IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

JULY 1996 SESSION

STATE OF TENNESSEE,	)	
	)	C.C.A. NO. 03C01-9601-CR-00017
Appellee	)	
	)	Hamilton Criminal
vs.	)	
	)	Honorable Stephen M. Bevil
RONALD DEVAUGHN HARRIS,	)	
	)	(Trespass and Assault)
Appellant	)	

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OPINION FILED_____

AFFIRMED

WILLIAM M. DENDER, SPECIAL JUDGE

OPINION

Appellant was indicted in Case No. 202253 for criminal trespass, and in Case No. 202254 for assault by causing bodily injury or by causing another to reasonably fear imminent bodily injury in Count One, and for assault by causing physical contact which the other would regard as extremely offensive or provocative in Count Two. He was tried in a bench trial and found guilty of trespass and assault by causing another to reasonably fear imminent bodily injury. This is his appeal as of right from the judgment of the trial court.

Appellant states his issues as follows:

> I. The evidence was insufficient to support the verdict, the verdict is contrary to the law and the evidence, and the evidence preponderates in favor of the appellant and against his guilt.
>
> II. The trial court abused its discretion in not granting appellant a continuance to adequately prepare for the testimony of the surprise witness.

FACTS

Brenda Pittman manages a Golden Gallon convenience store in Hamilton County. Ms. Pittman had encountered the appellant, whose nickname is Homegrown, several times in the store; and at some point before the incident involved in this case, she told the appellant he was not allowed to come into the store anymore. It appears that she had also told the appellant he was not allowed on the premises; however, there is a difference of opinion as to whether appellant was not allowed in the store or was not allowed upon the parking lot or any part of the premises.

On April 16, 1994, appellant knocked on the window behind the counter at which Ms. Pittman was working. She went to the door and told the appellant to move on. He told her that he did not have to go away, and he came right up in Ms. Pittman's face. Appellant put his hand behind his jacket in his pants, and told Ms. Pittman that he would "blow [her] m.f. white ass away." Ms. Pittman thought appellant had a gun when he reached behind his back, but she never

saw a gun. Her testimony at this point was as follows:

A. Well, I thought he had a gun.

Q. Okay. And how did that make you feel?

A. Well, it kind of happened fast, and I don't know. A thousand things are running through your mind -- do you run, do you stand there, you know, what do you do?

Q. Okay.

A. Because I'm not used to being threatened like that.

Q. Okay. Then what happened?

A. I told him to go on.

Q. All right.

A. And he said, "No, no, I don't have to." And I said, "Yes, you do." And something told me to just stand there, you know, not to turn around, just stand there. So he had backed up a little bit and then he came back at my face again and put his hand back there the second time. And I told him, I said, "Look, you either shoot or get off my property now, you know, one or the other, I don't care which, but one or the other, and get off this property." I said, "This is my store and you're not going to do this." And there was a older gentleman that was standing there. He kind of went between me and Homegrown and pushed him back and told him go on and leave me alone.

Another customer came up, and appellant was going around the car; but then appellant acted like he was going to come back, but then he stopped, went on and got back in the car. Ms. Pittman went back in the store, and appellant left the premises. Soon thereafter, appellant called the store and told Ms. Pittman that she had no right to keep him out of the store, and he also said, "You're going to keep messing around and you're going to get hurt."

ANALYSIS AND HOLDING

In his first issue, appellant questions the sufficiency of the evidence and the weight of the

evidence. When an accused challenges the sufficiency of the convicting evidence, this Court must review the evidence to determine whether a 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 (1979). This Court does not reweigh or re-evaluate the evidence, and is 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. Evans, 838 S.W.2d 185, 191 (Tenn. 1992); State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1985).

ASSAULT

T.C.A. § 39-13-101(a) states that a person commits assault who "intentionally or knowingly causes another to reasonably fear imminent bodily injury."

We feel that the repeated threats of physical violence by the appellant and the refusal of appellant to leave the premises after being told to do so provide evidence from which any rational trier of fact could have found beyond a reasonable doubt that appellant intended to "cause another to reasonably fear imminent bodily injury."

Ms. Pittman testified, "Well, I thought he had a gun." and "Well, it kind of happened fast, and I don't know. A thousand things are running through your mind -- do you run, do you stand there, you know, what do you do?" We feel this testimony provides evidence from which any rational trier of fact could have found beyond a reasonable doubt that Ms. Pittman "feared imminent bodily injury", and that it was "reasonable" for her to do so.

We hold there is ample evidence from which any rational trier of fact could have found the essential elements of the crime of assault beyond a reasonable doubt.

CRIMINAL TRESPASS

T.C.A. § 39-14-405(a) states:

> A person commits criminal trespass who, knowing he does not have the owner's effective consent to do so, enters or remains on property, or a portion thereof. Knowledge that the person did not have the owner's effective consent may be inferred where notice against entering or remaining is given by: (1) Personal communication to the person by the owner or by someone with apparent authority to act for the owner . . .

The uncontroverted evidence clearly shows that both Ms. Pittman and Ms. Dellinger had told appellant that he was not allowed in the store, and we feel the evidence is sufficient for the trier of fact to conclude that appellant was not allowed upon the parking lot or other portions of the Golden Gallon premises; however, we do not find it necessary to determine whether he was banned from the store or the premises. The failure of appellant to leave the premises when he was initially told to leave by Ms. Pittman is sufficient under our law to find appellant guilty of criminal trespass. Certainly this would be true after his continued argument with Ms. Pittman, his very specific threat to cause her bodily injury, and his leaving the premises only after the intervention of two men.

We hold there is ample evidence from which any rational trier of fact could have found the essential elements of the crime of criminal trespass beyond a reasonable doubt.

The first issue has no merit.

WITNESS - CONTINUANCE

In his second issue, appellant contends that the trial court abused its discretion by denying his motion for a continuance when Office O'Malley was allowed to testify, because O'Malley was not listed on the indictment, was not listed on the warrants, and was not listed as a witness in response to a discovery order of the trial court.

The decision to bar or permit an omitted witness to testify at trial is a matter which addresses itself to the sound discretion of the trial court. McBee v. State, 213 Tenn. 15, 27-28, 372 S.W.2d 173, 179 (1963). An accused is not entitled to relief for such a violation unless the accused can establish that he was prejudiced in the preparation and presentation of his defense. State v. Morris, 750 S.W.2d 746, 749 (Tenn. Crim. App. 1987).

Appellant has not established any way that he has been prejudiced by the testimony of Officer O'Malley. His testimony had little, if any, bearing on the facts surrounding the events for which appellant was convicted. We find no error in permitting O'Malley to testify without allowing a continuance. Under the circumstances of this case, any possible error in permitting O'Malley to testify would certainly be harmless error beyond any doubt. See Tenn. R. Crim. P. 52(a).

The second issue has no merit.

For the reasons stated herein, the trial court is affirmed, and the case is remanded to the trial court for all necessary proceedings not inconsistent with this opinion.

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William M. Dender, Special Judge

CONCUR:

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Joseph B. Jones, Presiding Judge

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David G. Hayes, Judge