IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
February 27, 2008 Session

# STATE OF TENNESSEE v. TIMOTHY LYNN DENTON

**Direct Appeal from the Circuit Court for Sullivan County**
**No. S49642 Jon Kerry Blackwood, Judge**

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**No. E2006-02557-CCA-R3-CD - Filed April 7, 2008**

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A Sullivan County jury found the Defendant, Timothy Lynn Denton, guilty of first degree premeditated murder, and the trial court sentenced him to life imprisonment. On appeal, he claims: (1) the jury erred because there was insufficient evidence to support premeditation; and (2) the trial court erred in its jury instruction on "intentional." After a thorough review of the case and the applicable law, we affirm the judgment.

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

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which JERRY L. SMITH and ALAN E. GLENN, JJ., joined.

Stephen M. Wallace, Blountville, Tennessee, for the Appellant, Timothy Lynn Denton.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; John H. Bledsoe, Senior Counsel; H. Greeley Wells, District Attorney General; James F. Goodwin, Jr., and William B. Harper, Assistant District Attorneys General, for the Appellee, State of Tennessee.

## OPINION
## I. Facts

At trial, the following evidence was presented: Kimberly Dugas, the Defendant's half-sister, testified that, in September 2003, she traveled from her home in Florida to Bristol, Tennessee, with her mother, Irma Jean Abbey, to attend a family member's funeral. She said that, on September 23, 2003, she saw the Defendant with Belinda Monroe, the victim, at the funeral home for the first day of the funeral proceedings. The Defendant lived with the victim, who was also his girlfriend. Dugas saw the Defendant at the funeral home again the next day, September 24, 2003, but the victim was not with him. That day, the Defendant was "crying and having trouble walking and sort of . . . couldn't talk to people." After the funeral, Dugas, her mother, and the Defendant met for supper at

a restaurant. The victim did not come because she was home mowing the lawn. After eating, the Defendant returned home to the victim with half of the food he ordered at the restaurant, which he planned to give to her.

Later that evening, Dugas returned to the hotel with her mother. Dugas heard her mother's cell phone ring, and when her mother answered it, she began screaming, "No, Timmy, No," into the phone. Dugas then grabbed the phone, and the Defendant told her he shot the victim and threatened to shoot himself if she called the police. Dugas suddenly lost the connection with the Defendant; Meanwhile, Abbey called 9-1-1 on another phone and reported the shooting.

On cross-examination, Dugas described the Defendant as having "a really hard time with [funerals]" but admitted she had not seen him at any other funerals. However, she said that while they ate supper, the Defendant seemed "fine," and she agreed that he did not "appear to be angry about anything that would have to do with [the victim]." Dugas said the Defendant began crying when he left the restaurant because she and Abbey were returning to Florida. She said that the Defendant's call later that night was brief and consisted of him admitting, "I shot [the victim]." On redirect examination, Dugas said the Defendant was "crying hysterically" when he called and admitted shooting the victim. She said he sounded scared.

Irma Jean Abbey, the Defendant's mother, testified that she traveled from Florida with Dugas, for Abbey's sister's funeral. She saw the Defendant at the funeral home on her first night in Tennessee. At that point, "he was fine," and the victim accompanied him. Abbey said, on the second day of the funeral, the Defendant was "very, very upset, crying." She admitted that the Defendant "was drinking or doing something" at the funeral. The Defendant left the funeral with someone in the early afternoon. She next saw him at the restaurant that evening where "he seemed fine." He told Abbey and Dugas the victim was mowing the lawn. Abbey said she knew the Defendant claimed the victim was a lesbian and that he wrote the victim a note that said, "If you want to be with a lesbian[,] I could be gay. I like women too much." Abbey could not remember whether the Defendant told her about the note or if she read the note herself. After dinner, the Defendant left for home on his own. Later that night, the Defendant called Abbey, exclaiming, "Momma, I shot [the victim]. Momma, please, I'm so scared. I didn't mean to do it." Abbey said she called 9-1-1 after her daughter took the phone from her.

On cross-examination, Abbey admitted that the Defendant "is more emotional than . . . most of the family members would be" at funerals, and she had seen him at other funerals. She said the Defendant never mentioned violence or being displeased with the victim, and she never heard the Defendant threaten the victim.

Dale Clifton Haga, the Defendant's uncle, testified that he talked to the Defendant at the funeral. The Defendant was scheduled as a pallbearer, but Haga thought the Defendant "had a little too much to drink" and did not want him carrying the casket. Haga said the Defendant did not smell of alcohol, but his speech was slurred. Haga was one of the first people to arrive at the Defendant's house after the Defendant called his mother and told her he shot the victim. Haga tried opening the

front door, but it was bolted shut. As he was attempting to enter the house, he "heard [a] shot." He eventually entered the house through the garage door. Haga testified that he searched the house and "found [the Defendant] laying at the bottom of the bed backwards across it. And he was a-jumping. And I walked up and spoke [the victim's] name. And I looked up and it -- I knew it was over then." Haga did not realize the Defendant also shot himself, but he did see a gun by the Defendant's right shoulder. At that point, Haga moved the gun away from the Defendant. Haga said he kept all other people out of the room until the police arrived on the scene.

On cross examination, Haga said that when he entered the bedroom, he initially yelled out "What the hell have you done, [Defendant]?" because he thought the Defendant was in shock. Upon closer inspection, he realized the Defendant was bleeding from his head.

Dr. Mona Gretel Case Harmon Stephens, a forensic pathologist and medical examiner, performed the autopsy on the victim. She testified that the victim died as a result of a gunshot to the head. The victim had scrapes on the right side of her face and additional abrasions on her face. Such abrasions looked "compatible" with the gun hitting the victim's face because of the "unusual pattern . . . that almost looked like a checkering" on the gun and on the victim's skin. Dr. Stephens said the pattern was especially strong "to the right of the bottom of the eye area." The victim also had contusions on her upper lip and near her left ear. Additionally, the victim had a "star-shaped gunshot wound to the right temple," showing that the barrel of the gun was "tightly against the skin surface" when the gun was fired. On cross-examination, Dr. Stephens said the victim had scrapes deep enough to "where they should have left moisture on the skin." She also said most of the bruises were "small except for the [bruise by the] left ear." That bruise was about two inches in maximum diameter. Dr. Stephens admitted that she did not know if the injuries were caused by a struggle to grab the gun. On redirect examination, Dr. Stephens stated that the injuries the victim sustained were consistent with multiple blows and could be consistent with being "pistol whipped."[1] Dr. Stephens testified that she did not find any evidence of defensive wounds. On recross examination, Dr. Stephens admitted that the victim's injuries were consistent with a much less "serious series of blows" than that usually connotated by the "pistol whipping."

John Michael Chambers, one of the victim's neighbors, knew the victim for about ten years. He said the Defendant moved in with the victim around 2000. Chambers was watching television with his wife on September 24, 2003, when he heard a gunshot. A few minutes after the shot, he saw police officers coming to the house. Chambers stated that he never saw the couple argue.

Officer Tim Weems of the Sullivan County Sheriff's Office testified that on September 24, 2003, he was dispatched to the victim's house for a reported shooting. Upon arriving at the house, he saw two people laying lengthwise across the bed; the Defendant was still moving, but the victim was not. Officer Weems located a .9 mm gun on top of the dresser and a shell casing near the

[1] According to Dr. Stephens, "pistol whipping" is when a person uses the gun as an object to hit another person, as opposed to firing the gun. Usually, the beating with the gun is quite severe, often breaking bones. The same term may be used to refer to any beating with a gun.

Defendant's left shoulder.

Detective Landon Bellamy of the Sullivan County Sheriff's Office testified that he responded to a reported shooting on September 24, 2003. By the time he arrived at the scene, the ambulance had transported the Defendant to the hospital, and the victim was declared deceased. Detective Bellamy found the gun used in the shootings on the dresser and placed it into evidence. On cross-examination, Detective Bellamy said his team later found a second shell casing inside a dresser drawer. Detective Bellamy also found one of the bullets fired from the gun "in the wall on the back side of the house." He said the other bullet traveled down into the foundation, and he could not retrieve it. The hospital also recovered a bullet fragment from the Defendant's head. Detective Bellamy testified that he found a typed letter taped to the bathroom mirror and some notes in the kitchen.[2] One of the notes read, "She's the best thing in the world. We make a good couple." A second note said, "I love Belinda. I can't live without her, so I have no [indecipherable] to live. I think I fuck up." The third note said "Last thing I want to say to [indecipherable] and Brady. I loved her with all my heart Tim." Detective Bellamy found even more notes written by the Defendant before the shooting in the one of the trash cans. They conveyed his desire to live with the victim for the rest of their lives and his uneasiness about their current strife. For example, one note included the line "I still hope we work [it] out and one day get married and grow old together."

Special Agent Forensic Scientist Bradley Everett with the Tennessee Bureau of Investigation ("TBI") testified that he analyzed the blood samples from the crime scene. The blood on a white shirt found on the bed belonged to the victim. He could not ascertain a DNA profile from the blood sample taken from the kitchen.

Special Agent Forensic Scientist Laura Jane Hodge of the TBI testified that she did not find gunshot residue on the victim's hands. The absence of gunshot residue, however, does not eliminate the possibility that the victim might have fired the gun.

Forensic scientist Don Carman with the TBI testified that he matched the bullets and cartridge cases found in the house to the gun found on the dresser. He stated that the gun requires eight pounds of pressure to pull the trigger and that firing the gun requires completely pulling the trigger. On cross examination, Agent Carman testified that the gun did not have an external safety latch.

The jury convicted the Defendant of first degree premeditated murder, and the trial court sentenced him to life imprisonment. It is from this judgment that the Defendant now appeals.

## II. Analysis

The Defendant raises two issues on appeal: (1) the jury erred because there was insufficient evidence to support premeditation; and (2) the trial court erred in its jury instructions on

[2] The typed letter was introduced only for identification and not for its content.

"intentional."

### A. Premeditation

The Defendant argues that there was insufficient evidence proving that he premeditatedly killed the victim. The State argues that premeditation could have been inferred by the use of a deadly weapon against an unarmed victim, the infliction of multiple wounds, the lack of evidence of a struggle, the close range from which the victim was shot, and the three notes the Defendant wrote after killing the victim.

When an accused challenges the sufficiency of the evidence, this Court's standard of review is whether, after considering the evidence in the light most favorable to the State, "*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* Tenn. R. App. P. 13(e); *State v. Goodwin*, 143 S.W.3d 771, 775 (Tenn. 2004) (citing *State v. Reid*, 91 S.W.3d 247, 276 (Tenn. 2002)). This rule applies to findings of guilt based upon direct evidence, circumstantial evidence, or a combination of both direct and circumstantial evidence. *State v. Pendergrass*, 13 S.W.3d 389, 392-93 (Tenn. Crim. App. 1999). A conviction may be based entirely on circumstantial evidence where the facts are "so clearly interwoven and connected that the finger of guilt is pointed unerringly at the Defendant and the Defendant alone." *State v. Smith*, 868 S.W.2d 561, 569 (Tenn. 1993). The jury decides the weight to be given to circumstantial evidence, and "[t]he inferences to be drawn from such evidence, and the extent to which the circumstances are consistent with guilt and inconsistent with innocence, are questions primarily for the jury." *State v. Rice*, 184 S.W.3d 646, 662 (Tenn. 2006) (citations omitted).

In determining the sufficiency of the evidence, this Court should not re-weigh or re-evaluate the evidence. *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Nor may this Court substitute its inferences for those drawn by the trier of fact from the evidence. *State v. Buggs*, 995 S.W.2d 102, 105 (Tenn. 1999); *Liakas v. State*, 286 S.W.2d 856, 859 (Tenn. 1956). "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); *Liakas*, 286 S.W.2d at 859. "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. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978); *State v. Grace*, 493 S.W.2d 474, 476 (Tenn. 1973). The Tennessee Supreme Court stated the rationale for this rule:

> This well-settled rule rests on a sound foundation. The trial judge and the jury see the witnesses face to face, hear their testimony and observe their demeanor on the stand. Thus the trial judge and jury are the primary instrumentality of justice to determine the weight and credibility to be given to the testimony of witnesses. In the trial forum alone is there human atmosphere and the totality of the evidence cannot be reproduced with a written record in this Court.

*Bolin v. State*, 405 S.W.2d 768, 771 (Tenn. 1966) (citing *Carroll v. State*, 370 S.W.2d 523 (Tenn. 1963)). This Court must afford the State of Tennessee the strongest legitimate view of the evidence contained in the record, as well as all reasonable inferences which may be drawn from the evidence. *Goodwin*, 143 S.W.3d at 775 (citing *State v. Smith*, 24 S.W.3d 274, 279 (Tenn. 2000)). Because a verdict of guilt against a defendant removes the presumption of innocence and raises a presumption of guilt, the convicted criminal defendant bears the burden of showing that the evidence was legally insufficient to sustain a guilty verdict. *State v. Carruthers*, 35 S.W.3d 516, 557-58 (Tenn. 2000).

First degree murder is a premeditated and intentional killing of another. T.C.A. § 39-13-202(a)(1) (2006). The Tennessee Code Annotated fully defines premeditation:

> 'Premeditation' is an act done after the exercise of reflection and judgment. '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 to be capable of premeditation.

T.C.A. § 39-13-202 (d) (2006). Additionally, the Tennessee Supreme Court found the following circumstances sufficient for supporting a finding of premeditation: the use of a deadly weapon on an unarmed victim; the particular cruelty of a killing; the defendant's threats or declarations of intent to kill; the defendant's procurement of a weapon; any preparations to conceal the crime undertaken before the crime is committed; destruction or secretion of evidence of the killing; and a defendant's calmness after a killing. *State v. Bland*, 958 S.W.2d 651, 660 (Tenn. 1997). Moreover, this list of circumstances sufficient for a finding of premeditation is not a complete list and "[a] jury is not limited to any specific evidence when determining whether a defendant intentionally killed the victim "after the exercise of reflection and judgment." *State v. Davidson*, 121 S.W.3d 600, 615 (Tenn. 2003). Furthermore, it should be noted that "evidence of repeated blows is relevant to establish premeditation, although this evidence alone is not sufficient to establish premeditation." *State v. Sims*, 45 S.W.3d 1, 8 (Tenn. 2001).

Viewing the facts in the light most favorable to the State, we conclude the Defendant premeditated this killing. He knew that the victim wanted to leave him and begin a new relationship with someone else. He wrote her notes before her death that said, "Please don't ever give up on our love! It would just kill me. I love you and I'm scared! What I might do" and "I know as long as we're together nobody will fuck over you or fuck you if I have say so!" He also admitted, "My nerves are still messing with me. I don't know which one you got twisted on me the most! My stomach or my head! Ha! Ha!" After coming home from the funeral and eating supper with his family, the Defendant at some point took out a gun. Based on the wounds the victim suffered, he hit her in the head numerous times with the gun. In fact, when he hit her by her eye, the gun's checkered pattern left a mark on her skin. The victim did not appear to defend herself, as evidenced by the lack of defensive wounds. Then, the Defendant put the gun directly against the victim's

temple and pulled the trigger, which required eight pounds of pressure. He then called his mother, reporting his crime to her, but threatened to kill himself if she contacted the authorities. The Defendant also wrote three notes about how much he loved the victim, instead of calling for help, before attempting suicide by shooting himself in the head. These facts sufficiently support a finding of premeditation, and the Defendant has not proven that no reasonable trier of fact could find that he premeditated this killing. That he told his mother he did not mean to shoot the victim does not overcome the other factual circumstances legally sufficient for premeditation. As such, the Defendant is not entitled to relief on this issue.

**B. Jury Instructions**

The Defendant also raises on appeal the issue that the trial court erred in its jury instruction on "intentionally." The State counters that any error was harmless. We agree with the State.

A defendant has a constitutional right to complete and accurate jury instructions on the law; the failure to provide such a complete and accurate instruction deprives a defendant of the constitutional right to a jury trial. *State v. Teel*, 793 S.W.2d 236, 249 (Tenn. 1990). If there was an omission of an element of the offense in the jury instruction, then we review whether the state proved that the error was harmless beyond a reasonable doubt. *State v. Walker*, 29 S.W.3d 885, 893 (Tenn. Crim. App.1999). An erroneous jury instruction that misstates the applicable conduct element of an offense and lessens the state's burden of proof is similarly subject to constitutional harmless error analysis. *State v. Page*, 81 S.W.3d 781, 789 (Tenn. Crim. App. 2002).

On its charge to the jury for first degree murder, the trial court gave a brief instruction on what "intentional" means:

> A person acts intentionally when it's that person's conscious objective or desire to cause the death of the alleged victim . . . . Defendant's conscious objective may not be to kill a specific victim. If you find beyond a reasonable doubt that the Defendant intended to cause the result, the death of the person, and he did so with premeditation in the killing of another, even if not the intended victim, would be first degree murder.

Later, in its general instructions addressing mental states, the trial court instructed on the term "intentionally" again: "'Intentionally' means that a person acts intentionally with respect to the nature of the conduct or to the result of the conduct that it's the person's conscious objective or desire to engage in the conduct or to cause the result."

In Tennessee, first degree murder is the premeditated and intentional killing of another. T.C.A. § 39-13-202(a)(1) (2006). It is a crime with a culpable mental state that references the result of the conduct. By that fact, the trial court's inclusion of "the nature of the conduct" in the definition it provided in its general instructions on "intentionally," was an error. While it was an error, we conclude that it was a harmless error because the trial court included the proper instruction in its

instruction for first degree murder. In *State v. Faulkner*, the Tennessee Supreme Court analyzed similar circumstances and concluded that such an error was harmless:

> We agree that a proper instruction defining 'knowingly' or 'intentionally' does not include the nature-of-conduct and circumstances-surrounding-conduct language because second degree murder and first degree premeditated murder are result-of-conduct offenses. We are not convinced, however, that the inclusion of such language is an error of constitutional dimension when the instruction also includes the correct result-of-conduct definition.

154 S.W.3d 48, 58-59 (Tenn. 2005). In this case, the trial court correctly instructed the jury when it gave the first degree murder instructions. Therefore, the jury did have a correct instruction on "intentional." Additionally, at oral argument, the Defendant conceded that he acted intentionally, which bolsters our conclusion that the error was harmless. The Defendant is not entitled to relief on this issue.

## III. Conclusion

After a thorough review of the facts and the applicable law, we conclude the evidence sufficiently supported premeditation and that an erroneous jury instruction was harmless error. We affirm the trial court's judgment.

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ROBERT W. WEDEMEYER, JUDGE