

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs July 24, 2018 at Knoxville

FILED
08/08/2018
Clerk of the
Appellate Courts

STATE OF TENNESSEE v. DEDRICK WIGGINS

Appeal from the Criminal Court for Shelby County
No. 14-01751 Chris Craft, Judge

No. W2017-00926-CCA-R3-CD

Dedrick Wiggins (“Defendant”) was convicted by a Shelby County jury of second degree murder and sentenced to thirty-five years’ incarceration. In this direct appeal, Defendant contends that the trial court erred in admitting the victim’s statement under the dying declaration hearsay exception and that the evidence presented at trial was insufficient to support his conviction. Following a thorough review, we affirm the judgment of the criminal court.

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

ROBERT L. HOLLOWAY, JR., J., delivered the opinion of the court, in which NORMA MCGEE OGLE and J. ROSS DYER, JJ., joined.

Monica A. Timmerman (on appeal), Bartlett, Tennessee; and Handel R. Durham, Jr., and Jonathan Mosley (at trial), Memphis, Tennessee, for the appellant, Dedrick Wiggins.

Herbert H. Slatery III, Attorney General and Reporter; James E. Gaylord, Senior Counsel; Amy P. Weirich, District Attorney General; and Reginald Henderson and Lora Fowler, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Factual Background

This appeal arises from the shooting death of Larry Richards (“the victim”) on November 6, 2013, for which Defendant was subsequently indicted for first degree premeditated murder (Count 1), first degree felony murder (Count 2), and three counts of convicted felon in possession of a firearm (Counts 3-5). The case proceeded to trial in May 2016. Benjamin Pierce testified that, around 2:00 a.m. on the date of the offense, he

and two friends were outside on the front porch of his Spottswood Avenue residence when he heard someone running through leaves, screaming, and multiple gunshots. Mr. Pierce and his friends ran into the house and locked the door. Mr. Pierce then looked out his window and saw the victim run onto the front porch of his next-door neighbor's house, screaming for help. Mr. Pierce noticed that two vehicles—a large white SUV and a silver Volkswagen Beetle—were driving along beside the victim. When the victim stopped on the neighbor's porch, several men jumped out of the vehicles and went in the yard towards the victim, "shooting at him until he fell down[.]" The assailants then ran back to the SUV and Volkswagen Beetle, which had stopped in front of Mr. Pierce's house, and drove off. Mr. Pierce estimated that he heard approximately thirty gunshots and that there appeared to be five or six men involved in the offense—two or three men per vehicle. After the assailants drove away, Mr. Pierce went to the victim on the porch and held him as he called 911. Mr. Pierce recalled that the victim was "writhing, . . . kicking and screaming and moving a lot in pain." The victim had bullet holes "all over his body and blood everywhere."

Officer Kory Payne of the Memphis Police Department (MPD) testified that he was dispatched to the location on Spottswood Avenue where he found the victim lying on the front porch of a house. The victim had on only a pair of a boxers and a tank top and was covered in blood. He was moaning and writhing, obviously in severe pain. Officer Payne's partner, Officer Bobby Johnson, attempted to get basic information from the victim. Officer Johnson asked the victim for his name and date of birth and then asked him, "[W]ho did this?" The victim responded, "Deedrick (spelled phonetically) did but I got him." Officer Payne recalled that Officer Johnson again asked who shot him, and the victim stated, "Dedrick did it." Officer Payne testified that, after paramedics arrived, he asked the victim what happened. The victim stated that he was walking down Spottswood Avenue and a silver Volkswagen Beetle pulled up:

full of individuals he didn't know. He exchanged words with a guy in the vehicle named Dedrick. Dedrick started firing shots at him. He began to run . . . away from the vehicle. The vehicle chased him. The individual got out of the vehicle. Again fired one more shot, got back in the vehicle, sped off.

When Officer Payne asked why he had been shot, the victim advised that "it was over a girl." Officer Payne observed multiple gunshot wounds all over the victim's body, including in the abdomen and back. Officer Payne recalled that, when paramedics arrived, the victim was "combative" and did not want anyone to touch him. Officer Payne began asking questions to try to distract the victim, but shortly afterwards, the victim passed out.

During Officer Payne's testimony, the following exchange occurred regarding the victim's statement:

Q. And the statement made by [the victim] was Deedrick did it and I got him?

A. Dedrick did it.

Q. Okay.

A. I got him though, that's, that's what he said, sir.

Officer Payne explained that he had memorialized the victim's statement later that morning, and the memo read that the victim yelled, "Dedrick did it, D-E-D-R-I-C-K."

MPD Officer Bobby Johnson testified that he was dispatched to the scene of the shooting along with Officer Payne. Upon arriving, Officer Johnson saw the victim lying on the porch covered in blood. When Officer Johnson asked the victim who shot him, his response was "Dedrick did it." The victim said that the shooting was "over a girl." Officer Johnson recalled that the victim was writhing in pain and repeatedly asking for help. Officer Johnson raised up the victim's shirt and observed several wounds to his torso. He recalled that the victim was combative when paramedics arrived. Officer Johnson testified that he wrote a memo that same morning regarding the incident. In his memo, Officer Johnson noted that the victim's exact words were "Dedrick did it but I got him."

On cross-examination, Officer Johnson agreed that at Defendant's preliminary hearing in December 2013, he mispronounced the name given by the victim, saying "Deedrick" instead of "Dedrick." Officer Johnson explained that he previously worked in the MPD's "gang unit," where he became familiar with "street vernacular" in Memphis. He testified that the phrase "but I got him though" could be interpreted in different ways. He explained, "It could mean that he said I got him, it could mean that I got him at that particular time. I hit him back or I shot him or whatever. It could mean that I'm planning to get him." Officer Johnson stated that no gun was found with the victim.

Benjamin Rye, a paramedic with the fire department, testified that he responded to the scene of the shooting, where he found the victim on the porch "bleeding, flopping around, being real combative[.]" Mr. Rye explained that the victim was in critical condition and was "moaning and groaning[.]" He stated that it was not unusual for critical patients to become combative. Mr. Rye explained, "You ask them how you feel,

what's going on, what hurts, it's just that they are combative. They're trying to grab anything that's in sight. Trying to grab you. Trying to just do whatever they can because they're freaking out, they're in shock." Mr. Rye testified that, after paramedics got the victim loaded onto a stretcher, he "completely went out, stopped breathing, no pulse, nothing." On the way to the hospital, paramedics performed CPR on the victim and administered drugs to continue the life of the victim's organs. However, the victim was pronounced dead upon arrival at the hospital.

Officer Marcus Mosby, a crime scene investigator with the MPD, testified that he responded to the scene of the shooting on the morning of November 6 to process the scene and collect evidence. In the immediate vicinity, he collected three live 9mm rounds and two 9mm shell casings.

Dr. Erica Curry, a medical examiner at the West Tennessee Regional Forensic Center, testified that she conducted the victim's autopsy and found that he died of multiple gunshot wounds. Dr. Curry stated that she counted five entrance wounds, including one in the chest and two in the abdomen. She explained that one bullet "injured his bowel and . . . two major arteries and one major vein in his abdominal area which caused him to bleed out[.]"

Brandy Jones testified that she had been the victim's girlfriend for three years at the time of his death. Ms. Jones recalled that the victim picked her up at her mother's house on November 5, 2013, and they went out to eat. Ms. Jones and the victim then spent several hours at a friend's house and returned to her mother's home around 11:00 p.m., where Ms. Jones picked up her daughter, granddaughter, and her dog. Ms. Jones recalled that the victim was driving a silver Chevy Tahoe that night. The victim came over to her house later that night, and they watched a movie and had sex. While lying in bed, the victim picked up his cell phones and "was doing something" to them. Ms. Jones fell asleep and did not wake up until her daughter woke her at 7:00 a.m. on November 6. After dropping off her daughter at school, Ms. Jones returned home and went back to bed. Her cousin and best friend later woke her up and explained that the victim had been killed.

Ms. Jones stated that she had been in an "off and on" relationship with Defendant for ten years, and at the time of the shooting, Defendant was her ex-boyfriend. She stated that, in the three-year period she dated the victim, she and the victim would occasionally break up, and she would go back to Defendant. She explained that the victim and Defendant had known each other for many years. Ms. Jones agreed that she told police officers that "[Defendant] had a problem with [the victim]." She clarified that Defendant's problem was with her dating the victim. Ms. Jones testified that Defendant was "a stalker" and that he would often ride around looking for her. Ms. Jones recalled

that, in October 2013, Defendant started sending her text messages, and the victim took her cell phone and responded to Defendant. Ms. Jones explained:

[Defendant] was blowing up my phone this particular night. [Defendant] did text the phone saying once you got through sucking [the victim's] thing go kiss your grandbaby.

.....

When [the victim] got the phone [and] started back texting [Defendant] I guess [Defendant] realized that it was [the victim] texting him, he was like, so now you got the n***** texting me. I took my phone and I blocked [Defendant].

Tammara Glasper testified that she and the victim had been dating for sixteen years and lived together before the victim's death. Ms. Glasper explained that the victim had sold marijuana for a living. Ms. Glasper recalled that she was watching the morning news on November 6 when she heard that a black male had been shot on Spottswood Avenue. She "had a gut feeling" this was the victim because "he was messing with . . . a girl, [Ms. Jones], and she lived in that area and [the victim] hadn't c[o]me home[.]" She stated that the victim and Defendant had known each other for longer than sixteen years and that Defendant "had a problem with" the victim. She explained, "I think it was the early part of 2012 [Defendant] . . . put up a status on Facebook about [the victim] being a trick and paying [Ms. Jones's] bills." The victim responded to Defendant by posting, "[T]his is [the victim]. I am not a trick and I am not about to pay bills where anyone can lay their head." According to Ms. Glasper, Defendant then responded, "[Y]ou know what's up with me, n*****, you know how I get down." Defendant then deleted the entire post, but Ms. Glasper interpreted Defendant's last comment as a threat against the victim. After hearing about the shooting on Spottswood Avenue, Ms. Glasper called the MPD and spoke to Sergeant Robert Wilkie. Sergeant Wilkie asked Ms. Glasper if she knew "a Dedrick," and she identified "Dedrick" as Defendant. Ms. Glasper stated that the victim did not have problems with anyone other than Defendant.

Officer Daniel Chambers testified that, on the morning of November 6, 2013, he and several other officers surrounded Defendant's residence on Allandale Road while detectives were applying for a search warrant. Officer Chambers was standing at the corner of the residence beside Defendant's silver Volkswagen Beetle, which was sitting in the driveway, when he heard a cell phone ringing. Officer Chambers found the cell phone on top of some bushes of the house next door, underneath a window air conditioning unit. Because it had been raining and was continuing to rain, the cell phone was getting wet. To protect the cell phone from the rain, Officer Chambers picked it up

and put it in his pocket. He then saw a set of keys underneath the cell phone. He testified that the keys and cell phone were approximately six feet away from Defendant's Volkswagen Beetle. Officer Chambers recalled that the keys and phone were wet but not "soaked," so he believed that the items had not been outside for a long period of time.

MPD Detective Brian Beasley testified that, on the morning of November 6, he received a phone call from Sergeant Wilkie instructing him to locate and arrest Defendant for the victim's murder. Sergeant Wilkie informed Detective Beasley that a silver Volkswagen Beetle had been used in the crime. Detective Beasley went to Defendant's residence on Allandale Road, where he saw a silver Volkswagen Beetle in the driveway. Detective Beasley testified that he and other officers intended to arrest Defendant at home. However, before they could do so, Defendant came out of the residence and got into a white Mustang. Detective Beasley followed the white Mustang and eventually pulled the car over and arrested Defendant. Detective Beasley searched Defendant and found a key to the silver Volkswagen Beetle in his pocket.

MPD Officer Chester Striplin testified that, as a search warrant was executed at Defendant's Allandale Road residence, he was called to the residence to retrieve some video surveillance equipment that was set up inside the home. Officer Striplin took the recording system back to the police department's video lab where he reviewed the footage. Officer Striplin determined that there was a time gap in the video footage from 12:20 a.m. to 3:59 a.m. on November 6, 2013. Officer Striplin's review showed that the surveillance system had been turned off and then turned back on manually by someone with administrative rights to the system. Officer Striplin explained that Defendant's video cameras "were around his house but he had one that covered the street that could pick up motion when vehicles pass by."

MPD Officer Andrew Kosso testified that he became involved in the investigation into the victim's death after receiving a call from dispatch that the victim's Chevy Tahoe had been located at Waverly and Marianna. After conducting surveillance of the vehicle for an hour, Officer Kosso secured the vehicle and called crime scene investigators. The Chevy Tahoe was towed to an impound lot where it was processed for evidence by Officer Michael Coburn, a member of the MPD's Crime Scene Unit, on November 8. From inside the Chevy Tahoe, Officer Coburn collected the victim's clothing and a spent 9mm shell casing; he also swabbed multiple areas of the vehicle's interior that appeared to contain blood. The swabs were sent to the Tennessee Bureau of Investigation Crime Lab, where a forensic scientist conducted DNA analysis on them and found that the swabs contained the victim's blood. Officer Coburn also lifted three latent prints from the Chevy Tahoe, which he forwarded to latent print examiner, Nathan Gathright. Officer Gathright was able to positively identify two of the prints as belonging to

Reginald Bowles. Officer Gathright was unable to identify the third latent print. Investigators later learned that Mr. Bowles was a family friend of the victim's.

Sergeant Robert Wilkie testified that he was assigned as the lead investigator in the victim's death. He learned from responding officers on the scene that the victim said "Dedrick" shot him and that it was over a girl. Sergeant Wilkie then received a phone call from Ms. Glasper, who identified Defendant as "Dedrick" and told Sergeant Wilkie that the victim and Defendant knew each other. Ms. Glasper stated that, based upon the location of the homicide, the victim was probably with Ms. Jones before his death. After confirming Defendant's identity and address, Sergeant Wilkie determined that Defendant owned a silver Volkswagen Beetle like the one reportedly used in the homicide. Sergeant Wilkie also determined that it was the victim's cell phone that Officer Chambers found in the bushes near Defendant's vehicle.

Sergeant Wilkie testified that Defendant's mother gave Sergeant Wilkie consent to search the home on Allandale Road. During the search, Sergeant Wilkie found the video surveillance system, which monitored "everyone coming in or out of the house." Sergeant Wilkie noted that approximately four hours' worth of video footage was missing. Defendant's mother stated that only she and Defendant had administrative rights to the video surveillance system. Defendant's mother stated that she had been at work since 7:00 p.m. on November 5.

Sergeant Wilkie testified that he attempted to interview Defendant after providing Defendant with a *Miranda* warning. Defendant stated that he was at home alone all night and never left his residence. Defendant acknowledged that he knew the victim. When asked if he had any problems with the victim, "[Defendant's] initial response was no but then there was an incident between them over [Ms. Jones] earlier, not that day but earlier before." He acknowledged previously texting with the victim about Ms. Jones. He further admitted that he owned a silver Volkswagen Beetle and stated that only he and his mother drove the car. Defendant denied stopping the video surveillance system in his residence on the morning of the offense. When Sergeant Wilkie told Defendant that the victim provided Defendant's name and vehicle description to responding officers, Defendant's hands began shaking, and he stated that he "need[ed] a lawyer[.]"

Sergeant Wilkie stated that he conducted a phone "dump" on Defendant's cell phone and discovered that Defendant's cell phone had been turned off around 11:00 p.m. on November 5 and was not turned on again until about 4:00 a.m. on November 6. Sergeant Wilkie stated that, when Defendant turned the cell phone back on, the cell phone signal "hit the [cell] tower, at Spottswood near Brister, which is seven or eight blocks from the scene of the homicide."

On cross-examination, Sergeant Wilkie testified that no weapons were found during the search of Defendant's residence. Moreover, investigators found no DNA evidence connecting Defendant to the homicide. Following deliberations, the jury convicted Defendant of the lesser-included offense of second degree murder in both Count 1 and Count 2. After the jury's verdict on Counts 1 and 2, Defendant pled guilty to three counts of convicted felon in possession of a firearm (Counts 3-5), as a Range II offender.

At a subsequent sentencing hearing, the trial court merged Count 2 into Count 1. It found that Defendant was a Range II multiple offender and imposed a sentence of thirty-five years' incarceration for second degree murder in Count 1.¹ Pursuant to Defendant's plea agreement on Counts 3-5, the trial court sentenced Defendant to six years in Counts 3 and 4 and four years in Count 5 and ordered all sentences to run concurrently, for a total effective sentence of thirty-five years.

Thereafter, Defendant filed a timely motion for new trial. Following a hearing, the trial court entered a written order denying Defendant's motion for new trial. This timely appeal follows.

Analysis

Dying declaration

Defendant contends that the trial court improperly admitted into evidence the victim's statement that "Dedrick did it," under the dying declaration exception to the hearsay rule. He asserts that the victim did not have a fear of impending death as evidenced by the victim's statement "I got him though," which Defendant asserts meant that the victim intended to seek revenge in the future. Defendant further contends that the trial court failed to consider whether the victim's statement was reliable when the victim was "out of it," writhing in pain, and moaning and when there was a discrepancy in the officers' testimony as to whether the victim said, "Detrick or Dedrick." The State responds that the trial court correctly inferred the victim's consciousness of impending death from the dire nature of his wounds, and it properly admitted the victim's dying declaration.

In admitting the victim's statement into evidence, the trial court made the following factual findings:

¹ From the record, it does not appear that the trial court sentenced Defendant for second degree murder in Count 2.

[T]he [] victim while on the ground, having been shot in the torso multiple times, was asked by uniformed police officers who were the first responders on the scene for the identity of the person who shot him. He immediately stated “Dedrick did it, but I got him.” At the time he was giving the statement while still on the ground, he was “writhing and moaning” in pain. They then asked him why Dedrick shot him and he stated “over a girl.” His organs began “shutting down” and the ambulance paramedic testified that he began to breathe for the victim, and that although they were breathing for him, keeping his organs alive, in his opinion he was already dead. He was officially pronounced dead at the hospital.

The trial court determined that the victim’s statement was admissible pursuant to Rule 804(b)(2) of the Tennessee Rules of Evidence as a “statement under belief of impending death.” Specifically, the trial court reasoned:

I find the statement to be extremely reliable though under the circumstances. Because I think both sides admit the victim understood, he was wide awake, he was in pain, he was alert, this had just happened and there’s no question that he knew what he was doing. They asked him why this happened, he said over a girl. He was very alert. So I have no problem at all with the reliability of the statement.

....

The State has to show . . . five things. There’s no question about the first four. The declarant must be dead at the time of the trial, which is true. The statement’s admissible only in the prosecution of a criminal homicide, which is true. This is a criminal homicide. The declarant must be the victim of the homicide, which is true. The statement must concern the cause or the circumstances of the death. He says who did it but I got him or but I got him though and over a girl. So that’s true. So the question is the declarant must have made the statement under the belief that death was imminent.

Under the circumstances of this case I find that he believed at the time he made this statement that death was imminent for two reasons. First, the extensive nature of his wounds. And I, and I’m going by this I have not heard a medical examiner testify but I’m going on it by the statement of the State about the extensive wounds to the body, the

abdomen, things like that. The officers pulling up his shirt and seeing numerous bullet wounds. And the extreme pain that he was in.

Secondly, the statement Dedrick did it but I got him. We need to take that into context of if he was going to say Dedrick did it but I'm going to get him back and kill him, he was saying that to two uniformed police officers. So why would someone who had just been shot with police officers there admit to the police officers I'm going to kill this man. That would not be something he would do.

The trial court further explained its reasoning in a written order, as follows:

Although it is the defense position that the victim's statement [] "but I got him" should be taken to mean that the victim was stating that when he recovered he would be taking revenge on [Defendant], negating belief of impending death, this court takes that statement to mean that he was stating that he "got" [Defendant] by telling the police that [Defendant] was the person who shot him, before he died. This court arrives at that determination by taking under consideration several things: not only the testimony, demeanor and voice inflection of the two police officers as they testified about the victim's statement, but also the fact that the victim was a drug dealer, and that his character would not be one generally that would cooperate with the police to the extent that he would confess to uniformed police officers his planned intent to kill [Defendant] when he recovered from his injuries. If he knew he would survive to retaliate against [Defendant], he would have more than likely remained silent so that [Defendant] would have been accessible to him in the future for retaliation. This court also takes into consideration the extent of the victim's injuries and the victim's knowledge of this fact, circumstantially evidenced by the extreme pain he was in as shown by the testimony of the officers who arrived on the scene, the autopsy report and the testimony of the medical examiner.

Our supreme court has explained that the appellate standard of review for rulings on hearsay evidence has multiple layers:

Initially, the trial court must determine whether the statement is hearsay. If the statement is hearsay, then the trial court must then determine whether the hearsay statement fits within one of the exceptions. To answer these questions, the trial court may need to receive evidence and hear testimony. When the trial court makes factual findings and credibility

determinations in the course of ruling on an evidentiary motion, these factual and credibility findings are binding on a reviewing court unless the evidence in the record preponderates against them. *State v. Gilley*, 297 S.W.3d [739,] 759-61 [(Tenn. Crim. App. 2008)]. Once the trial court has made its factual findings, the next questions—whether the facts prove that the statement (1) was hearsay and (2) fits under one of the exceptions to the hearsay rule—are questions of law subject to de novo review. *State v. Schiefelbein*, 230 S.W.3d 88, 128 (Tenn. Crim. App. 2007); *Keisling v. Keisling*, 196 S.W.3d 703, 721 (Tenn. Ct. App. 2005).

Kendrick v. State, 454 S.W.3d 450, 479 (Tenn. 2015).

Hearsay is defined as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Tenn. R. Evid. 801(c). Generally, hearsay is inadmissible unless the statement falls under one of the exceptions to the hearsay rule found in Tennessee Rules of Evidence 803 and 804. *See* Tenn. R. Evid. 802. In this case, the testimony from Officer Johnson and Officer Payne about the victim’s out-of-court statement that “Dedrick did it” was hearsay. However, the trial court admitted the victim’s statement under the dying declaration exception found in Rule 804(b)(2), which provides that if the declarant is unavailable, the following is not excluded by the hearsay rule:

In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant’s death was imminent and concerning the cause or circumstances of what the declarant believed to be impending death.

Tenn. R. Evid. 804(b)(2) (2016). This exception is rooted in the traditional notion that, as death looms near, the incentive to speak truthfully inevitably overwhelms any motivation to lie. *See State v. Lewis*, 235 S.W.3d 136, 148-49 (Tenn. 2007).

In the context of a criminal prosecution, the dying declaration exception to the rule against hearsay has five elements:

- (1) [t]he declarant must be dead at the time of the trial;
- (2) the statement is admissible only in the prosecution of a criminal homicide;
- (3) the declarant must be the victim of the homicide;

(4) the statement must concern the cause or the circumstances of the death;
and

(5) the declarant must have made the statement under the belief that death
was imminent.

Lewis, 235 S.W.3d at 149 (citing Neil P. Cohen et al., *Tennessee Law of Evidence* § 8.35[2][b]-[f] at 8-156 (5th ed. 2005)).

Defendant's challenge on appeal addresses the final element—that the declarant must have made the statement under the belief that death was imminent. As recognized by the trial court, “[I]t is not necessary that the declarant have stated unequivocally his belief that his situation is hopeless.” *State v. Branam*, 604 S.W.2d 892, 895 (Tenn. Crim. App. 1980). “Awareness of impending death may be inferred from the facts and circumstances, the language and condition of the declarant, and the seriousness of the wounds.” *Id.* (internal citations omitted). Our supreme court has stated that “our cases attach much importance to the character of the wound; and that where the wound is obviously of a desperate nature the wounded man can scarcely contemplate it with any expectation of life.” *Crawford v. State*, 273 S.W.2d 689, 691 (Tenn. 1954). Additional circumstances that this court has found significant in determining awareness of impending death include difficulty breathing, a frantic or frightened demeanor, fading in and out of consciousness, and final expressions of love to a romantic partner. *See State v. David Smith*, No. W2009-02002-CCA-R3-CD, 2010 WL 2482326, at *7 (Tenn. Crim. App. June 17, 2010), *perm. app. denied* (Tenn. Nov. 10, 2010).

In this case, the circumstances as summarized by the trial court support a finding that the victim was aware of his impending death. Mr. Pierce testified that, when he reached the victim, the victim was writhing, kicking and screaming, and “moving a lot in pain.” Mr. Pierce could see bullet holes “all over” the victim’s body, and he testified that there was “blood everywhere.” Likewise, the two responding officers testified as to the seriousness of the victim’s condition. Officer Payne stated that the victim was moaning, writhing, and obviously in severe pain. He observed multiple gunshot wounds on the victim’s body, including wounds in the abdomen and back. Officer Johnson testified that the victim was covered in blood, and when he raised the victim’s shirt, he saw several wounds to his torso. Mr. Rye, the paramedic who first tended to the victim, testified that the victim’s condition was critical at the scene and that the victim became combative and did not want anyone to touch him when paramedics attempted to load him onto a stretcher. Dr. Curry testified that the victim suffered multiple gunshot wounds, including wounds to the chest and abdomen. She explained that one bullet “injured his bowel and . . . two major arteries and one major vein in his abdominal area which caused him to bleed out[.]” In addition to the medical testimony, photographs of the scene where the victim

was shot depict a large pool of blood, blood spatter on the porch, and the victim's bloody clothing that was cut away by paramedics. Under these circumstances, the trial court properly inferred the victim's consciousness of impending death from the dire nature of his wounds.

Despite Defendant's claim to the contrary, the trial court specifically considered the reliability of the victim's statement, concluding that the statement was "extremely reliable [] under the circumstances." Furthermore, the trial court's factual finding that the victim stated, "Dedrick did it, but I got him[,] is supported by the record and is binding on this court. *Gilley*, 297 S.W.3d at 759-61. For these reasons, we conclude that the trial court did not err by admitting the victim's out-of-court statement under the dying declaration exception to the hearsay rule, and Defendant is not entitled to relief.

Sufficiency of the evidence

Defendant argues that the State's evidence was "almost completely circumstantial, with the exception of the victim's dying declaration, which was erroneously presented to the jury." He contends that without the victim's statement the evidence was not sufficient to establish Defendant's identity as the shooter. The State responds that the evidence is sufficient to support Defendant's conviction for second degree murder.

Our standard of review for a sufficiency of the evidence challenge 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) (emphasis in original); *see also* Tenn. R. App. P. 13(e). Questions of fact, the credibility of witnesses, and the weight of the evidence are resolved by the fact finder. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). This court will not reweigh the evidence. *Id.* Our 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)) (internal quotation marks omitted).

A guilty verdict removes the presumption of innocence, replacing it with a presumption of guilt. *Bland*, 958 S.W.2d at 659; *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). The defendant bears the burden of proving why the evidence was insufficient to support the conviction. *Bland*, 958 S.W.2d at 659; *Tuggle*, 639 S.W.2d at 914. On appeal, the "State must be afforded the strongest legitimate view of the evidence and all reasonable inferences that may be drawn therefrom." *State v. Vasques*, 221 S.W.3d 514, 521 (Tenn. 2007).

The identity of the perpetrator is an essential element of any crime and may be proven by circumstantial evidence alone. *State v. Rice*, 184 S.W.3d 646, 662 (Tenn. 2006) (citing *State v. Reid*, 91 S.W.3d 247, 277 (Tenn. 2002) and *State v. Thompson*, 519 S.W.2d 789, 793 (Tenn. 1975)). The weight to be given to circumstantial evidence, the inferences to be drawn from such evidence, and “the extent to which the circumstances are consistent with guilt and inconsistent with innocence” are questions for the jury. *Id.* (quoting *Marable v. State*, 313 S.W.2d 451, 457 (Tenn. 1958)).

As relevant here, second degree murder is “[a] knowing killing of another[.]” Tenn. Code Ann. § 39-13-210(a)(1) (2013). Second degree murder is a “result of conduct” offense. *See State v. Brown*, 311 S.W.3d 422, 431-32 (Tenn. 2010); *State v. Ducker*, 27 S.W.3d 889, 896 (Tenn. 2000). Accordingly, the appropriate statutory definition of “knowing” in the context of second degree murder is as follows: “A person acts knowingly with respect to the result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result.” Tenn. Code Ann. § 39-11-302(b) (2013); *see Brown*, 311 S.W.3d at 431.

When viewed in the light most favorable to the State, the evidence supports Defendant’s second degree murder conviction. The victim identified his assailant as “Dedrick” when asked who shot him and told responding officers that the shooting was “over a girl.” As previously discussed, the victim’s out-of-court statement was properly admitted into evidence by the trial court. In addition to the victim’s dying declaration, the State presented testimony from Ms. Jones and Ms. Glasper, who connected Defendant to the name “Dedrick” and identified Ms. Jones as “the girl” in the victim’s statement. Ms. Jones and Ms. Glasper testified that the victim and Defendant had both dated Ms. Jones, and there was animosity between the men because of it. Officers testified that Defendant owned a silver Volkswagen Beetle, which matched the description of a vehicle used during the killing. Moreover, the victim’s cell phone was located on top of some bushes six feet away from Defendant’s car, and Defendant shut off both his home video surveillance system and his cell phone during the time of the murder. Based on this evidence, any rational trier of fact could conclude that Defendant was guilty of second degree murder. Defendant is not entitled to relief.

Conclusion

For the aforementioned reasons, the judgment of the trial court is affirmed.

ROBERT L. HOLLOWAY, JR., JUDGE