that he and the defendant had been married twenty-three years with two brief divorces during that period and that they had been very happy for the four years prior to the crime. Mr. Shelfer knew that his wife had been involved in certain business dealings with Mr. Dockery. He was also aware that his wife had been with Mr. Dockery at a bar on one occasion and even that they had danced together there. However, Mr. Shelfer testified that he never distrusted his wife nor had any belief that she had romantic feelings for Mr. Dockery.

Tommy Lee Dockery, who had already confessed to his involvement in the attempted murder, was also a witness at trial. Confirming Mr. Shelfer's testimony, he said that his relationship with the defendant began as a business relationship and that his relationship with the defendant evolved into a romantic one on June 3, 1992 when they first went to the County Line Tavern to dance and listen to live music. The County Line Tavern was a bar just across the McMinn County line in Monroe County where, according to Mr. Dockery's testimony, he had performed country and western songs so often that they gave him a personal table. Mr. Dockery said that he and the defendant went back there several times, always at night. Their relationship continued to develop and they were soon talking about marriage and a future together.

Mr. Dockery testified that he loaned the defendant \$1000 of his father's money so that she could get a divorce from her husband. According to Mr. Dockery, it was the defendant who initiated the plan to murder her husband because she thought a divorce would not eliminate the problem of Mr. Shelfer's presence in her life. Moreover, if he was killed in Polk County in uniform and on duty, she would get money from a work-related insurance policy. Mr. Dockery testified that on August 20, 1992, the defendant told him to come pick her up and to bring his gun. After they ate some food that she had brought, she practiced

driving his Scout. When Mr. Shelfer passed by, they sped after him, he shot at Mr. Shelfer, and missed. A high speed chase ensued in which Mr. Shelfer chased the Scout and then backed off. After Mr. Dockery drove home to switch cars, he dropped the defendant off a couple of blocks from her house.

According to Mr. Dockery, the defendant was furious at him for missing and threatened to kill him if he ever told anyone about the events of the day. On cross-examination, Mr. Dockery said that he had volunteered to be the shooter so he could purposely aim to miss Mr. Shelfer. However, he had earlier responded on direct examination that it was in his heart to kill Mr. Shelfer that day.

Marion Dockery, the father of Tommy Lee Dockery, also testified at trial. He said that in June, July, and August of 1992, the defendant was at his home three to four times a week. According to the elder Mr. Dockery, his son and the defendant acted like much more than friends, and he had even heard the defendant tell his son that she loved him more than life. He said that he had permitted his son to borrow \$1000 for the defendant.

Marie Martin, the proprietor of the County Line Tavern, testified that she recognized the defendant and Tommy Lee Dockery as the couple who had been in her bar two to five times. She testified that she worked during the daytime and saw the couple in the bar only during the day. She said that they danced to the jukebox when they were at the bar. She noticed them because they seemed to be an especially happy couple. However, she did not agree that Mr. Dockery had ever sung at the bar before, and she said that she was the one who hired all the bands.

The state's proof also included the testimony of Andy Lockhart, a friend of the Shelfers. He said that the defendant had asked him for money a few weeks prior to the shooting, because he testified that he had helped the Shelfers financially in the past. On this occasion, he understood from the defendant that both she and her husband needed money. There was no inference that they were having any problems with their marriage.

The state's final witness was Richard Brogan, the T.B.I. agent who arrested Tommy Lee Dockery. He said that he stopped by the Shelfer's home on the day after the shooting and asked the defendant a few questions. Mr. Brogan testified that the defendant appeared to be calm and collected at first. She told him that she had been with a neighbor named Denise the night before. However, upon further questioning regarding the whereabouts and last name of Denise, the defendant got excited and emphatically asserted that she was not going to get Denise involved. Mr. Brogan contacted various people in the defendant's neighborhood in an attempt to find Denise but found no one that knew of her.

The defendant's theory was that she was not involved in the attempted murder of her husband. Only two witnesses testified for the defense-- both had been in jail with Mr. Dockery after the shooting and one of the men was Mr. Dockery's son. They gave similar stories about how Mr. Dockery had told them that he would try to get the defendant convicted and sent to prison because it was the only way to keep her away from her husband. According to these defense witnesses, Mr. Dockery also had hopes of having his sentence reduced if he could help convict the defendant.

Prior to the trial of the defendant, Tommy Lee Dockery pled guilty to this crime and received a fifteen year sentence. On February 16, before the trial was continued, the jury was selected. While the state was attempting to locate their

witness, Marie Martin, a plea was entered by the defendant and opening statements were given by both parties. Over the defendant's objection, the jury was deliberately not sworn.

I.

In the defendant's first issue, she contends that the state failed to satisfy the requirements for obtaining a continuance. Acknowledging that the grant of a continuance is within the sound discretion of the trial court, the defendant cited this court in State v. Dykes, 803 S.W.2d 250, 256 (Tenn. Crim. App. 1990):

When an accused seeks a continuance on the ground a witness is unavailable, the accused is required to file a written motion which sets forth the grounds with particularity; and the motion must be supported by an affidavit. The affidavit must allege (a) the substance of the facts that the accused expects to prove through the unavailable witness, (b) sufficient facts to establish the relevance and materiality of the testimony of the unavailable witness, (c) the testimony would be admissible, if the witness was available, (d) the testimony is not merely cumulative to other evidence, (e) the witness will be available at a later date, and (f) diligence was exercised to obtain the presence of the witness. The failure to file a proper motion and/or a properly drafted affidavit standing alone, will justify the denial of the motion without a hearing.

As the state has pointed out in its brief, Dykes and the others cases cited by the defendant establish factors, the absence of which, may justify a trial court's denial of a motion for continuance. It does not logically follow, however, that these factors are threshold requirements for a trial court to grant a continuance. Rule 47 of the Tennessee Rules of Criminal Procedure provides that the court may permit oral motions. As for affidavits Tenn.R.Crim.P. 47 provides that motions "may be supported by affidavit"; however, there is no such requirement. In this case, the state did not know that its witness, Marie Martin, would be absent until the morning of the trial. The state explained to the court the significance of this witness who was the only non-family member who could testify to the relationship between the defendant and Mr. Dockery. It was well

within the trial court's discretion to grant a continuance to the state upon oral motion under those circumstances.

II.

In the defendant's next issue, she contends that she was placed in jeopardy by the proceedings at the initial trial date on February 17, 1993. Therefore, the trial and conviction on May 17, 1993 were in violation of the prohibition against double jeopardy. The state first knew that its witness, Marie Martin, was missing around 9:00 in the morning at which time it began immediately trying to locate her. After determining that the witness could not be found, the state made the court aware of her unavailability. The judge acknowledged that once the jury was sworn, jeopardy would attach. While the state continued its search for the witness, the indictment was read by the Attorney General; a plea of not guilty was entered by the defendant's attorney; the witnesses were called, placed under the rule, and excluded from the courtroom; and opening statements were made by both parties.

The defendant's argument is that she was, in essence, placed in the hands of the jury during the proceedings that took place on the morning of February 17 and, therefore, placed in jeopardy even though the jury was not sworn. However, neither does the defendant present nor can we find authority to support her argument. Indeed, it is well established in Tennessee that jeopardy does not attach in a jury case until the "defendant is put to trial before a court of competent jurisdiction upon a sufficient indictment and the jury is impaneled and sworn." State v. Max, 714 S.W.2d 289, 294 (Tenn. Crim. App. 1986); State v. Moore, 713 S.W.2d 670, 675 (Tenn. Crim. App. 1985). The trial judge stated that it was his normal procedure to swear the jury only after the indictment had been read, the plea entered, and the opening statements made. This issue has no merit.

III.

Next, the defendant contends that in-court identification of herself and of Tommy Lee Dockery by the witness, Marie Martin, was tainted by an earlier impermissibly suggestive photographic showup. Following the arrest of the defendant, the Sheriff and Deputy Sheriff, James Burris, of Polk County visited Ms. Martin at her bar, the County Line Tavern. Ms. Martin, who had read about the shooting in the newspapers, was unable to recognize the defendant or Mr. Dockery from the descriptions given by the officers. However, when Mr Burris returned later with photographs of Mr. Dockery and the defendant, she identified them as a couple who had been in her bar two or three times. Both photographs were mug shots and Mr. Dockery's photograph had upon it his name and the following notation: "attempted murder of an officer." Though the officer admittedly had the opportunity and time to obtain other photographs of the suspects, as well as those of other persons of similar descriptions for a photographic array, he did not. At trial, the judge disallowed the pre-trial identification but permitted Ms. Martin to identify the defendant and Mr. Dockery who were both in the courtroom.

"Constitutional due process is violated if a pre-trial identification procedure is so suggestive as to render the identification unreliable." State v. Short, 698 S.W.2d 81, 83 (Tenn. Crim. App. 1985) (citing State v. Shanklin, 608 S.W.2d 596, 598 (Tenn. Crim. App. 1980)). Once the initial determination is made that the pre-trial identification procedure is unreasonably suggestive, the court must examine the totality of the circumstances to determine the reliability of the in-court identification. State v. Mosely, 667 S.W.2d 767, 770 (Tenn. Crim. App. 1983) (citing Stovall v. Denno, 388 U.S. 293, 302, 87 S.Ct. 1967, 1972, 18 L.Ed.2d 1199 (1967); Neil v. Biggers, 409 U.S. 188, 198, 93 S.Ct. 375, 382, 34 L.Ed.2d 401 (1972); Manson v. Brathwaite, 432 U.S. 98, 114, 97 S.Ct. 2243, 2253, 53 L.Ed.2d 140, 154 (1977)). We agree with the defendant that this photographic showup was unduly suggestive. This court has said, "[w]e know of no decision of any appellate court which has approved a photographic show-up

consisting of only one picture designated by the prosecutor as the accused." State v. Tyson, 603 S.W.2d 748, 753 (Tenn. Crim. App. 1980). Here, not only were the photographs not accompanied by others but they were mug shots, one of which designated the defendant's confessed accomplice as an attempted murderer.

The question then becomes whether the subsequent in-court identification was affected by the earlier tainted photographic show-up. The United States Supreme Court has enumerated the factors to be weighed against the corrupting effect of suggestive identifications including "the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of his prior description of the criminal, the level of certainty demonstrated at the confrontation, and the time between the crime and the confrontation." Manson v. Brathwaite, *supra*. Turning to the facts of this case to apply this analysis, we look first at Ms. Martin's opportunity to view the defendant. She testified that the defendant came into her bar three to five times, staying briefly. Ms. Martin said that the defendant came to the bar in the daytime with Mr. Dockery where they usually danced and drank beer which Ms. Martin served them. The witness said that she noticed these customers in particular because they seemed happy. Although ten months had passed from the time that the defendant was in the bar and the time that Ms. Martin identified her in the courtroom, Ms. Martin was certain that the defendant was the one who had been in her tavern with Mr. Dockery. Though there are certainly factors weighing against the reliability of this identification, there are indicia of reliability surrounding the in-court identification made by Ms. Martin which outweigh any injurious effect of the suggestive photographic show-up, particularly her level of certainty as to the identification of both parties.

IV.

The defendant's next argument is that the trial court erred in admitting the statements she had made to a Tennessee Bureau of Investigation agent which she contends were inadmissible hearsay. The defendant has failed to include this issue in her motion for new trial. It has, therefore, been waived. Tenn. R. App. P. 3(e). See, e.g., State v. Clinton, 754 S.W.2d 100, 103 (Tenn. Crim. App. 1988).

V.

In the defendant's fifth issue, she asserts that the trial court erred in forcing her husband to testify as to certain statements made to him by her. After the defendant was arrested and taken to jail, she made several telephone calls to her husband at his home. During one of their phone conversations, the defendant told him that she had been driving Tommy Lee Dockery's Scout, but had nothing to do with trying to kill him. She explained to him that she had ended up in the Scout against her desire and that she had attempted to drive erratically so that Mr. Dockery would not be able to accurately aim the gun. At trial the defense counsel objected to the admission of this testimony based upon the fact that the communication was made in confidence and therefore subject to the marital privilege. Mr. Shelfer made it clear that he was not willing to testify, asking the judge if there were any way that he could invoke the marital privilege. However, after the judge found that the marital privilege was inapplicable, Mr. Shelfer testified to the defendant's version of the crime as told to him by her.

"There are two traditional privileges involved when a spouse is being called to testify against his [or her] criminal defendant spouse at his [or her] trial." Cohen et. al., Tennessee Law of Evidence § 501.13 (2d ed. Supp. 1994). The marital communications privilege protects against the disclosure of confidential marital communications and has historically been held by both the testifying spouse and the defendant spouse. Id. The second privilege is the spousal

witness privilege under which a spouse cannot be forced to testify about either confidential or non-confidential communications with his or her spouse. Id. This court has held that there is no marital privilege in trials of crimes of violence committed by one spouse against the other, or upon their children Adams v. State, 563 S.W.2d 804, 809 (Tenn.Crim.App. 1978); Royston v. State, 1 Tenn.Crim.App. 748, 450 S.W.2d 39, 42 (Tenn.Crim.App. 1969) (where the husband and wife were separated, and the wife willingly testified that she feared her husband who had been abusive in the past); State v. Phillips, 728 S.W.2d 21, 27 (Tenn. Crim. App. 1986) (where estranged wife was a willing witness for the state in her testimony that defendant/husband had hit her). The marital privilege has been justified in the past by society's interest in the sanctity of the home and in marital communications. See Martin v. State, 584 S.W.2d 830, 832 (Tenn.Crim.App. 1979). In the cases where the privilege was held to be inapplicable, the court based its decisions on the theory that societal interests were better served by allowing disclosure where the spouse or the children were the victims. See Adams v. State, 563 S.W.2d 804, 809 (Tenn. Crim. App. 1978) (where marital privilege did not preclude statements and actions surrounding the beating of a deceased child).

The Tennessee Supreme Court addressed a situation in which the witness, who was not the victim of the crime, willingly testified against her husband/defendant who had attempted to invoke the marital privilege to keep her from testifying. State v. Hurley, 876 S.W.2d 57, 64 (Tenn. 1993). The court was "of the opinion that the common law rule, as it has been stated heretofore, to the effect that public policy requires that neither the husband nor the wife shall be permitted to testify, in criminal cases as to any matter coming to his or her knowledge by reason of the marital relation. . . is too broad a statement." Id. at 63. The court further stated that, "[s]uch a rule does not necessarily promote marital harmony. In this case, defendant invoked the rule of spousal disqualification not for the protection of confidential marital communications, but

to exclude evidence of criminal acts with which he was charged." Id. The court's holding modified the spousal privilege in criminal cases so that "the witness spouse alone has the privilege to refuse to testify adversely." Id. at 64. In so holding, the Court stated that, "[t]he witness can be neither compelled to testify nor foreclosed from testifying." Id. The Court felt that the new rule, "furthers the important public interest in marital harmony without unduly burdening legitimate law enforcement needs." Id.

The Supreme Court in Hurley failed to distinguish between the marital communications and the spousal witness privilege, instead "collaps[ing] these two privileges into one that is controlled by the witness spouse." Cohen et. al., Tennessee Law of Evidence § 501.13 (2d ed. Supp. 1994). The question remains whether or not a spouse who has been the victim of a crime can refuse to testify against his or her spouse who is on trial for that crime. As the court in Hurley did, we examine this situation in light of the historical justification for the marital privilege: the interest in marital harmony. Here, we have a spouse who testified that he did not believe that his wife, the defendant, was guilty of the crime. He testified that they were living together at the time of the trial and were the happiest they had been since first marrying twenty-three years before. He was convinced by the conversation he had had with the defendant that her involvement in the events surrounding the crime was innocent. However, by compelling an unwilling spouse such as this victim to testify, we do not find that the important societal interest in marital harmony would be unduly encumbered. This is not like the situation in Hurley where the fact that a spouse is willing to testify indicates that the marriage is already beyond repair. Nor is this a situation in which the legislature has provided for the compulsion of testimony from an unwilling spouse in order to protect that spouse.¹ We do not believe that State v.

¹ By comparison, we note that the Tennessee legislature has deemed it necessary in one situation to permit the compulsion of the testimony of a witness against his or her spouse. The "Tennessee Adult Protection Act", which lists as its purpose the protection of adults from abuse, neglect, or exploitation, includes the following provision: "Notwithstanding the existence of the privilege for confidential communications between husband and wife, the chancellor at the hearing may compel testimony if in his opinion disclosure is necessary in the interest of the adult." Tenn. Code Ann. § 71-6-106 (1995).

Hurley controls this situation giving this witness the power to testify or to refuse to testify against the defendant, his wife. As the Supreme Court noted in Hurley, 876 S.W.2d at 63, Tenn.R.Evid. 501 has "removed any barrier to interspousal testimony, for or against the other spouse, except as provided by common law." The Court then went on to note, as previously stated, that the common law rule was too broad. In Hurley, the Supreme Court cited Adams approvingly, and Adams clearly mandated that no privilege exists in cases involving crimes by one spouse against the other. Therefore, we hold that Mr. Shelfer was properly compelled to testify against the defendant in the trial and his testimony was properly considered as evidence by the jury.

VI.

In her final issue, the defendant argues that the evidence is insufficient to support the jury verdict finding her guilty of attempted murder because there was insufficient evidence to corroborate the testimony of Tommy Lee Dockery, an accomplice. The principles which govern this court's review of a conviction by a jury are well established. This court must review the record to determine if the evidence adduced at trial was sufficient "to support the finding of the trier of fact of guilt beyond a reasonable doubt." Tenn. R. App. P. 13(e). This rule is applicable to determinations of guilt predicated upon direct evidence, circumstantial evidence, or a combination thereof. State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990).

A jury verdict of guilty, approved by the trial court, accredits the testimony of the state's witnesses and resolves all conflicts in favor of the theory of the state. State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983); 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 all reasonable and legitimate inferences which may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832,

835 (Tenn. 1978). Moreover, a verdict against the defendant removes the presumption of innocence and raises a presumption of guilt on appeal, State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973), which the appellant has the burden of overcoming. State v. Brown, 551 S.W.2d 329, 330 (Tenn. 1977).

In examining the sufficiency of the evidence, this court does not reevaluate the weight or credibility of the witnesses' testimony as those are matters entrusted exclusively to the jury as the triers of fact. State v. Sheffield, 676 S.W.2d 542, 547 (Tenn. 1984); State v. Wright, 836 S.W.2d 130, 134 (Tenn. Crim. App. 1992). Nor may this court substitute its inferences for those drawn by the trier of fact from circumstantial evidence. Liakas v. State, 199 Tenn. 298, 305, 286 S.W.2d 856, 859 (1956). The relevant question on appeal is whether, after viewing the evidence in the light most favorable to the state, any rational trier of fact could have determined that the essential elements of the crime were established beyond a reasonable doubt. Tenn. R. App. P. 13(e); Jackson V. Virginia, 443 U.S. 307, 314-324, 99 S. Ct. 2781, 2786-2792, 61 L. Ed. 2d 560 (1979).

It is also well established that, in Tennessee, a conviction may not be based upon the uncorroborated testimony of an accomplice. State v. Bigbee, 885 S.W.2d 797, 803 (Tenn. 1994); Monts v. State, 379 S.W.2d 34, 43 (Tenn. 1964). Whether a witness' testimony has been sufficiently corroborated is a matter entrusted to the jury as the trier of fact. Id. The Tennessee Supreme Court recently discussed the nature of the rule as follows:

[T]here must be some fact testified to, entirely independent of the accomplice's testimony, which, taken by itself, leads to the inference, not only that a crime has been committed, but also that the defendant is implicated in it; and this independent corroborative testimony must also include some fact establishing the defendant's identity. This corroborative evidence may be direct or entirely circumstantial, and it need not be adequate, in and of itself, to support a conviction; it is sufficient to meet the requirements of the rule if it fairly and legitimately tends to connect the defendant with the commission of the crime charged. It is not necessary that the corroboration extend to every part of the accomplice's evidence. The corroboration need not be conclusive,

but it is sufficient if this evidence, of itself, tends to connect the defendant with the commission of the offense, although the evidence is slight and entitled, when standing alone, to but little consideration.

State v. Bigbee, 885 S.W.2d at 83 (quoting State v. Gaylor, 862 S.W.2d 546, 552 (Tenn. Crim. App. 1992) which was quoting Hawkins v. State, 469 S.W.2d 515 (Tenn. Crim. App. 1971)); also citing State v. Henley, 774 S.W.2d 908, 913 (Tenn. 1989), and other cases.

As we have concluded, the defendant's husband, the victim, Andy Shelfer, was properly compelled to testify at trial; therefore, his testimony is considered in our review of the sufficiency of the evidence. The defendant is correct that, other than her husband's testimony, there is nothing in the record which leads to the inference that she is implicated in the crime. The testimony of both Marion Dockery and Marie Martin suggest that the defendant and Tommy Lee Dockery were involved in a relationship on some level. However, proof of even a serious romantic relationship is inadequate to connect the defendant to the crime for which she has been convicted. Neither were the state's final two witnesses sufficient to incriminate the defendant. The testimony of Andy Lockhart revealed only that the defendant expressed a need for money a few weeks prior to the crime. The crux of Richard Brogan's testimony was that he could not verify the defendant's story about where she was on the night of the shooting. But when the victim's testimony concerning the defendant's statement is added to the evidence, it is clear that the evidence adduced at trial is sufficient to support her attempted murder conviction. Therefore, this issue has no merit.

The judgment is affirmed.

JERRY SCOTT, PRESIDING JUDGE

CONCUR:

PENNY J. WHITE, JUDGE

DAVID G. HAYES, JUDGE