

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs at Knoxville July 26, 2016

STATE OF TENNESSEE v. ANTWION DOWDY

**Appeal from the Criminal Court for Shelby County
No. 15-00706 John W. Campbell, Judge**

No. W2015-02342-CCA-R3-CD - Filed September 21, 2016

The Defendant, Antwion Dowdy, was convicted by a Shelby County Criminal Court jury of first degree premeditated murder and four counts of aggravated assault, Class C felonies. *See* T.C.A. §§ 39-13-202 (2014), 39-13-102 (2014) (amended 2015). The trial court sentenced the Defendant to concurrent sentences of life imprisonment for first degree murder and five years for each aggravated assault. On appeal, he contends that the evidence is insufficient to support his convictions. We affirm the judgments of the trial court.

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

ROBERT H. MONTGOMERY, JR., J., delivered the opinion of the court, in which THOMAS T. WOODALL, P.J., and CAMILLE R. MCMULLEN, J., joined.

Edwin C. Lenow, Memphis, Tennessee, for the appellant, Antwion Dowdy.

Herbert H. Slatery III, Attorney General and Reporter; M. Todd Ridley, Assistant Attorney General; Amy P. Weirich, District Attorney General; and Paul Hagerman and Tracye Jones, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

This case arises from a May 18, 2013 graduation party, during which Sharquette Smith died as a result of a single gunshot wound. At the trial, Albernesha Smith, Mr. Smith's sister, testified that Mr. Smith was age fifteen at the time of his death and the youngest of four children. She said that she and Mr. Smith both attended East High School at the time of the shooting, although Mr. Smith had attended Douglass High School previously. She did not attend the graduation party. On cross-examination, Ms. Smith testified Mr. Smith lived in the Mitchell Heights community and did not live near the location of the graduation party.

Jamie Foster testified that she attended Montero Rivers's graduation party with Jacques Wright and her sister-in-law, Kelia Johnson. Ms. Foster said that she attended Douglass High School with Mr. Rivers, although Ms. Foster had not graduated at the time of the shooting. She said that Ms. Johnson drove her red four-door car to the party. She said that the party had already begun when they arrived, that music was playing, and that they went inside the home. She said that it was a normal party for the first couple of hours but that the female homeowner took the microphone from the disc jockey and ordered everyone from Mitchell Heights to go outside the home. Ms. Foster said that she, Ms. Johnson, and Mr. Wright went outside as the woman directed.

Ms. Foster testified that outside the home, she saw four men on the sidewalk near the home arguing with Mr. Wright and Mr. Smith, who were standing in the middle of the street. Ms. Foster said that Ms. Johnson grabbed her and pulled her toward Ms. Johnson's car parked across the street. Ms. Foster said that she, Ms. Johnson, Mr. Wright, and Mr. Smith got in Ms. Johnson's car and drove down the street, that the street was a dead end, and that Ms. Johnson turned around the car. Ms. Foster said that Edward Grandberry jumped inside the car, that Ms. Johnson drove down the street, and that when they passed the home of the party, Mr. Smith stuck his head out the car window and yelled at the four men. She said Mr. Wright and Mr. Smith knew Mr. Grandberry.

Ms. Foster testified that the Defendant was one of the four men arguing with Mr. Wright and Mr. Smith and that she knew the Defendant from Douglass High School. She identified Tevin as one of the men standing with the Defendant and said she did not know the remaining two men. Ms. Foster said that as Ms. Johnson drove by the home, Ms. Foster saw the Defendant with a gun and that he stood in the middle of the street after Ms. Johnson drove by the home. She said that a second man was carrying a gun and was standing beside a truck parked near the home. She said the Defendant and the second man had retrieved their guns from the truck. She said the man standing beside the truck had dreadlocks. She said that the Defendant and the second man pointed their guns at Ms. Johnson's car, that Ms. Foster heard gunshots, and that Mr. Smith sustained a gunshot wound. Ms. Foster said that nobody inside the car had a weapon. She said Ms. Johnson immediately drove to the hospital. Ms. Foster stated that the police provided her a photograph lineup and that she identified the Defendant as the person she saw standing in the street and shooting at Ms. Johnson's car.

On cross-examination, Ms. Foster denied that several people outside the home were dressed alike and said that she did not know what clothes the Defendant wore at the time of the shooting. She said she did not know Justin Swain. She agreed Mr. Smith was intoxicated before he arrived at the party, but she did not know whether he smoked marijuana that night. She agreed that Mr. Smith and Mr. Wright were from Mitchell Heights but said she did not

hear a commotion inside the home before the homeowner asked people from Mitchell Heights to leave.

Ms. Foster testified that Mr. Grandberry, Mr. Smith, and Mr. Wright sat in the backseat of Ms. Johnson's car, that Mr. Wright sat behind the driver's seat, and that Mr. Grandberry sat behind the front passenger seat. She said that she turned her head and looked back as Ms. Johnson drove past the home and that she saw the Defendant. She agreed that Will Stacko was the second man carrying a gun and that Mr. Stacko wore a blue polo shirt and a baseball cap. She said that Mr. Stacko was standing in the street by the truck from where the Defendant and Mr. Stacko retrieved the guns. She clarified that the truck was a white, four-door Ford SUV and said that she saw the Defendant retrieve a gun from the truck when Ms. Johnson drove her car past the truck and that Ms. Foster immediately heard gunshots.

Ms. Foster testified that as Ms. Johnson drove past the home, Mr. Smith leaned his head out the window, turned his head, and looked back at the men. She said that although she saw the Defendant and Mr. Stacko holding guns, she did not see who fired the shots.

On redirect examination, Ms. Foster testified that the Defendant and Mr. Stacko were two of the four people arguing with Mr. Smith and Mr. Wright outside the home. She said that as she and Ms. Johnson were attempting to leave, Ms. Foster saw the four men walking to the truck and saw the Defendant's and Mr. Stacko's retrieving guns. She said that after Ms. Johnson turned the car around at the dead end and approached the home, the car passed the Defendant first. She said that Tevin, who was with the Defendant and Mr. Stacko, also retrieved a gun from the truck. Ms. Foster said that when she heard the gunshots, she looked back at the men and that she saw the Defendant and Mr. Stacko holding guns. She said Tevin and the fourth man were standing on the sidewalk behind the truck. She did not see the fourth man holding a gun. She said that Tevin attended her high school but that she did not know his last name. She said that she saw Mr. Stacko fire his black gun once.

Jacques Wright testified that he attended Douglass High School at the time of the shooting and that he attended the party with Mr. Smith, who Mr. Wright knew from the Mitchell Heights neighborhood where they both lived. Mr. Wright said Mr. Grandberry also attended the party. Mr. Wright said that the three of them "hung out" in the Mitchell Heights area before going to the party. Mr. Wright said that although Mr. Grandberry was from Mitchell Heights, Mr. Grandberry did not attend Douglass High School. Mr. Wright said that although he and Mr. Grandberry did not drink alcohol before the party, Mr. Smith drank "hard liquor." Mr. Wright admitted smoking two or three grams of marijuana before the party but denied Mr. Smith smoked marijuana. Mr. Wright said that he was "not . . . high at all" but that Mr. Smith was very intoxicated.

Mr. Wright said that he, Mr. Smith, and Mr. Grandberry walked to the graduation party and that everyone who came to the party was allowed to enter the home. He said, though, nobody was allowed to enter with alcohol or marijuana. He said that the homeowner searched people for drugs and alcohol as they entered. He said that he, Mr. Smith, and Mr. Grandberry did not have drugs, alcohol, or weapons when they entered the home. Mr. Wright said that a friend was the party's disc jockey, that people were dancing and mingling, and that Mr. Wright spoke into the microphone attempting to get everyone to dance. He recalled Mr. Smith danced in the living room. Mr. Wright said that after he spoke, people began "throwing up gang signs" and "bumping each other." He said that when certain rap songs played, people showed their respective gang signs while they danced, which caused concern that violence might result.

Mr. Wright testified that people from the Mitchell Heights and the Douglass neighborhoods attended the party and that "bad feelings" and a rivalry existed between members of the respective neighborhoods. He said that people at the party flashed their respective gang signs for about an hour before the homeowner told everyone from Mitchell Heights to go outside. He said that he, Mr. Smith, and Mr. Grandberry were forced outside the home. Mr. Wright said that as people from Mitchell Heights left the home, people from Douglass began showing gang signs and cursing people from Mitchell Heights. Mr. Wright admitted people from Mitchell Heights also became "rowdy."

Mr. Wright testified that outside the home, twenty to thirty people from Douglass were yelling at the people from Mitchell Heights. He said he knew the Defendant from Douglass. Mr. Wright said that the groups argued, that he wanted to fight, and that Mr. Smith also wanted to fight because Mr. Smith removed his shirt. He said, though, that nobody from Douglass indicated they were willing to fight and that Ms. Johnson pushed him and Mr. Smith inside Ms. Johnson's car.

Mr. Wright testified that he and Mr. Smith did not have any weapons that night but that he saw people from Douglass with handguns. He said that the Defendant held a gun but did not point it at anyone and that another man with dreadlocks held a gun. Mr. Wright said that at that time, he and Mr. Smith were surrounded by people from Douglass and that Ms. Johnson pushed him and Mr. Smith toward Ms. Johnson's car. Mr. Wright said that Ms. Johnson had to turn the car around because the street was a dead end, that Mr. Grandberry got in the car, and that Ms. Johnson drove by the home to get out of the neighborhood. Mr. Wright said that as they passed the home, people from Douglass displayed gang signs and said, "Crip Killers." Mr. Wright said that Mr. Smith rolled down the window, leaned out the window, and yelled disrespectful things. Mr. Wright said that he looked back after the car passed the home, that he heard gunshots, and that he saw gunfire coming from the Defendant's gun. Mr. Wright said the Defendant was standing on the curb with three men

when the Defendant shot at the car. Mr. Wright recalled that the Defendant stood beside an unknown man with dreadlocks and that the man also fired a gun. Mr. Wright recalled hearing four gunshots during the incident.

Mr. Wright testified that Mr. Smith fell into Mr. Wright's arms after being shot in the chest. Mr. Smith told Mr. Wright to tell Mr. Smith's mother that he loved her. Mr. Wright said that although nobody else in the car had been shot, the windshield was cracked and that a bullet went through a door. He said that Ms. Johnson drove to the hospital and that they waited for the police. Mr. Wright said he told the police that the Defendant shot Mr. Smith and recalled identifying the Defendant from a photograph lineup about five or six hours after the shooting.

On cross-examination, Mr. Wright testified that he knew the Defendant played basketball for Douglass High School. Mr. Wright said that he heard the gunshots as Ms. Johnson drove by the home. He agreed Mr. Smith displayed gang signs from Ms. Johnson's car. Relative to the man who had dreadlocks, Mr. Wright denied the man wore a blue cap or a "grill" in his mouth. Mr. Wright did not see anyone walk to a vehicle and retrieve anything, although his statement to the police reflected the men walked to a four-door Toyota SUV.

Kelia Johnson testified that Ms. Foster was her sister, that Mr. Wright was her former boyfriend, and that she graduated from Overton High School. Ms. Johnson said that she and Ms. Foster arrived at the party around 8:00 p.m., that around 10:00 or 11:00 p.m., people began "gang banging," which she described as having words back and forth, and that the homeowner told people from Mitchell Heights to go outside. Ms. Johnson said that Mr. Smith and Mr. Wright argued with people inside the home for ten minutes before the homeowner asked people to go outside. Ms. Johnson said that when she walked outside, she saw Mr. Smith and Mr. Wright arguing with several men. She said that she began walking toward her car because she wanted to leave and that after fifteen minutes of arguing, Mr. Wright and Mr. Smith got inside her car. She said Ms. Foster and Mr. Grandberry also got inside her car.

Ms. Johnson testified that after she drove down the dead-end street and turned around to leave the neighborhood, she heard four or five gunshots. She did not see who shot at her car but noted bullets struck the passenger side and front of her car. She immediately drove to the hospital after Mr. Smith stated he had been shot. She said nobody inside her car had a gun that night.

On cross-examination, Ms. Johnson testified that Mr. Smith and Mr. Wright were intoxicated before she arrived at the party. She agreed it was difficult to identify people's faces outside because it was dark. She did not recognize any of the men arguing with Mr.

Smith and Mr. Wright outside the home. She agreed that she told the police she saw four men walk toward a four-door truck or SUV and that she could not determine the make, model, or color because it was dark. She did not know if any of the men carried weapons. She said that Mr. Grandberry, not Mr. Wright, sat in the middle rear seat of her car.

Edward Grandberry testified that at the time of the shooting, he attended East High School, that he never attended Douglass High School, and that he lived in Mitchell Heights. Relative to the shooting, he said he was unable to see anyone shooting a gun. He said that he spent time with Mr. Smith before the party, that Mr. Smith drank alcohol and smoked marijuana, and that Mr. Grandberry smoked marijuana.

Mr. Grandberry testified that neither he nor Mr. Smith had weapons or attempted to enter the home with marijuana. He said that a rivalry existed between Douglass and Mitchell Heights and that during the party, each group displayed their respective gang signs. He said that about forty minutes after he and Mr. Smith arrived, the homeowner told Mr. Smith to leave because Mr. Smith was intoxicated. Mr. Grandberry said that outside the home, something occurred between Mr. Smith and people from Douglass and that as a result, the homeowner told everyone from Mitchell Heights to go outside. Mr. Grandberry said that Mr. Smith had already removed his shirt by the time Mr. Grandberry left the home and that Mr. Smith argued with a group of men. Mr. Grandberry said that he placed Mr. Smith inside Ms. Johnson's car and that Ms. Foster drove down the street. Mr. Grandberry said that Mr. Smith stuck his head out the window, displayed gang signs, and yelled at the Douglass men and that Mr. Grandberry heard gunshots as they drove past the home. He did not see the shooters because he ducked to avoid being shot.

On cross-examination, Mr. Grandberry testified that no lights were on outside the home. He said that Mr. Smith drank vodka during the party and that he had never seen Mr. Wright drink alcohol. Mr. Grandberry said that about forty people were outside the home when the shooting occurred and that he did not see anyone holding a gun.

Memphis Police Officer David Payment testified that he collected evidence from Ms. Johnson's red car. He identified photographs of the car, which showed a hole he said was consistent with a bullet strike on the right rear side of the car between the doors, circular defects in the cracked front windshield that were consistent with bullets striking the windshield from inside the car, and a red substance on the back seat and the right rear door. Officer Payment did not find any guns, cartridge casings, bullets, or any other weapons inside the car.

On cross-examination, Officer Payment testified that he had no training on bullet trajectory and that he did not know what might have been inside the car before the police secured it. He said the windshield defect near the driver's seat did not penetrate the outside of the windshield and that he could not determine how long the defect had been present. He noted, though, that he found black dust on the dashboard near the defect.

Memphis Police Officer James Sewell testified that he and Sergeant Quinn interviewed the Defendant the day after the shooting and that the Defendant was calm during the interview. Officer Sewell said that the Defendant knew they were investigating Mr. Smith's death and that the Defendant reported being inside the home when he heard gunshots. When Officer Sewell told the Defendant that witnesses identified the Defendant as one of the shooters, the Defendant denied being outside the home at the time of the shooting. Officer Sewell said that the Defendant denied shooting a gun, holding a gun, or standing near someone who had fired a gun in the previous couple of days.

Officer Sewell testified that the Defendant later stated he was outside during the shooting but was "being held back" by the homeowner in the yard. Officer Sewell said that he requested a crime scene officer test the Defendant's hands for gunshot residue and that the Defendant told the officer that he had not bathed since the shooting. After the test was completed, the officers said, "uh-huh," in the Defendant's presence, and the Defendant asked if it was too late to change his statement. Officer Sewell said that the Defendant admitted firing a gun after the party and said he and a friend went to an open field in north Memphis and fired a .22-caliber gun. Officer Sewell said that Sergeant Quinn told the Defendant the officers did not believe him and that the Defendant provided a fourth version, which was reduced to writing and presented to the jury.

In the written statement, the Defendant said that he was responsible for Mr. Smith's death and that he fired two rounds from a black "automatic" handgun while standing in the street. The Defendant said he fired his gun at the back of the car in which Mr. Smith was traveling while standing on the left side of the street beside Carnesia Pierce's car. The Defendant said he was twenty-five to thirty feet from Mr. Smith when the Defendant fired the gun. The Defendant said that Will Stacko and Dee Dee Montana also fired guns at the car. The Defendant stated Mr. Stacko and Mr. Montana stood in the street and were closer to the car when they fired their guns. The Defendant said Mr. Stacko and Mr. Montana walked toward the right side of the car and fired their guns as Mr. Smith got inside the car. The Defendant said Mr. Smith fired a gun at the Defendant and his friends and hung out the car window when the Defendant, Mr. Stacko, and Mr. Montana fired their guns. The Defendant said that he obtained the gun he used from Kenny Lance and that he returned the gun to Mr. Lance after the shooting. The Defendant said he had never seen Mr. Smith before the night of the party.

The Defendant stated that he arrived at the party with Justin Swain, Freddy Williams, and two other men, that several people argued with Mr. Smith on the dance floor, and that the homeowner told all of the people from Mitchell Heights to go outside and all of the people from Douglass to stay inside the home. The Defendant said that the homeowner later told the people inside the home that it was okay to leave, that when he got outside, Mr. Smith was threatening people from Douglass, and that the Defendant thought he, Mr. Stacko, and Mr. Montana were going to fight Mr. Smith. The Defendant said that when he walked to where Mr. Smith, Mr. Stacko, and Mr. Montana were arguing, he saw a gun in Mr. Smith's hand. The Defendant said that Mr. Smith pointed the gun at him and his friends, that Mr. Smith fired his gun, and that the Defendant and his friends returned fire. The Defendant said that Mr. Smith got into a silver four-door car while gun fire was being exchanged and that the car drove away.

The Defendant stated that Ms. Pierce drove him home after the party in her green four-door car. He said that the windshield of Mr. Swain's car sustained a bullet hole when Mr. Smith fired his gun. The Defendant did not believe he shot Mr. Smith because he was further away from Mr. Smith than Mr. Stacko and Mr. Montana. The Defendant said his friends told him that they saw Mr. Smith pull out a gun first and that was the reason "we shot back."

On cross-examination, Officer Sewell testified that he did not speak to Mr. Stacko, Mr. Montana, or Mr. Swain. Officer Sewell did not record the Defendant's interview but said Melinda Harris typed the statement as Officer Sewell asked questions and as the Defendant provided answers. Officer Sewell said the Defendant did not know the caliber of the gun he used.

Memphis Police Officer James Smith testified that he processed the scene of the shooting and that he found a purple polo shirt, a white t-shirt, and three Federal .380-caliber cartridge casings in the street. He said the casings suggested a semi-automatic handgun was fired during the shooting. On cross-examination, Officer Smith stated that two casings were on the sidewalk, that the third was beside the curb in the street, and that all of the casings were in front of the home where the party was held.

Upon questioning by the trial court, Officer Smith testified that after a cartridge casing was ejected from a handgun, the casing could travel between three and five feet and that the casing could also travel up to ten yards after striking a surface.

Dr. Erica Curry, an expert in forensic pathology, testified that she performed Mr. Smith's autopsy and that Mr. Smith sustained a single gunshot wound to his right torso. She said the bullet entered between two right ribs and traveled through the right lung, heart, left

lung, and left rib. She could not determine the caliber of the bullet but said that no stippling was present and that the gun was fired more than three feet from Mr. Smith. She said the gunshot wound could have been consistent with Mr. Smith's hanging out a car window when he was shot. She said the toxicology report showed that Mr. Smith's blood alcohol concentration was .08 and that Mr. Smith had smoked marijuana within two days of his death. She concluded that the cause of death was a gunshot wound to the torso and that the manner of death was homicide.

On cross-examination, Dr. Curry testified that the entrance wound was slightly toward the back of the torso and that the bullet traveled upward. She said the bullet could have been .380-caliber. She found scrapes on the elbows, right arm, right knee, left thigh, and lower left leg and said the scrapes could have been caused from fighting. She said a gunshot residue test was performed. On redirect examination, she stated that Mr. Smith's abrasions could have been caused by many methods, not only fighting. On recross-examination, she stated that the abrasions were sustained within one day of Mr. Smith's death.

Shelby County Sheriff's Deputy Ruben Ramirez testified that he reviewed recordings of the Defendant's jail telephone calls. Deputy Ramirez identified the recording of a telephone call placed on May 19, 2013, at 7:30 p.m., by the Defendant in the booking area of the jail. The recording was played for the jury.

In the recording, the Defendant talked to an unidentified man. The Defendant said that he told the police that he was at the party, that he was denied an attorney, and that he falsely stated he fired a gun. The Defendant told the man that nobody taught him how to remove "the powder," and the man stated that the Defendant should not have mentioned shooting a gun. The Defendant asked what would remove the powder, and the man said bleach. The Defendant said he was not thinking. The Defendant and the man discussed having "all the witnesses" provide statements to the police, and the Defendant said he did not tell the police that he killed Mr. Smith. The man told the Defendant that he never should have told the police that he fired a gun. The Defendant said he was going to tell his attorney that he lied to the police because he was scared.

Tennessee Bureau of Investigation (TBI) Special Agent J. Russell Davis, an expert in gunshot residue analysis, testified for the defense that he analyzed the swabs obtained from the Defendant's hands and that no gunshot residue was found. Agent Davis also analyzed the swabs obtained from Mr. Smith's hands. Agent Davis said that the analysis was inconclusive and that he could not eliminate the possibility Mr. Smith fired a gun. He noted, though, that Mr. Smith sustained a gunshot wound.

On cross-examination, Agent Davis testified that a gunshot residue test was used to determine the proximity to a discharged firearm and that a positive finding for residue could have been caused by shooting a gun, being shot, and being nearby when a gun was fired. He said that Mr. Smith was shot, which could have resulted in the presence of residue, that the hospital treatment Mr. Smith received could have removed any residue from Mr. Smith's hands, and that the bag in which Mr. Smith was placed contained blood, which could have destroyed any residue. Agent Smith agreed that generally, gunshot residue tests conducted on victims were meaningless because various factors impacted the results of the analysis. He agreed the TBI did not routinely test gunshot victims for the presence of residue.

Agent Davis testified that the swabs were obtained from the Defendant about twelve hours after the shooting. Agent Davis said, though, eight hours was preferred. He said that twelve hours was outside his "comfort zone" because residue most likely would have been gone, resulting in inconclusive findings. He said that he would not have expected to find any residue on the Defendant's hands twelve hours after the shooting.

Tevin Tate testified that he, Keython Johnson, and Quentin Richmond arrived at the party around 7:30 or 8:00 p.m. Mr. Tate said that he met the Defendant playing football at Douglass High School. Mr. Tate said that the Defendant attended the party and that he did not see the Defendant with a gun. Mr. Tate said that he did not have any weapons inside his vehicle. He said he left the party at 11:00 p.m. because of his curfew. He could not recall if he saw Mr. Wright at the party and said sixty people attended the party. He said high school students from all of north Memphis' schools were present. He said that when he left the party, everyone appeared to be having a good time. He did not see anyone retrieve a gun from a vehicle.

Keython Johnson testified that he attended the party, that fifty to sixty people attended, and that he did not see the Defendant with a gun that night. Mr. Johnson said that his brother drove him and Mr. Tate to the party and that no weapons were inside his brother's truck. Mr. Johnson said that he, his brother, and Mr. Tate left the party around 10:30 or 11:00 p.m.

Jasmine Johnson, the Defendant's cousin, testified that she attended the party and that she saw the Defendant and Mr. Smith, although she did not know Mr. Smith. She said that Mr. Wright assisted the disc jockey by speaking into the microphone, that Mr. Wright talked about STMG, the abbreviation for Swag Team Music Group and a Douglass High School music group, on the microphone, and that Mr. Wright gave a "shout out to" everyone from Mitchell Heights. She said that the party became "rowdy" because the shout out resulted in arguments about whether Mitchell Heights or Douglass was superior and that the Mitchell Heights people wanted to fight. Ms. Johnson said that the party ended, that everyone went outside the home, and that "they" became rowdy. She said that Mr. Wright pulled out a gun

and that everyone backed away. She said that the homeowner held people, including the Defendant, from going to the front yard after Mr. Wright displayed his gun.

Ms. Johnson testified that a few minutes later, she heard car engines and shooting and that she ran inside the home. She said everyone, including the Defendant, ran inside the home. She said that she saw Mr. Smith hanging out of a car window, yelling, and displaying gang signs as the car drove down the street. She said she did not hear any gunshots as the car drove away. She said that she did not see who fired a gun because she was attempting to return to the home. She said, though, she never saw the Defendant with a gun. She said the Defendant left the party with Ms. Pierce and thought Ms. Pierce drove a car, not a SUV.

On cross-examination, Ms. Johnson testified that the Defendant was a member of STMG and that several people at the party wore their STMG shirts. She said that the Defendant and Mr. Swain arrived at the party around 8:30 p.m. She said that after Mr. Wright used the microphone to give a shout out to Mitchell Heights, people from Douglass became rowdy. She said that the homeowner told everyone the party would end if everyone did not calm down. She said the Defendant became rowdy but calmed down as instructed by the homeowner.

Ms. Johnson testified that although she did not know what occurred, the people at the party became rowdy again and that the homeowner ended the party. She said that outside the home, Mr. Wright pulled out a gun and that the crowd split. She said that Mr. Wright did not fire the gun and that Mr. Wright and Mr. Smith immediately left in the red car. She said she saw the car turn around and drive by the home quickly. She admitted, though, she did not see the red car turn around because the home's garage blocked her view. She agreed she never told the police that the Defendant was being held back by the homeowner.

Justin Swain testified that he had known the Defendant since childhood and that they had attended Douglass High School together. Mr. Swain said that he drove his gray Taurus to the party and that the Defendant and Mr. Williams attended the party with him. Mr. Swain said that he and the Defendant wore STMG shirts to the party and that Mr. Rivers was the leading member of the group. Mr. Swain said that he did not know Mr. Smith before the night of the party and that he knew Mr. Wright from Douglass High School. Mr. Swain said that he was six feet, two inches tall and that the Defendant was slightly taller.

Mr. Swain testified that Mr. Smith was pacing and talking on a cell phone when Mr. Swain, the Defendant, and Mr. Williams arrived at the party. Mr. Swain said that everyone was having a good time but that Mr. Wright used the disc jockey's microphone, "started talking da-da-da this and that," which caused "confusion." Mr. Swain said people were not violent but jumped around and had a good time. He said that after time passed, Mr. Johnson,

Mr. Johnson's brother, and Mr. Tate had to leave the party and that he, the Defendant, and Mr. Williams walked the men to their truck and said goodbye. Mr. Swain said that he, the Defendant, and Mr. Williams returned to the party and that the homeowner announced the party was over and told everyone from Mitchell Heights to leave the home before people from Douglass because of the earlier "confusion." Mr. Swain denied that he, the Defendant, and Mr. Williams were involved in the earlier confusion but admitted it involved people from Douglass.

Mr. Swain testified that the homeowner required people from Douglass to stay inside until the people from Mitchell Heights were gone but that when the homeowner allowed people from Douglass to leave, some of the people from Mitchell Heights were outside. Mr. Swain said that when he and the Defendant walked outside the home, Mr. Swain saw a crowd of people from Mitchell Heights in the street, that the two groups converged, and that he heard yelling and thought a fight occurred. Mr. Swain said that Mr. Wright was in the center of the crowd and that Mr. Wright pulled out a gun and pointed it toward the sky. Mr. Swain said that initially he thought Mr. Wright "was pistol playing" and did not intend to shoot anyone, that Mr. Swain walked toward his car, and that Mr. Swain saw the homeowner holding back the Defendant and others near the home. Mr. Swain said that as he was getting ready to get inside his car on the passenger side, he saw a red car driving down the street toward the home, that he heard three gunshots as the red car approached his car, and that he saw Mr. Smith hanging out the car window. Mr. Swain did not know who was shooting. He said the police did not interview him.

On cross-examination, Mr. Swain testified that he did not contact the police about the shooting and that he was waiting for the police to contact him. He said that he did not know Mr. Stacko or Mr. Montana and that the men did not ride with him, the Defendant, and Mr. Williams to the party. He said that he wore pajama pants to the party, that his keys fell out of the pockets easily, and that as a result, he left his keys outside the passenger side of his car. He said later, though, that his driver's side door was jammed. He denied he went to his car to retrieve a gun.

Mr. Swain testified that Mr. Smith did not have a gun or a weapon when Mr. Smith hung out the car window. Mr. Swain agreed that if a person said Mr. Smith was holding a gun as he hung out the window, the person was lying. He said Mr. Smith displayed gang signs. Mr. Swain agreed that as he attempted to avoid gunfire, he did not know what the Defendant was doing or who was shooting a gun. He said that after he started his car, he walked to the home to look for the Defendant and Mr. Williams, that Mr. Swain realized the men were not there, that Mr. Swain returned to his car, and that Mr. Swain drove away. Mr. Swain said that he spoke with the Defendant on the telephone immediately after leaving the home and that the Defendant did not mention the shooting.

Mr. Swain testified that he met the Defendant at Ms. Pierce's home and that he drove the Defendant home. Mr. Swain said that he spoke to the Defendant's mother before the Defendant's arrest and that Mr. Swain told the Defendant's mother to contact him if "they" needed Mr. Swain.

Carnesia Pierce testified that she drove several of her friends to the party in a green Mazda. She said that near the end of the party, the homeowner told everyone from Douglass to leave and that she heard three gunshots. She said that she saw Mr. Swain and the Defendant arguing with Mr. Smith on the sidewalk, that Mr. Smith got inside a car and hung his head out the window, and that she heard four additional gunshots. She said the gunshots came from behind the car in which Mr. Smith rode. She said that the Defendant stood on the sidewalk when the shots were fired and that afterward, the Defendant got inside her car. She said the Defendant was standing beside her when the shots were fired and recalled attempting to calm the Defendant because he was arguing with Mr. Smith. She said Mr. Smith hung out the car window when he argued with the Defendant.

Ms. Pierce testified that she never saw the Defendant hold a gun or any other type of weapon. She said that although she did not see anyone fire a gun at Mr. Smith, she heard the gunshots. She said that she provided a statement to the police the morning after the shooting and that she told the police Mr. Swain was at the party.

On cross-examination, Ms. Pierce clarified that during the party, she heard three gunshots before the homeowner told the people from Douglass to go outside. She said that when Mr. Smith was hanging out the car window and arguing with the Defendant, Mr. Smith was in the right rear passenger seat and that two males were sitting in the front seats. She said that when Mr. Smith was in the car, the Defendant and Mr. Swain were standing on the sidewalk about fifteen to twenty feet from the car, which was in the middle of the street in front of the home. She said the car was getting ready to drive away. She said she was standing beside the Defendant when the Defendant and Mr. Swain argued with Mr. Smith. She said the argument lasted about seven minutes and that she heard four or five gunshots coming from down the street. She said that after she heard the gunshots, she got in her car and saw the car in which Mr. Smith was riding drive away. She agreed she heard two sets of gunshots and said she did not know who fired any of the guns.

Montero Rivers testified that the graduation party was held in his honor for graduating from Douglass High School. He said that earlier on the day of the shooting, he, the Defendant, Mr. Swain, and John Trammel, who he identified as his godbrother, had shirts made with the STMG logo and that Mr. Rivers was the founder of the music group. He said that afterward, they returned to his home where the party was held. Mr. Rivers said that Mr. Wright attended the party and used the disc jockey's microphone to scream, "Mitchell

Heights Crip.” Mr. Rivers said that people became rowdy in response to Mr. Wright’s statement but that Mr. Rivers’s uncle calmed everyone down. Mr. Rivers said that his godmother, the homeowner, threatened to kick out anyone who became rowdy again and that she kicked out Mr. Smith, Mr. Wright, and Ms. Foster because they were intoxicated.

Mr. Rivers testified that he was inside the house before he heard gunshots, that from inside his home, he saw a crowd of people arguing as though a fight were about to occur, and that he ran outside. He said that as he ran out the door, he heard gunshots and that everyone ran toward the home. He said that the Defendant was in the crowd and ran toward the home when the shots were fired. Mr. Rivers said the shots were fired by a “chubby guy,” who was standing on the sidewalk. Mr. Rivers recalled that the car in which Mr. Smith was riding had already turned around at the dead end and was about to drive away. Mr. Rivers said that the Defendant did not have a gun and that the Defendant attempted to prevent Mr. Trammel from being shot by pulling Mr. Trammel toward the home and away from the street. Mr. Rivers did not see Mr. Wright or Mr. Smith with a gun.

Mr. Rivers testified that from inside the home, he was about thirty to forty feet from the crowd and that he could see faces in the crowd. He said that as he reached the door, he saw the Defendant in the street pulling Mr. Trammel toward the home and saw “sparks” and a “big guy” shoot a gun three times. Mr. Rivers agreed that the Defendant was not being held back by Mr. Rivers’s godmother at the time of the shooting. He said the only person who argued with Mr. Smith outside the home was Mr. Trammel.

Mr. Rivers testified that after the shots were fired, everyone, including the Defendant and Mr. Swain, ran toward his home except the “fat guy.” He said that Mr. Swain did not walk to his car after the shooting. Mr. Rivers said the Defendant was not chubby at the time of the shooting. Mr. Rivers agreed he did not speak to the police about the shooting but said the police spoke to Mr. Trammel. Mr. Rivers said that the police came to his home and asked to speak with Mr. Trammel, that Mr. Rivers attempted to provide a statement to the police, and that the police told Mr. Rivers the police only needed Mr. Trammel’s statement because Mr. Trammel was present when the shooting occurred. On redirect examination, Mr. Rivers testified that the party was also a pajama party and that many people wore their STMG shirts.

John Trammel testified that Mr. Smith was intoxicated at the graduation party, that Mr. Trammel’s mother told Mr. Smith to leave the party several times, and that Mr. Trammel’s mother allowed Mr. Smith to stay. Mr. Trammel said, though, that the last time his mother told Mr. Smith to leave, Mr. Smith was disrespectful. Mr. Trammel said that he became angry at Mr. Smith for the disrespect and that he and Mr. Smith argued in the street outside the home. Mr. Trammel denied that the Defendant argued with Mr. Smith and said that the Defendant grabbed and pulled Mr. Trammel toward the home. Mr. Trammel said

that although he did not see anyone with a gun, he heard gunshots. Mr. Trammel said that after he heard the gunshots, he and the Defendant ran toward the home and toward Mr. Trammel's mother and stepfather. Mr. Trammel did not know where Mr. Swain was during the commotion.

Mr. Trammel testified that Mr. Smith, Mr. Wright, and Ms. Foster were intoxicated while they were at the party. He recalled Mr. Smith drank a water bottle full of brown liquor before reaching the home. Mr. Trammel said he spoke to the police after the shooting.

On cross-examination, Mr. Trammel testified that he, Mr. Smith, Mr. Wright, the Defendant, and Mr. Trammel's mother were standing in the street during the argument but that Mr. Smith was inside the car hanging out the window when the shooting began. Mr. Trammel said that he, his mother, and the Defendant stood in the street when the shooting started and that the Defendant pulled Mr. Trammel away from the street. He said that the gunshots sounded as though they came from behind, that he heard four gunshots before he stopped counting, and that all of the gunshots sounded as though they came from the same gun.

The Defendant testified that he never changed his version of the events. He thought he signed release papers, not a statement, at the end of his interview. He said that the officers shackled his leg to the floor and denied his request for an attorney. The Defendant said that he never denied being at the party and that he told the officers he heard gunshots, although he knew nothing about anyone being shot. He said that the first officer slapped the table and "got in [his] face" and that the second officer told the Defendant to tell the truth because the second officer could not keep the first officer off the Defendant. The Defendant said he was scared but denied knowing anything about Mr. Smith's death. The Defendant said that the officers left, that a third officer offered him a drink, and that the third officer said the officers would return with his release papers. He said the officers returned with papers and told him to sign and initial showing that "it" was read to him. The Defendant said that he did not understand because nothing had been read to him, that the officer asked if the Defendant wanted to go home, that the Defendant said yes, and that the Defendant signed and initialed the papers.

The Defendant testified that he did not identify Mr. Stacko or Mr. Montana in his statement to the police, that the officers asked if he knew the men, and that he told the officers that although he knew who the men were, he did not know them personally. The Defendant said he attended the party with Mr. Swain and Mr. Anderson. He said that although Mr. Montana attended the party, the Defendant did not socialize with Mr. Montana. The Defendant denied owning a gun or having a gun on the night of the shooting.

The Defendant testified that when the shooting started, he was attempting to stop Mr. Trammel from arguing with Mr. Smith and Mr. Wright and to convince Mr. Trammel to leave the street. The Defendant said that when he heard gunshots, he, Mr. Trammel, Mr. Trammel's mother, and Mr. Trammel's uncle ran toward the home. The Defendant said that he and Mr. Swain were dressed identically that night. The Defendant said he did not shoot Mr. Smith and did not know who shot him. The Defendant said that it was dark outside that night, that nobody saw "who did what," and that everyone ran when they heard gunshots.

The Defendant testified that although he knew who Kenny Lane was, he did not know Mr. Lane personally and that the Defendant did not identify Mr. Lane to the police. The Defendant said that Mr. Lane did not deliver a gun to him.

On cross-examination, the Defendant identified his and his brother's voices in the recording of the jail telephone call previously played for the jury. The Defendant said that his brother asked why the Defendant told the police he had fired a gun and that the Defendant explained the police continued to ask questions. The Defendant denied his brother accused him of lying about not being involved in the shooting. The Defendant denied lying to his brother and to the jury. The Defendant said he did not tell his brother he signed release papers because "people had already told me what I had just signed . . . a statement that they had coerced me into signing." The Defendant acknowledged that the version of events he told his brother focused on the Defendant's shooting at Mr. Smith, Mr. Smith's running away, and Mr. Stacko's and Mr. Anderson's following Mr. Smith. The Defendant said, though, he just wanted to "make it out alive."

Upon this evidence, the Defendant was convicted of first degree murder and four counts of aggravated assault, and the trial court imposed a life sentence. This appeal followed.

The Defendant contends the evidence is insufficient to support his convictions. He argues that the State failed to establish he acted with premeditation. We interpret the Defendant's argument as an attack on the credibility of testimony from Mr. Wright, Mr. Smith's fellow gang member, and Kelia Johnson, Mr. Wright's former girlfriend. Alternatively, the Defendant asserts the evidence supports a finding that he acted based upon a state of passion produced by adequate provocation because of Mr. Smith's creating anger among people from Douglass. We interpret the Defendant's final argument as the jury should have disregarded his statement to the police. The State responds that the evidence is sufficient. We agree with the State.

In determining the sufficiency of the evidence, the standard of review 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 State v. Vasques*, 221 S.W.3d 514, 521 (Tenn. 2007). The State is “afforded the strongest legitimate view of the evidence and all reasonable inferences” from that evidence. *Vasques*, 221 S.W.3d at 521. The appellate courts do not “reweigh or reevaluate the evidence,” and questions regarding “the credibility of witnesses [and] the weight and value to be given the evidence . . . are resolved by the trier of fact.” *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997); *see State v. Sheffield*, 676 S.W.2d 542, 547 (Tenn. 1984).

“A crime may be established by direct evidence, circumstantial evidence, or a combination of the two.” *State v. Hall*, 976 S.W.2d 121, 140 (Tenn. 1998); *see State v. Sutton*, 166 S.W.3d 686, 691 (Tenn. 2005). “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)).

First degree murder is the unlawful, intentional, and premeditated killing of another. T.C.A. §§ 39-13-201 (2014), 39-13-202(a)(1) (2014). In the context of first degree murder, intent is shown if the defendant has the conscious objective or desire to cause the victim’s death. *State v. Page*, 81 S.W.3d 781, 790-91 (Tenn. Crim. App. 2002); T.C.A. § 39-11-106(a)(18) (2010) (amended 2011, 2014) (defining intentional as the conscious objective or desire to engage in the conduct or cause the result”). “It is not necessary that the purpose to kill preexist in the mind of the accused for any definite period of time.” T.C.A. § 39-13-202(d) (2014). “The element of premeditation is a question for the jury which may be established by proof of the circumstances surrounding the killing.” *State v. Young*, 196 S.W.3d 85, 108 (Tenn. 2006). As a result, the jury “may infer premeditation from the manner and circumstances of the killing.” *State v. Jackson*, 173 S.W.3d 401, 408 (Tenn. 2005); *see State v. Vaughn*, 279 S.W.3d 584, 595 (Tenn. Crim. App. 2008). Our supreme court has provided a list of factors which “tend to support the existence” of premeditation and deliberation. *See Bland*, 958 S.W.2d at 660. The list includes the use of a deadly weapon upon an unarmed victim, the particular cruelty of the killing, declarations by the defendant of an intent to kill, evidence of procurement of a weapon, preparations before the killing for concealment of the crime, and calmness immediately after the killing. *Id.* (citing *State v. Brown*, 836 S.W.2d 530, 541-42 (Tenn. 1992); *State v. West*, 844 S.W.2d 144, 148 (Tenn. 1997)).

Assault is defined, in relevant part, as “[i]ntentionally or knowingly caus[ing] another to reasonably fear imminent bodily injury[.]” T.C.A. § 39-13-101(a)(2) (2014). A defendant commits aggravated assault when he “[i]ntentionally or knowingly commits an assault . . .

and the assault . . . [i]nvolved the use or display of a deadly weapon[.]” *Id.* § 39-13-102(a)(1)(iii).

We conclude that the evidence is sufficient to support the Defendant’s convictions. Relative to the first degree murder conviction, the evidence viewed in the light most favorable to the State reflects that during the graduation party, people from rival neighborhoods began arguing and that the homeowner hosting the party told everyone from Mitchell Heights to leave the home. Jamie Foster testified that outside the home she saw the Defendant, Will Stacko, and two additional men arguing with Mr. Wright and Mr. Smith, who was undisputedly intoxicated. During the argument, Ms. Foster and Kelia Johnson walked toward Ms. Johnson’s car to leave the neighborhood. Before the women left, Mr. Smith, Mr. Wright, and Mr. Grandberry got inside Ms. Johnson’s car. Because of where the car was parked, Ms. Johnson drove to the dead end down the street, turned around, and drove past the home where the party was held. Ms. Foster, Mr. Wright, and Mr. Grandberry testified that when Ms. Johnson’s car drove past the home, Mr. Smith stuck his head out the window, yelled derogatory remarks, and displayed gang signs to the Defendant and others from Douglass. Ms. Foster, Ms. Johnson, Mr. Wright, and Mr. Grandberry each testified that nobody inside the car possessed a firearm or any type of weapon, and no weapons, bullets, or cartridge casings were found inside Ms. Johnson’s car when it was processed by the police.

Ms. Foster testified that she saw the Defendant and Mr. Stacko retrieve guns from a vehicle parked along the street and that after Ms. Johnson drove past the home, Ms. Foster saw the Defendant standing in the street holding the gun he previously retrieved. Ms. Foster said that the Defendant and Mr. Stacko, who was standing near the vehicle from which the guns were retrieved, pointed their guns at Ms. Johnson’s car, that Ms. Foster heard gunshots, and that Mr. Smith suffered a gunshot wound. Ms. Foster said that she looked back at the home when she heard gunshots and that she saw the Defendant and Mr. Stacko holding guns. Mr. Wright testified that after Ms. Johnson drove past the home, Mr. Wright heard gunshots, that he looked back toward the home, and that he saw gunfire coming from the Defendant’s gun. Moreover, the Defendant told the police that he obtained a gun from Kenny Lance, that the Defendant fired the gun twice at the back of Ms. Johnson’s car, that the Defendant was twenty-five to thirty feet from Mr. Smith when the Defendant fired the gun, and that he returned the gun to Mr. Lance after the shooting.

Based upon this evidence, a reasonable jury could conclude beyond a reasonable doubt that the Defendant committed first degree premeditated the murder. Although Mr. Smith was intoxicated and arguing with the Defendant and others, Mr. Smith ended the argument and attempted to leave the neighborhood. The Defendant procured a firearm from a vehicle parked along the street and shot at Mr. Smith, who was unarmed, as he yelled out the window of Ms. Johnson’s car. Although the defense presented witnesses who provided

testimony contradictory to the State's witnesses, any conflicts in the evidence and witness credibility were resolved by the jury in favor of the State. The evidence is sufficient to support the conviction.

Relative to the Defendant's argument that the evidence supports a finding that he acted based upon a state of passion produced by adequate provocation because of Mr. Smith's conduct outside the home, we note that Mr. Smith ended the argument and entered Ms. Johnson's car with the intent to leave the neighborhood. Although Mr. Smith continued to yell and to display gang signs from the car as it drove away, no evidence suggests that Mr. Smith's conduct as he fled the neighborhood produced adequate provocation for the Defendant to shoot Mr. Smith. The tense confrontation had ended, and Mr. Smith was leaving the area when he was shot. We note that the trial court's final jury instructions reflect that the court provided the jury with a voluntary manslaughter instruction as a lesser included offense of first degree murder. The Defendant is not entitled to relief on this basis.

Although the Defendant's arguments focus on his first degree murder conviction, we likewise conclude that a reasonable jury could conclude beyond a reasonable doubt that the Defendant committed aggravated assault against Ms. Foster, Mr. Wright, Ms. Johnson, and Mr. Grandberry because they were inside the car when the Defendant fired his gun at the car as it drove away. Although the victims were not asked whether they experienced fear during the incident, "[a] victim's fear may be inferred from circumstances surrounding the offense." *State v. Rico Vales*, No. W2014-00048-CCA-R3-CD, 2015 WL 1094667, at *5 (Tenn. Crim. App. Mar. 9, 2015), *perm. app. denied* (Tenn. June 11, 2015); *see State v. Lonta Montrell Burress, Jr., and Darius Jerel Gustus*, No. E2013-01697-CCA-R3-CD, 2014 WL 6855226, at 8* (Tenn. Crim. App. Dec. 4, 2014). The Defendant's conduct involved the use of a deadly weapon, and a reasonable jury could infer that the Defendant's conduct caused each victim to reasonably fear imminent bodily injury. The victims heard the gunshots, knew shots were being fired at the car in which they were riding, and knew Mr. Smith had suffered a gunshot wound to the chest. Mr. Grandberry testified that he ducked inside the car to avoid being shot. We note that the police found evidence of bullets striking Ms. Johnson's car on the right rear side and on the windshield. The evidence is sufficient to support the aggravated assault convictions.

The Defendant also argues that his statement to the police was involuntary because it was made under duress and because he believed his was signing release papers. He claims the jury should have disregarded the statement during its deliberations. Officer Sewell and the Defendant provided contradictory testimony regarding the circumstances of the Defendant's written statement to the police. As a result, the evidence was before the jury, which by its verdict credited the written statement and Officer Sewell's testimony. This court may not reweigh evidence and must view it in the light most favorable to the State.

The jury was permitted to place as much or as little weight upon the statement as it considered appropriate.

In consideration of the foregoing and the record as a whole, we affirm the Defendant's convictions.

ROBERT H. MONTGOMERY, JR., JUDGE