

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
NOVEMBER 1999 SESSION

FILED
November 23, 1999
Cecil CROWS ON, Jr.
Appellate Court Clerk

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| STATE OF TENNESSEE, |) | |
| Appellee, |) | No. 03C01-9902-CR-00054 |
| |) | Knox County |
| v. |) | Honorable Mary Beth Leibowitz, Judge |
| |) | (First degree murder) |
| THOMAS E. CHAMBERS, |) | |
| Appellant. |) | |

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OPINION FILED: _____

AFFIRMED

Joseph M. Tipton
Judge

OPINION

The defendant, Thomas E. Chambers, appeals as of right following his conviction by a jury in the Knox County Criminal Court for first degree murder. The defendant was sentenced to life imprisonment in the custody of the Department of

Correction. He contends that the evidence is insufficient to support his conviction and that the trial court erred by not instructing the jury on his failure to flee the scene. We affirm the judgment of conviction.

The defendant was convicted of the first degree murder of Clyde Solomon, the estranged husband of the defendant's girlfriend, Dana Solomon. The defendant and Ms. Solomon lived together in the defendant's trailer at the time of the offense. At trial, Sean Collier, a friend of the victim, testified that he and the victim went to the defendant's trailer on December 26, 1996, to visit the victim's infant son. He testified that Ms. Solomon told the victim that the baby was not there and that he should come back around 4:00 p.m. He said the defendant stayed inside the trailer while the victim and Ms. Solomon spoke for about forty-five minutes. Mr. Collier said the victim told him that Ms. Solomon had stated that she was still in love with the victim and wanted to reconcile.

Mr. Collier testified that he accompanied the victim back to the trailer around 3:30 p.m. that day. He said Ms. Solomon told the victim that the baby was having a bath at the trailer next door and that she would go get him. Mr. Collier testified that Ms. Solomon told the victim that he should go inside and talk to the defendant because they needed to get along. Mr. Collier said the victim stated that he did not want to go inside because the defendant had previously threatened to shoot him. Mr. Collier testified that the victim agreed to go inside while Ms. Solomon went to the trailer next door.

Mr. Collier testified that he stayed in his car until he heard arguing inside the defendant's trailer. He said he went to the door and heard the defendant and victim arguing about the victim's visitation of his son. He said he knocked on the door, and the victim told him he would be out shortly. Mr. Collier testified that he went back to his car, and Ms. Solomon came outside from the neighbor's trailer. He said that Ms. Solomon did not have the baby with her and that she told him the baby was asleep. He said he and Ms. Solomon spoke for about five minutes, and he told her that he had heard the victim and defendant arguing.

Mr. Collier testified that he then heard a gunshot. He said he went to the defendant's trailer and heard the victim scream, "Oh, my God." He said he heard a second shot, then the victim opened the door, and the defendant reached out and shot the victim in the head. Mr. Collier said he ran to call 9-1-1, and the defendant went back into the trailer. He said the victim was right-handed and had nothing in his hands when he came out of the trailer.

Officer Steve Burros of the Knox County Sheriff's Department testified that he was dispatched to the scene. He said that when he arrived, he found the victim lying face down outside the trailer, and the defendant was inside watching cartoons. He described the defendant as emotionless. Officer Burros testified that a utility knife was located about six inches to the right of the victim's body.

Michael Freeman testified that at the time of the offense, he supervised the Forensic Services Division of the Knox County Sheriff's Department. He testified that he found a jacket in the defendant's trailer with a hand-written note inside the pocket addressed to Billy Russell and signed, "Thomas." The note was admitted into evidence and states, in relevant part, as follows:

I've found me a girl that I want to spend the rest of my life with. I love this woman more than I've ever loved any one befor[e]. . . . She's 20 and [has] blond hair. She is beautiful I may be seeing you real soon because there's this dude that's causing me some trouble but I'm going to put a stop to it real quick. You know I will. I'm going to dust his ass real quick. Because I can't loose [sic] her. If I loose [sic] her I don't know what I would do.

Officer James Tripp, with the Knox County Sheriff's Department Major Crimes Unit, testified that he spoke with the defendant and learned that Billy Russell is the defendant's brother who is in prison. He stated that the defendant gave three statements. The statements were admitted into evidence, and in the first statement, the defendant said that the victim had shown Ms. Solomon a gun during his first visit to the trailer that day. He said that during the second visit, the victim entered the trailer, and Ms. Solomon took marijuana to the neighbor's trailer because the defendant did not like the marijuana to be in the house when visitors were there. He said that as he came out of the bathroom, the victim came toward him with a utility knife and that he shot the victim once. He said that as the victim turned away and ran toward the door, he shot

the victim two more times. In his second statement, the defendant maintained that he shot the victim in self-defense.

However, in his third statement, the defendant admitted that he and Ms. Solomon plotted to kill the victim. With respect to their plan, the defendant stated:

We just talked about how he, how we was going to get him in the couch and, everything. Or get him in the house. Ya know, and yeah, she was going to have him on the couch. Ya know, and how she is going to leave the house, ya know. Act like she was going to go get his son. So, he could see his son. That's the only way he'd of stayed in the house.

The defendant then stated, "I tried to lie earlier, but it ain't going to do no good now. [Laughing]. We stood there and we argued for a little bit. I had the gun on him, ya know. The whole time . . ."

The defendant admitted that the victim did not have a gun and was not threatening him. He admitted that he was not in fear for his life. He stated that he had seen the victim a few weeks earlier in court and that the victim had threatened to kill him. He stated that he and Ms. Solomon had discussed various ways of killing the victim, including "going over to his house and doing it. Uh, Blowing up his car. Everything." The defendant stated, "I knew, I knew for a fact that I'd go to prison after I shot him. I knew I would before I pulled the trigger." He stated that he shot the victim in the chest and then shot the victim twice more as the victim was running away.

Carol Lewis testified that she lived in the trailer next to the defendant and Ms. Solomon. She testified that on the afternoon of December 26, Ms. Solomon knocked on her door carrying items wrapped in a baby blanket. She said Ms. Solomon asked her to keep the items because the police were on the way. She said Ms. Solomon said that "they were going to fight and the law was coming." Ms. Lewis testified that she had not heard any disturbance to warrant the police being called. She said Ms. Solomon then made a telephone call and stated, "Mommie can't come and get you right now." Ms. Lewis said that Ms. Solomon was acting nervous and that she told Ms. Solomon that she wanted no part of what Ms. Solomon was doing. Ms. Lewis said her sister asked Ms. Solomon to leave and that as soon as Ms. Solomon left, she heard three gunshots. Ms. Lewis said she looked out her window and saw the victim fall onto

a concrete slab. She said she saw the defendant standing in the doorway, holding a gun and watching the victim. She testified that the victim had nothing in his hands. She said that when the victim died, the defendant threw up his hands, looked at her, and told her to call the police.

Dr. John Neff testified that he performed an autopsy on the victim's body. He testified that the victim died from three relatively close-range gunshot wounds. He stated that one of the shots took away a portion of the victim's right arm muscle, rendering him incapable of using that arm.

Dr. Pamela Auble, a neuropsychologist, testified that she evaluated the defendant. She testified that his I.Q. is 76, which ranks in the fifth percentile. She testified that the defendant is depressed and impulsive and that he emphasizes problems. Based on the foregoing evidence, the jury convicted the defendant of first degree murder.

I. SUFFICIENCY OF THE EVIDENCE

The defendant contends that the evidence is insufficient to support his conviction for first degree murder. He argues that the evidence shows that he acted in self-defense. The state contends that the evidence is sufficient.

Our standard of review when the sufficiency of the evidence is questioned on appeal 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, 99 S. Ct. 2781, 2789 (1979). This means that we do not reweigh the evidence but presume that the jury has resolved all conflicts in the testimony and drawn all reasonable inferences from the evidence in favor of the state. See State v. Sheffield, 676 S.W.2d 542, 547 (Tenn. 1984); State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978).

First degree murder is defined as the premeditated and intentional killing of another. Tenn. Code Ann. § 39-13-202(a). A premeditated act is one "done after the

exercise of reflection and judgment.” Tenn. Code Ann. § 39-13-202(d). The jury was instructed on self-defense, which is defined as follows:

A person is justified in threatening or using force against another person when and to the degree the person reasonably believes the force is immediately necessary to protect against the other’s use or attempted use of unlawful force. The person must have a reasonable belief that there is an imminent danger of death or serious bodily injury. The danger creating the belief of imminent death or serious bodily injury must be real, or honestly believed to be real at the time, and must be founded upon reasonable grounds. There is no duty to retreat before a person threatens or uses force.

In the light most favorable to the state, the evidence sufficiently supports a conviction for first degree murder. The defendant admitted that he and Ms. Solomon planned to lure the victim into the trailer in order to shoot him, and the evidence shows that this is exactly what occurred. Although the defendant claims that the evidence shows he acted in self-defense, the defendant’s own statement belies such a claim. He admitted that the victim did not have a gun and that he was not afraid of the victim. He stated that he “had the gun on the victim” while the victim was in the trailer. Mr. Collier and Ms. Lewis both testified that they saw nothing in the victim’s hand when he stumbled out of the trailer after the first two shots. Dr. Neff testified that a portion of the victim’s right arm had essentially been blown away, rendering his right arm useless. Mr. Collier testified that the victim was right-handed. The evidence shows that the defendant intentionally and premeditatedly killed the victim, and the jury obviously discredited the defendant’s claim of self-defense, as is its prerogative.

II. JURY INSTRUCTION ON FLIGHT

The defendant contends that the trial court erred by denying his proposed jury instruction regarding flight. He argues that the trial court should have instructed the jury that it could infer innocence from the defendant’s failure to flee the scene of the crime. Essentially, he argues that the trial court should have granted his request for a reverse flight instruction. The state contends that the trial court properly denied the instruction.

It is well-settled that the fact that a defendant fled “from the vicinity where the crime was committed, with knowledge that he was likely to be arrested for the crime

or charged with its commission, may be shown as a circumstance tending to indicate guilt.” State v. Williams, 638 S.W.2d 417, 421 (Tenn. Crim. App. 1982). However, this court has previously determined, based upon existing authority, that the opposite is not true; that is, a defendant is not entitled to an instruction that failure to flee is a factor to be considered in the defendant’s favor. Holt v. State, 591 S.W.2d 785, 791 (Tenn. Crim. App. 1979), overruled on other grounds, State v. Dyle, 899 S.W.2d 607, 612 (Tenn. 1995) (promulgating a new jury instruction to be used when identification is a material issue). Thus, the trial court in the present case did not err by denying the proposed instruction.

In consideration of the foregoing and the record as a whole, we affirm the judgment of conviction.

Joseph M. Tipton, Judge

CONCUR:

Jerry L. Smith, Judge

Thomas T. Woodall, Judge