

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs February 1, 2023

FILED
02/16/2023
Clerk of the
Appellate Courts

STATE OF TENNESSEE v. RICKY HUNTER

Appeal from the Criminal Court for Shelby County
Nos. 19-01169, C1901560 John W. Campbell, Sr., Judge

No. W2022-00763-CCA-R3-CD

Ricky Hunter, Defendant, was indicted for one count of first degree murder and one count of being a felon in possession of a firearm. After a jury trial, Defendant was convicted of the lesser included offense of second degree murder and being a felon in possession of a firearm. He was sentenced to a total effective sentence of 33 years. The trial court denied a motion for new trial. After this Court waived the timely filing of the notice of appeal, this appeal ensued. On appeal, Defendant challenges the sufficiency of the evidence sustaining the second degree murder conviction. We find the evidence sufficient and affirm the convictions.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed

TIMOTHY L. EASTER, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR. and KYLE A. HIXSON, JJ., joined.

Phyllis Aluko, Public Defender; Mark Renken and Madeline Hopper, Assistant Public Defenders, for the appellant, Ricky Hunter.

Jonathan Skrmetti, Attorney General and Reporter; Richard D. Douglas, Assistant Attorney General; Steve Mulroy, District Attorney General; and Nicole Germain and Joey Griffin, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Defendant was indicted for first degree murder for the shooting death of Carolyn Thomas. Defendant was also indicted for one count of felon in possession of a firearm. The indictment was based on an incident that took place on July 3, 2018, at Brenda's

Rhythm and Blues Club, a bar in Shelby County. Brenda Tate, the owner of the club, was present that night, as were Defendant and the victim along with approximately 60 or 70 people. There was no security guard at the club, but there was someone stationed at the front entrance taking a cover charge from people entering the club. There was a D.J., Michael Jones, playing music at the club. Mr. Jones would often “pat down” people who were unfamiliar visitors. There was a group of “regulars” who came to the club nearly every weekend who were not searched because they “were regulars.”

Ms. Tate identified the victim as a regular, who had been “coming there for four or five years.” Defendant was also a regular. Ms. Tate had known Defendant for about 14 years at the time of the incident, but knew him by the nickname of “Bernie Mac.”¹

At around 11:15 p.m., Ms. Tate was “sitting at the bar” when she saw Defendant and the victim “arguing” near one of the tables in the bar. It was the first time Ms. Tate had “noticed them together” that night. Ms. Tate could not hear “what they were arguing about” over the music and people talking but could tell “they were going back and forth.” Ms. Tate moved to go “through [her] double doors,” when she “saw [Defendant] backhand [the victim with his right hand] and [the victim] fell over the table.”

Ms. Tate saw the victim get “up and r[u]n into [Defendant] and she started fighting him.” Ms. Tate quickly made her way across the bar and “snatch[ed Defendant] away from [the victim].” Ms. Tate told Defendant not to “do that” to a “female.” The victim “walked [away from Defendant heading] back to her table and got a 40-ounce bottle.” The victim threw the empty bottle toward Defendant and Ms. Tate, despite Ms. Tate’s command to not throw the bottle. The bottle missed both of them and hit a jersey hanging on the wall as Ms. Tate led Defendant “by his left arm” toward the double doors. Ms. Tate was facing toward the front doors while Defendant walked backward.

Ms. Tate then recalled that Defendant “came out of his right pocket [with a gun] and shot” one time. The victim “fell to the floor.” Defendant told Ms. Tate to take her hands off of him and he began to “slowly” walk around the bar.

Ms. Tate made it to the victim’s side. The victim told her she was not alright and that she was “bleeding inside.” Ms. Tate did not see a bullet hole or blood on or around the victim. Ms. Tate observed Defendant walking back toward where the victim was laying on the floor and “pulled the trigger [on the gun] twice, but it didn’t go off.” Ms. Tate heard Defendant say, “[n]ow she’ll see who she’s f***ing with” before he smiled and walked out the front door of the club with the gun in his hand.

¹ Ms. Tate explained that Defendant looked like the comedian Bernie Mac.

Ms. Tate did not know that Defendant had a gun. She had never seen him with a gun before. Ms. Tate identified Defendant in a photographic lineup prior to trial.

Officer Terrence Frazier of the Memphis Police Department (“MPD”) responded to a shooting call at Brenda’s Rhythm and Blues Club. Upon entry, he saw a “female black that was laying on the floor.” The victim was “[n]ot very responsive” to him. Officer Frazier did not see any wounds but the “fire department” observed “a spot and said it was up under her arm.” After speaking to “several people in the club,” Officer Frazier identified Defendant as a suspect.

Officer Lee Dale Walker of the MPD Crime Scene Investigation Department also responded to the shooting call. He documented the scene by taking photographs. Officer Walker described it as “not a large room for a night club,” measuring “22 feet, 2 inches by 24 feet, 8 inches.” He did not find any shell casings, bullets, or bullet fragments but found a red hat and a spot of blood on a table.

At trial, several people who were present at the club on the night of the incident testified about what they observed. Rickie Wardell identified himself as a 66-year-old regular of Brenda’s. He knew both Defendant and the victim and was able to identify both of them by sight. Mr. Wardell was present on the night of the victim’s death. He described the club as “pretty crowded.” He saw Defendant and the victim argue with each other, explaining that the victim and Defendant were standing about “10 to 15 feet” apart at the time. The next time Mr. Wardell saw Defendant he was reaching in his “[r]ight pocket” and a “gun c[a]me out.” Mr. Wardell “looked away and then [he] heard the shot.” He “[r]an to the bathroom” immediately after hearing the shot. Defendant had shown Mr. Wardell a gun at some point prior to that night but Mr. Wardell could not recall an exact time, stating it, “could’ve been months, could’ve been a year or months before that. It was way back.”

Judy Thomas, another regular, identified both Defendant and the victim at trial. Ms. Thomas saw the victim and Defendant have “words” at the club that night and Defendant “kind of like pushed [the victim], shove[d her]” before they were fighting “[l]ike two mens were fighting mens.” It was a true “fist fight.” Ms. Thomas recalled that Ms. Tate came to break up the fight, pulling Defendant and the victim apart. Ms. Thomas saw the victim throw the beer bottle and watched it hit the wall and break. “[T]hat’s when [Defendant] reached in his pocket” and “[p]ulled a pistol out.” Ms. Thomas saw Defendant shoot, she “thought it was two or three shots.” One of them left a “little hole right there in the top of the wall where the wall is right there by the doorway.” Then, Defendant “shot directly at [the victim] and smiled.” After shooting the victim, Ms. Thomas said that Defendant “[t]urned around and . . . walked out the door just smiling.”

Ms. Thomas identified Defendant in a photographic lineup by circling his picture and writing, "Bernie Mac is the person I saw shoot the lady at the club with the small black handgun."

Mr. Jones was working as D.J. on the night of the incident. He described both Defendant and the victim as regulars at the club. Mr. Jones had seen Defendant with a gun before this night.

Mr. Jones explained that throughout the night, the victim was "trying" to "avoid" Defendant and "moved" to "different tables." Each time the victim moved tables, Defendant would follow "behind her." Mr. Jones saw this happen "[t]wo or three times." Mr. Jones described the victim's "expression" as "agitated." Eventually he saw an "argument or something went down" between the victim and Defendant. The victim was "pushing" Defendant in the chest, but Mr. Jones could not hear what was being said because the music was "too loud." Other people at the club told Mr. Jones that Defendant "was agitating" the victim. Mr. Jones saw the victim throw a bottle and Defendant "mugged [the victim] in her face a little bit and pushed her." Mr. Jones explained that to "mug" someone is to "push" someone in the face with your "[h]ands." After Defendant pushed the victim, she "staggered" and "fell back" but did not fall to the ground. Then "a brawl took place." Mr. Jones explained that the victim "went at it" like "Mike Tyson." Ms. Tate came over to try to break up the fight, but the victim was "still fighting." The two were still "tangling" when Defendant "pulled an object" from his pocket. Mr. Jones heard a "pop, pop, pop" and saw the victim fall. Mr. Jones saw Defendant walk toward the victim. Mr. Jones told Defendant to leave. The victim was still talking at that point, saying she had been shot. Mr. Jones did not see any blood and thought the victim was "playing." Mr. Jones told Defendant to "go get [his] business straight" and "walked him out to his truck." Mr. Jones asked Defendant what happened and Defendant told him that the victim "disrespected" him. Defendant told Mr. Jones he "done messed up." Mr. Jones later identified Defendant in a photographic lineup as the person who "had the gun and shot the woman."

According to the medical examiner, the victim died as a result of a single gunshot wound to the left shoulder. The bullet went through the victim's left shoulder near the armpit and into her torso, eventually coming to rest inside the victim's body "in fatty tissues on the outer part . . . of the right side of her torso." The medical examiner testified that the manner of death was "homicide" and the cause of death was "the gunshot wound to the left shoulder."

Defendant stipulated that he had been convicted of a "qualifying felony" for purposes of the statute but testified that he did not know anything about guns and had never had a gun before. Defendant testified that he was at Brenda's on the night of the incident.

Defendant had seen the victim at the club before but had never spoken to her before that night. He left the club at one point during the evening to go home and get a bottle of liquor for someone. Defendant saw the victim at the club that night with “her boyfriend.”

When he returned, Defendant danced with a lady, and “she asked [him] to buy her a beer.” Defendant was unable to identify or name the woman with whom he was dancing that night. The victim “left her table, went over to the table where that lady” was sitting, and sat down. Defendant bought the beer and took it to “the lady.” The victim “jumped up, told the lady, ‘don’t dance with [Defendant]’” anymore. Defendant explained that he and “the lady” were confused. The victim “jumped up” from the chair and “attacked” him at that point. Defendant explained that the victim “had something in her hand, and at that time [he] reached for it and [they began] wrestling over the gun.” Defendant “caught [the gun] in midair.”

According to Defendant, Ms. Tate “came from behind the bar” and pulled him away while someone else pulled the victim back. The victim “ripped” his shirt and “knocked” his hat off his head. Ms. Tate was leading Defendant toward the door when the victim threw a bottle at him. Defendant was still holding the gun at this point. He explained that when the victim threw the bottle, he put his arm up “to block the bottle, [and] the gun [went] off in the ceiling.” Defendant testified that he did not fire any more shots, did not aim at the victim, and “didn’t see what happened to her.” He “lowered the gun” and started “walking out the door.” Defendant saw the victim laying on the floor of the club as he left. Defendant “threw the gun away” before he “got in [his] car” and left. Defendant denied telling anyone else what happened on the way out the door. Defendant claimed he did not know that he shot the victim when he left the club.

Defendant testified that he did not go to the bar intending to kill the victim and did not know that she was dead at the time he left. Defendant testified that the man he sold liquor to called him after the incident to tell him that the victim was “faking.” Defendant claimed that all of the other witnesses lied about what happened that night at the club. Defendant claimed that his “testimony is the truth” and that the victim “cause[d] it upon herself by throwing the bottle at [him], caused a rational person to act irrational.”

After the proof, the jury found Defendant guilty of second degree murder and unlawful possession of a firearm by a convicted felon. At a sentencing hearing, the trial court sentenced Defendant to 25 years for the second degree murder conviction and 8 years for the felon in possession of a firearm conviction, to be served consecutively to the second degree murder sentence for a total effective sentence of 33 years.

Defendant’s motion for new trial was denied. Defendant filed a motion for permission to late-file the notice of appeal which this Court granted.

Analysis

On appeal, Defendant argues that the “overwhelming proof of provocation” supported a conviction for voluntary manslaughter rather than second degree murder. The State counters that the evidence is sufficient.

When a defendant challenges the sufficiency of the evidence, this Court is obliged to review that claim according to certain well-settled principles. The relevant question the reviewing court must answer is whether any rational trier of fact could have found the accused guilty of every element of the offense beyond a reasonable doubt. *See* Tenn. R. App. P. 13(e); *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). The jury’s verdict replaces the presumption of innocence with one of guilt; therefore, the burden is shifted onto the defendant to show that the evidence introduced at trial was insufficient to support such a verdict. *State v. Reid*, 91 S.W.3d 247, 277 (Tenn. 2002). The prosecution is entitled to the “strongest legitimate view of the evidence and to all reasonable and legitimate inferences that may be drawn therefrom.” *State v. Goodwin*, 143 S.W.3d 771, 775 (Tenn. 2004) (quoting *State v. Smith*, 24 S.W.3d 274, 279 (Tenn. 2000)). It is not the role of this Court to reweigh or reevaluate the evidence, nor to substitute our own inferences for those drawn from the evidence by the trier of fact. *Reid*, 91 S.W.3d at 277. Questions concerning the “credibility of the witnesses, the weight to be given their testimony, and the reconciliation of conflicts in the proof are matters entrusted to the jury as the trier of fact.” *State v. Wagner*, 382 S.W.3d 289, 297 (Tenn. 2012) (quoting *State v. Campbell*, 245 S.W.3d 331, 335 (Tenn. 2008)). “A guilty verdict by the jury, approved by the trial court, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the prosecution’s theory.” *Reid*, 91 S.W.3d at 277 (quoting *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997)). The standard of review is the same whether the conviction is based upon direct evidence, circumstantial evidence, or a combination of the two. *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011); *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009).

In relevant part, second degree murder is a “knowing killing of another.” T.C.A. § 39-13-210(a). “A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result.” T.C.A. § 39-11-106(a)(22). Whether a defendant acted knowingly in killing another person is a question of fact for the jury, and a jury can infer that a defendant “acted knowingly from surrounding facts and circumstances.” *State v. Brown*, 311 S.W.3d 422, 432 (Tenn. 2010). Moreover, this Court has held that pointing a gun at someone and discharging it is sufficient to sustain the “knowing” element of second degree murder. *See State v. Anthony Bayman*, No. W2014-01537-CCA-R3-CD, 2015 WL 12978649, at *6 (Tenn. Crim. App. Aug. 17, 2015), *perm. app. denied* (Tenn. Dec. 14, 2015); *State v. Randy Ray Ramsey*, No. E2013-

01951-CCA-R3-CD, 2014 WL 5481327, at *6-7 (Tenn. Crim. App. Oct. 29, 2014), *perm. app. denied* (Tenn. Feb. 9, 2015).

Viewed in a light most favorable to the State, the proof at trial shows that at least four witnesses (Ms. Tate, Mr. Wardell, Ms. Thomas, and Mr. Jones) were all present on the night of the incident and saw Defendant arguing with the victim. Ms. Tate observed Defendant slap the victim, Ms. Thomas saw Defendant “push” the victim, and Mr. Jones saw Defendant “mug” the victim. Ms. Tate, Ms. Thomas, and Mr. Jones all testified that Defendant started the physical confrontation. Ms. Tate separated Defendant and the victim, admonishing Defendant in the process. As Ms. Tate guided Defendant toward the door, the victim launched a 40-ounce beer bottle toward Defendant. In response, Defendant pulled out a gun and shot the victim. Both Ms. Thomas and Mr. Jones said that Defendant pointed the gun directly at the victim. Ms. Tate saw Defendant point the gun at the victim as she was lying on the ground and testified that it looked like Defendant pulled the trigger twice more, but the gun did not fire. Ms. Tate heard Defendant say, “Now she’ll see who she’s f***ing with,” smile, and walk out the door of the club with the gun in his hand.

Defendant insists that the victim’s actions warranted a conviction for voluntary manslaughter. However, the jury was presented with Defendant’s theory, including the defense of necessity, and rejected it, as was their prerogative. The evidence was sufficient to support a conviction for second degree murder. Defendant is not entitled to relief.

Conclusion

For the foregoing reasons, the judgments of the trial court are affirmed.

TIMOTHY L. EASTER, JUDGE