

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
January 3, 2018 Session

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Appellate Courts

STATE OF TENNESSEE v. BRYANT WILLIAMSON

Appeal from the Criminal Court for Shelby County
No. 13-04434 Chris Craft, Judge

No. W2016-02434-CCA-R3-CD

The Defendant-Appellant, Bryant Williamson was convicted of one count each of first degree murder, attempted first degree murder, and unlawful employment of a firearm during the commission of a dangerous felony. The trial court sentenced him as a Range I, standard offender to an effective sentence of life plus ten years. The sole issue presented for our review is whether the evidence is sufficient to support the Defendant's convictions. After a thorough review of the record and briefs, we affirm the judgments of the trial court.

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

CAMILLE R. MCMULLEN, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS and ALAN E. GLENN, JJ., joined.

Charles Edgar Waldman, Memphis, Tennessee, for the Defendant-Appellant, Bryant Williamson.

Herbert H. Slatery III, Attorney General and Reporter; David H. Findley, Senior Counsel; Amy P. Weirich, District Attorney General; and Reginald Henderson and Carla Taylor, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

On January 11, 2013, the Defendant¹ was standing at his front door, arguing with Jeremy Jones, when he pulled out his gun and shot at Jeremy Jones. The Defendant's

¹ We acknowledge that we do not use titles when referring to every witness. We intend no disrespect in doing so. Judge John Everett Williams believes that referring to witnesses without proper titles is disrespectful even though none is intended. He would prefer that every adult witness be referred to as Mr. and Mrs. or by his or her proper title.

shot missed its intended victim and instead struck and killed the actual victim who was standing in her driveway across the cove. Several eyewitnesses testified that the Defendant and Jones had been fighting in the days prior to the shooting, heard the Defendant tell people to move out of the way so he could shoot Jones, saw the Defendant holding and firing his gun, and saw the victim fall to the ground immediately after the shooting.

State's Proof. Waddell McLemore testified that, on the morning of January 11, 2013, he and his sister, the victim, went to the grocery store and returned to their house in Burnham Cove. As they were unloading their groceries, McLemore recalled hearing individuals arguing and fighting from the house across the cove, later identified as the Defendant's house. He said he was inside the house when he heard someone yell out "B[----], get out of my cove." This was followed by a single gunshot. When he came outside, he found the victim lying on the ground and saw a red car drive away quickly. He testified that he gave a written statement to the police after the shooting and also told them that he saw a man run from the front porch of the Defendant's house towards the back of that house. McLemore identified exhibits 2 and 3 as his house and the Defendant's house, respectively, and placed a red "W" on each.

On cross-examination, McLemore testified that he recognized one of the voices in the commotion, specifically the one who said "B[----], get out of my cove," as that of the Defendant. He said that the Defendant was arguing with two or three people who he thought were standing outside by the large bush next to his house and another in a car. Although he testified that he did not recall any females involved in the argument, in his written statement to police he stated that the Defendant was arguing with a female who was driving the red car and did not remember seeing anyone else inside.

Jeremy Jones testified that, on the day of the shooting, he was driving his burgundy Buick Century when he picked up Daraion Stone and Gregory Reed and brought them to the Defendant's house. He said that the Defendant came to the door as he dropped off Stone and Reed near the mailbox, and that he was leaving the cove when he heard a single gunshot and kept driving. He testified that he did not see anyone else or hear anyone arguing as he dropped his friends off and left the cove. He stated that Stone called his phone repeatedly after the gunshot, and when he answered, Stone said that the Defendant "shot that lady." He explained that he did not believe Stone at first because he and the Defendant had been longtime friends and that they did not have any "issues going on" at the time. He said that it was not until he saw the shooting on the news the next day that he realized what happened.

On cross-examination, Jones clarified that he could only see the Defendant's head when he came out of his house and that there were no females around them at the time

and that he did not see anyone with a gun. He said he went straight home and slept until he had to work the next day.

Gregory Reed testified that he had been friends with the Defendant for over twenty years. He said that he was walking with his brother, Stone, when Jeremy Jones picked them up in his burnt orange Buick Century and took them to the Defendant's house. Reed said that when he and Stone got out of the car near the mailbox, the Defendant and Jones "had a[n] altercation going on" and then the Defendant said, "Get out the way. I'm fixing to bust." He said he was not paying attention to the arguing but then heard a gunshot, and Stone directed his attention to the victim who was lying on the ground. He said that the victim's brother came out and asked what happened to the victim, at which point Stone pointed to the Defendant's house and said that the gunshot came from there. He said that at that same time, Jones was driving really fast out of the cove because "he was trying to get away." After the shot, Reed and Stone started walking out of the cove when the Defendant's brother, Marcus Deaner, came out of the house asking what happened. In response, Reed overheard the Defendant say, "d[---], man, I f[---]ed up." Reed verified that he gave a statement to the police the next day and identified exhibits 5 and 6 as the photographic lineup given to him by the police where he identified the Defendant as the shooter.

On cross-examination, Reed said he did not see anyone by the large bush besides the victim and her brother. He stated that he could not see whether the Defendant was holding a gun because there were bushes in front that obscured his view and that he was not aware that the Defendant and Jones were fighting until they were dropped off before the shooting. He said he did not call Jeremy Jones after the shooting, and that he did not recall Stone calling Jones either, but that they did call their mother on the way home. As he and Stone were walking away from the house, he said he saw the Defendant go back inside and start putting on clothes.

Daraion Stone testified that he was walking toward the Defendant's house when Jeremy Jones picked him and his brother up in a burgundy or red Buick and dropped them off by the Defendant's mailbox. He stated that the Defendant and Jones had an altercation a few days prior and that they were "talk[ing] back and forth" as Jones dropped them off. He said he heard the Defendant tell Stone and Reed to "[g]et out the way . . . [b]ecause he was fixing to shoot at Jeremey Jones." He testified that he saw the Defendant holding a black gun and saw him fire it toward Jones' car as it was leaving. After he heard the shot, he said he looked across the cove and saw the victim fall to the ground. He saw the Defendant go back in the house and saw him "just pacing across the floor like he was trying to grab things and leave." He saw Marcus Deaner come out of the Defendant's house but did not see anyone else outside in the neighborhood. He called

his mother shortly after the shooting and gave a written statement to the police in which he said that the gunshot came from the Defendant's house.

On cross-examination, Stone testified that he did not call Jeremy Jones after the shooting but saw him drive fast out of the cove because Stone "believe[d] [Jones] was trying to dodge a bullet." He later called Officer Jones of the Memphis Gang Unit who then brought him down to make a statement to detectives about the shooting. He said that, after he pointed to the Defendant's house in reference to where the gunshot came from, he heard the Defendant ask, "Why did you point up here?" On redirect, he confirmed that he did not actually see the Defendant flee the scene, as was suggested in his police statement, but he did see the Defendant, in his opinion, preparing to flee.

Memphis Police Officer Tyont Shabazz testified that he responded to the scene of the shooting and found the victim unresponsive on the ground. He identified exhibit 9 as an accurate representation of the victim when he arrived on the scene. He explained that he investigated the scene and canvassed the neighborhood to determine any possible suspects and that he spoke with the victim's brother. On cross-examination, Officer Shabazz specified that he did not recall talking to any neighbors and that he did not notice any shell casings during his investigation of the scene.

Memphis Police Officer Charles Cathey, with the Crime Scene Investigation Unit, testified that he responded to and immediately began processing the scene. He said he took photographs of the scene as it was when he arrived, including the victim's identification cards (exhibit 10) and the victim after the shooting (exhibit 11). He identified exhibits 12, 13, and 14 as the photos he took of the victim's car where she was standing and pointed out that a red substance, likely blood, was visible on the grocery bags. He then examined the area around the Defendant's house, located a spent shell casing in the driveway, and identified exhibits 15, 16, and 17 as photos accurately representing that area and the spent casing. He noted that the shell casing looked old and as if it had been in the driveway for a while, not like it had recently been fired. He also examined the Point Church area which he said has a walkway the suspect may have gone through and where footprints were found, photographed, and casted. He identified exhibits 18 through 24 as accurate representations of that area and the footprint and exhibit 25 as a drawing made by Officer Carlyle depicting the crime scene. On cross-examination, Officer Cathey identified exhibits 26, 27, and 28 as the castings made from the footprints found in the Point Church walkway.

Agent Kasia Lynch of the Tennessee Bureau of Investigation was qualified as an expert in the field of firearm identification. She testified that she examined the fired bullet retrieved from the victim and the fired shell casing found in the Defendant's driveway, and identified these two items at trial as exhibits 29 and 30, respectively. Her

examination and official firearms report were admitted into evidence as exhibit 31. Pursuant to her examination, Agent Lynch determined that the fired bullet could have come from “a 9 millimeter Luger caliber, a .38 special caliber, a 357 caliber or a 380 auto caliber” and that the spent shell casing was “a 9 millimeter Luger caliber[.]” On cross-examination, Agent Lynch testified that, without the actual firearm, she could not determine whether the fired bullet came from the spent shell casing. She also discussed gunshot residue and stated that “the maximum distance that we will find these residues is about 5 feet.”

Jerome Black, also known as Jason Harris, testified that, on the morning of the shooting, he was at his sister’s house on Fortune when he heard and saw a man with a 9 millimeter gun banging on his sliding glass door. He identified exhibits 32 through 36 as the photographic lineups given to him; he identified the Defendant in exhibit 33 as the man he saw banging on the glass door but was unable to identify anyone else on the other lineups.

On cross-examination, Black testified that, in his written statement to police, he described the man banging on the glass door as being around five foot five inches and approximately 140 pounds, wearing blue jeans, a dark sweatshirt, and white tennis shoes. He then compared the Defendant in court and agreed that he was taller and heavier than the man he described to police. He also confirmed that the police performed a show up of another individual, Jodell Jones, and Black said he identified that man as the one who was at his glass door. On redirect, he stated that he did not recognize Jodell Jones as number 4 in exhibit 36. On recross, he confirmed that he did not see the Defendant in the police car during the show up.

Jodell Jones testified that, on the morning of the shooting, the police picked him up as he was walking towards his mother’s house on Overton Crossing Road and took him to the scene of the crime for a show up identification. He marked a star and arrow on exhibit 36 indicating where he was when he was walking which was in the same map block as Point Church and Burnham Cove. He identified himself as number 4 in exhibit 36 and identified exhibit 37 as the location where the police performed a show up of him to Jerome Black. On cross-examination, he stated that he was about five foot nine or eleven inches and weighed about 150 pounds. He said he was tested for gunshot residue (“GSR”), but that he did not have any on him. He said he was wearing blue jeans, a blue jacket, a white t-shirt, and white shoes when he was picked up.

Memphis Police Officer David Payment testified that he performed a GSR analysis on Jodell Jones on the morning of the shooting and identified exhibits 39 through 42 as the photos he took of Jones, specifically showing his clothing and shoes. He also identified exhibits 43 through 46 as the photographs he took of Jones during the GSR test

and explained that exhibits 43 and 44 show an “average” amount of GSR around Jones’ mouth and nose, indicating that Jones was in the “vicinity of a gunshot.” He also noted that exhibits 45 and 46 show a few specks of possible GSR on Jones’ left hand and no possible GSR on his right hand or clothing, indicating that he likely did not shoot a gun but was within twenty-five feet of a gunshot. On cross-examination, Officer Payment clarified that there was no visible GSR on Jones other than his mouth, nose, and a few specks on his left hand, noting that even if someone wore gloves while shooting a gun, GSR would still appear on that person’s clothing, arms, hair, face, etc.

Dr. Karen Chancellor, Shelby County Medical Examiner, was qualified as an expert in forensic pathology. She testified that she performed an autopsy on the victim and determined that her cause of death was a single gunshot wound to the head. She identified exhibits 47, 48, and 49 as autopsy photographs taken of the victim’s gunshot wound; exhibits 50 and 51 as the x-rays showing the bullet inside the victim’s head; and exhibit 52 as the bullet removed from the victim. On cross-examination, Dr. Chancellor explained that the bullet came from a gunshot that came from farther away in distance.

Jessica Black testified that, at the time of the shooting, she lived on Fortune and identified exhibit 53 as a photograph of her home. She said that when she returned home from work that morning, police were in and around her house and her brother, Jerome Black, told her that a stranger with a gun was banging on their glass door. She said she saw a picture of the stranger on Lieutenant Alisa Mitchell’s phone and identified that person as the Defendant. She said that the Defendant had called her at home approximately twenty times that morning and that he called once again while Lieutenant Mitchell was beside her. She confirmed giving a written statement to police that stated that the Defendant told her he was the stranger with a gun banging on the glass door and that he wanted to hide a gun and weed in her home. She stated that the Defendant told her he threw his gun into a field behind her house, but when he learned police were near her, he asked her not to tell the police about his gun. She then identified exhibits 54 and 55 as the photo lineup she was given where she identified the Defendant. She also identified exhibit 56 as the intersection near her home and exhibit 57 as depicting her street, Fortune, in the background.

On cross-examination, she testified that the Point Church area is behind her house. She did not recognize the pathway shown in exhibit 19, but recognized the area depicted in exhibit 37 as a pathway along the side of her neighbor’s house. She confirmed that her police statement said that, when she was on the phone with the Defendant, she asked him if he shot someone and he said he did not. On redirect, she confirmed that, in her police statement, she said the Defendant told her that “he had got into it with some CRIPS, FAM Squad and the police showed up[.]”

Memphis Police Lieutenant Alisa Mitchell testified that she was the lead investigator for the shooting. She spoke with the victim's brother who told her that, as he and the victim were returning home, he heard some commotion from another house in the cove and that he saw a car speeding out of the cove after he heard the gunshot. She testified that she also went to the house on Fortune where she spoke with Jessica Black who identified the Defendant from a photo on Lieutenant Mitchell's phone. She said that the Defendant then called Black again and that she was able to overhear their phone conversation. She said that the Defendant told Black that he was the stranger at the door and that he wanted to hide a gun and weed at her house. Lieutenant Mitchell said she asked Black to ask the Defendant where he ended up putting the gun and he responded that "he hid it somewhere behind the church." She also testified that she spoke with Jodell Jones and that he was tested for GSR. She said she gave Jason Black several photo lineups and that he was unable to identify Jodell Jones, but instead identified the Defendant as the stranger at the door. She stated that she collected witness statements from Daraion Stone and Gregory Reed who told her that, on the morning of the shooting, Jeremy Jones dropped them off at the Defendant's house, that the Defendant came out of the house and told them to get out of the way because he was going to shoot Jones, and that he actually did fire at Jones. She said they also told her that, at that same time, they saw Jones speeding out of the cove and that one of them saw the victim fall down.

On cross-examination, Lieutenant Mitchell stated that the particles that appeared on Jodell Jones' face during the GSR test could have been other particles, not necessarily GSR. She verified that the number that called Jessica Black's house twenty times was the Defendant's number. She stated that she overheard the Defendant tell Jessica Black that he had an altercation with a gang. She said that when Jeremy Jones came to give his statement, she viewed his car, described it as "dark red, kind of maroonish," and noted that it could have been faded due to its age. She stated that both Reed and Stone indicated that there was "beef" between the Defendant and Jeremy Jones prior to the shooting, but that Jeremy Jones denied any "beef" between himself and the Defendant.

Memphis Police Officer Walter Doty testified that he arrested the Defendant on January 30, 2013, pursuant to an arrest warrant in this case.

Pursuant to the trial judge's instructions, the jury visited Burnham Cove and Fortune to view the area where the instant crime took place. The trial judge, attorneys, and parties were also present.

Defense Proof. Chelse Sampler testified that the Defendant is the father of her child and that, on the morning of the shooting, the Defendant and Jeremy Jones arrived to her house around 9:30 a.m. and stayed until around 2:00 p.m. or 3:00 p.m. On cross-examination, Sampler confirmed that she did not provide this alibi to the police prior to

trial. She initially testified that she had not had contact with the Defendant for several months, but she then corrected her testimony and said she spoke with the Defendant either the day or within days prior to her testimony. On redirect, she stated that she would not lie under oath for the Defendant.

Following the conclusion of the proof, the jury convicted the Defendant as charged. The trial court later sentenced the Defendant as a standard offender to life for the first degree murder conviction, twenty years for the attempted first degree murder conviction, and ten years for the unlawful employment of a firearm conviction. The court ordered the twenty-year sentence to run concurrently with the life sentence and consecutively to the ten-year sentence, and ordered the ten year sentence to run consecutively to the twenty year sentence, for an effective sentence of life plus ten years. The Defendant filed a motion for new trial, which was denied by the trial court on November 17, 2016. A timely notice of appeal was filed, and this case is now properly before this court.

ANALYSIS

As an initial matter, the Defendant briefly asserts that the trial court failed to perform its duty as the thirteenth juror. However, we note that the trial court explicitly stated that it was affirming the jury verdict as thirteenth juror in its ruling at the Defendant's motion for new trial and in its order denying the same.

Sufficiency of the Evidence. The sole issue on appeal is whether the evidence is sufficient to sustain the Defendant's convictions for first degree murder, attempted first degree murder, and unlawful employment of a firearm during the commission of a dangerous felony. The Defendant argues that there is insufficient evidence to sustain his convictions because the State failed to establish premeditation, which entails a previously formed intent to kill. He further argues that, because the State failed to prove he intended to kill Jeremy Jones, he cannot then be guilty of the intent to kill the actual victim. The State responds that the evidence presented was sufficient to establish each of the Defendant's convictions. We agree with the State.

“Because a verdict of guilt removes the presumption of innocence and raises a presumption of guilt, the criminal defendant bears the burden on appeal of showing that the evidence was legally insufficient to sustain a guilty verdict.” State v. Hanson, 279 S.W.3d 265, 275 (Tenn. 2009) (citing State v. Evans, 838 S.W.2d 185, 191 (Tenn. 1992)). “Appellate courts evaluating the sufficiency of the convicting evidence must determine ‘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.’” State v. Wagner, 382 S.W.3d 289, 297 (Tenn. 2012)

(quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)); see Tenn. R. App. P. 13(e). When this court evaluates the sufficiency of the evidence on appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable inferences that may be drawn from that evidence. State v. Davis, 354 S.W.3d 718, 729 (Tenn. 2011) (citing State v. Majors, 318 S.W.3d 850, 857 (Tenn. 2010)).

Guilt may be found beyond a reasonable doubt where there is direct evidence, circumstantial evidence, or a combination of the two. State v. Sutton, 166 S.W.3d 686, 691 (Tenn. 2005); State v. Hall, 976 S.W.2d 121, 140 (Tenn. 1998). The standard of review for sufficiency of the evidence “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 Hanson, 279 S.W.3d at 275). The jury as the trier of fact must evaluate the credibility of the witnesses, determine the weight given to witnesses’ testimony, and reconcile all conflicts in the evidence. State v. Campbell, 245 S.W.3d 331, 335 (Tenn. 2008) (citing Byrge v. State, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978)). Moreover, the jury determines the weight to be given to circumstantial evidence, the inferences to be drawn from this evidence, and the extent to which the circumstances are consistent with guilt and inconsistent with innocence. Dorantes, 331 S.W.3d at 379 (citing State v. Rice, 184 S.W.3d 646, 662 (Tenn. 2006)). When considering the sufficiency of the evidence, this court “neither re-weighs the evidence nor substitutes its inferences for those drawn by the jury.” Wagner, 382 S.W.3d at 297 (citing State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997)).

“The identity of the perpetrator is an essential element of any crime.” Rice, 184 S.W.3d at 662 (citing State v. Thompson, 519 S.W.2d 789, 793 (Tenn. 1975)). The State has the burden of proving the identity of the defendant as the perpetrator beyond a reasonable doubt. State v. Cribbs, 967 S.W.2d 773, 779 (Tenn. 1998). The identity of the defendant as the perpetrator may be established by direct evidence, circumstantial evidence, or a combination of the two. Thompson, 519 S.W.2d at 793. “The credible testimony of one identification witness is sufficient to support a conviction if the witness viewed the accused under such circumstances as would permit a positive identification to be made.” State v. Radley, 29 S.W.3d 532, 537 (Tenn. Crim. App. 1999) (citing State v. Strickland, 885 S.W.2d 85, 87-88 (Tenn. Crim. App. 1993)). The identification of the defendant as the perpetrator is a question of fact for the jury after considering all the relevant proof. State v. Thomas, 158 S.W.3d 361, 388 (Tenn. 2005) (citing Strickland, 885 S.W.2d at 87). In addition, as relevant here, this court has held that “the testimony of a victim, by itself, is sufficient to support a conviction.” Strickland, 885 S.W.2d at 87 (citing State v. Williams, 623 S.W.2d 118, 120 (Tenn. Crim. App. 1981)).

We also note that the jury may reject an alibi defense. State v. Cate, 746 S.W.2d 727, 729 (Tenn. Crim. App. 1987). “The defense of alibi presents an issue of fact

determinable by the jury, as the exclusive judges of the credibility of the witnesses in support of that defense, and of the weight to be given their testimony.” State v. Crawford, 635 S.W.2d 704, 705 (Tenn. Crim. App. 1982) (citing Green v. State, 512 S.W.2d 641, 643 (Tenn. Crim. App. 1974)).

A. First Degree Murder. First degree murder is the premeditated and intentional killing of another person. T.C.A. § 39-13-202(a)(1) (2006). Premeditation is defined as “an act done after the exercise of reflection and judgment.” Id. § 39-13-202(d). This section further defines premeditation:

“Premeditation” means that the intent to kill must have been formed prior to the act itself. It is not necessary that the purpose to kill pre-exist in the mind of the accused for any definite period of time. The mental state of the accused at the time the accused allegedly decided to kill must be carefully considered in order to determine whether the accused was sufficiently free from excitement and passion as to be capable of premeditation.

Id. “‘Premeditation’ is the process of thinking about a proposed killing before engaging in the homicidal conduct.” State v. Brown, 836 S.W.2d 530, 540-41 (Tenn. 1992) (quoting C. Torcia, Wharton’s Criminal Law § 140 (14th ed. 1979)).

The existence of premeditation is a question of fact for the jury to determine and may be inferred from the circumstances surrounding the offense. State v. Rosa, 996 S.W.2d 833, 837 (Tenn. Crim. App. 1999) (citing Brown, 836 S.W.2d at 539). “[T]he 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” may support the existence of premeditation. Bland, 958 S.W.2d at 660 (citing Brown, 836 S.W.2d at 541-42; State v. West, 844 S.W.2d 144, 148 (Tenn. 1992)). This court has also noted that the jury may infer premeditation from any planning activity by the defendant before the killing, evidence concerning the defendant’s motive, and the nature of the killing. State v. Bordis, 905 S.W.2d 214, 222 (Tenn. Crim. App. 1995) (citation omitted).

Here, the Defendant argues that the proof provided at trial was insufficient to “conclusively establish” the existence of premeditation or the intent to kill. As noted above, premeditation is a question of fact reserved for the jury and no particular set of facts is necessary to establish its existence. The jury may infer premeditation from any number of facts and circumstances surrounding the offense. The evidence in this case demonstrates that the Defendant and the intended victim, Jeremy Jones, had been fighting in the days preceding the shooting. The victim’s brother and Reed testified that the

Defendant and Jones were arguing at the Defendant's home immediately before the shooting. Stone observed the Defendant walk out of his home with a gun and shoot at Jones. Stone then observed the actual victim fall to the ground after the shot was fired. Stone and Reed testified that, right before the shot was fired, the Defendant told them both to get out of the way because he was about to shoot Jones. Upon our review, there was sufficient evidence for a rational juror to conclude that the Defendant acted with premeditation and intent to commit first degree murder.

B. Attempted First Degree Murder. As relevant in this case, “[a] person commits criminal attempt who, acting with the kind of culpability otherwise required for the offense . . . [a]cts with intent to cause a result that is an element of the offense, and believes the conduct will cause the result without further conduct on the person's part[.]” T.C.A. § 39-12-101(a)(2). As we have previously noted, first degree murder is the premeditated and intentional killing of another person. Id. § 39-13-202(a)(1). Having already established that the evidence was sufficient to sustain the Defendant's conviction for first degree murder of the actual victim, we conclude that the same evidence is sufficient to sustain the Defendant's conviction for attempted first degree murder of the intended victim. In the light most favorable to the State, a rational jury could conclude that the Defendant acted with premeditation and intent to kill Jeremy Jones, regardless of the fact that the shot missed Jones and killed the actual victim instead.

C. Unlawful Employment of a Firearm during the Commission of a Dangerous Felony. Employing a firearm during the commission of a dangerous felony is a Class C felony. Id. § 39-17-1324(b)(2), (h)(1). First degree murder and attempted first degree murder are defined as dangerous felonies pursuant to Tennessee Code Annotated section 39-17-1324. Id. § 39-17-1324(b), (i)(1)(A). Viewing the evidence in the light most favorable to the State, a rational juror could have determined that the Defendant fired a gun when he killed the victim and when he attempted to kill Jeremy Jones. Consequently, the evidence is sufficient to sustain this conviction.

CONCLUSION

Upon review, we affirm the judgments of the trial court.

CAMILLE R. McMULLEN, JUDGE