FILED
10/12/2023
Clerk of the
Appellate Courts

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs October 3, 2023

STATE OF TENNESSEE v. MARKETTUS L. PATRICK

Appeal from the Circuit Court for Madison County
No. 22-49 Donald H. Allen, Judge

No. W2022-01774-CCA-R3-CD

A Madison County jury convicted the Appellant, Markettus L. Patrick, of aggravated assault by strangulation or attempted strangulation, a Class C felony, see Tenn. Code Ann. § 39-13-102(a)(1)(A)(iv), for which he received a sentence of five years to be served on supervised probation following service of 150 days in confinement. The sole issue presented for our review is whether the evidence is sufficient to support the conviction. Upon our review, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

CAMILLE R. MCMULLEN, P.J., delivered the opinion of the court, in which ROBERT H. MONTGOMERY, JR., and J. ROSS DYER, JJ., joined.

Daniel J. Taylor, Jackson, Tennessee, for the Appellant, Markettus L. Patrick.

Jonathan Skrmetti, Attorney General and Reporter; Garrett D. Ward, Assistant Attorney General; Jody S. Pickens, District Attorney General; and Matthew Floyd, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

The facts giving rise to the conviction in this case stem from the Appellant being intoxicated at a restaurant, repeatedly calling Latina Mercer, the victim, a "b---h," and then demanding that she pick up his sunglasses from the ground. When the victim refused to do so, the Appellant put both of his hands around the victim's throat and choked her.

At the Appellant's one-day August 10, 2022 trial, the following witnesses testified: Latina Mercer, Meagan Beard, Josh Jones, and the Appellant. On August 10, 2021, the

day of the offense, the victim was getting a late lunch around 4 p.m. and stopped at the Rafferty's restaurant (hereinafter the restaurant). She was later joined by Meagan Beard, her close friend and cousin. Shortly after Beard arrived, the victim left the restaurant to attend another event downtown. The victim saw the Appellant at the restaurant and he said "hi" to her before she left. The victim had known the Appellant through "friends and family" for over thirty years; however, they were not close. The victim received a phone call and returned to the restaurant from her downtown event around 6 p.m. A receipt from the restaurant showing the food items for the victim and Beard was admitted into evidence. Beard did not have alcoholic drinks that night or later in the evening while on the patio.

When the victim returned to the restaurant, the restaurant had become crowded, and the people there were giving their condolences to the victim in regard to the loss of one of her relatives. Beard and the Appellant were still at the restaurant when the victim returned. When the victim entered the restaurant, the Appellant "was cursing loudly, and he was belligerent, and he was screaming across the bar" at the victim and other people. Asked what the Appellant said, the victim said, "hey Tina Mercer, she's back, MF this and that." The victim eventually decided to leave the restaurant because there was no place to sit. However, when Beard told her she was waiting to start her next shift, the victim and Beard decided to go onto the patio of the restaurant, even though it was closed with no service.

While Beard and the victim were outside, the Appellant came outside, sat at their table, and joined their conversation. Eventually, the Appellant turned to the victim and told her that she was not paying him any attention. The Appellant received and took a phone call, but later returned to their conversation. The victim described the Appellant as animated when he was talking, and that he had a pair of sunglasses that had fallen to the ground. When the Appellant's sunglasses fell to the ground, he looked at the victim and said, "B---h, pick up my sunglasses." The victim looked at the Appellant and told him not to call her a b---h. The Appellant said, "F--- that. I know you. I can call you a b---h[,]" and called the victim a b---h again. In response, the victim did not "flinch" and told the Appellant to calm down and stop calling her names, but he again referred to her as a b---h. The victim remained seated, did not respond, and shook her head in disbelief.

After the Appellant called her a b---h a fourth time, he stood over the victim, put both hands around her throat, and compressed or squeezed her throat. When the Appellant squeezed her throat, the victim was in shock, disbelief, and afraid she was going to be injured. The victim testified that if the Appellant had continued to choke her, she would have been unable to breathe. The victim pushed the Appellant off of her, the Appellant "staggered away," but he approached her again and punched her in her chest area. In response, the victim punched the Appellant in his mouth or lip. The Appellant staggered back, saw his reflection in the glass window of the restaurant, and said, "B---h, you busted my lip." At this point, the Appellant "charged" the victim and punched her in her head and

back. The victim grabbed a Corona bottle the Appellant had brought outside and struck him in the face with it. The Appellant stopped hitting her, grabbed his belongings, and walked out.

During the altercation, the victim said that Beard was screaming for the Appellant to stop as well as banging on the restaurant door trying to get someone's attention. The victim believed the Appellant was intoxicated because of his staggering and the fact that she had never seen him behave in this manner. The victim said after the altercation she was in shock, got her belongings, and went to her car. She did not see Beard and did not know what Beard was doing at this time. Eventually, Beard and other people began to exit the restaurant, asking if she was okay, and observed blood on her shirt, which was the Appellant's. The victim drove home, took a shower to determine if she had any cuts, and called the police. The victim suffered some bruising and broken nails as a result of the incident. Photographs of her injuries, including bruising to her arms and back, were admitted into evidence. The victim said the Appellant hit her at least ten times during the physical altercation.

On cross-examination, the victim denied that the Appellant told her he was joking when he called her "B---h" and demanded that she pick up his sunglasses. She affirmed that the physical altercation occurred after the Appellant called her a b---h the fourth time. The victim agreed that she had provided testimony at a prior hearing and said that she did not have any trouble breathing when the Appellant had his hands around her throat. She explained that she did not have trouble breathing because she "pushed him off of [her] before it got any further." During the entire physical altercation, the victim hit the Appellant three times. The victim also recalled testifying previously that she did not have any injuries or photographs of her injuries, but she explained that the photographs of her injuries were taken by someone else and that she did not have any injuries compared to the Appellant.

The victim agreed that she called Josh Jones, the manager of the restaurant, on the night of the offense and provided a statement concerning the altercation. As a regular customer at the restaurant, the victim wanted to apologize for what happened. She also told the manager that "the black male was making inappropriate comments to [her] that she did not like and then finally after the verbal altercation that [she] shoved him away from her." Defense counsel stressed that the victim told the manager that she shoved the Appellant away from her after the verbal altercation. The victim explained that she did not give the manager the "one, two, three, four, five steps of everything that happened." Rather, "[She] told him that the altercation got so bad that [she] had to push him up off of [her], and it ended up getting physical." She stressed that the purpose of the phone call to the manager was to apologize, not to provide details of everything that happened that night. She said the manager did not witness the altercation because he was inside the restaurant.

Meagan Beard testified, in large part, consistently with the testimony of the victim. Beard said she met the Appellant through the victim and a mutual friend. Beard had known the Appellant for over a year prior to the offense. On the day of the offense, she had gone to the restaurant to meet the victim. She saw the Appellant seated at the bar, and he appeared "a little different, unlike [himself]." Asked to explain, Beard said the Appellant was "more talkative" than usual. Beard recalled while she and the victim and the Appellant sat outside on the patio of the restaurant, the Appellant received a text from his mom which appeared to upset him. Beard said the Appellant "dropped his glasses, and just out of the blue, he told [the victim], 'b---h, pick up my glasses.'" Beard said the victim's reaction was "calm," and that she told the Appellant "not to call her out of [her] name." Beard said the Appellant called the victim a b---h again, and the victim again told the Appellant to stop and that he had had too much to drink. Beard said the Appellant called her a b---h again, and the victim told him the same, and they appeared to be going "back and forth."

At this point, Beard started looking at her phone because the situation was "getting uncomfortable, and they just, I mean, he choked her[.]" Beard said the Appellant put both hands around the victim's throat when he choked her. When the Appellant was choking the victim, the victim reached over, grabbed a beer bottle, and hit the Appellant in the face with it. Beard said the Appellant was standing over the victim, who was seated, when he began to choke her. The Appellant walked off toward the door of the restaurant and said the victim had "busted his lip." At this point, the Appellant came back toward the victim and they began "tussling" or fighting. Beard observed the Appellant punch the victim in the head, and Beard left to find help. When Beard returned, the victim was the only one on the patio.

The victim left the restaurant and Beard stayed for a while to talk with some of the other patrons. While Beard was at the restaurant, the Appellant returned and made threats to "beat [the victim] every time he saw that b---h" because of what she had done to his eye. Beard told the Appellant to calm down and go home because she believed he was not "hisself." Beard also called the victim and told her about the Appellant's threats. Beard agreed that the first person to initiate physical contact during the altercation was the Appellant. She further agreed that the initial physical contact was the Appellant choking the victim. She clarified, however, that when the Appellant called the victim a "b---h," the victim reached over and touched him on his shoulder "but it wasn't anything, you know, physical as far as hitting him." She demonstrated for the jury how the victim touched the Appellant's shoulder.

On cross-examination, Beard agreed that before the victim left for her downtown event, Beard and the victim were sitting at the bar in the restaurant near the Appellant. They were communicating, laughing, relaxing, and making jokes. Beard also agreed that

she ordered a "Tito's and pineapple" vodka drink, but it was too strong, so she did not drink it. She did not see the victim with a drink. When the victim returned from her downtown event, initially, there was not a problem with the Appellant. She also agreed that there was not a problem with the Appellant when he joined them outside on the patio until he started calling the victim a b---h. Beard maintained that the victim did not get angry and remained calm until the Appellant started to choke her. Beard did not see the victim push the Appellant off of her. Instead, after the Appellant put his hands around the back of the victim's neck, the victim grabbed the beer bottle and hit him in the eye. Beard said the Appellant appeared to be seriously injured, and she may have told him to go to the hospital. Beard acknowledged that although the Appellant said the victim busted his lip, the Appellant was holding his eye. She agreed that the Appellant left the restaurant first, and then the victim.

Josh Jones, the senior assistant manager for the restaurant on the night of the offense, testified on behalf of the Appellant. Although Jones was working on the night of the offense, he did not observe the altercation. Jones said he received a phone call from the victim, a regular customer at the restaurant, later that night. During the phone call, the victim told Jones the following:

> [S]he had been on the deck with [Beard] and [the Appellant] had followed them out there, and they got into it kinda, and she had to shove him off of her, and then he started trying to choke her, and she hit him with a beer bottle and that she was apologizing for it after the fact.

Jones agreed that he provided a statement to law enforcement a month or two prior to trial. In his statement, he said the victim told him that after the verbal altercation, she shoved the Appellant away from her. The victim told him the Appellant then almost threw her to the ground. She then hit him with a beer bottle. On cross-examination, Jones agreed that at the time of the victim's call, it was late at night, and he was preoccupied with doing closing paperwork and counting money for the restaurant. He agreed that he probably did not give the victim his full attention. On the night of the offense, Jones had minimal interaction with the Appellant but observed that he was "a little rowdy" and "a little aggressive."

The Appellant, age forty-nine, testified that he had known the victim for "a number of years," characterized their relationship as "great," and considered the victim a "friend." He said the victim had previously "invited him to her house, [he would] stay all night, wake up, cook shrimp and grits, [and they] just had a great relationship." The Appellant also described the night of the offense, a Tuesday, as the night that a group of friends, including the victim and Beard, would regularly meet at the restaurant to socialize. The Appellant said the group had been doing so for at least six months prior to the instant offense. He

arrived at the restaurant around 5 or 5:15 p.m., sat between the victim and Beard at the bar, and talked with them and had drinks until the victim left for her downtown event. He stayed at the bar with Beard and, over the course of the night, he had three or four beers and a mixed alcoholic drink.

When the victim returned to the restaurant, "she returned right back where [the Appellant] and [Beard]" were seated at the bar. They were "cutting up" and became loud, so "we made the suggestion to go out on the patio because it was open, and it was a nice day." The Appellant said he made the decision along with the victim and Beard. He agreed that when he first saw the victim, he "called her out by name" because they were friends, and he did not see anything wrong with it. He denied there was anything ill-willed or angry by saying the victim's name.

The Appellant did not exit the restaurant to go onto the patio at the same time as the victim and Beard because he had to go to the restroom. He took a Modelo Mexican beer and a mixed drink with him onto the patio. Once outside on the patio, the Appellant joined the victim and Beard at a table. The Appellant said they were conversing with each other, and "[he] regret[ed] . . . calling [the victim] the 'B word.' . . . [He] was dead wrong calling her that, but [he] thought [he] had the type of relationship where [he] could say that, and [he] said it in a joking way."

The Appellant explained that he said, "B---h, pick up my glasses." When the victim told him not to call her that, the Appellant said, "B---h, you know I'm just playing." Once the Appellant said this, "BAM!" and the victim hit him with a beer bottle. The Appellant tried to move away from the victim, but she was "steady trying to strike [him]." The Appellant eventually left because he was bleeding so badly. He did not go to the hospital or call the police. He denied choking the victim or putting his hands on her in any way. As a result of his injury, the Appellant had three "busted" eye vessels.

Photographs of the Appellant's injuries were admitted into evidence. He said the victim hit him with the beer bottle three or four times. From the Appellant's perspective, he was sitting there drinking a beer and the victim accidently "knocked [his] shades off[.]" He had a "good pair" of Ray Ban brand sunglasses, and he believed he could joke with the victim about picking them up. He honestly believed they were joking with each other during the entire incident until the victim hit him with the beer bottle. The Appellant left the restaurant after he was hit.

On cross-examination, the Appellant denied that he was intoxicated on the night of the offense. Based on the type of relationship he had with the victim, the Appellant had called the victim a b---h in the past and she had called him the same in a joking manner. On redirect examination, the Appellant said he texted the victim on the night of the offense

and said, "'If you're wrong or I'm wrong, I'm truly sorry.' . . . I knew I was dead wrong by calling her a b---h, but I knew she was just as wrong by hitting me."

Based on the above proof, the jury convicted the Appellant as charged and he received a sentence of five years to be served on supervised probation following service of 150 days in confinement. Following an unsuccessful motion for new trial, the Appellant filed a timely notice of appeal. This case is now properly before this court for review.

ANALYSIS

The Appellant contends that the evidence is insufficient to sustain his conviction of aggravated assault due to inconsistencies between the testimony of the victim, Beard, Jones, and the Appellant. The State responds that the proof presented at trial established that the Appellant's attempt to choke the victim placed her in fear of bodily injury and that the jury resolved any inconsistencies in the testimony and accredited the testimony of the State's witnesses in this case. We agree with the State.

We review the Appellant's challenge to the sufficiency of the evidence based upon the following well established legal framework. "Because a verdict of guilt removes the presumption of innocence and raises a presumption of guilt, the criminal defendant bears the burden on appeal of showing that the evidence was legally insufficient to sustain a guilty verdict." State v. Hanson, 279 S.W.3d 265, 275 (Tenn. 2009) (citing State v. Evans, 838 S.W.2d 185, 191 (Tenn. 1992)). "Appellate courts evaluating the sufficiency of the convicting evidence must determine 'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" State v. Wagner, 382 S.W.3d 289, 297 (Tenn. 2012) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)); see Tenn. R. App. P. 13(e). When this Court evaluates the sufficiency of the evidence on appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable inferences that may be drawn from that evidence. State v. Davis, 354 S.W.3d 718, 729 (Tenn. 2011) (citing State v. Majors, 318 S.W.3d 850, 857 (Tenn. 2010)).

Guilt may be found beyond a reasonable doubt where there is direct evidence, circumstantial evidence, or a combination of the two. State v. Sutton, 166 S.W.3d 686, 691 (Tenn. 2005); State v. Hall, 976 S.W.2d 121, 140 (Tenn. 1998). The standard of review for sufficiency of the evidence "'is the same whether the conviction is based upon direct or circumstantial evidence.'" State v. Dorantes, 331 S.W.3d 370, 379 (Tenn. 2011) (quoting Hanson, 279 S.W.3d at 275. The jury as the trier of fact must evaluate the credibility of the witnesses, determine the weight given to witnesses' testimony, and reconcile all conflicts in the evidence. State v. Campbell, 245 S.W.3d 331, 335 (Tenn. 2008) (citing Byrge v. State, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978)). Moreover,

the jury determines the weight to be given to circumstantial evidence, and the inferences to be drawn from this evidence, and the extent to which the circumstances are consistent with guilt and inconsistent with innocence, are questions primarily for the jury. Dorantes, 331 S.W.3d at 379 (citing State v. Rice, 184 S.W.3d 646, 662 (Tenn. 2006)). When considering the sufficiency of the evidence, this court "neither re-weighs the evidence nor substitutes its inferences for those drawn by the jury." Wagner, 382 S.W.3d at 297 (citing State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997)).

The jury convicted the Appellant of aggravated assault by strangulation, a Class C felony. As charged in this case, aggravated assault occurs when a person intentionally or knowingly commits an assault, and the assault involved strangulation or attempted strangulation. Tenn. Code Ann. § 39-13-102(a)(1)(A)(iv). Assault occurs when a person "[i]ntentionally or knowingly causes another to reasonably fear imminent bodily injury." Id. § 39-13-101(a)(2). Strangulation occurs by "intentionally or knowingly impeding normal breathing or circulation of the blood by applying pressure to the throat or neck or by blocking the nose and mouth of another person." Id. § 39-13-102(a)(2).

Although the Appellant frames this issue as a challenge to the sufficiency of the evidence, he does not argue that the State failed to satisfy any of the elements of aggravated assault by strangulation or attempted strangulation. Instead, the entirety of the Appellant's argument rests on inconsistencies between the testimony of the State's witnesses and the Appellant. The Appellant's brief does not identify any particular inconsistencies but directs this court to the differences in the witnesses' testimony in his statement of facts. The Appellant has run perilously close to waiver of this issue, as this court does not mine the record or the statement of facts "to research or construct a litigant's case or arguments for him or her, and where a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived." Sneed v. Bd. of Prof'l Responsibility, 301 S.W.3d 603, 615 (Tenn. 2010). In any case, it has long been settled that "[a] guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State." State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973). Moreover, this court is not arbiter of the credibility of witnesses or the weight to be given to their testimony. Campbell, 245 S.W.3d at 335.

We have consistently held that, even "numerous inconsistencies" in testimony do not serve to undermine a jury's verdict on appeal. State v. Watkins, No. M2017-01600-CCA-R3-CD, 2019 WL 1370970, at *23 (Tenn. Crim. App. Mar. 26, 2019) (citing State v. Brewer, III, No. W2014-01347-CCA-R3-CD, 2015 WL 4060103, at *5 (Tenn. Crim. App. June 1, 2015), no perm. app. filed; State v. Smith, No. E2007-00084-CCA-R3-CD, 2009 WL 230696 (Tenn. Crim. App. Feb. 2, 2009), perm. app. denied (Tenn. Aug. 17, 2009); see State v. Radley, 29 S.W.3d 532, 537 (Tenn. Crim. App. 1999) ("[A]lthough

inconsistencies or inaccuracies may make the witness a less credible witness, the jury's verdict will not be disturbed unless the inaccuracies or inconsistencies are so improbable or unsatisfactory as to create a reasonable doubt of the appellant's guilt.")). Based on the evidence adduced at trial, a rational jury could find that the Appellant committed the offense of aggravated assault by strangulation or attempted strangulation beyond a reasonable doubt. Accordingly, the Appellant is not entitled to relief.

CONCLUSION

Based on the above reasoning and authority, the judgment of the trial court is affirmed.

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CAMILLE R. MCMULLEN, PRESIDING JUDGE