

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON  
September 6, 2017 Session

<b>FILED</b> 07/31/2018 Clerk of the Appellate Courts
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**STATE OF TENNESSEE v. ANGELA DENISE BREWER**

**Appeal from the Circuit Court for Tipton County  
No. 8065 Joe H. Walker, III, Judge**

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**No. W2017-00124-CCA-R3-CD**

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Defendant, Angela Denise Brewer, appeals her jury conviction for premeditated first degree murder, for which she was sentenced to life imprisonment. Defendant contends that the evidence was insufficient to support her conviction, specifically challenging the evidence establishing premeditation and that she acted “intentionally.” Having reviewed the entire record and the briefs of the parties, we affirm the judgment of the trial court.

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

THOMAS T. WOODALL, J., delivered the opinion of the court, in which NORMA MCGEE OGLE and J. ROSS DYER, JJ., joined.

Bo G. Burk, District Public Defender; David A. Stowers and Melissa Downing, Assistant Public Defenders, Covington, Tennessee, for the appellant, Angela Denise Brewer.

Herbert H. Slatery III, Attorney General and Reporter; Jeffrey D. Zentner, Assistant Attorney General; D. Michael Dunavant, District Attorney General; James Walter Freeland, Jr., Jason R. Poyner, and Sean G. Hord, Assistant District Attorneys General, for the appellee, State of Tennessee.

**OPINION**

***Facts***

On December 8, 2013, at approximately 5:54 a.m., Defendant called Tipton County 911 and stated that she thought she had accidentally shot her husband. Deputy Chad McCommon, of the Tipton County Sheriff’s Office, was among the officers dispatched to Defendant’s residence. Deputy McCommon testified that Defendant and her children were present at the home when he arrived. Deputy McCommon found the

victim, Stan Brewer, deceased in bed. Mr. Brewer appeared to have a gunshot wound to the back of his head. Deputy McCommon found a .410 shotgun on the pillow beside the victim's head. Deputy McCommon testified that when he arrived at the scene at approximately 6:10 a.m., the victim's face and hands were "a bluish-purplish color."

Deputy McCommon testified that Defendant stated that she had shot the shotgun in the past and that she had had problems unloading it. Deputy McCommon overheard Defendant tell her daughter that it was an accident and that she was sorry. Deputy McCommon described Defendant as "very sporadic . . . [n]ervous, upset, crying. Then she would calm down for a while, and it just – and it would repeat the whole time that we were [at the scene]."

Deputy Randy Lee also responded to the scene. He also testified that the victim's "skin tone was gray, kind of [a] slight bluish color." The victim's hand "seemed stiff," like rigor mortis had apparently set in. Lieutenant Daniel Walls, who also responded to the scene, also testified that the victim appeared to have rigor mortis in his hand. Lieutenant Walls also testified that he smelled what he described "from [his] experience, [as] death."

Lieutenant Walls testified that a .410 single-barrel shotgun was lying on the bed beside the victim's head. The shotgun had a lever that released the barrel to load a shell. After it was loaded, the barrel had to be locked into place, the hammer cocked, and the trigger pulled to fire it. In order to unload the shotgun while the hammer was thusly pulled back, one would have to hold the trigger while releasing the hammer to then open the barrel and pull out the shell.

Karen Chancellor, the Chief Medical Examiner for Shelby County, performed an autopsy on the victim. Dr. Chancellor testified that the victim died of a shotgun wound to the back of his head. She observed sooting inside the wound, which indicates "that the end of the barrel of the gun was next to the skin when the gun was fired." Dr. Chancellor testified as follows:

If you have the end of the barrel of the gun *held tightly* against the skin, when it's fired sooty residues are released as well as the projectiles, either a bullet, or a shotgun wound, pellets. Those sooty residues, if they are deposited inside the wound, that tells us that it's a contact wound.

As the barrel moves away from the skin, there may be sooty residues on the outer parts of the wound, and there may be what we call powder stippling. That's when flakes of powder impact the skin and

cause tiny abrasions. So that's at a further distance than a contact wound. There's no evidence of powder stippling here.

(emphasis added).

Dr. Chancellor also observed "wadding" in the victim's brain, which "confirms that this is a very close-range wound." Dr. Chancellor determined that the manner of the victim's death was homicide.

The victim's brother, Albert Thomas Brewer, testified that he had been hunting with the victim on the afternoon before the victim's death. Mr. Brewer testified that he and the victim hunted regularly and that Defendant had hunted with them on one occasion. He testified that Defendant had taken a hunter safety course with the victim. He testified that he had seen Defendant shoot the .410 shotgun before. He testified that Defendant had "target practiced a lot" with the shotgun.

Special Agent Mark Reynolds, of the Tennessee Bureau of Investigation ("TBI"), interviewed Defendant. Defendant stated that she woke up at approximately 5:30 a.m. and heard a "noise [that] sounded like something falling or like a crash." She stated that the noise scared her. She took the .410 shotgun out of a gun cabinet in her bedroom. She stated that it was "the gun that [she was] familiar with" and that the victim had "show[n] [her] how to shoot it several times." She went to the kitchen to get a shotgun shell and loaded the shotgun. She looked outside and did not find anything. She returned to the bedroom and laid the shotgun on the pillow. She attempted to wake the victim to ask him for help, and she heard a "pop or boom." She turned on the bedroom light and saw blood. She then called 911. Defendant stated that she was not holding the shotgun when it fired. She stated,

I had laid it on my pillow but kept my hand on it because I noticed it pointing at [the victim]'s head. I moved the gun because I remembered the safety of never point a gun at anything you don't intend to shoot. I did not think it was pointing at his head, and I don't know how it went off.

Special Agent Reynolds testified that the shotgun is "very simple" to operate. He testified that Defendant was upset during his interview with her, and she maintained that the shooting was an accident.

A forensic examination of the shotgun by the TBI revealed that there were no defects with the shotgun and that it operated as intended by the manufacturer. Special Agent Eric Warren, of the TBI, tested the shotgun for accidental discharge, including

dropping the firearm and hitting it with a mallet while the hammer was cocked, and “in no circumstance did [he] get the firearm to discharge.” Special Agent Warren testified, “[t]he only way that I was able to get the hammer to fall that would result in a discharge would be by pulling the trigger.” Special Agent Warren also examined the pillowcase that the victim’s head was lying on. He testified that the soot pattern on the pillowcase was consistent with the medical examiner’s finding that the shotgun wound was a contact wound.

Four witnesses testified for the defense. Leah Cochran attended church with Defendant and babysat Defendant’s children. Ms. Cochran testified that Defendant “seemed like a very good mother” and that she had a reputation for honesty.

Sarah Harmon, a long-time family friend, had lived with Defendant’s family in 2013. She testified that Defendant “loved her family very much” and that Defendant and the victim had a “loving” family. Ms. Harmon found the allegation that Defendant intentionally shot her husband to be “shocking.”

Bill Waits, another friend from church, described Defendant as “[s]weet, kind gentle, [and a] good mother.” He believed the allegation was out of character for Defendant.

Sherry Hudson had been a professor at Dyersburg State Community College and taught a class with Defendant in 2010. Ms. Hudson was a mentor to Defendant. She testified that Defendant was a conscientious student and “was very dedicated to her family.” Ms. Hudson “always found [Defendant] to be very honest and trustworthy, very forthcoming.”

### ***Analysis***

The sole issue on appeal is whether the evidence is sufficient to sustain Defendant’s conviction for premeditated first degree murder. Defendant argues that there is insufficient evidence to sustain her conviction because the State failed to establish that she acted with premeditation, and that she acted intentionally. The State responds that the evidence presented was sufficient to sustain Defendant’s conviction. We agree with the State.

“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, the inferences to be drawn from this evidence, and the extent to which the circumstances are consistent with guilt and inconsistent with innocence. *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)).

First degree murder is defined as “[a] premeditated and intentional killing of another.” T.C.A. § 39-13-202(a)(1). A person acts intentionally “when it is the person’s conscious objective or desire to engage in the conduct or cause the result.” T.C.A. § 39-11-302(a).

“[P]remeditation” is 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 pre-exist in the mind of the accused for any definite period of time.

T.C.A. § 39-13-202(d).

The element of premeditation is a factual question to be decided by a jury from all the circumstances surrounding the killing. *State v. Davidson*, 121 S.W.3d 600, 614 (Tenn. 2003). Although a jury may not engage in speculation, it may infer premeditation

from the manner and circumstances of the killing. *Bland*, 958 S.W.2d at 660. Our supreme court has held that factors demonstrating the existence of premeditation include, but are not limited to, the following: the declaration of the intent to kill, the procurement of a weapon, the use of a deadly weapon upon an unarmed victim, the fact that the killing was particularly cruel, the infliction of multiple wounds, the making of preparations before the killing for the purpose of concealing the crime, the destruction or secretion of evidence, and calmness immediately after the killing. *State v. Jackson*, 173 S.W.3d 401, 409 (Tenn. 2005); *State v. Nichols*, 24 S.W.3d 297, 302 (Tenn. 2000). Additional factors cited by this court from which a jury may infer premeditation include lack of provocation by the victim and the defendant's failure to render aid to the victim. See *State v. Lewis*, 36 S.W.3d 88, 96 (Tenn. Crim. App. 2000). Further, "[e]stablishment of a motive for the killing is a factor from which the jury may infer premeditation." *State v. Leach*, 148 S.W.3d 42, 54 (Tenn. 2004) (citing *State v. Nesbit*, 978 S.W.2d 872, 898 (Tenn. 1998)).

We conclude that the evidence viewed in the light most favorable to the State proves that the killing was intentional. The medical examiner determined that the victim suffered a fatal shotgun wound to the back of his head. She testified that it was a contact wound, as evident by the sooting inside the wound, the absence of stippling around the wound, and the presence of wadding in the victim's brain. TBI analysis of the victim's pillowcase confirmed that the shotgun wound was inflicted at a close range. In her statement to police, Defendant stated that the shotgun accidentally discharged. TBI Special Agent Warren examined the shotgun and found that it only fired as designed. He performed a variety of tests and was unable to make the shotgun fire without cocking the hammer and pulling the trigger. The State also presented proof that Defendant was familiar with firearm safety, having completed a hunter safety course. The jury could reasonably have inferred from the circumstantial evidence that the killing was intentional. The evidence is also sufficient to establish premeditation. Defendant used a deadly weapon on an unarmed, sleeping victim. The victim died from a contact shotgun wound to the back of his head. The jury was free to conclude from the evidence that Defendant, while the victim was asleep, retrieved the shotgun from the gun cabinet, took the shotgun to the kitchen to obtain a shell, loaded the shotgun, and then returned to the bedroom; after all this preparation, she pulled back the hammer, placed the barrel against the victim's head, and pulled the trigger. The jury could reasonably infer that she promptly called 911 and claimed that she believed she had "accidentally" shot her husband. From this, the trier of fact could reasonably conclude that prior to killing her husband, she came up with a plan to cover up the crime she planned to commit by quickly asserting that it was an accident. Proof of premeditation and that Defendant intentionally killed the victim is overwhelming. Defendant is not entitled to relief.

CONCLUSION

The judgment of the trial court is affirmed.

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THOMAS T. WOODALL, JUDGE