

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

DECEMBER 1999 SESSION

**FILED**

December 15, 1999

Cecil Crowson, Jr.  
Appellate Court Clerk

STATE OF TENNESSEE, )  
 )  
 Appellee, )  
 )  
 VS. )  
 )  
 VERNON ELKINS, JR., )  
 )  
 Appellant. )

NO. M1999-00107-CCA-R3-CD

CANNON COUNTY

HON. JAMES K. CLAYTON, JR.,  
JUDGE

(Second Degree Murder)

FOR THE APPELLANT:

**GERALD L. MELTON**  
District Public Defender  
201 West Main Street, Suite 101  
Murfreesboro, TN 37130

FOR THE APPELLEE:

**PAUL G. SUMMERS**  
Attorney General and Reporter

**ELIZABETH T. RYAN**  
Assistant Attorney General  
Cordell Hull Building, 2nd Floor  
425 Fifth Avenue North  
Nashville, TN 37243-0493

**WILLIAM C. WHITESELL, JR.**  
District Attorney General

**THOMAS F. JACKSON, JR.**  
**DAVID L. PUCKETT**  
Asst. District Attomeys General  
303 Rutherford Co. Judicial Bldg.  
Murfreesboro, TN 37130

OPINION FILED: \_\_\_\_\_

**AFFIRMED**

**JOE G. RILEY, JUDGE**

## OPINION

A Cannon County Grand Jury indicted defendant for first degree murder. A trial jury convicted him of second degree murder, a Class A felony. In this appeal as of right, defendant challenges only the sufficiency of the evidence upon which the jury based its conviction. Our review of the record reflects sufficient evidence to support the jury's finding. Therefore, we **AFFIRM** the judgment of the trial court.

## FACTS

Prior to June 26, 1996, defendant, his mother, grandmother, and aunt (the victim) peacefully shared a home in Cannon County. On that date, nothing unusual had occurred between defendant and the victim. They neither fought nor argued.

However, defendant entered the house, passed by his mother, grandmother, and aunt in the living room, and went to a nearby hall closet. In the closet, he retrieved his 30-30 lever-action deer rifle. From the hallway, defendant fired the rifle at least three times. One of the shots hit and killed his aunt.

Defendant's mother ran away from the house as soon as she heard gunshots. His grandmother, splattered with the victim's blood, went to a neighbor's house to get help. Law enforcement arrived shortly thereafter and found defendant standing in the front yard. Without any prompting, defendant stated, "I did it" and "I shot her." Officers immediately took defendant into custody without further incident.

The defendant did not testify at trial, and no defense proof was offered.

## SUFFICIENCY OF THE EVIDENCE

Defendant concedes he caused the victim's death. However, he claims the state failed to prove that he acted "knowingly" so as to support the conviction for second degree murder.

When a defendant challenges the sufficiency of the convicting evidence, we must review the evidence in the light most favorable to the prosecution to determine whether "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, 318, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560, 573 (1979). We do not reweigh or reevaluate the evidence and are required to afford the state the strongest legitimate view of the proof contained in the record as well as all reasonable and legitimate inferences which may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). It is the defendant's burden to show this Court why the evidence is insufficient to support the verdict returned by the trier of fact in his or her case. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

"The law in Tennessee has long recognized that once the homicide has been established, it is presumed to be murder in the second degree." State v. Brown, 836 S.W.2d 530, 543 (Tenn. 1992)(citation omitted). Second degree murder is defined as a knowing killing of another. Tenn. Code Ann. § 39-13-210(a)(1). A person acts "knowingly" when "the person is aware that the conduct is reasonably certain to cause the result . . ." Tenn. Code Ann. § 39-11-106(a)(20).

In this case, the state failed to carry its burden of proving premeditation for first degree murder, but the jury found sufficient proof to convict defendant of second degree murder. The degree of homicide is a question for the jury's determination. State v. Shelton, 854 S.W.2d 116, 119 (Tenn. Crim. App. 1992).

Evidence of motive is not necessary to prove a homicide. State v. Johnson, 541 S.W.2d 417, 423 (Tenn. 1976).

The evidence in this case, taken in the light most favorable to the state, showed that defendant entered the family home and went directly to the hallway closet where he stored his deer rifle. With no apparent provocation, defendant proceeded to fire the lever-action rifle a minimum of three times. Expert testimony eliminated the possibility that the gun fired accidentally, as a lever-action rifle requires action by the shooter in order to eject a spent shell and load a new one in the chamber. These actions evidenced sufficient "knowing" behavior to support the conviction for second degree murder.

This issue is without merit.

#### **CONCLUSION**

Based upon the foregoing, we **AFFIRM** the judgment of the trial court.

---

**JOE G. RILEY, JUDGE**

**CONCUR:**

---

**JAMES CURWOOD WITT, JR., JUDGE**

---

**ALAN E. GLENN, JUDGE**