

FILED

10/17/2023

Clerk of the
Appellate Courts

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs October 10, 2023

STATE OF TENNESSEE v. LORIE ANN GERBIS

**Appeal from the Criminal Court for Davidson County
No. 2016-C-1443 Jennifer L. Smith, Judge**

No. M2023-00016-CCA-R3-CD

The Defendant, Lorie Ann Gerbis, was convicted following a bench trial of two counts of aggravated assault. On appeal, the Defendant argues that the evidence was insufficient to support her convictions. Specifically, she contends that the State's evidence was inadequate to establish her identity as the perpetrator beyond a reasonable doubt. After review, we affirm the judgments of the trial court.

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

KYLE A. HIXSON, J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and JOHN W. CAMPBELL, SR., JJ., joined.

Jay Umerley (on appeal), and Dave Kieley and Annie Berry (at bench trial), Nashville, Tennessee, for the appellant, Lorie Ann Gerbis.

Jonathan Skrmetti, Attorney General and Reporter; Garrett D. Ward, Assistant Attorney General; Glenn R. Funk, District Attorney General; and Doug Thurman, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. FACTUAL AND PROCEDURAL HISTORY

This case arises from the December 1, 2015 assault of the victim, Marvine Jennette. A Davidson County grand jury indicted the Defendant for attempted first degree murder in count one and especially aggravated robbery in count two. *See* Tenn. Code Ann. §§ 39-12-101, -13-202, -13-403. The State amended count one to aggravated assault involving

the use or display of a deadly weapon and amended count two to aggravated assault resulting in serious bodily injury, both Class C felony offenses. *Id.* § 39-13-102(a)(1)(i), (iii), (e)(1)(ii).

On August 2, 2021, the Defendant waived her right to a jury trial and proceeded with a bench trial. The trial court declared the victim unavailable due to her June 3, 2019 death, and her testimony from the preliminary hearing was introduced at trial.

The victim testified that she knew the Defendant through a mutual friend, Tina Sloan, and had known the Defendant for about six months prior to the date of the assault, December 1, 2015. The Defendant had been to the victim's apartment several times to "just visit and talk." According to the victim, the Defendant had never been violent before, and she did not notice anything different about the Defendant when she let the Defendant into her home on December 1, 2015.

The victim stated that at approximately 7:10 to 7:15 a.m. that day, the Defendant knocked on her door wearing blue jeans and a sweatshirt. The victim had been unwell, and the Defendant asked if the victim needed anything. When the victim stated she did not, the Defendant asked to use the victim's bathroom, and the victim allowed the Defendant to enter her apartment. The victim returned to the chair she had been sitting in and resumed watching television with her back to the bathroom. When the Defendant exited the bathroom, approximately five to ten minutes later, the victim saw something fly over her head. The victim stated that she "put [her] hand under it[,] but the Defendant pulled the object tight and jerked the victim out of her chair and threw her onto the floor. The Defendant straddled the victim's back and struck the back of the victim's head. The victim did not know whether the Defendant hit her head with a fist or a hammer. The Defendant beat the victim until the victim lost consciousness.

When the victim regained consciousness, she called her sons and was taken to the hospital. She had a concussion, two "knots" on her head, and her right eye had been gouged. The victim spoke with the police at the hospital and identified the Defendant as her assailant from a photographic lineup.

The victim stated she was released the same day from the hospital. Initially, the victim did not notice anything missing at her home. When she looked for her medications, however, she found several missing, including her pain medication. She stated she had her medications with her that morning. The victim additionally found that eighty dollars was missing from her pocketbook. She affirmed that no one else was in her apartment.

The victim stated that after this assault, she needed a stronger eye-glasses prescription and injections for back pain. The victim stated that, at first, she was not sure what the Defendant placed around her neck but that she later discovered it was a plastic grocery bag.

Andy Jennette,¹ the victim's son, testified that the victim called him around 8:00 a.m. on December 1, 2015. The victim sounded scared and said she had been "beat up." When asked by who, the victim said "Lorie." When Andy asked who Lorie was, the victim replied, "[A] friend." After his call with the victim ended, Andy called his brother, Russ, who lived closer to the victim. Andy met the victim and Russ at the hospital. Andy described the victim as being "all black and blue" and as having knots on her head when he observed her at the hospital.

He looked through the victim's phone at her recent calls. While his was the most recent number the victim called, Andy noticed that the immediately-preceding incoming call was from an unknown number from the night before. Andy entered this number into FaceBook, and a profile belonging to "Lorie Gerbis" populated in the results. Andy provided the police with this information at the hospital. He said the police never took custody of the victim's phone. He stated that he had never seen the Defendant before and identified the Defendant in court as the person he saw on Facebook.

When Andy returned to the victim's apartment, he saw a plastic bag on the floor that looked like it had been "stretched." There was also a hammer on the floor. Andy explained that the victim had used a hammer to hang pictures a day or two prior to the assault. Andy could not recall whether the police collected these items. He stated that the victim had to make subsequent trips to the hospital for pain after the assault. He stated that the victim received more medication after the assault and that her mobility was not as good as it was previously. He affirmed that the victim immediately identified the Defendant as her assailant.

Russ Jennette lived about a mile from the victim's house, and he got there as quickly as he could, arriving around 8:00 a.m. When he arrived, the door was unlocked. This was unusual because the victim generally kept the door locked. When he entered, he did not see the victim sitting in her chair and called out her name. No one answered, and when he stepped into the apartment, he found the victim collapsed on the floor beside her chair. Her head was "saturated" in blood, and there was blood covering the floor. He stated that the victim was groggy, upset, and confused. He stated that the victim could hardly speak and

¹ Because the victim's two sons share a surname, we will refer to them by their first names. We intend no disrespect in so doing.

was “incoherent.” The victim told Russ that she had let a woman in to use the bathroom and that the woman had struck her in the head. When asked who the woman was, the victim replied, “Lorie.” He did not know anyone associated with his mother by that name. He saw a hammer lying in the floor and a bag lying beside the victim. Russ took the victim to the hospital.

Russ stated the victim had a “big gash” on the back of her head, “really large egg-size bumps,” red rings around her neck, and slight bruising and redness around her face. He stated that over the next few days, the bruising got worse and “three quarters of [the victim’s] face turned purple all down the side of her neck.” He stated that when the victim returned home, she found that her money and medications were missing. He said that, prior to this incident, the victim took pain medication for her back and hip. Russ stated that at the time of the assault, the victim was seventy-eight years old, four feet, ten inches tall, and weighed approximately eighty-five pounds. He identified photographs of the victim’s injuries, which were entered as exhibits to his testimony.

Larry Benz of the Metropolitan Police Department (“MPD”) testified that on December 1, 2015, he worked as a patrol officer and responded to the victim’s assault. He met the victim at the hospital. He stated that the victim had bruising and discoloration on her forehead area, blood on her mouth, bumps on head, and “line” marks around her neck. He said the victim was “distraught.” When asked who assaulted her, the victim replied, “Lorie.” Officer Benz stated that one of the victim’s sons gave him information from the victim’s phone and provided Officer Benz with a name. He entered the name into a police database and got a match for the Defendant. Officer Benz provided this information to Detective Harrison.

Erid Harrison of the MPD testified that he worked as a detective on the victim’s case. He stated that victim was “severely assaulted” but was able to answer questions. He stated that the victim gave him the first name of her attacker and that he got a last name from another officer who had spoken with Andy Jennette. The victim “immediately” identified the Defendant in a photographic lineup. Det. Harrison stated that the victim “knew who it was” and that the victim’s injuries were consistent with her description of the attack. Det. Harrison could not recall the victim saying her assailant had brown hair but did recall the victim saying the assailant wore jeans and a hoodie. He stated he never looked at a phone or corroborated the phone number in the victim’s phone. The photographic lineup was entered as an exhibit.

Det. Harrison stated that when he entered the victim’s apartment, the hammer was not near the chair and he did not recall seeing a bag. He stated that he did not collect the

hammer because it had been moved and was “contaminated.” Det. Harrison said the victim’s sons had been in the victim’s apartment, but he did not know if they moved the hammer. He explained that he did not collect the hammer or dust it for fingerprints because it was not in the “correct place where the crime occurred.” He stated that he did not dust for any fingerprints at the victim’s apartment, take any DNA samples, verify the victim’s prescriptions, or recover any pills.

Det. Harrison stated that the Defendant told him that she took her daughter to school the morning of the assault and that he confirmed this with the Defendant’s daughter. He could not explain why that potential alibi was not recorded in his investigative reports. He did not recall the Defendant giving him an ATM receipt. He said he never searched the Defendant’s home or vehicle, never recovered any pills, never spoke with the Defendant’s husband, and never found anything belonging to the victim in the Defendant’s possession. He further stated that he did not record his interview with the Defendant.

The State rested, and the Defendant recalled Officer Larry Benz. Officer Benz affirmed that the victim described the assailant as having shoulder-length brown hair and had initially stated a towel was put around her neck. He confirmed that the victim was able to answer all questions at the hospital.

The Defendant testified and denied assaulting the victim. She stated that she had only known the victim for approximately six weeks and that the two were introduced by Tina Sloan, a mutual friend. The Defendant stated she had previously taken Ms. Sloan to the victim’s apartment but had physically been in the victim’s apartment only once. During this visit, the Defendant brought the victim a thermometer because the victim had said she was not feeling well and wanted to take her temperature. The Defendant stated that she and the victim were not alone and a home health worker was present. The Defendant stated she had never been alone with the victim.

The Defendant said that December 1, 2015, was a normal morning. She took her daughter to school around 7:00 a.m., got coffee with other school moms around 8:00 or 8:30 a.m., and then went back home and got ready for a doctor’s appointment. On her way to her doctor’s appointment, the Defendant received a call from Ms. Sloan. Ms. Sloan was upset and told the Defendant that the victim was injured and at the hospital. The Defendant agreed to cancel her doctor’s appointment to drive Ms. Sloan to the hospital because Ms. Sloan did not have a vehicle. The Defendant said that she spoke to Det. Harrison at the hospital, and he asked her and Ms. Sloan to go to the police station to answer some questions.

The Defendant stated that she gave Det. Harrison a time-stamped ATM receipt for around the time of the assault and that he made a copy of the receipt. She gave him her husband's phone number, the contact information of the people she had coffee with that morning before her appointment, and permission to speak with her daughter. She stated the receipt had now faded now but that she had the bank records to show the exact time. The Defendant's arrest was her next contact with the police.

The Defendant said that the police never searched her home or vehicle. She stated that in 2015, she had blonde hair and Ms. Sloan had brown hair. She stated that she owned only one pair of jeans because she disliked wearing jeans and that she would have been wearing yoga pants and a t-shirt the morning of the assault. The Defendant confirmed that she had a FaceBook account.

The Defendant stated that she had rheumatoid arthritis and fibromyalgia. She was diagnosed with rheumatoid arthritis in 2015 and had trouble gripping things. The Defendant held up her hands and showed the trial court her swollen joints and said they were in about the same condition at the time of the assault. She said she was only taking 800 milligrams of Ibuprofen at the time of the assault but had been prescribed Percocet and OxyContin for her rheumatoid arthritis. She affirmed that she had briefly sought treatment for drug addiction to pain medication after a surgery in 2014. The Defendant further acknowledged that she had been convicted of theft twice.

On August 11, 2021, the trial court found the Defendant guilty of aggravated assault by using or displaying a deadly weapon and of aggravated assault resulting in serious bodily injury. The trial court merged the convictions and, on November 12, 2021, sentenced the Defendant to five years in confinement. The Defendant filed an untimely motion for new trial on December 15, 2021. Subsequently, the Defendant filed a post-conviction petition seeking a delayed appeal, which the trial court granted following a hearing. Thereafter, the Defendant filed a motion for new trial, alleging that the verdicts were against the weight of the evidence. The trial court denied the motion. This timely appeal followed.

II. ANALYSIS

The Defendant argues that the evidence was insufficient to prove her identity as the perpetrator of this offense. The State counters that the evidence was sufficient to support the Defendant's convictions. We agree with the State.

The United States Constitution prohibits the states from depriving “any person of life, liberty, or property, without due process of law[.]” U.S. Const. amend. XIV, § 1. A state shall not deprive a criminal defendant of his liberty “except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.” *In re Winship*, 397 U.S. 358, 364 (1970). In determining whether a state has met this burden following a finding of guilt, “the relevant question 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). Because a guilty verdict removes the presumption of innocence and replaces it with a presumption of guilt, the defendant has the burden on appeal of illustrating why the evidence is insufficient to support the jury’s verdict. *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). If a convicted defendant makes this showing, the finding of guilt shall be set aside. Tenn. R. App. P. 13(e).

“Questions concerning the credibility of witnesses, the weight and value to be given the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact.” *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). Appellate courts do not “reweigh or reevaluate the evidence.” *Id.* (citing *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978)). “A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State.” *State v. Grace*, 493 S.W.2d 474, 476 (Tenn. 1973). Therefore, on appellate review, “the State is entitled to the strongest legitimate view of the evidence and to all reasonable and legitimate inferences that may be drawn therefrom.” *Cabbage*, 571 S.W.2d at 835. “In a bench trial, the verdict of the trial judge is entitled to the same weight on appeal as a jury verdict.” *State v. Holder*, 15 S.W.3d 905, 911 (Tenn. Crim. App. 1999) (citing *State v. Hatchett*, 560 S.W.2d 627, 630 (Tenn. 1978)).

A person commits aggravated assault who “[i]ntentionally or knowingly commits an assault” and, as pertinent to count one, the assault “[i]nvolved the use or display of a deadly weapon” and, as pertinent to count two, the assault “result[ed] in serious bodily injury to another[.]” Tenn. Code Ann. § 39-13-102(a)(1)(A)(i), (iii). A person commits assault, as it relates to this case, who “[i]ntentionally or knowingly causes another to reasonably fear imminent bodily injury[.]” *Id.* § 39-13-101(a)(2).

The Defendant argues that the State failed to prove her identity as the perpetrator beyond a reasonable doubt because its case relied solely on the victim’s testimony. She argues that the victim was elderly and had a “hazy” memory so soon after the assault, demonstrated by the victim’s describing the Defendant as having brown hair and wearing blue jeans and a hoodie.

The identity of the perpetrator is an essential element of any crime. *State v. Rice*, 184 S.W.3d 646, 662 (Tenn. 2006) (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. Sneed*, 908 S.W.2d 408, 410 (Tenn. Crim. App. 1995) (citing *White v. State*, 533 S.W.2d 735, 744 (Tenn. Crim. App. 1975)). Identity is a question of fact for the jury’s determination upon consideration of all competent proof. *State v. Thomas*, 158 S.W.3d 361, 388 (Tenn. 2005). As with any sufficiency analysis, the State is entitled to the strongest legitimate view of the evidence concerning identity contained in the record, as well as all reasonable inferences which may be drawn from the evidence. *See id.* (citing *State v. Evans*, 838 S.W.2d 185, 191 (Tenn. 1992)); *see also State v. Miller*, 638 S.W.3d 136, 158-59 (Tenn. 2021).

Despite the Defendant’s contention, we conclude the State presented sufficient evidence to establish the Defendant’s identity. The victim was familiar with the Defendant because the two had known each other for approximately six months and the Defendant had previously been to the victim’s apartment where the two “visit[ed] and talk[ed].” The victim immediately and consistently identified the Defendant as “Lorie” to her sons and to police and immediately recognized the Defendant when shown a photographic lineup. “[T]he testimony of a victim, by itself, is sufficient to support a conviction.” *State v. Strickland*, 885 S.W.2d 85, 87 (Tenn. Crim. App. 1993) (citing *State v. Williams*, 623 S.W.2d 118, 120 (Tenn. Crim. App. 1981)). Moreover, the victim’s testimony was corroborated by her injuries, the Defendant’s number in her phone, and by the testimony of her sons as to the victim’s condition and her surroundings that morning. The trial court further accredited the victim’s testimony and repeated identifications of the Defendant, as was its province. *See Bland*, 958 S.W.2d at 659.

III. CONCLUSION

In consideration of the foregoing and the record as a whole, we affirm the judgments of the trial court.

KYLE A. HIXSON, JUDGE