

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs July 9, 2013

STATE OF TENNESSEE v. DAMEON WILLIAMS

Appeal from the Criminal Court for Shelby County
No. 11-00145 Paula Skahan, Judge

No. W2012-01989-CCA-R3-CD - Filed October 17, 2013

Following a jury trial, the defendant, Dameon Williams, was convicted of voluntary manslaughter, a Class C felony, and sentenced as a Range I, standard offender to six years in the county workhouse. On appeal, he argues that the trial court erred in admitting an autopsy photograph of the victim's skull and that the evidence is insufficient to support his conviction. Based upon our review, we affirm the judgment of the trial court.

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 JOSEPH M. TIPTON, P.J., and JERRY L. SMITH, J., joined.

Stephen C. Bush, District Public Defender; Harry E. Sayle, III (on appeal), Kamilah E. Turner and Gregory T. Carman (at trial), Assistant Public Defenders, for the appellant, Dameon Williams.

Robert E. Cooper, Jr., Attorney General and Reporter; Jeffrey D. Zentner, Assistant Attorney General; Amy P. Weirich, District Attorney General; and Patience R. Branham and Samuel D. Winnig, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

FACTS

In January 2011, the defendant was indicted for first degree premeditated murder arising out of the shooting death of his wife, Latisha Williams, on August 20, 2010. At the May 14-18, 2012 trial, the jury convicted the defendant of the lesser-included offense of voluntary manslaughter.

Luis Victor, the victim's father, testified that the victim had five children, two of whom were living with him at the time of trial. He said that the victim had been married to the defendant for approximately two years at the time of her death.

Officer Jason Bledsoe of the Memphis Police Department testified that he was the first officer to respond to a shooting call at 2225 Riley Alley on August 20, 2010. When he arrived, the defendant, who was shirtless and sweating, walked toward him from the porch. The defendant was hysterical, "yelling and screaming and crying." Officer Bledsoe's partner arrived, and the officers placed the defendant in the backseat of a squad car in order to investigate inside the house. Officer Bledsoe discovered the deceased victim lying on the living room floor with a t-shirt on her head.

Officer Lynnette Taylor of the Memphis Police Department testified that she transported the defendant from the scene of the shooting to the homicide bureau. The defendant, who was distraught and "crying profusely," kept yelling "my wife."

Officer Newton Morgan, a crime scene investigator with the Memphis Police Department, testified that when he arrived at the scene of the shooting, it appeared as if someone was moving in or out of the residence. He took photographs of the scene and sketched a diagram of evidence in the living room where the victim's deceased body was found in front of the loveseat. He identified photographs depicting, among other things, the victim's body; a bullet hole in the wall; a nine-millimeter spent casing located behind the couch; blood on the loveseat and on a cushion from the loveseat; a nine-millimeter Ruger handgun found on the living room floor; blood spatter on the east wall; blood on the floor leading into the kitchen; a cell phone found in the front yard and the back of the phone found inside the residence; a .380 caliber handgun found in a chest in a bedroom; one magazine and four live rounds, .380 caliber; and sixteen live rounds and one magazine, nine-millimeter. Officers were unable to locate a bullet in the bullet hole in the wall.

Officer Jeffrey Garey of the Memphis Police Department Crime Scene Investigation Unit testified that he took four DNA swabs of the nine-millimeter Ruger handgun recovered from the crime scene. He noticed a red substance, which he believed to be blood, on the top portion of the gun. He also observed a red substance, believed to be blood, and pinkish gray matter on the inner portion of the barrel of the gun. He explained that the gun contained blowback, which occurs when a gun is placed "very, very close to a person and it is shot, you will get what's considered blowback, which is blood and or skin, bone fragments that actually will get sucked back into the barrel."

Jessica Marquez of the Tennessee Bureau of Investigation ("TBI") DNA Serology Unit testified that she analyzed the DNA swabs, which revealed the presence of the victim's

DNA on the gun. The victim's DNA was also found on a pair of blue jean shorts belonging to the defendant.

Agent Cervinia Braswell of the TBI Firearms Identification Unit testified that she examined the Ruger nine-millimeter pistol and determined that the gun had a magazine safety that would not allow it to be fired without the magazine in it. She also examined the nine-millimeter cartridge casing recovered from the scene and determined that it was fired from the pistol. She said that the trigger pull on the handgun with the magazine in it was five and five-eighths pounds.

Sergeant William Merritt of the Memphis Police Department testified that he interviewed the defendant at the homicide office the day of the shooting. The defendant was shirtless and wearing knee-length blue jean trousers and tennis shoes, both of which were stained with what appeared to be blood. Sergeant Merritt said that the defendant was upset and kept saying, "I'm sorry, I'm sorry. . . . I killed my wife. I'm sorry, I didn't mean for it to happen." After the defendant was advised of his rights, the defendant explained what had happened. He said that he and the victim were outside and the victim wanted him to help her wash her car, but he refused. He went inside, followed by the victim a few minutes later. They had a conversation, during which the victim told him she felt she had been "back stabbed" by several individuals and that she was "going to get those individuals and then she was going to get [the defendant]." The conversation then shifted to guns and their experiences of being previously robbed at gunpoint. The victim then "put her hand down next to a cushion on the loveseat where she was seated, looking for a gun that was normally kept there." However, earlier that day, the defendant had moved that gun to the sofa where he was seated. The defendant then retrieved the gun and walked toward the victim. According to the defendant, as he was sitting down next to the victim, the gun discharged, striking her in the head. The defendant said that the nine-millimeter gun used in the shooting belonged to the victim.

After the interview, the defendant agreed to give a formal statement which was largely similar to his interview. The defendant denied that he and the victim were arguing before the shooting or that the victim planned to leave him. He said that he was "right next to" the victim when the gun accidentally discharged and that he did not think the clip was in the gun at the time. The defendant acknowledged that he also owned a nine-millimeter gun. Based on that information, Sergeant Merritt obtained a second search warrant for the defendant's residence, and he and another officer subsequently located an unloaded Ruger nine-millimeter handgun in a holster. Officers also found a magazine loaded with nine-millimeter rounds underneath a cushion on the sofa.

Dr. James Caruso, who performed the autopsy on the victim's body, testified that the

cause of death was a gunshot wound to the right side of the victim's head and the manner of death was homicide. He said that the victim's wound had a distinct impression, a "muzzle imprint of the weapon . . . where the projectile entered through the skin and then continued on into the [victim's] head." The wound also had several characteristics of a contact gunshot wound, including the muzzle imprint, the "blown out type of periphery to it," and the lack of soot or gunpowder stippling on the skin around the wound. Dr. Caruso said that the victim's wound was a "tight contact wound," rather than a loose contact wound. He said the bullet exited the left side of the victim's head above the ear. The exit wound was "a rather irregular jagged wound," in that it did not have the blown appearance the entrance wound had.

Dr. Caruso said that the victim had "both fractures of her calvarium, the round part of the skull[,] and she had significant fractures of the basilar skull, the part of the skull where the brain is sitting on." He identified a photograph depicting the basilar skull of the victim showing that "the force of the bullet going through the skull actually caused fractures in areas that weren't necessarily associated with the path of that bullet." He said that the photograph helped him explain the fractures. Dr. Caruso said the bullet went through the victim's scalp, then through the skull, and into both sides of the brain. He did not recover any bullet fragments during the autopsy.

Dr. Caruso said that he had seen tight contact wounds with muzzle imprints in other autopsies he had performed but that the victim's wound was "perhaps . . . one of the best examples" he had seen. He explained that a muzzle imprint meant that "the weapon was pressed up tight against the individual's head when the trigger was pulled."

The defendant elected not to testify and rested his case without presenting any proof.

ANALYSIS

I. Autopsy Photograph

The defendant argues that the trial court erred in admitting an autopsy photograph of the victim's skull, saying that it was "gruesome, unnecessarily inflammatory, and, thus, highly prejudicial." The State counters that the defendant has waived this issue for failure to make a contemporaneous objection at the time the photograph was admitted and that the requirements of plain error review are not met. In the alternative, the State argues that any error in admitting the photograph was harmless.

We first address the State's argument that the defendant waived consideration of the issue by his failure to make a contemporaneous objection at trial. The trial court considered

the admissibility of the autopsy photographs at a bench conference held prior to Dr. Caruso's testimony. At that time, the defendant raised an objection to the admission of the photograph at issue, arguing that it was duplicative of another photograph and that it was "gruesome" and "too inflammatory." The State responded that it was necessary for the doctor to show the extent of the victim's skull fractures and how the bullet traveled through her head.

In response, the trial court issued the following ruling:

THE COURT: Probative value to the photos and are asking to demonstrate through the doctor, but probative value – there is to the picture as to what it is he's talking about and why it would be helpful to show it in a photo.

I don't see how the . . . the probative value is substantially outweighed by any prejudicial effect.

I don't think these are terribly gruesome. These are cleaned up. . . . And I'm assuming there is some probative value to this that the doctor would want to use this. I don't know what it is, but if there is some probative value other than just showing the inside of her skull where the bullet went, then I would think it's admissible, but if there's no probative value other than showing the inside of her skull –

[THE STATE]: The doctor actually asked for that photo.

THE COURT: Okay. Then right now I'm going to allow the State to go forward if there is some probative value to these photos. I'll have to hear what the testimony is.

The State argues that the defendant was required to renew his objection to the photograph at trial because the trial court did not make a definitive ruling on the admissibility of the photograph during the bench conference. We disagree that the defendant waived consideration of the issue by failing to make another contemporaneous objection at the time of the doctor's testimony. Nonetheless, we conclude that the defendant is not entitled to relief on the basis of this claim.

The admissibility of photographs generally lies within the sound discretion of the trial court and will not be overturned on appeal absent a clear showing that the trial court abused its discretion. State v. Faulkner, 154 S.W.3d 48, 67 (Tenn. 2005); State v. Banks, 564 S.W.2d 947, 949 (Tenn. 1978). "Tennessee courts follow a policy of liberality in the admission of photographs in both civil and criminal cases." State v. Morris, 24 S.W.3d 788,

810 (Tenn. 2000). In determining whether a photograph is admissible, the trial court must first determine whether it is relevant to a matter at issue in the case. See Tenn. R. Evid. 401; State v. Vann, 976 S.W.2d 93, 102 (Tenn. 1998); Banks, 564 S.W.2d at 949. The court must next consider whether the probative value of the photograph is “substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.” Tenn. R. Evid. 403.

The photograph at issue was relevant to show the nature of the victim’s head injuries and to support the State’s argument that the defendant intentionally placed the gun directly against the victim’s head, rather than having accidentally fired the weapon, as he claimed. Moreover, the photograph, while unpleasant, is not unduly gruesome. As such, we cannot conclude that its probative value was substantially outweighed by the danger of unfair prejudice or that the trial court abused its discretion in admitting it into evidence.

II. Sufficiency of the Evidence

The defendant argues that the evidence is insufficient to support his conviction for voluntary manslaughter. The State disagrees.

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, 219 Tenn. 4, 11, 405 S.W.2d 768, 771 (1966) (citing Carroll v. State, 212 Tenn. 464, 370 S.W.2d 523 (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).

Voluntary manslaughter is defined as “the intentional or knowing killing of another in a state of passion produced by adequate provocation sufficient to lead a reasonable person to act in an irrational manner.” Tenn. Code Ann. § 39-13-211(a).

Taken in the light most favorable to the State, the evidence showed that, immediately before the shooting, the victim had told the defendant how she felt “back stabbed” by several individuals and that she was “going to get those individuals and then she was going to get [the defendant].” Their conversation then shifted to guns and their prior experiences of being robbed. According to the defendant’s statement to the police, the victim then reached for a gun that was normally kept on the loveseat where she was seated. However, earlier that day, the defendant had moved that gun to the sofa where he was seated. The defendant said that he then retrieved the gun, walked toward the victim, and, as he sat down next to her, the gun accidentally discharged, striking her in the head. However, Officer Garey testified that the gun contained blowback, “which is blood and or skin, bone fragments that actually will get sucked back into the barrel” when the gun is fired “very, very close to a person.” Dr. Caruso testified that the victim’s gunshot wound was a tight contact wound and that the muzzle imprint indicated that “the weapon was pressed up tight against” the victim’s head when the trigger was pulled. We, therefore, conclude that the evidence was sufficient for the jury to find the defendant guilty of voluntary manslaughter beyond a reasonable doubt.

CONCLUSION

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

ALAN E. GLENN, JUDGE