

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

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Clerk of the
Appellate Courts

STATE OF TENNESSEE v. DESHAUN TATE

Appeal from the Criminal Court for Shelby County
No. 19-03579 James Jones, Jr., Judge

No. W2022-01671-CCA-R3-CD

A Shelby County jury convicted Defendant, Deshaun “Bushwick” Tate, of first degree premeditated murder. On appeal, Defendant argues that the trial court erred in denying his motion for judgment of acquittal, his motion for new trial, and his motion to suppress witness identification. After review, we affirm the judgment of the trial court.

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

TIMOTHY L. EASTER, J., delivered the opinion of the court, in which JOHN W. CAMPBELL, SR., and MATTHEW J. WILSON, JJ., joined.

Dewun R. Settle, Memphis, Tennessee, for the appellant, Deshaun Tate.

Jonathan Skrmetti, Attorney General and Reporter; Caroline Weldon, Assistant Attorney General; Steven J. Mulroy, District Attorney General; and Forrest Edwards, Chris Lareau, and Regan Murphy, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Evidence at Trial

Lacey Odom (the victim) and Defendant were cousins and friends whose families were close. Their relationship eventually deteriorated. In the early morning hours of April 27, 2019, Tommy Smith, the victim’s brother, was at Ralph’s Bar and Grill (“Ralph’s”) in Memphis. The victim came to Ralph’s after Mr. Smith had been there around three hours. Coincidentally, Defendant was at Ralph’s that evening celebrating his birthday. Though he knew Defendant was there celebrating, Mr. Smith chose not to join the festivities—he

spent his time that evening on the dance floor. Mr. Smith saw Defendant at some point at Ralph's and noted that Defendant was wearing a white shirt with "a rabbit or . . . some type of animal" on it.

At one point, Mr. Smith and the victim ventured outside. There they saw Defendant, who looked as if he was heading back into the club. Much to Mr. Smith's surprise, Defendant pulled out a gun and began shooting at the victim. Mr. Smith testified at trial that he had not seen the victim in any arguments that evening and that he did not see the victim with a gun that evening. Later police investigation revealed a handgun in the driver's door of the victim's vehicle that was fully loaded.

The victim began running toward his vehicle. Mr. Smith knew the victim had been shot because he saw the victim pause and his hat fly off as he was running. Defendant continued to shoot at the victim while the victim got into his vehicle and attempted to drive away. Defendant approached the victim's vehicle after the victim had gotten into the vehicle. Defendant shot at the victim several times through the driver's window. At no point did the victim pull out a weapon of his own. Mr. Smith testified at trial that he heard at least ten gunshots. After the shooting, Mr. Smith ran back into Ralph's to tell his other cousins what had happened. Someone other than Mr. Smith called 911.

Two surveillance videos that captured the shooting from different vantage points were admitted as a collective exhibit at trial. Mr. Smith identified himself, the victim, and Defendant in the videos. The videos reflect the events as testified to at trial by Mr. Smith.

Shortly thereafter, Memphis Police Department ("MPD") Officer Farrell Brassell was dispatched to a location near Ralph's where a vehicle had struck a utility pole. Upon arriving, Officer Brassell noticed bullet holes in the vehicle and spent shell casings around the vehicle. He saw the victim "slumped over" in the driver's seat. At that point, he realized that this was not a car accident and began to set up a crime scene. He taped off the area to preserve evidence.

MPD Sergeant Jerome Bussey, who was in the crime scene unit, came to the scene to document evidence. He took several photographs of the scene, of the victim's vehicle, and of the spent shell casings he found. Sergeant Bussey recovered ten spent shell casings from the scene. Sergeant Bussey testified at trial that there were five bullet holes in the victim's vehicle.

Mr. Smith spoke with police officers at Ralph's that evening about what had happened. He told the officers that he did not see the shooter's face, but that the shooter wore a white shirt and used a "big," "black" handgun. Mr. Smith admitted on direct examination that his initial statement was untruthful. When asked why he fabricated his

initial statement, Mr. Smith said, “[b]ecause [Defendant is] [] family -- he’s my cousin and I was really shocked that he actually did it and I didn’t know if I wanted to get the police involved or go looking for him myself.” He told the officers that the shooter’s name was “Bushwick.” Mr. Smith was also shown a photo lineup at that time but did not identify anyone in the lineup as the person who shot the victim. Mr. Smith said at trial that he did this for the same reason he told police officers he could not see the shooter’s face, which was because he wanted to try and handle the matter himself.

Dr. Marco Ross, a Memphis medical examiner, performed an autopsy on the victim. Dr. Ross noted four gunshot wounds on the victim’s body: one in the victim’s upper left chest, one in the victim’s abdomen, one in the victim’s upper left arm, and one in the victim’s upper right arm. Dr. Ross testified at trial that the victim was shot “at least three times,” and possibly a fourth. Dr. Ross testified that it was possible that one of the bullets passed through the victim’s body and reentered into his arm. The bullet wounds were primarily on the victim’s left side. Photographs of the victim’s wounds taken during the autopsy were admitted as an exhibit at trial.

Mr. Smith spoke with the police officers again in November 2019. Since April, Mr. Smith had a change of heart and told the officers this time that Defendant shot the victim. Mr. Smith was shown a photo lineup and identified Defendant’s photograph as the person who shot the victim. Mr. Smith was unequivocal at trial that he saw Defendant shoot the victim.

Cathy Odom, the victim’s mother, testified at trial. Ms. Odom testified that she had known Defendant for fifteen or twenty years and that he went by the nickname “Bushwick.” Ms. Odom testified that Defendant and the victim used to be friends, but that Defendant had not been around in a long time. Ms. Odom positively identified Defendant in the courtroom at trial. When shown a still photo from the surveillance video at Ralph’s from the date of the shooting, Ms. Odom positively identified Defendant as the person in the photograph. Less than two days after the victim was killed, Ms. Odom also viewed a photo lineup and positively identified Defendant.

After the State concluded its case-in-chief, Defendant moved for judgment of acquittal, arguing that the State had not put on sufficient proof to establish Defendant’s identity as the shooter. Defendant described Mr. Smith’s credibility as “strained.” The trial court denied Defendant’s motion.

Defendant chose not to testify or present any proof at trial.

The jury convicted Defendant of first degree premeditated murder and employing a firearm during the commission of a dangerous felony as charged in the indictment. The trial court dismissed the firearm conviction and sentenced Defendant to life in prison.

Defendant filed a motion for new trial in which he argued that the State's witnesses, specifically Mr. Smith, were not credible, and the evidence was thus legally insufficient to support Defendant's conviction. The trial court denied Defendant's motion. Defendant appeals.

Analysis

Sufficiency of the Evidence

Defendant argues that the trial court erred in denying his motion for judgment of acquittal and motion for new trial because Mr. Smith was not a credible witness. "The standard by which the trial court determines a motion for judgment of acquittal at the end of all the proof is, in essence, the same standard which applies on appeal in determining the sufficiency of the evidence after a conviction." *State v. Thompson*, 88 S.W.3d 611, 614-15 (Tenn. Crim. App. 2000). As such, we group these issues together to consider Defendant's argument that the evidence was insufficient to support his conviction because Mr. Smith was not a credible witness. The State counters that the evidence was sufficient to support Defendant's conviction. We agree with the State.

Several well-settled principles guide our analysis. We 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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original); *see also* Tenn. R. App. P. 13(e). A guilty verdict removes the presumption of innocence and replaces it with a presumption of guilt. *State v. Evans*, 838 S.W.2d 185, 191 (Tenn. 1992). The defendant bears the burden on appeal to demonstrate that the evidence is insufficient to support his conviction. *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). The State is entitled on appeal to "the strongest legitimate view of the evidence and to all reasonable and legitimate inferences that may be drawn therefrom." *State v. Elkins*, 102 S.W.3d 578, 581 (Tenn. 2003). As such, this Court is precluded from re-weighing or reconsidering the evidence when evaluating the convicting proof. *State v. Morgan*, 929 S.W.2d 380, 383 (Tenn. Crim. App. 1996); *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Moreover, we may not substitute our own "inferences for those drawn by the trier of fact from circumstantial evidence." *Matthews*, 805 S.W.2d at 79. Questions as to the credibility of witnesses and the weight of the evidence, as well as factual issues raised by such evidence, are resolved by the trier of fact, not this Court. *State v. Pruett*, 788 S.W.2d 559, 561 (Tenn. 1990). These principles guide us "whether the conviction is based upon direct or

circumstantial evidence.” *State v. Dorantes*, 331 S.W.3d 373, 379 (Tenn. 2011) (quoting *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009)).

Defendant was charged with first degree murder, which is in relevant part “[a] premeditated and intentional killing of another.” T.C.A. § 39-13-202(a)(1). Tennessee Code Annotated section 39-13-202(d) (2019) defines premeditation as:

an act done after the exercise of reflection and judgment. “Premeditation” means that the intent to kill must have been formed prior to the act itself. It is not necessary that the purpose to kill preexist in the mind of the accused for any definite period of time. The mental state of the accused at the time the accused allegedly decided to kill must be carefully considered in order to determine whether the accused was sufficiently free from excitement and passion as to be capable of premeditation.

The State must prove premeditation beyond a reasonable doubt. *See State v. Sims*, 45 S.W.3d 1, 7 (Tenn. 2001); *State v. Hall*, 8 S.W.3d 593, 599 (Tenn. 1999). Premeditation may be proved by circumstantial evidence. *See, e.g., State v. Brown*, 836 S.W.2d 530, 541-42 (Tenn. 1992), *overruled on other grounds by State v. Reynolds*, 635 S.W.3d 893, 917 (Tenn. 2021). The existence of premeditation is a question of fact for the jury and may be inferred from circumstances surrounding the killing. *State v. Young*, 196 S.W.3d 85, 108 (Tenn. 2006); *State v. Suttles*, 30 S.W.3d 252, 261 (Tenn. 2000). Such circumstances may include the use of a deadly weapon on an unarmed victim, the particular cruelty of the killing, the infliction of multiple wounds, threats or declarations of an intent to kill, a lack of provocation by the victim, failure to aid or assist the victim, the procurement of a weapon, preparations before the killing for concealment of the crime, destruction and secretion of evidence of the killing, and calmness immediately after the killing. *State v. Kiser*, 284 S.W.3d 227, 268 (Tenn. 2009); *State v. Leach*, 148 S.W.3d 42, 53-54 (Tenn. 2004); *State v. Davidson*, 121 S.W.3d 600, 615 (Tenn. 2003); *State v. Bland*, 958 S.W.2d 651, 660 (Tenn. 1997); *State v. Larkin*, 443 S.W.3d 751, 815-16 (Tenn. Crim. App. 2013).

The evidence here, viewed in a light most favorable to the State, shows that Defendant chased after the victim as the victim exited Ralph’s Bar and Grill, shooting as he went. When the victim got into his vehicle and attempted to drive away, Defendant shot at the victim several more times through the driver’s window. The victim finally managed to drive away, but crashed into a utility pole. The victim was dead by the time first responders arrived at the scene. The victim was shot at least three times in his left side, and the victim’s vehicle was shot several times. The victim never drew any weapon of his own. Video surveillance footage from Ralph’s confirms all of this, and Defendant was identified by an eyewitness, Mr. Smith, at trial as the person who shot the victim. A fully-loaded handgun was recovered from the victim’s vehicle, which indicates that the victim

never returned fire. We comfortably conclude that the evidence presented at trial was sufficient to support Defendant's conviction for first degree premeditated murder.

Defendant complains primarily of Mr. Smith's testimony, arguing that "the jury should have viewed [Mr. Smith] as a witness that lacked credibility." The jury was made aware of both of Mr. Smith's accounts and was free to accept or reject all or part of Mr. Smith's testimony. We decline Defendant's invitation to reweigh Mr. Smith's credibility. *See Pruett*, 788 S.W.2d at 561. Defendant is not entitled to relief on this issue.

Denial of Motion to Suppress Identifications

Defendant also argues that the trial court erred in denying his motion to suppress witness identification. The State argues that the trial court properly denied the motion. We agree with the State.

Before trial, Defendant, through counsel, filed a motion to suppress in which he requested that the trial court suppress "all evidence directly or indirectly related to identifying [Defendant] as the culprit in this case." At the hearing on the motion, Samantha Tate, Defendant's sister, testified that at a prior court status date she overheard Ms. Odom say to a female prosecutor that the defendant in the courtroom was not Defendant and that "[they had] the wrong person." According to Ms. Tate, the female prosecutor told Ms. Odom that the defendant in the courtroom was Defendant and that he had altered his appearance while in pretrial detention.

The following exchange occurred on cross-examination:

[Prosecutor]: Ma'am, just so I'm clear, is your brother, Deshaun Tate, in the courtroom here today?

[Ms. Tate]: No, sir.

The Court: [Deputy], read that gentleman's wristband right there.

The Deputy: His name is Deshaun Tate.

The Court: Well, that's what the wristband says. You're saying that's -- that's not your brother?

[Ms. Tate]: Oh, I didn't see him. I'm sorry. I didn't see him. I am so sorry. I looked right over this man.

The trial court instructed Ms. Tate to step down from the witness stand. After argument, the trial court denied Defendant's motion. The trial court noted that only a male prosecutor had worked on Defendant's case up to that point. The trial court concluded that the "nebulous" evidence that Defendant had proffered was insufficient to justify granting Defendant's motion.

As to motions to suppress, "[q]uestions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996). We afford the prevailing party the "strongest legitimate view of the evidence and all reasonable and legitimate inferences that may be drawn from that evidence." *State v. Martin*, 505 S.W.3d 492, 500 (Tenn. 2016) (quoting *State v. Keith*, 978 S.W.2d 861, 864 (Tenn. 1998)). We are bound by the trial court's findings of fact in a suppression hearing unless the evidence preponderates against them. *Id.* (citing *Keith*, 978 S.W.2d at 864). We review the trial court's application of the facts to the law de novo with no presumption of correctness. *Id.* (citations omitted).

Due process principles mandate that "a witness's pretrial identification of the defendant by photograph will be suppressed 'only if the photographic identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification.'" *Id.* (quoting *Simmons v. United States*, 390 U.S. 377, 384 (1968)). A witness's in-court identification is not admissible if the identification is tainted by an unconstitutional pretrial identification. *State v. Cannon*, 642 S.W.3d 401, 477 (Tenn. Crim. App. 2021) (citations omitted).

Ms. Tate's testimony was the only evidence presented at the suppression hearing. Defendant describes her testimony as "unrebutted" because no other witnesses testified, and he argues that the trial court necessarily abused its discretion because it was bound to accept Ms. Tate's testimony as true. Defendant claims that "Ms. Odom would not have been able to identify [Defendant] at trial but for the conversation she had with the State prosecutor."

Defendant overlooks a couple of key points. First, the trial court is the finder of fact at suppression hearings and thus weighs witness credibility. *See Odom*, 928 S.W.2d at 23. Second, Ms. Odom had already identified Defendant in a photo lineup that occurred almost immediately after the victim was killed, over three years before the suppression hearing took place. The trial court, which was free to evaluate Ms. Tate's credibility, charitably described her testimony as "nebulous" and found that Defendant had not carried his burden of showing that any identifications of Defendant should be suppressed. The trial court also noted that only a male prosecutor had worked on Defendant's case up to the time of the suppression hearing.

Defendant failed to show that the photo lineups were impermissibly suggestive. We conclude that the trial court did not abuse its discretion in denying Defendant's motion. Defendant's arguments to the contrary are unavailing. Defendant is not entitled to relief on this issue.

CONCLUSION

The evidence presented at trial was sufficient to support Defendant's conviction for first degree premeditated murder. The trial court properly denied Defendant's motion to suppress witness identifications. We accordingly affirm the judgments of the trial court.

TIMOTHY L. EASTER, JUDGE