

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
October 7, 2014 Session

STATE OF TENNESSEE v. LADELL WALKER

**Direct Appeal from the Criminal Court for Shelby County
No. 11-07916 W. Mark Ward, Judge**

No. W2014-00040-CCA-R3-CD - Filed November 20, 2014

A Shelby County Criminal Court Jury convicted the appellant, Ladell Walker, of assault, a Class A misdemeanor, and the trial court sentenced him to nine months in confinement. On appeal, the appellant contends that the evidence is insufficient to support the conviction. Based upon the oral arguments, the record, and the parties' briefs, we affirm the judgment of the trial court.

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

NORMA MCGEE OGLE, J., delivered the opinion of the Court, in which CAMILLE R. MCMULLEN and TIMOTHY L. EASTER, JJ., joined.

Ruchee J. Patel, Memphis, Tennessee, for the appellant, Ladell Walker.

Robert E. Cooper, Jr., Attorney General and Reporter; J. Ross Dyer, Senior Counsel; Amy P. Weirich, District Attorney General; and Susan Taylor, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

In November 2011, the Shelby County Grand Jury indicted the appellant for the aggravated assault of Latischa Boyd. At trial, the victim testified that she and the appellant used to be friends but that she started having "problems" with him. On May 1, 2011, the victim's birthday, the appellant gave money to the victim, her children, and her sister. The victim thought the money was a gift, but the appellant later contacted her and told her that the money was for her "not to press charges." On May 13, 2011, the victim was sitting outside her sister's apartment when the appellant approached and demanded that she return

the money to him. The appellant pulled two guns out of the pockets of his hoodie and threatened to “burn” the victim. The victim said she was scared because she thought the appellant was going to shoot her. She immediately called 911, and the appellant ran away. A few days later, the victim went to the police department, viewed a photograph array containing the appellant’s photograph, and identified him as the man who had threatened her.

Cynthia Boyd testified that she was the victim’s older sister and the “resident manager” of an apartment complex. She stated that after the appellant gave money to the victim, he began threatening the victim. On May 13, 2011, Boyd was inside her apartment when she heard the appellant and the victim argue and heard the appellant threaten to “burn” the victim. The victim came into Boyd’s apartment and telephoned the police. Later that day, the appellant returned to Boyd’s apartment, claiming that he wanted to rent an apartment from her. Boyd let the appellant into her apartment and saw the imprint of guns in his clothing. Boyd said that the appellant threatened to “blow [her a**] off” and that her husband tried to lock the appellant in the apartment while she telephoned the police. However, the appellant “managed to get out.”

The jury convicted the appellant of simple assault, a Class A misdemeanor, as a lesser-included offense of aggravated assault, a Class C felony. After a sentencing hearing, the trial court sentenced him to nine months to be served in confinement.

II. Analysis

On appeal, the appellant contends that the evidence is insufficient to support the conviction. The State argues that we should dismiss the appeal because the notice of appeal was untimely and that, in any event, the evidence is sufficient. We have decided to waive the requirement of the timely filing of the notice of appeal and address the appellant’s argument. We conclude that the evidence is sufficient.

The trial court sentenced the appellant on May 24, 2013. At the conclusion of the hearing, the court agreed to postpone execution of the judgment until June 4, 2013, in order for the appellant to make living arrangements for his grandfather. Nevertheless, the trial court entered the judgment of conviction on May 24. On July 17, 2013, trial counsel filed the appellant’s motion for new trial, and the trial court held a hearing on the motion that same day. The trial court denied the appellant’s motion for new trial and requested that trial counsel continue to represent the appellant on direct appeal. Trial counsel filed the appellant’s notice of appeal on July 29, 2013.

“A judgment becomes final in the trial court thirty days after its entry if no post-trial motions are filed.” State v. Mixon, 983 S.W.2d 661, 670 (Tenn. 1999). When a judgment

becomes final, a trial court loses jurisdiction to amend it. State v. Peele, 58 S.W.3d 701, 705-06 (Tenn. 2001). In this case, the appellant should have filed his motion for new trial on or before June 24, 2013. Therefore, his July 17, 2013 motion for new trial was untimely and a nullity. See Tenn. R. Crim. P. 33(b). Moreover, because the trial court did not have jurisdiction to hear and determine the merits of the untimely motion, the court’s “erroneous consideration [and] ruling on a motion for new trial not timely filed . . . [did] not validate the motion.” State v. Martin, 940 S.W.2d 567, 569 (Tenn. 1997).

Because the appellant’s late-filed motion for new trial did not toll the time for filing a notice of appeal, his notice of appeal also was untimely. See Tenn. R. App. P. 4(a) (providing that “the notice of appeal required by Rule 3 shall be filed with and received by the clerk of the trial court within 30 days after the date of entry of the judgment appealed from”). Rule 4 states that “in all criminal cases the ‘notice of appeal’ document is not jurisdictional and the filing of such document may be waived in the interest of justice.” Tenn. R. App. P. 4(a).

During oral arguments on October 7, 2014, trial counsel advised this court that she thought the time to file the motion for new trial began on June 4, 2013, the date of execution of the judgment. She also stated that she made a timely oral motion for new trial on June 4, 2013. However, nothing in the record supports that claim, and, regardless, “the oral motion [for new trial] must be reduced to writing within thirty days from the entry of the sentencing order.” State v. Mark Allen Seyler, No. 01C01-9801-CC-00050, 1999 Tenn. Crim. App. LEXIS 558, at *8 (Nashville, June 4, 1999) (citing Tenn. R. Crim. P. 33(b)). Counsel said that on August 27, 2014, she filed a motion in this court, requesting that we waive the requirement of a timely notice of appeal. The motion is in the record. Therefore, we will waive, albeit reluctantly, the requirement of a timely notice of appeal to address whether the evidence is sufficient to support the conviction.

When an appellant challenges the sufficiency of the convicting evidence, the standard for review by an appellate 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); Tenn. R. App. P. 13(e). The State is entitled to the strongest legitimate view of the evidence and all reasonable or legitimate inferences which may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). Questions concerning the credibility of witnesses and the weight and value to be afforded the evidence, as well as all factual issues raised by the evidence, are resolved by the trier of fact. State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). This court will not reweigh or reevaluate the evidence, nor will this court substitute its inferences drawn from the circumstantial evidence for those inferences drawn by the jury. Id. Because a jury conviction removes the presumption of innocence with which a defendant

is initially cloaked at trial and replaces it on appeal with one of guilt, a convicted defendant has the burden of demonstrating to this court that the evidence is insufficient. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

A guilty verdict can be based upon direct evidence, circumstantial evidence, or a combination of direct and circumstantial evidence. State v. Hall, 976 S.W.2d 121, 140 (Tenn. 1998). “The jury decides the weight to be given to circumstantial evidence, and ‘[t]he inferences to be drawn from such evidence, and the extent to which the circumstances are consistent with guilt and inconsistent with innocence, are questions primarily for the jury.’” State v. Rice, 184 S.W.3d 646, 662 (Tenn. 2006) (quoting State v. Marable, 203 Tenn. 440, 313 S.W.2d 451, 457 (Tenn. 1958)). “The standard of review ‘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 State v. Hanson, 279 S.W.3d 265, 275 (Tenn. 2009)). Moreover, “[t]he 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). A person commits misdemeanor assault who “[i]ntentionally or knowingly causes another to reasonably fear imminent bodily injury.” Tenn. Code Ann. § 39-13-101(a)(2).

The appellant contends that the evidence is insufficient to support the conviction because there is no credible evidence that he acted unlawfully or that the victim was in reasonable fear of imminent bodily injury. We disagree. Taken in the light most favorable to the State, the evidence shows that on May 13, 2011, the appellant approached the victim, demanded that she return money he had given her, and threatened to “burn” her, meaning shoot her. Although the victim testified that the appellant pointed guns at her, the jury, for whatever reason, chose not to convict him of aggravated assault. Nevertheless, the jury obviously accredited the victim’s testimony that the appellant threatened to harm her and that she feared imminent bodily injury. Therefore, the evidence is sufficient to support the conviction.

III. Conclusion

Based upon the oral arguments, the record, and the parties’ briefs, we conclude that the evidence is sufficient to support the conviction.

NORMA MCGEE OGLE, JUDGE