IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
NOVEMBER SESSION, 1996

STATE OF TENNESSEE,	)	
	)	No. 02C01-9512-CR-00357
Appellee	)	
	)	SHELBY COUNTY
vs.	)	
	)	Hon. JOHN P. COLTON, JR., Judge
TIMOTHY J. PATTERSON,	)	
	)	(Criminal Attempt to Commit
Appellant	)	Voluntary Manslaughter; Criminal Attempt to Commit Aggravated Rape)

For the Appellant:

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For the Appellee:

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OPINION FILED: _____

AFFIRMED

David G. Hayes
Judge

OPINION

The appellant, Timothy J. Patterson, was convicted by a Shelby County jury of one count of criminal attempt to commit voluntary manslaughter and one count of criminal attempt to commit aggravated rape. Following his convictions, the Shelby County Criminal Court imposed Department of Correction sentences of four years for the attempted voluntary manslaughter conviction and ten years for the attempted aggravated rape conviction. The sentences were ordered to run concurrently. In this appeal, the appellant contends that the evidence is insufficient to support his convictions.

After a review of the record, we affirm the judgment of the trial court.

I. Background

The proof developed at trial revealed that, at approximately 11:00 p.m., on the evening of July 11, 1993, the appellant returned to his residence after completing a double shift as a cook at a Memphis-area PoFolks restaurant. An hour later, the appellant dressed and prepared to leave his residence in search of his roommate.[1] He began by looking in bars that he knew his roommate frequented and eventually ended up at J-Wags at approximately 12:45 a.m. He decided to stay at J-Wags and proceeded to drink four to six cups of beer.

Around 4:00 a.m., the appellant left J-Wags en route to his residence. At the same time, Jewell McDowell Traywick was also on her way home. Traywick observed the appellant behind her as she walked toward the Circle-K on

[1]The appellant indicated that he needed to discuss "the rent" with his roommate.

Madison. Approaching the Circle-K, Traywick noticed that the appellant was no longer behind her, but was walking toward the MATA bus shelter on the other side of the street. Soon thereafter, Traywick, along with Ricky Dillard, who was standing in the Circle-K's parking lot, heard noises coming from inside the bus shelter.[2] Deciding to investigate, Dillard approached the shelter and observed the appellant "stomping Papa."[3] The fifty-seven year old victim was lying on the pavement in a fetal position. He was heard pleading with the appellant to stop hitting him, yet the blows continued. Dillard began hitting the shelter's walls in an attempt to stop the appellant's assault. At this time, Dillard observed that the appellant's "private parts were hanging out" and that the victim's pants were to his knees. Dillard again yelled at the appellant to stop. The appellant responded that he was calling the police on Dillard and he ran across the street to a telephone booth outside the Circle-K. By that time, Dillard noticed the approach of Officer Renfro's patrol car. Dillard "flagged down" Renfro and told him what had happened.[4]

Officer Renfro of the Memphis Police Department placed the appellant in the back seat of his patrol car. He noticed "what appeared to be fresh blood" on the appellant's tennis shoes. Renfro then approached the victim, who was lying on the pavement. He observed that the victim's "face was bloody. . . . His pants were down below his waist. Part of his buttocks were exposed and the seat of his pants were completely ripped from the back on up toward the front. They were ripped open." Renfro noted that the appellant did not appear intoxicated, although he was in obvious pain. The victim told Renfro that, while he was asleep on the bench, the appellant approached him, tried to pull his pants down, and started kicking him in the head. The victim added that the appellant had

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[2]The MATA bus shelter on Madison is an enclosed structure made of dark tinted glass.

[3]Dillard explained that "Papa" was his name for Roy Pritchard, the victim in this case.

[4]Ms. Traywick's testimony at trial corroborated Dillard's testimony.

exposed his penis to him and tried to insert it into his rectum. Renfro described the victim as weighing 140 to 150 pounds, while the appellant weighed approximately 215 pounds.

Patricia Briske, a registered record administrator at the Regional Medical Center in Memphis, testified that the victim was admitted to the hospital on July 12, 1993, and was released August, 26, 1993. While in the hospital, Pritchard was treated for "traumatic subdural hematoma, closed skull fracture, peritoneum injury, decubitus ulcer, pulmonary collapse, pneumonia, respiratory failure, sudamina septicemia, chronic stomach ulcer with hemorrhage, dependence on a respirator, convulsions, and purulent endo-opthalmus." Additionally, Briske reported that a test administered to a sample of the victim's blood revealed a blood alcohol level of .13 percent.

The victim did not testify at trial. Brenda Slaughter, the victim's daughter, testified that, since this incident, her father has been placed in a nursing home because he is incapable of living on his own. Due to the injuries received from this incident, her father experiences seizures, his speech is slurred, he has difficulty walking, and his memory is impaired. Ms. Slaughter conceded that her father had an alcohol problem.

Testifying in his own behalf, the appellant maintained that the victim was the aggressor in the instant offenses. He explained that Mr. Pritchard grabbed his arm as he passed the MATA bus stop. Because Pritchard would not release him, the appellant hit him in the chest to get free. Pritchard again grabbed the appellant, and again, the appellant hit Pritchard in the chest. Pritchard grabbed the appellant a third time, and when hit by the appellant this time, Pritchard fell to the ground. The appellant denied exposing his penis and also denied pulling down Pritchard's pants.

II. Sufficiency of the Evidence

The appellant challenges the sufficiency of the evidence to sustain a conviction for either offense. Specifically, he argues that his convictions are based upon the hearsay testimony of Officer Renfro and the unreliable testimony of Ricky Dillard, who was not present when the physical confrontation first ensued.

A jury conviction removes the presumption of innocence with which a defendant is initially cloaked and replaces it with one of guilt, so that on appeal a convicted defendant has the burden of demonstrating that the evidence is insufficient. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). 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). On appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable or legitimate inferences which may be drawn therefrom. State v. Harris, 839 S.W.2d 54, 75 (Tenn. 1992). It is the appellate court's duty to affirm the conviction if the evidence, viewed under these standards, was sufficient for any rational trier of fact to have found the essential elements of the offenses beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 317, 99 S.Ct. 2781, 2789 (1979); State v. Cazes, 875 S.W.2d 253, 259 (Tenn. 1994); Tenn. R. App. P. 13(e).

The appellant first argues that the evidence is insufficient to sustain either conviction because it is in part supported by the hearsay testimony of Officer Renfro. At trial, Renfro recited to the jury the victim's statements describing his assault by the appellant. These statements were made by the declarant immediately following the assault and while still lying on the pavement in obvious

pain and distress. Under the terms of Tenn.R.Evid. 803(2), "[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition" is admissible as an exception to the rule against hearsay. State v. Smith, 868 S.W.2d 561, 574 (Tenn. 1993); State v. Summerall, 926 S.W.2d 272, 277-78 (Tenn. Crim. App. 1995). The attempted rape and the obvious beating of the victim qualify as a startling event "to render inoperative the normal reflective thought processes of the observer." State v. Person, 781 S.W.2d 868, 872 (Tenn.Crim. App. 1989) (citations omitted). The circumstances surrounding the victim's statement to Renfro establish that "the statement was not made as the result of a conscious fabrication or reflection but was triggered by the influence of the startling event." Id.

Thus, the testimony of Officer Renfro was admissible and the weight afforded this testimony is determined by the jury. Cabbage, 571 S.W.2d at 835. Concerning the appellant's contention that the testimony of Ricky Dillard lacks credibility to support a conviction, again, questions concerning the credibility of witnesses are resolved by the finder of fact and not this court. Id. Aside from these contentions, the appellant concedes that the evidence is otherwise sufficient to support his conviction. We agree that the evidence supports both convictions.

A. Criminal Attempt to Commit: Voluntary Manslaughter

The appellant was indicted for criminal attempt to commit first degree murder. The jury convicted him of the lesser offense of criminal attempt to commit voluntary manslaughter. To find a defendant guilty of voluntary manslaughter, the finder of fact must find, beyond a reasonable doubt, that the

defendant "intentional[ly] or knowing[ly] kill[ed] . . . another in a state of passion produced by adequate provocation sufficient to lead a reasonable person to act in an irrational manner." Tenn. Code Ann. § 39-13-211(a) (1991). We find from the proof contained in the record that a rational jury could infer that the appellant's brutal assault upon his victim could produce death. We, therefore, conclude that the evidence was sufficient to establish the essential elements of criminal attempt to commit voluntary manslaughter beyond a reasonable doubt.

B. Criminal Attempt to wit: Aggravated Rape

In order to secure a conviction for aggravated rape, the State must prove, beyond a reasonable doubt, that the defendant committed "unlawful sexual penetration of a victim by the defendant . . . accompanied by . . . [t]he defendant caus[ing] bodily injury to the victim."[5] Tenn. Code Ann. § 39-13-502(a)(2) (1994 Supp.). The evidence, viewed in the light most favorable to the State, revealed that the appellant, with his penis exposed, removed the victim's pants, beating the victim as he resisted. Additionally, the hospital records introduced by Briske established that the victim suffered serious injuries to the head, requiring the victim to be hospitalized for over a month. Thus, the jury could reasonably find the element of bodily injury to the victim. Accordingly, the evidence is sufficient for a rational finder of fact to conclude, beyond a reasonable doubt, that the appellant attempted to commit the offense of aggravated rape.

After reviewing the record before us, we conclude that the evidence clearly supports the appellant's convictions for criminal attempt to commit voluntary manslaughter and criminal attempt to commit aggravated rape.

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[5]The indictment charged the appellant with aggravated rape accompanied by bodily injury.

Accordingly, the judgment of the trial court is affirmed.

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DAVID G. HAYES, Judge

CONCUR:

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GARY R. WADE, Judge

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WILLIAM M. BARKER, Judge