

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs December 5, 2017

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STATE OF TENNESSEE v. KATHERINE TAYLOR

Appeal from the Criminal Court for Shelby County
No. 14-03702 James M. Lammey, Judge

No. W2016-01941-CCA-R3-CD

The Defendant, Katherine Taylor, was convicted of attempted first-degree murder and sentenced to 18 years as a Range I offender. On appeal, she argues that the trial court erred by excluding evidence of the victim’s history of drug use and that the evidence is insufficient to sustain the conviction. Following our review, we affirm the judgment.

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

ALAN E. GLENN, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS and J. ROSS DYER, JJ., joined.

Stephen C. Bush, District Public Defender; Tony N. Brayton, Assistant Public Defender, Memphis, Tennessee, for the appellant, Katherine Taylor.

Herbert H. Slatery III, Attorney General and Reporter; Sophia S. Lee, Senior Counsel; Amy P. Weirich, District Attorney General; and Marianne L. Bell, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

This case arises out of the Defendant’s October 27, 2013 stabbing of her estranged husband, Eronest Taylor. At the time, the Defendant and the victim were living apart, and the victim was seeing another woman, Sandra Brodnax. By the time of trial, the victim and Ms. Brodnax had married, and she had assumed the surname “Taylor.” To avoid confusion, we will refer to Ms. Brodnax by her name at the time of the stabbing.

The victim and the Defendant married in 1992 and had three children together, including twins. In 2006, they began living separate and apart. The Defendant filed for divorce in March 2013. At a later custody hearing, the victim was granted “standard”

visitation rights and ordered to pay child support. Later, the victim and the Defendant agreed to a change in the custody order whereby the children would be with the victim every other weekend from 7 p.m. on Friday until noon on Sunday. The weekend of October 25-27, 2013, the victim's twin boys spent the weekend with him and he introduced them to Ms. Brodnax, whom he had not yet married.

The victim testified that he picked that weekend for the introduction because his birthday fell over that weekend. The four of them had dinner together on Friday, October 25, and then spent the night at the victim's house. On Sunday, the victim left the twins at his mother's house to be picked up by the Defendant, to whom he had sent a text message advising her of this. The victim testified that, as he was driving back to his house, he received a telephone call from the Defendant, telling him that she "need[ed] to meet the woman that [her] kids [were] around." After the victim arrived back at his residence, he heard a "nice strong knock" at his front door and saw that it was the Defendant. She told him that she wanted "some answers" about Ms. Brodnax. The victim went outside to speak with the Defendant, and she asked him how he could "just leave [her]" for Ms. Brodnax. He asked the Defendant to leave, and she replied, "I'll kill you before I let you leave me." The victim took her picture with his cell phone. As he turned to dial 911, the Defendant unzipped her jacket and produced an 8 inch knife that she had in a plastic bag. The Defendant then stabbed the victim twice in the left side of his chest and pulled the victim backwards as he tried to go indoors. The second time the Defendant stabbed him, the knife was left sticking out of his chest, where it remained until the victim pulled it out.

Ms. Brodnax and a neighbor helped the victim into the house and put him on a recliner in his house with towels on his wounds. While there, the victim called Vickie Spencer, the Defendant's sister, to tell her what the Defendant had done, but her daughter, Mia, answered the phone and responded, "Oh, my God," after he related what had happened.

The victim testified that he had three surgeries as the result of the wounds and remained in a coma for three days. The wounds were to his upper intestines, liver and stomach. He said that he had only his cell phone in his hands at the time of the stabbing and did not have a knife.

Ms. Brodnax testified that she saw the stabbing through a window and ran outside while dialing 911. She said that the Defendant's voice had been "[v]ery loud and stern and angry," as the Defendant stabbed the victim. Ms. Brodnax described the scene after the victim was stabbed as blood gushing out of the victim's chest, with the victim holding his chest to try and stop the bleeding. The Defendant was holding onto the victim's shirt and did not let go until Ms. Brodnax said, "let him go," and told the Defendant that she had called 911. The Defendant lit a cigarette and left in "[a] normal walk" to return to her car that was parked a block away.

Michelle Gaylor, a 911 supervisor, identified a recording of a 911 call received from the victim's address on October 27, 2013 at 1:12 p.m., which was then played for the jury.

Deandre Forsthoefel, a paramedic employed by the City of Memphis, testified that he arrived at the victim's location shortly after the stabbing to find the victim sitting on a couch with a deep one inch laceration on the left side of his chest. He said there was an eight inch chef's knife at the scene, with about four inches of the blade "covered in blood." The victim "was pale, cold, diaphoretic, which [meant] that he was showing blood loss." Mr. Forsthoefel said that he placed I.V.s in both of the victim's arms to treat blood loss and possible shock and used a heart monitor to make certain the victim's heart rate was normal. The victim had suffered a major trauma and was transported to the Regional Medical Center.

The State's next witness was Douglas Haskin, a Memphis police officer assigned to the Ridgeway Precinct, who arrived at the scene shortly after 1:00 p.m. on the afternoon of the stabbing. He testified that the victim, who was "slumped" over in a chair and barely able to talk said, "My wife just stabbed me."

David Galloway testified that he was also with the Memphis Police Department as a crime scene officer. He processed the crime scene and explained a number of photographs which were shown to the jury. Following his testimony, the State rested its case.

The Defendant was the first defense witness and admitted that she had stabbed the victim with a butcher knife, but explained that she was only defending herself because he had come at her with a knife and said he was going to kill her. She said that, earlier, on October 27, 2013, she learned from one of the twins that they had not stayed at their grandmother's house, as the Defendant had expected, but had met Ms. Brodnax, whom the Defendant did not know. The Defendant called the victim, and he screamed at her, saying he could do whatever he wanted and not to call him anymore. The Defendant had never been to the victim's residence and obtained the address using the Google search engine. She wanted to ask him why he had not followed the terms of the visitation agreement.

As she approached the victim's house, the Defendant parked her car on the street in front of another house, got out, and started walking towards the victim's house. However, because she believed the Defendant would be angry with her, she then returned to her car and retrieved a butcher knife that she kept in the driver's side pocket. The Defendant said the knife had been put in the car by her daughter, Kierra Spencer, because they lived in a high crime area. Later in her testimony, however, the Defendant said she had put the knife in the car when she drove to the Defendant's residence because she "would be out by [herself] early." She testified that when she walked to the victim's

house and knocked on the front door, the angry victim came out “shouting” that she was not supposed to be at his residence and he was going to call the police.

The Defendant testified that as she turned to leave, the victim came “charging” at her with a pocket knife in his right hand and a phone in his left hand. The victim took her picture with his cell phone and yelled that he was going to kill her. The Defendant said she was afraid and backed away while unzipping her jacket and taking out the butcher knife. As the victim “charg[ed]” and “lunged” at her, she “jabbed at him” with her eyes closed. When she opened her eyes and saw she had stabbed him, she was “scared” and ran to her car. She then drove to the house of Vicki Spencer, her sister, who called the police.

The Defendant testified that the victim had attacked or threatened her on three prior occasions. The first time occurred in June of 1991 when she and the victim, who were dating, were at her mother’s house after the funeral of the Defendant’s stepfather. She and the victim got into an argument, and the victim choked her. It took several of her relatives to pull him off, and the Defendant’s mother then made him leave. The second incident occurred on New Year’s Eve in 2010 when she got into a shouting match with the victim over whether their children would spend the holiday with her family or the victim’s family. The victim was “screaming” at her, and she told him to leave. The third incident occurred on Christmas Day 2012 when the victim was late bringing Christmas presents for the children, who still believed in Santa Claus and were disappointed to awaken without presents. After the victim delivered the presents, the Defendant slammed the door on him so that he could not watch the children open them. The victim became angry and began knocking on the door. The Defendant refused to open the door and threw a bag of the victim’s tools over the apartment railing. The victim responded with a threat, saying, “You crazy, MF, I got something for you.” She called her sisters to tell them what the victim had just done, but she did not call the police.

Vickie Spencer,¹ one of the Defendant’s sisters, testified that, on October 27, 2013, the victim called her saying that the Defendant had stabbed him. She immediately tried to call the Defendant. Shortly thereafter, the semi-incoherent Defendant, who was “bewildered” and in “shock,” came to her residence, claiming that the victim had tried to kill her. In response, Vickie telephoned a friend who was a police officer, who came to her home and stayed until other police officers arrived.

Vickie recalled an incident that had occurred in 1991 between the victim and Defendant before the two were married. She said that, following her stepfather’s funeral, she heard screaming coming from a bedroom and, as she entered, saw the victim on top

¹ Because several of the witnesses who testified bear the same surname we will refer to each by first name only. We do so for the purposes of clarity and intend no disrespect.

of the Defendant, choking her. The Defendant's brothers pulled the victim away from the Defendant. The victim then left, after being ordered to do so.

Vickie also recalled the Christmas Day 2012 incident when the Defendant had called her very upset to tell her that the victim had threatened her. She said the Defendant told her at the time that if anything happened to her, she would know that the victim had done it.

Kierra Spencer, the Defendant's daughter, also testified regarding the incident on New Year's Eve, 2010, saying that she overheard the Defendant say to the victim three times, "You need to leave." As the victim was walking toward the Defendant, Kierra stepped between them, and told him to leave. The witness also said that the twins were upset on Christmas Day 2012 when they saw that their presents were not under the Christmas tree. The Defendant shut the door on the victim as he and the eldest son were bringing an electric piano into the apartment. Later, the Defendant cried as the departing victim said to her, "I got something for you. I'll be back." The Defendant telephoned her sisters and told them that if something happened to her, the victim would be responsible. The witness said that she had put the knife in the automobile driven by the Defendant because they lived in a high crime area.

The Defendant's other sister, Sharon Spencer, testified that the upset and crying Defendant called her on Christmas Day 2012 to tell her about her altercation with the victim over his late arrival with presents for the children. The Defendant also told her that if anything happened to her, the victim would be responsible.

The final witnesses were Chicca Macklin, a former co-worker of the Defendant's, and Tyler Glover, Jr., who had been a friend of the Defendant since childhood. Both testified that they believed her to an honest and peaceful person.

ANALYSIS

We will review the issues raised on appeal by the Defendant.

I. Evidence of the Victim's Prior Drug Use

Prior to trial, the trial court granted the State's motion in limine to prevent the victim's prior drug use from being presented by the defense. The trial court later reaffirmed its ruling after hearing jury-out testimony from the victim about the various disputes and altercations she had with the victim during their marriage:

I still think going into [the victim's] prior, you know – like I say, he could have had problems years ago; but, you know, unless she has proof that he was – she's speculating. She's speculating about that, and I don't find that

to be convincing that she had that idea that he was under the influence of crack cocaine or anything on this particular day. Plus I didn't hear anything that he was under crack cocaine on any of those other four occasions where supposedly he was hostile to her. So, I'm going to stick by my original ruling about leaving all that out.

The Defendant argues on appeal that the reason she feared the victim at the time she stabbed him would have been shown if the court had allowed evidence regarding his addiction to crack cocaine and subsequent rehabilitation treatment. Excluding this evidence, in her view, denied her the right to present a meaningful defense. The State responds that no offer of proof was made establishing a causal connection between the victim's use of cocaine and his being stabbed by the Defendant. Further, the State points out that the trial court did not preclude the Defendant from testifying that she had returned to her car to retrieve the knife because of her fear of the victim due to the prior incidents with him.

Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Tenn. R. Evid. 401. All relevant evidence, subject to certain exceptions, is generally admissible under Rule 402 of the Tennessee Rules of Evidence. Relevant evidence may be excluded, however, if "its probative value is substantially outweighed by the danger of unfair prejudice." Tenn. R. Evid. 403.

"[Q]uestions concerning the admissibility of evidence rest within the sound discretion of the trial court" and will not be disturbed absent a showing of an abuse of discretion. See State v. Pylant, 263 S.W.3d 854, 870 (Tenn. 2008) (citations omitted). A trial court is found to have abused its discretion when it applies "an incorrect legal standard, or [reaches] a decision which is illogical or unreasonable and causes an injustice to the party complaining." State v. Ruiz, 204 S.W.3d 772, 778 (Tenn. 2006) (citing Howell v. State, 185 S.W.3d 319, 337 (Tenn. 2006)).

In State v. Powers, 101 S.W.3d 383, 395 (Tenn. 2003), our supreme court explained the decision to be made by the trial court regarding Tennessee Rule of Evidence 403 regarding the probative versus prejudicial effect of certain evidence:

Under Rule 403, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Generally, when we review a claim that calls into question a trial court's exclusion of evidence on the grounds of irrelevance, we will not disturb the decision of

the trial court absent an abuse of discretion. See State v. Banks, 564 S.W.2d 947, 949 (Tenn. 1978).

State v. Hughes, No. M2016-01222-CCA-R3-CD, 2017 WL 3724457, at *4 (Tenn. Crim. App. Aug. 29, 2017).

During the jury-out hearing, the Defendant testified that the victim used cocaine during their marriage, that she found a crack pipe belonging to him, and that he had previously been in drug rehabilitation programs. She said that at the time she stabbed the victim, she thought it was “questionable” whether he was under the influence of drugs. Although the trial court allowed the defense to present testimony regarding prior arguments between the parties, the court did not permit testimony regarding the victim’s prior drug use. As to this issue, the court concluded that the Defendant was “speculating” regarding the victim’s use of drugs on the day of the stabbing. Further, the court explained that the Defendant had not presented proof that the victim had been under the influence of drugs at the times of their previous altercations.

We conclude that the trial court did not abuse its discretion in not allowing the Defendant to testify regarding the victim’s prior use of drugs. She presented no proof that the victim had used drugs the day that she stabbed him, and the court properly determined that testimony regarding the victim’s prior drug use was irrelevant and inadmissible.

II. Sufficiency of the Evidence

On appeal, the Defendant argues that the evidence at trial is insufficient to support the conviction because the State failed to prove premeditation. In support, she cites the evidence that the Defendant had armed herself with a knife before arriving at the victim’s house because he had previously assaulted her.

In considering this issue, we apply the rule that where sufficiency of the convicting evidence is challenged, the relevant question of the reviewing court is “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); see also Tenn. R. App. P. 13(e) (“Findings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt.”); State v. Evans, 838 S.W.2d 185, 190-92 (Tenn. 1992); State v. Anderson, 835 S.W.2d 600, 604 (Tenn. Crim. App. 1992).

All questions involving the credibility of witnesses, the weight and value to be given the evidence, and all factual issues are resolved by the trier of fact. See State v. Pappas, 754 S.W.2d 620, 623 (Tenn. Crim. App. 1987). “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). Our supreme court stated the rationale for this rule:

This well-settled rule rests on a sound foundation. The trial judge and the jury see the witnesses face to face, hear their testimony and observe their demeanor on the stand. Thus the trial judge and jury are the primary instrumentality of justice to determine the weight and credibility to be given to the testimony of witnesses. In the trial forum alone is there human atmosphere and the totality of the evidence cannot be reproduced with a written record in this Court.

Bolin v. State, 405 S.W.2d 768, 771 (Tenn. 1966) (citing Carroll v. State, 212 Tenn. 464, 370 S.W.2d 523 (Tenn. 1963)).

“A jury conviction removes the presumption of innocence with which a defendant is initially cloaked and replaces it with one of guilt, so that on appeal a convicted defendant has the burden of demonstrating that the evidence is insufficient.” State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

The Defendant was found guilty of criminal attempt to commit the first degree premeditated murder of the victim. First degree murder is defined as “[a] premeditated and intentional killing of another.” Tenn. Code Ann. § 39-13-202(a)(1) (2010).

“[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. 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.

Id. § 39-13-202(d).

A person “commits criminal attempt who, acting with the kind of culpability otherwise required for the offense: [i]ntentionally engages in action or causes a result that would constitute an offense, if the circumstances surrounding the offense were as the person believes them to be; [a]cts with intent to cause a result that is an element of the offense, and believes the conduct will cause the result without further conduct on the person’s part.” Id. § 39-12-101(a)(1)-(2).

State v. Parham, No. W2009-02576-CCA-R3-CD, 2010 WL 5271612, at *4 (Tenn. Crim. App. Dec. 10, 2010).

The evidence, taken in the light most favorable to the State, shows that the Defendant and the victim had a troubled relationship, apparently both before and after their divorce. The Defendant was upset over the fact that the victim had introduced their twins to his girlfriend. Using a computer search, the Defendant located the victim's residence, parked a distance away, and started walking to his house. She then returned to her vehicle and retrieved a large knife which she took with her. Confronting the victim at the front door of his residence, the Defendant produced the knife that she had carried from her car and stabbed him twice. She returned to her car and left the scene. Although the Defendant claimed that the victim, and not she, was the aggressor, the jury's verdict showed that they believed the victim and other witnesses supporting his testimony and disbelieved the Defendant. The record supports such a determination.

CONCLUSION

Based upon the foregoing authorities and reasoning, we affirm the judgment of the trial court.

ALAN E. GLENN, JUDGE