

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs July 8, 2020

FILED

09/17/2020

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. DJUAN MANNING

Appeal from the Circuit Court for Madison County
No. 19-83 Roy B. Morgan, Jr., Judge

No. W2019-01625-CCA-R3-CD

The Defendant, Djuan Manning, was convicted of aggravated assault and tampering with evidence for his involvement with a shooting, and he received an effective four-year sentence. On appeal, he challenges the sufficiency of the evidence, asserting that the State did not negate his theory of self-defense and that the State did not establish that he destroyed or concealed the weapon. The Defendant also maintains that the State failed to provide him adequate notice of the charges. After a thorough review of the record, we discern no error, and we affirm the trial court's judgments.

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

JOHN EVERETT WILLIAMS, P.J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and J. ROSS DYER, JJ., joined.

William J. Milam, Jackson, Tennessee, for the appellant, Djuan Manning.

Herbert H. Slatery III, Attorney General and Reporter; T. Austin Watkins, Assistant Attorney General; Jody Pickens, District Attorney General; and Lee R. Sparks, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTUAL AND PROCEDURAL HISTORY

The Defendant and co-defendant, Mr. Torijon Coplin, were indicted for aggravated assault and tampering with evidence after exchanging gunfire with the victim, Mr. Joshua Anderson, who had been romantically involved with Mr. Coplin's girlfriend. The Defendant moved the victim's vehicle after the shooting, and neither the Defendant's

nor co-defendant's guns were recovered. The parties disputed whether the gunfire was initiated by the victim or by the Defendant and co-defendant. The Defendant and co-defendant also objected when the prosecutor specified after the close of the State's proof that the State would be relying on the missing guns rather than the moved vehicle for the tampering with evidence charge.

The State's evidence included the victim's 911 call placed when the victim realized he was being followed, footage from a security camera capturing the shooting, the damaged vehicles, and testimony from various witnesses. The victim recounted that there was animosity between him and the co-defendant because they had both been romantically involved with the co-defendant's girlfriend. The two had a "fight" at their workplace approximately four months prior to the shooting, and the co-defendant had made numerous threats against the victim. The victim stated he went to school with the Defendant.

The victim testified he drove past the Defendant and co-defendant, whose vehicle was traveling the same direction as the victim's vehicle but in a turn lane. The Defendant was in the passenger's seat, and he stuck his head out of the window as the victim passed. The Defendant and co-defendant's vehicle then pulled out of the turn lane and began to follow the victim. The victim testified that he turned onto another street to establish whether or not he was being followed, and the car with the Defendant also turned. The victim decided to call 911 prior to any shots being fired. The victim testified that, as he was on the telephone with 911, the co-defendant fired a shot at him, causing him to stop his vehicle. The victim exited his car, began shooting at the assailants, and then fled on foot, still on the telephone with emergency services. The victim saw a van with an open window and entered the van to hide. When a man emerged from the adjacent home, the victim left his firearm in the van and entered the house. He explained that he left his firearm because he did not want to alarm the occupants of the house where he was seeking shelter. He testified that he had a permit to carry a concealed weapon and that he was legally in possession of his firearm. The victim was in fear for his life when the co-defendant and Defendant shot at him. He gave a statement to police approximately thirty to forty minutes after the shooting, when he was still upset and "[r]attled." He acknowledged to police that he had returned fire and informed police of the location of his weapon.

The audio of the 911 recording was played, as was the security footage of the shoot-out. The victim told the 911 operator that a car was following him and that someone in the car had "pulled a gun out on" him. The victim stated, "I think he's about to start shooting, sir," and gave his location. Gunfire followed. The victim then told the operator, "He's got my car." The victim gave his location in the house where he had taken shelter. He became agitated when he saw police pass his location and demanded

for the operator to have the police turn around and come to the home where he was hiding. The victim began shouting at some point that he believed one of the assailants was outside the house.

The security footage showed the two vehicles coming to a stop so that a tree was blocking a direct view of the driver's side door of the Defendant's and co-defendant's vehicle. The video showed the victim exiting his car facing the vehicle behind him and fleeing, the co-defendant's door opening and the vehicle rolling forward, the Defendant entering the victim's vehicle, and the co-defendant returning to his vehicle. The victim's vehicle then made a U-turn, and both vehicles drove away. On the video, the victim identified the Defendant as the man getting into the victim's car.

The victim acknowledged that prior to the date of the offense, the co-defendant's girlfriend had obtained an order of protection against him. He acknowledged that in his statement to police, which was given before he knew that security footage had captured the shooting, he had asserted that the co-defendant got out of the car and started shooting at him. He acknowledged that the video reflected that the co-defendant did not exit his vehicle until after the victim had fled. He explained that he had not lied to police because the material aspect of that statement, that the co-defendant shot at him, was true and because his mistake was due to his agitation from having weapons fired at him. He agreed that he exited the car while being fired upon, and he explained that he felt safer fleeing than remaining in the vehicle because the bullets were penetrating the vehicle. He agreed that he turned on a side street instead of driving to the police station when he realized he was being followed. The victim fired between ten and fourteen shots.

Various personnel with the Jackson Police Department testified regarding the subsequent investigation. Officer Travis McNatt confirmed that the victim was "shaken" and "visibly offended" that someone had attempted to shoot him. He confirmed that the victim had a permit to carry a firearm. When he was shown the order of protection in effect at the time of the crime, he agreed that it reflected that the victim was in violation of the order by being in possession of a firearm. With the victim's assistance, officers located and collected the victim's gun. Investigator Michael Byrd took the Defendant and co-defendant into custody. He testified that a concerned citizen called to say the suspects were running into the Defendant's home, which was located very close to the site of the shooting. Investigator Byrd spoke with the Defendant's mother, and she summoned the Defendant and co-defendant, who surrendered immediately. The Defendant's mother gave permission to search the house, and no firearm was located. The vehicle in which the Defendant and co-defendant were traveling was parked at the Defendant's home.

Investigator Michael Thomas took the victim's statement. He agreed that the victim's statement was in conflict with the video because the victim had said that the co-defendant exited the car to shoot. The victim was given a chance to review and sign the statement and to make corrections.

The victim's vehicle was found within one hundred yards of the Defendant's home, on a dead-end street which ran behind the Defendant's home. Investigator Thomas supervised the collection of the vehicles as evidence. He testified in detail about the numerous bullet holes in the victim's vehicle. Investigator Thomas tracked the trajectory of the bullets through the use of rods and noted that several bullets went through the vehicle and exited. The vehicle in which the Defendant and co-defendant were riding was also struck by bullets. Investigator Thomas identified shots penetrating the vehicle from the outside and shots which had been fired from inside the vehicle running through the hood of the vehicle. Numerous photographs of the damage to the vehicles were introduced into evidence.

Investigator Thomas stated that only the victim's firearm was recovered. Neither the Defendant's nor the co-defendant's firearm was ever found. Investigator Thomas acknowledged that the victim's vehicle was parked in the open and not concealed in a garage. It had not been altered or camouflaged.

Over twenty bullet casings were recovered from the scene. Investigator Thomas said that the bullet holes in the victim's vehicle were either from 9 millimeter or .40 caliber bullets, and that only .40 caliber shell casings were recovered from the scene. The victim's weapon was a .40-caliber weapon. However, Investigator Thomas rejected the theory that the victim had riddled his own car with bullets, noting that the puckering of the metal around the bullet strikes indicated the direction from which the bullets were entering and that the bullets were fired from behind the car. He observed that the video established the victim was never behind the car shooting. He agreed that he could not determine the order in which any of the shots had been fired.

The Defendant and co-defendant moved for judgment of acquittal after the close of the State's proof. In particular, they argued that the tampering with evidence charge was not supported because the victim's car had not been altered or concealed in any way but simply left out in the open. The prosecutor stated that the State's theory was that the Defendant and co-defendant had concealed or destroyed their firearms. The trial court observed that the indictment did not specify the evidence that was tampered with, and continued, "So I have to ask the question, prior to today, have you been misled in any way as to the state relying on the [car] as to the issue of tampering with evidence versus firearms?" The co-defendant's attorney stated he "wouldn't say [he] was misled." The court inquired whether counsel had "made an assumption like I might even have made an

assumption that it would be the vehicle....” The co-defendant’s counsel agreed. The court then asked defense counsel if it was “the same for [him],” and he replied, “It is, Your Honor. There’s a fancy saying about assumptions I’ll leave off the court record.” Defense counsel then argued that acquittal was nevertheless warranted because the State had failed to prove that a thorough search was conducted for the weapons. The trial court denied the motions for judgment of acquittal but noted that the State would have to elect in closing arguments to proceed on the theory that the firearms were the evidence that was the basis of the tampering charge.

The Defendant testified in his own defense that he was acting in self-defense when he fired shots at the victim. The Defendant was twenty-three years old and employed by a residential healthcare company in Nashville. He denied having gone to school with the victim, speculated the victim might have gone to school with his brother, and stated he had never seen the victim before the day of the shooting. He had been preparing to move from the city of Jackson on the day of the offense and was helping his mother pack for most of that day.

The Defendant recounted that the co-defendant came to pick him up in the co-defendant’s girlfriend’s car to get food at Sonic. As they approached a red light, the victim sped up and “threw his car in front of” their car. The victim then stopped his car suddenly and hesitated for a few seconds. During that time, the co-defendant honked the horn. The victim opened the door and “just got out shooting.” The Defendant saw bullets hitting their vehicle, and he picked up a gun which was lying on the console between him and the co-defendant. He pulled himself out of the window and shot, hitting the hood of the co-defendant’s car. The Defendant stated he was “just trying to get [the victim] off our back.” The Defendant testified that he was afraid for his life and for the co-defendant’s life and that the victim shot first. He denied ever brandishing the gun at the victim and denied that the co-defendant ever handled the gun. The Defendant asserted that although the victim fled, he did not know where the victim was and was worried the victim would return with “backup” because the victim was on the telephone. The Defendant fell out of the car window and hit his head. He entered the victim’s car and drove it to his home. The Defendant stated he parked the car in an empty driveway and that “it was parked right there.” Police arrived shortly thereafter, and he and the co-defendant came out of the house immediately when his mother summoned him. He said he did not have time to report the shooting.

On cross-examination regarding the route he and the co-defendant took prior to the shooting, the Defendant stated that they did not go straight to Sonic but went to a tobacco store first. He testified that the co-defendant’s girlfriend called from her workplace to ask them to search the car for her lost cell phone. They went to a carwash prior to the tobacco store but did not find the cell phone. On further cross-examination the

Defendant revealed that the carwash was not in the vicinity of his home, the Sonic, or the tobacco shop and that they were “just riding.” He was further questioned about the fact that the location where he first saw the victim was between the carwash and the tobacco store, and he concluded, “Well, I’ll say either we had to stop before that or either — it had to be prior to it ’cause he — All I remember was, the man turned around and followed us as he bust[ed] a U-turn at the church.”

The Defendant testified that he did not know what happened to the gun. He last saw it when he was falling out of the car. He stated the gun was a 9 millimeter weapon and that he did not know who owned it. The Defendant only got into the victim’s car because it was blocking the co-defendant’s car. He acknowledged that the co-defendant’s car rolled forward toward the victim’s car while the co-defendant briefly exited the car, after the victim had fled on foot.

The Defendant gave a statement to police. He acknowledged he was not entirely truthful in the statement and testified that he was not truthful because he was scared, had never been a suspect in a crime, and was told he could be charged with attempted murder. He denied that he said in his statement he was home all day and denied that the statement he was shown was his, asserting that the statement he gave was signed. The video of the Defendant giving a statement to law enforcement was played for the jury, and he agreed it showed that he did not sign the statement and that he asserted forcefully during the interview that he knew nothing about the crime and had not been involved.

The jury found the Defendant and the co-defendant guilty of aggravated assault and tampering with evidence. The Defendant was sentenced to four years for aggravated assault and a concurrent three years for tampering with evidence. For each sentence, the Defendant was ordered to serve eleven months and twenty-nine days incarcerated and the remainder on probation, and he was assessed fines for the offenses.

The Defendant filed a motion for a new trial, challenging the sufficiency of the evidence. He noted that both the arrest warrant and the preliminary hearing testimony concerned the missing vehicle, and he asserted that he “had not ever been put on any notice that the State would rely on a ‘missing’ firearm.” The trial court denied the motion, and the Defendant appeals.

ANALYSIS

I. Sufficiency of the Evidence

The Defendant argues that the evidence was insufficient to support the verdicts. In particular, he asserts that the State failed to negate the defense of self-defense and that the

State did not present any evidence that police searched for the weapons but were unable to locate them. The State notes the absence of the exhibits from the record on appeal and argues that this court cannot review the issue without the exhibits. The Defendant does not respond to the State's argument regarding the absence of the exhibits.

The appellant has the duty to prepare a record which conveys "a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal." Tenn. R. App. P. 24(b). Failure to prepare a proper record may result in waiver of an issue. *State v. Thompson*, 36 S.W.3d 102, 108 (Tenn. Crim. App. 2000). However, if the record provides an adequate basis for review, this court may reach the merits of an issue with the presumption that the missing part of the record would support the trial court's decision. *State v. Caudle*, 388 S.W.3d 273, 279 (Tenn. 2012). While the Defendant did not respond to the State's argument regarding the absence of exhibits, and while the record here, in any event, provides a sufficient basis for review, we note that the exhibits to the case are in the possession of this court as part of the co-defendant's appeal. *See State v. Torijon Coplin*, W2019-01593-CCA-R3-CD. A court's own records are subject to judicial notice, *see State v. Lawson*, 291 S.W.3d 864, 870 (Tenn. 2009), and we have reviewed the exhibits in evaluating the sufficiency of the evidence.

This court must set aside a finding of guilt if the evidence is insufficient to support the finding by the trier of fact of guilt beyond a reasonable doubt. Tenn. R. App. P. 13(e). The question before the appellate court is whether, after reviewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Pope*, 427 S.W.3d 363, 368 (Tenn. 2013). This court will not reweigh or reevaluate the evidence, and it may not substitute its inferences drawn from circumstantial evidence for those drawn by the trier of fact. *State v. Smith*, 436 S.W.3d 751, 764 (Tenn. 2014). The jury's guilty verdict, approved by the trial judge, accredits the State's witnesses and resolves all conflicts in favor of the prosecution. *State v. Reid*, 91 S.W.3d 247, 277 (Tenn. 2002). The trier of fact is entrusted with determinations concerning witness credibility, factual findings, and the weight and value of evidence. *Smith*, 436 S.W.3d at 764. In reviewing the sufficiency of the evidence, we afford the State the strongest legitimate view of the evidence and all reasonable inferences that can be drawn from the evidence. *State v. Hawkins*, 406 S.W.3d 121, 131 (Tenn. 2013). "A verdict of guilt removes the presumption of innocence and replaces it with a presumption of guilt, and on appeal the defendant has the burden of illustrating why the evidence is insufficient to support the verdict rendered by the jury." *Reid*, 91 S.W.3d at 277. "Circumstantial evidence alone is sufficient to support a conviction, and the circumstantial evidence need not exclude every reasonable hypothesis except that of guilt." *State v. Wagner*, 382 S.W.3d 289, 297 (Tenn. 2012).

The Defendant was convicted of aggravated assault, which, as charged, required the State to show that he intentionally or knowingly caused the victim to reasonably fear imminent bodily injury by the use or display of a deadly weapon. T.C.A. §§ 39-13-101(a)(2), -102(a)(1)(A)(iii). The Defendant does not contend that the evidence did not establish the elements of aggravated assault; instead, he challenges the finding that he was not acting in self-defense. That the accused was acting in self-defense is a complete defense to an offense. *Hawkins*, 406 S.W.3d at 128; see T.C.A. §§ 39-11-601, -611(b)(2) (establishing the statutory requirements for self-defense, including a reasonable belief of imminent danger of death or serious bodily injury). The burden of negating self-defense lies with the State. T.C.A. § 39-11-201(a)(3). Whether a defendant was acting in self-defense is a question of fact for the jury. *State v. Echols*, 382 S.W.3d 266, 283 (Tenn. 2012) (citing *State v. Clifton*, 880 S.W.2d 737, 743 (Tenn. Crim. App. 1994)).

Here, the jury was presented with two competing narratives: that the Defendant and co-defendant followed the victim and then began to shoot at him before he returned fire or that the victim stopped his car, got out, and began shooting at the co-defendant and Defendant, who returned fire out of fear of injury. The victim testified specifically about the manner in which the Defendant and co-defendant began to follow him, about his attempts to get help through 911, about the shooting, about his fleeing the scene, and about his abandoning his own weapon to seek shelter in a home. He spoke to police afterward and helped them to locate his weapon. The State's evidence included the victim's 911 call, which was placed before shots were fired, and a video showing the shooting and showing the Defendant driving away in the victim's car. The Defendant's testimony was not coherent or consistent regarding the route he and the co-defendant took, the establishments they visited prior to the shooting, or how they encountered the victim. The Defendant testified that the victim "threw" his car in front of their vehicle, that the victim began to shoot at them, and that the Defendant drove away in the victim's car because it was blocking the road. He was unable to account for the gun, did not summon emergency assistance, and after being taken into custody, gave a statement to police denying any involvement with the shooting. The jury clearly chose to credit the victim's version of events, rejecting the Defendant's testimony supporting self-defense, and this court will not revisit such a credibility determination on appeal. *Reid*, 91 S.W.3d at 277.

The Defendant was also convicted of tampering with the firearm he used during the shooting. The tampering with evidence charge required the State to show that the Defendant, knowing that an investigation or official proceeding was pending or in progress, altered, destroyed, or concealed any record, document or thing with the intent to impair its verity, legibility, or availability as evidence in the investigation or proceeding. T.C.A. § 39-16-503(a)(1). The State and the Defendant both presented evidence that the Defendant used a firearm during the shoot-out. The victim testified that the co-defendant

likewise fired a weapon. According to Investigator Thomas, over twenty shell casings were recovered from the scene of the shooting.

The Defendant argues that the State did not present sufficient evidence that any search was conducted for the gun and that therefore the jury could not have inferred that the Defendant concealed or destroyed the weapon. He likens the proof to that in *Hawkins*, 406 S.W.3d at 125-26, 137, where the Tennessee Supreme Court concluded that the defendant did not conceal his gun when he remained on the scene and tossed the gun over a short, metal fence where it could easily be seen and was quickly discovered. In *Hawkins*, the defendant “did not materially impede the investigation or cause the gun to lose any of its evidentiary value” by tossing it over the fence “out in the open near the crime scene.” *Id.* at 137.

In the case at bar, the disappearance of the gun impaired its availability as evidence at trial. *See* T.C.A. § 39-16-503(a)(1). The evidence established that the Defendant had a gun which he used to shoot at the victim. When the victim fled on foot, the Defendant entered the victim’s vehicle and parked it on a street running parallel to the street he lived on, close to his home. The Defendant then entered his home, which was near the crime scene, and was taken into custody very shortly after the crime. A search of the co-defendant’s car, the victim’s car, and the house did not produce the gun. The State’s evidence included photographs of a thorough examination of the vehicles, showing bullet trajectories through the use of rods. The jury could have inferred that police also canvassed the scene of the shooting, as Investigator Thomas testified that more than twenty .40-caliber bullet casings were recovered from the road and as the evidence at trial included a video from a nearby security camera. Investigator Thomas testified that no gun other than the victim’s was found. The Defendant spoke to police but denied all involvement with the crime and did not inform them about the whereabouts of the gun. While the Defendant testified at trial that he merely lost track of the gun at the scene of the shooting, the jury was free to discredit his testimony. Viewing the evidence in the light most favorable to the State, we conclude that the jury could have inferred that the Defendant was in possession of a firearm, that he concealed it somewhere to prevent police from discovering it, and that he subsequently denied his involvement with the shooting. The Defendant is not entitled to relief.

II. Notice

The Defendant also asserts that the trial court “err[ed] in denying defense counsel’s Motion for new trial when the State changed its theory of what evidence was tampered with in this matter.” The Defendant’s argument, however, largely reverts to an assertion that the State failed to present sufficient evidence that the firearm was altered or destroyed. Insofar as the Defendant raises an issue separate from sufficiency of the

evidence, we conclude that the Defendant is articulating a challenge to the notice provided by the State of the nature of the charges brought against the Defendant.

The Sixth and Fourteenth Amendments to the United States Constitution and article I, section 9 of the Tennessee Constitution afford an accused the right to be informed of the nature and cause of the accusation against him or her. “It is a well-known principle of law that a criminal indictment must include a sufficient description of the charged offense to insure that the accused understands the special nature of the charge he is called upon to answer.” *State v. Lemacks*, 996 S.W.2d 166, 172 (Tenn. 1999). An indictment must contain information sufficient: “(1) to inform the defendant of the substantive offense charged; (2) to enable a trial court upon conviction to enter an appropriate judgment and sentence; and (3) to protect the defendant against double jeopardy.” *State v. Barnes*, 954 S.W.2d 760, 763 (Tenn. Crim. App. 1997).

Here, the indictment informed the Defendant that he was accused of altering, destroying, or concealing any record, document, or thing with the intent to impair its verity, legibility, or availability as evidence in an investigation that he knew was taking place. The indictment cited to Tennessee Code Annotated section 39-16-503(a)(1). Accordingly, the indictment was sufficient to inform the Defendant of the nature of the charge. The Defendant argues that he nevertheless did not have adequate notice because the original arrest warrant and the testimony at the preliminary hearing both focused on the moving of the victim’s vehicle.

“Where ... an indictment sufficiently alleges the elements of the offense and otherwise complies with constitutional and statutory requirements, a defendant should move for a bill of particulars if additional particular information about the nature of the conduct or the theory upon which the State intends to rely to establish the criminal offense is needed.” *State v. Hammonds*, 30 S.W.3d 294, 303 (Tenn. 2000) (concluding that indictment was sufficient when it charged aggravated assault without specifying if the State was relying on bodily injury or the reasonable fear of imminent bodily injury); *see* Tenn. R. Crim. P. 7(c); *State v. Sherman*, 266 S.W.3d 395, 408 (Tenn. 2008). A bill of particulars functions to: (1) provide information about the details of the charge to assist in preparation of the defense; (2) prevent prejudicial surprise at trial; and (3) enable the defendant to preserve a plea against double jeopardy. *Sherman*, 266 S.W.3d at 408-09. When the State provides a bill of particulars, “lack of specificity will not result in reversible error unless a defendant can prove prejudice.” *Id.* at 409.

The Defendant here never moved for a bill of particulars to determine what evidence would be the subject of the tampering with evidence charge. At trial, both defense counsel and the co-defendant’s counsel explicitly stated that they were not misled into believing that the vehicle would be the subject of the tampering charge, and defense

counsel conceded that he merely assumed the vehicle was the focus of the charge. Given the Defendant's concession, we cannot say that the trial court erred in denying the motion for acquittal based on lack of notice. The Defendant has likewise not articulated any prejudice, and we conclude he is not entitled to relief.

CONCLUSION

Based on the foregoing, we affirm the trial court's judgments.

JOHN EVERETT WILLIAMS, PRESIDING JUDGE