

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs October 3, 2023

FILED

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Clerk of the
Appellate Courts

STATE OF TENNESSEE v. AMANDA NICOLE GEORGE

Appeal from the Circuit Court for Madison County
No. 22-446 Joseph T. Howell, Judge

No. W2023-00124-CCA-R3-CD

A Madison County jury convicted the Appellant of aggravated assault for which she received a four-year sentence to be served on supervised probation after service of eleven months and twenty-nine days at 75% release eligibility. The sole issue presented for our review is whether the evidence is sufficient to support the serious bodily injury element of aggravated assault and self-defense. Upon our review, we affirm.

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

CAMILLE R. MCMULLEN, P.J., delivered the opinion of the court, in which ROBERT H. MONTGOMERY, JR., and J. ROSS DYER, JJ., joined.

Jeremy Epperson, District Public Defender, and Parker O. Dixon, Assistant District Public Defender, for the Appellant, Amanda Nicole George.

Jonathan Skrmetti, Attorney General and Reporter; G. Kirby May, Assistant Attorney General; Jody S. Pickens, District Attorney General; and Lee R. Sparks, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

The facts giving rise to the conviction in this case stem from an altercation between the Appellant and the victim, Crystal Perry, who knew each other only through Kevin Doss, the father of the Appellant's four-year old daughter. On the day of the offense, September 27, 2021, the victim and Doss were attempting to exchange property after their relationship had ended, and the Appellant struck the victim in the back of the head with a trampoline pole, causing extensive injuries.

The proof offered at the Appellant's one-day jury trial on November 3, 2022, established that the victim had been in a prior relationship with Kevin Doss and knew the Appellant only as the mother of Doss's child. Two weeks prior to the offense, the victim had "put [Doss] out" of her residence but she still had property that belonged to him, and he also had property that belonged to her. On the day of the offense, the victim and Doss had arranged to exchange property at the home of the victim's cousin to avoid any confrontation. However, shortly after confirming the arrangements for the exchange, Doss and the Appellant drove into the victim's driveway. The victim said that Doss exited the vehicle and put a bag on the ground outside. She too walked outside and put a bag of his items on the ground. Doss then attempted to enter the victim's home, and the victim became upset and yelled, "There ain't nothing in there[,]" and demanded for Doss to leave. The victim said she did not see the Appellant exit the car. As Doss continued to approach the steps of the victim's residence, the Appellant picked up a trampoline pole from the yard and hit the victim in the head.

The victim testified the Appellant "c[a]me from behind [her], and [the victim was] steadily yelling at [Doss], and [the Appellant] hits [the victim] and [she] turn[ed] around and [explained] there ain't nothing in my house, you know [.]" Asked if the Appellant hit her a second time, the victim replied, "She hit me again, and I guess that's when I started bleeding real bad, and [the Appellant] hollered for [Doss] and they got in the car and left." Madison County Sherriff's Deputy Trevor Schrupp responded to the scene and took ten photographs reflecting the trampoline, the trampoline poles, the bags of items left on the ground, and the victim's injuries at the time of the offense. The photographs were admitted into evidence. The victim said the photograph of her injuries was taken soon after the ambulance arrived. She explained that she had to call the ambulance because she could not drive and was "feeling woozy."

Upon being taken to the hospital, the victim had nine staples placed in the back of her head as part of her treatment. The victim described her injuries as "painful for weeks after they took the staples out." She suffered lingering impacts from the wounds including a scar. She also explained that in order to put the staples in her head, doctors "had to pull her skin up on her skull." On cross-examination, the victim agreed that her skull was "numbed" before the staples were placed on it. She agreed she was not on any painkillers at the hospital and no needles were placed in her arm. She agreed that once the police arrived, she told them that the Appellant hit her with "one of those trampoline poles" and pointed to a pile of them in her yard. The victim believed the Appellant took the pole that she used to hit the victim when she left.

Kevin Doss testified on behalf of the Appellant. On the day of the offense, the Appellant gave Doss, along with their four-year old daughter, a ride to the residence he shared with the victim. Doss explained that it was his residence because he was on

probation and home arrest at that residence. Upon arrival at the residence, Doss observed the victim exit the home in “a wild rage[.]” When asked about the victim’s demeanor, Doss said she was very angry and that he knew she had been on drugs for a while. He explained this was one of the reasons he was leaving the residence of his own accord because he did not want to violate his probation. Doss said the victim “attack[ed]” him a few times, grabbed a metal pipe off the ground and “went at the vehicle.” Doss said the victim was “fixing to bust the windows out the vehicle, but she did not know there was a four-year-old little girl sitting in there playing on the phone[.]” Doss said he had told the Appellant to stay in the vehicle, but when the victim “started coming at the window with the pipe, [the Appellant] c[a]me up and grabbed a pipe from [the victim] and threw it, you know.” Doss said the victim then attacked the Appellant, and they went down onto the ground into a “big burn pile full of glass and bricks.” Doss put his foot on the Appellant’s shoulder to separate them. After the altercation, Doss and the Appellant got in the vehicle and left.

On cross-examination, Doss agreed that he was currently serving time for violating his probation. He had previously been convicted of theft of property and forgery. Doss said the victim sent him the photographs of her injuries and said she was going to get them “in trouble and take their kids away.”

The Appellant testified and provided her account of the day of the offense. The Appellant drove Doss and their four-year-old daughter to the victim’s residence for the purpose of Doss “collecting his belongings” and returning the victim’s belongings. As they pulled into the driveway, the victim approached their vehicle “arguing and hollering because Kevin Doss is in there.” When Doss exited the vehicle and approached the victim’s residence to return her belongings, the victim immediately attacked Doss. The Appellant said the victim was “cursing, she’s angry, she’s crying, she’s begging for [Doss] back, stating ‘she can’t believe that he chose to come back to me and left her.’” The Appellant said she remained in the vehicle with her daughter during this time. When the victim noticed the Appellant in the vehicle, she hollered out, “I can’t believe you brought that ‘B’ to my house.”

The Appellant said the victim then angrily approached her vehicle, grabbed a pole, and “act[ed] like she [was] going to swing it” at the passenger side window where the Appellant was seated. The Appellant said she feared for her life and the life of her child. The Appellant jumped out of the vehicle and took the pole away from the victim by “[taking] the victim down” into a burn pile onto the ground. The Appellant said the victim was swinging, pulling hair, and was difficult to get down. The Appellant said the victim slapped her, pulled her hair, and broke the Appellant’s tooth. The Appellant “slammed” the victim’s head because the victim would not stop attacking her. After the victim was down on the ground, the Appellant gave her the benefit of the doubt and let her up.

However, the victim got up and attacked the Appellant a second time. The Appellant testified they fought again, but she let the victim get up again. After the second altercation, Doss separated the women by putting his foot on top of the victim. As the Appellant and Doss were attempting to leave, the victim tried to come back at the Appellant and Doss, and the victim picked up a pole again indicating she was going to “bust out [the Appellant’s] windshield[.]” The Appellant said she repeatedly asked the victim to leave them alone, and that the Appellant and Doss were finally able to get into the vehicle and leave. However, the victim ran and chased them holding a pole as they drove out of the driveway.

The Appellant denied swinging a trampoline pole or any kind of metal object at the victim. The Appellant also denied taking a trampoline pole with her after the altercation with the victim. On cross-examination, the Appellant agreed she had a prior conviction of misdemeanor theft of property.

Based on the above proof, the jury convicted the Appellant as charged. The December 29, 2022 judgment reflects that the Appellant was sentenced to four years which was to be served on supervised probation after service of eleven months and twenty-nine days at 75% release eligibility. The Appellant filed an unsuccessful motion for new trial which was denied by written order on January 24, 2023. This case is now properly before this court for review.

ANALYSIS

As an initial matter, the statement of the issues section of the Appellant’s brief asserts the issue presented is as follows: “Whether there is sufficient evidence produced in the record to establish the State’s case overcame Appellant’s self-defense argument and instruction. Whether the Evidence is sufficient to convict Appellant based on a theory of inflicting serious bodily injury. The indictment lists a deadly weapon as an aggravating factor; however, no Jury instruction was given to the jury in this regard.” In contrast, the argument section of the Appellant’s brief provides the following two issues (1) “the evidence at trial was insufficient to support a conviction for aggravated assault on a theory of serious bodily injury” and (2) “the State did not present proof that overcame Appellant’s claim of Self-Defense.” Nothing in the argument section addresses the impropriety of the indictment or the jury instructions in this case. We also note, as pointed out by the State, that the Appellant failed to object to the indictment or to the trial court’s jury instructions at trial, and she failed to include either of these issues in her motion for new trial.

Accordingly, to the extent that the Appellant attempts to raise a claim relating to her indictment or the jury instructions on direct appeal, these issues are waived. See Tenn. R. App. P. 36(a) (failure to raise a contemporaneous objection at trial or include this issue in

motion for a new trial constitute waiver); Tenn. R. App. P. 27(a)(7) (requiring the appellant to set forth an argument for each issue, along with “the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities and appropriate references to the record); Tenn. Ct. Crim. App. R. 10(b) (“Issues which are not supported by argument, citation to authorities, or appropriate references to the record will be treated as waived in this court.”).

Upon review of the Appellant’s sufficiency of the evidence challenge, we apply the following well-established legal framework. The State, on appeal, is entitled to the strongest legitimate view of the evidence and all reasonable inferences which may be drawn from that evidence. State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). When a defendant challenges the sufficiency of the evidence, the standard of review applied by this court is “whether, after reviewing 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). Similarly, Rule 13(e) of the Tennessee Rules of Appellate Procedure states, “Findings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support a finding by the trier of fact of guilt beyond a reasonable doubt.”

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. Odom, 928 S.W.2d 18, 23 (Tenn. 1996). When reviewing issues regarding the sufficiency of the evidence, this court shall not “reweigh or reevaluate the evidence.” Henley v. State, 960 S.W.2d 572, 578-79 (Tenn. 1997). This court has often stated that “[a] guilty verdict by the jury, approved by the trial court, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the prosecution’s theory.” Bland, 958 S.W.2d at 659. A guilty verdict also “removes the presumption of innocence and replaces it with a presumption of guilt, and the defendant has the burden of illustrating why the evidence is insufficient to support the jury’s verdict.” Id. (citing State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982)).

The Appellant first contends the State failed to prove that the victim suffered serious bodily injury, an element of aggravated assault. In reply, the State maintains that due to the victim’s head injury, the victim suffered extreme physical pain as well as protracted and obvious disfigurement from the scarring that resulted from having to receive nine staples to close the gash, and that the victim’s injury clearly meets the definition of one that caused “extreme physical pain” and “protracted or obvious disfigurement.” Tenn. Code Ann. § 39-11-106(a)(37). Upon our review, we agree with the State.

Aggravated assault, as charged in this case, is defined as follows: “A person commits aggravated assault who: (A) Intentionally or knowingly commits an assault as

defined in § 39-13-101, and the assault: (i) Results in serious bodily injury to another [.]” Id. § 39-13-102(a)(1)(A)(i). “A person commits assault who: (1) Intentionally, knowingly or recklessly causes bodily injury to another[.]” Id. § 39-13-101(a)(1). “‘Bodily injury’ includes a cut, abrasion, bruise, burn or disfigurement, and physical pain or temporary illness or impairment of the function of a bodily member, organ, or mental faculty[.]” Id. § 39-11-106(a)(3). As relevant to the facts of this case, serious bodily injury is defined as bodily injury involving: “(A) A substantial risk of death; (B) Protracted unconsciousness; (C) Extreme physical pain; (D) Protracted or obvious disfigurement; [or] (E) Protracted loss or substantial impairment of a function of a bodily member, organ or mental faculty[.]” Id. § 39-11-106(a)(37).

Viewed in the light most favorable to the State, there was sufficient evidence from which a rational jury could have found that the victim suffered serious bodily injury involving protracted or obvious disfigurement based on her scar. Protracted, as relevant here, means “delayed or prolonged in time.” State v. Denton, No. 02C01-9409-CR-00186, 1996 WL 432338, at *5 (Tenn. Crim. App. Aug. 2, 1996) (citing Merriam Webster’s Collegiate Dictionary 939 (10th ed.1994); American Heritage Dictionary 568 (1975)) (determining the meaning of protracted unconsciousness as a basis for serious bodily injury). The record shows that the incident causing the victim’s injuries occurred on September 27, 2021. At the trial on November 3, 2022, over a year after the offense, the victim still suffered from scarring as a result of the staples being removed from her skull. This court has consistently held that a scar is sufficient to support the element of serious bodily injury. See State v. Martin, No. M2013-00569-CCA-R3-CD, 2014 WL 1102010, at *11 (Tenn. Crim. App. Mar. 20, 2014); State v. Reece, No. M2011-01556-CCA-R3-CD, 2013 WL 1089097, at *14 (Tenn. Crim. App. Mar. 14, 2013) (citing cases in which this court held that a scar constitutes protracted or obvious disfigurement for the purpose of establishing serious bodily injury), perm. app. denied (Tenn. June 17, 2013); State v. Matthews, No. M2010-00647-CCA-R3-CD, 2012 WL 5378046, at *4 (Tenn. Crim. App. Oct. 31, 2012) (same); State v. Capps, No. M2010-02143-CCA-R3-CD, 2012 WL 3800848, at *7 (Tenn. Crim. App. Sept. 4, 2012) (holding that the victim’s scar from a two-inch laceration on his ear was sufficient to establish serious bodily injury), perm. app. denied (Tenn. Feb. 13, 2013); State v. Forster, No. M2002-0008-CCA-R3-CD, 2011 WL 1431980, at *10 (Tenn. Crim. App. April 12, 2011) (concluding that the victim’s scar, which began in the middle of the bridge of her nose and ended at her lip, was sufficient to establish the element of serious bodily injury), perm. app. denied (Tenn. Aug. 24, 2011); State v. Sullivan, No. M2004-03068-CCA-R3-CD, 2006 WL 644021, at *8 (Tenn. Crim. App., Mar.10, 2006) (concluding that two-inch scar from a gunshot wound to the shoulder was sufficient for a jury to find protracted and obvious disfigurement). Accordingly, we conclude that there is sufficient evidence to support a finding of serious bodily injury based on the victim’s protracted or obvious disfigurement.

The Appellant next argues the State did not carry its burden of proving beyond a reasonable doubt that the Appellant did not act in self-defense. In support, the Appellant points out that two witnesses testified that the alleged victim was acting “crazy” and attempting to attack the Appellant and her vehicle with a metal object, and that the Appellant was “well within her right to disarm the alleged victim and push her down when she attempts to continue the aggressive and violent behavior.” In reply, the State contends the Appellant is not entitled to relief because a rational trier of fact could have found from the evidence presented at trial that she did not act in self-defense or in defense of another and that she was guilty of aggravated assault beyond a reasonable doubt. We agree with the State.

The Appellant argues that she struck the victim in self-defense. Tennessee Code Annotated section 39-11-611, the self-defense statute in effect at the time of the offense, states, in pertinent part:

(b)(1) Notwithstanding § 39-17-1322, a person who is not engaged in conduct that would constitute a felony or Class A misdemeanor and is in a place where the person has a right to be has no duty to retreat before 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.

(2) Notwithstanding § 39-17-1322, a person who is not engaged in conduct that would constitute a felony or Class A misdemeanor and is in a place where the person has a right to be has no duty to retreat before threatening or using force intended or likely to cause death or serious bodily injury, if:

- (A) The person has a reasonable belief that there is an imminent danger of death, serious bodily injury, or grave sexual abuse;
- (B) The danger creating the belief of imminent death, serious bodily injury, or grave sexual abuse is real, or honestly believed to be real at the time; and
- (C) The belief of danger is founded upon reasonable grounds.

Tenn. Code Ann. § 39-11-611(b)(1)-(2) (2021). “The State carries the burden of proving that the defendant did not act in self-defense.” State v. Sims, 45 S.W.3d 1, 10 (Tenn. 2001) (citing State v. Belser, 945 S.W.2d 776, 782 (Tenn. Crim. App. 1996)). The jury, as the trier of fact, determines whether the defendant acted in self-defense. State v. Goode, 956

S.W.2d 521, 527 (Tenn. Crim. App. 1997) (citing State v. Ivy, 868 S.W.2d 724, 727 (Tenn. Crim. App. 1993)). It is within the jury's prerogative to reject a claim of self-defense. Id. Upon our review of a jury's rejection of a claim of self-defense, "in order to prevail, the defendant must show that the evidence relative to justification, such as self-defense, raises, as a matter of law, a reasonable doubt as to his conduct being criminal." State v. Clifton, 880 S.W.2d 737, 743 (Tenn. Crim. App. 1994).

Here, the Appellant argues the State did not carry its burden in proving beyond a reasonable doubt that the Appellant did not act in self-defense. In support, the Appellant relies on her own testimony and the testimony of Doss and claims the victim's testimony was false and "the outlier in this matter." In doing so, the Appellant's self-defense arguments relate to the weight of the evidence and the jury's credibility determinations, which this court will not disturb on appeal. Bland, 958 S.W.2d at 659. The jury, by its verdict, rejected the Appellant's account of the altercation, as was its prerogative. Accordingly, the Appellant is not entitled to relief.

CONCLUSION

Based on the foregoing reasoning and authority, we affirm the judgment of the trial court.

CAMILLE R. MCMULLEN, PRESIDING JUDGE