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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2020-2021

CR-19-0354

Morgan Fletcher Shirley

v.

State of Alabama

Appeal from Marion Circuit Court
(CC-16-331)

COLE, Judge.

Morgan Fletcher Shirley appeals his convictions for first-degree robbery, a violation of § 13A-8-41, Ala. Code 1975, and felony murder, a violation of § 13A-6-2(a)(3), Ala.

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Code 1975, and his resulting life sentences, to be served concurrently.

Facts and Procedural History

On April 29, 2016, William Jerome Henry went to the house where Mareya Hannah ("Mareya") and Candace Beaty Hannah ("Candace") lived to smoke methamphetamine with them. Candace is Shirley's stepdaughter. During the evening, Mareya and Henry made two trips to buy more methamphetamine. Candace claimed that, at some point during the evening, Henry sent her a text that she interpreted as Henry "making a pass" at her.

Mareya and Candace agreed that they would go with Henry to Sulligent, Alabama, and then beat him up and rob him of any money or drugs he had. Mareya and Candace went with Henry to Sulligent, where they bought drugs, and then returned to the Hannah's house to smoke methamphetamine yet again. When they returned, Mareya and Candace developed a plan in which they would "fake" a fight, induce Henry to react and join the fight, and then beat up Henry and rob him.

Mareya texted Shirley to come to the house. When Shirley arrived, Mareya told him that he and Candace were offended by Henry's texts to Candace and that they planned to beat up

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Henry and rob him. Shirley then smoked or injected methamphetamine. Later, Mareya and Candace staged a fake fight that caused Henry to react by hitting Mareya. During the fight, Shirley beat Henry on the head with an aluminum level until the level broke. Mareya testified that he saw Shirley holding Henry around the neck with the level until Henry stopped moving. At some point during the fight, Henry was stabbed. Thereafter, Henry apparently walked out of the house and started down the driveway.

When the paramedics arrived at the house, they found Henry in the driveway. He had no pulse and appeared to be dead, but he was not pronounced dead until he arrived at the hospital. Police found Henry's wallet, keys, and cellular telephone in various locations in the house.

Shirley left before the paramedics and the police arrived. He was later found by police hiding in a shed located on rural property belonging to his family. When he was found, Shirley had in his possession jewelry belonging to Henry.

Shirley testified in his own defense. He claimed that he went to his stepdaughter's house because she led him to

believe that Henry had made inappropriate advances toward her and that her safety was in jeopardy. He testified that he was not aware that Mareya and Candace were planning to rob Henry. He claimed that Mareya and Candace staged a fake fight and attacked Henry while he stood by "astonished." Once he saw Henry choking Mareya, however, he grabbed a level and hit Henry with it "[o]ne, maybe two times." (R. 738, 760.)

Eventually, Henry fell to the ground, after which Shirley held him on the ground for several minutes with his foot. Shirley testified that Candace asked Henry for his wallet, keys, and money, and then took some items from Henry's pockets. Shirley claimed that Candace left the room and that he opened the door to let Henry go outside. Shirley testified that Henry walked out of the house and started walking down the highway. Shirley admitted that he "pick[ed] up a necklace that was laying in the floor." (R. 742-43.)

Shirley was indicted for capital murder during the course of a robbery, first-degree robbery, and four drug offenses. Shirley's jury trial began on June 4, 2019. After the State rested, Shirley moved for a judgment of acquittal on all charges. The State moved to dismiss the four drug-related

charges and stated that it had no objection to dismissal of the capital-murder charge if the jury would be instructed to consider felony murder as a lesser-included offense to capital murder. The trial court granted Shirley's motion for a judgment of acquittal as to the capital-murder charge and informed the parties that it would instruct the jury on the lesser-included offense of felony murder, denied Shirley's motion for a judgment of acquittal as to the first-degree robbery charge, and granted the State's motion to dismiss the four drug-related charges.

After the defense rested, Shirley renewed his motion for a judgment of acquittal on the remaining charges, which the trial court again denied. The jury found Shirley guilty of both felony murder and first-degree robbery. The trial court adjudicated Shirley guilty of both charges in accordance with the jury's verdict. On November 7, 2019, the trial court sentenced Shirley, as a habitual felony offender with two prior felonies, to concurrent sentences of life imprisonment for each conviction. This appeal followed.

Standard of Review

"In determining the sufficiency of the evidence to sustain the conviction, this Court must accept as

true the evidence introduced by the State, accord the State all legitimate inferences therefrom, and consider the evidence in the light most favorable to the prosecution.' Faircloth v. State, 471 So. 2d 485, 489 (Ala. Cr. App. 1984), affirmed, Ex parte Faircloth, [471] So. 2d 493 (Ala. 1985).

"'....

"'"The role of appellate courts is not to say what the facts are. Our role, ... is to judge whether the evidence is legally sufficient to allow submission of an issue for decision to the jury." Ex parte Bankston, 358 So. 2d 1040, 1042 (Ala. 1978). An appellate court may interfere with the jury's verdict only where it reaches "a clear conclusion that the finding and judgment are wrong." Kelly v. State, 273 Ala. 240, 244, 139 So. 2d 326 (1962).... A verdict on conflicting evidence is conclusive on appeal. Roberson v. State, 162 Ala. 30, 50 So. 345 (1909). "[W]here there is ample evidence offered by the state to support a verdict, it should not be overturned even though the evidence offered by the defendant is in sharp conflict therewith and presents a substantial defense." Fuller v. State, 269 Ala. 312, 333, 113 So. 2d 153 (1959), cert. denied, Fuller v. Alabama, 361 U.S. 936, 80 S. Ct. 380, 4 L. Ed. 2d 358 (1960).' Granger [v. State], 473 So. 2d [1137,] 1139 [(Ala. Crim. App. 1985)].

"... 'Circumstantial evidence alone is enough to support a guilty verdict of the most heinous crime, provided the jury believes beyond a reasonable doubt that the accused is guilty.' White v. State, 294 Ala. 265, 272, 314 So. 2d 857, cert. denied, 423 U.S. 951, 96 S. Ct. 373, 46 L. Ed. 2d 288 (1975). 'Circumstantial evidence is in nowise considered

inferior evidence and is entitled to the same weight as direct evidence provided it points to the guilt of the accused.' Cochran v. State, 500 So. 2d 1161, 1177 (Ala. Cr. App. 1984), affirmed in pertinent part, reversed in part on other grounds, Ex parte Cochran, 500 So. 2d 1179 (Ala. 1985)."

White v. State, 546 So. 2d 1014, 1017 (Ala. Crim. App. 1989).

Discussion

I. Double Jeopardy

On appeal, Shirley argues that his convictions for felony murder during the course of a robbery and for first-degree robbery based on the same incident violate principles of double jeopardy. The State agrees with Shirley that the robbery conviction should be vacated if this Court affirms the felony-murder conviction.

"It is well settled that an individual may not, consistent with the Double Jeopardy Clause of the Fifth Amendment to the Constitution of the United States, be convicted of felony murder and of the felony underlying the felony-murder conviction. See Jones v. State, 992 So. 2d 76, 76 (Ala. Crim. App. 2007) (holding that when the same burglary forms the basis for a felony-murder conviction and a burglary conviction, 'convictions for both felony-murder and first-degree burglary violate double jeopardy principles'); Harris v. State, 854 So. 2d 145, 152 (Ala. Crim. App. 2002); Brooks v. State, 952 So. 2d 1180, 1184 (Ala. Crim. App. 2006). In such cases, a double-jeopardy violation occurs because the felony underlying the felony-murder conviction is a lesser-included offense of felony murder. See Brooks, 952 So. 2d at 1184. It is also well settled

that this type of "'transgression ... implicates the trial court's jurisdiction to render a judgment.'" Harris, 854 So. 2d at 152 (quoting Borden v. State, 711 So. 2d 498, 503 (Ala. Crim. App. 1997), citing in turn Rolling v. State, 673 So. 2d 812 (Ala. Crim. App. 1995))."

Washington v. State, 214 So. 3d 1225, 1230 (Ala. Crim. App. 2015).

In this case, Shirley was convicted of both felony murder during the course of a robbery and first-degree robbery based on the same occurrence. The two convictions violate double-jeopardy principles. Accordingly, the robbery conviction and resulting sentence are reversed, and the case is remanded for the trial court to vacate Shirley's robbery conviction and the corresponding sentence.

II. Sufficiency of the Evidence

Shirley contends that the evidence was insufficient to support his conviction for felony murder because, he says, (1) there was no evidence indicating that Shirley intended to rob Henry and (2) the evidence showed that he attacked Henry only to protect his family members against "an attack by a much larger man." (Shirley's brief, p. 14.) This argument fails because it does not accept as true the State's evidence and

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does not view the evidence in the light most favorable to the State.

A person is guilty of felony murder if

"he or she commits or attempts to commit ... robbery in any degree, ... and, in the course of and in furtherance of the crime that he or she is committing or attempting to commit, or in immediate flight therefrom, he or she, or another participant if there be any, causes the death of any person."

§ 13A-6-2(a)(3), Ala. Code 1975.

"A person commits the crime of robbery in the third degree if in the course of committing a theft he:

"(1) Uses force against the person of the owner or any person present with intent to overcome his physical resistance or physical power of resistance."

§ 13A-8-43, Ala. Code 1975.

Further, as the trial court instructed Shirley's jury, "[a] person is legally accountable for the behavior of another constituting a criminal offense if, with the intent to promote or assist the commission of the offense ... [h]e aids or abets such other person in committing the offense." § 13A-2-23(2), Ala. Code 1975.

A conviction for felony murder based on first-degree or third-degree robbery does not require proof that Shirley

killed Henry or that he intended for Henry to be killed. It requires only proof that Shirley intended to rob Henry or to aid and abet the robbery of Henry and that he or another participant in the robbery caused Henry's death. See Morton v. State, 154 So. 3d 1065, 1081 (Ala. Crim. App. 2013) (holding that felony murder requires an intent to commit the underlying felony, but does not necessarily require an intent to kill); Saunders v. State, 10 So. 3d 53, 95 (Ala. Crim. App. 2007) ("Felony murder requires an intent to commit the underlying felony.").

Shirley's argument on appeal is that he did not have an intent to rob Henry and that he joined the fight only to protect his family members. This argument fails for several reasons. First, the question of a defendant's intent is a determination for the jury to make because "[t]he question of intent is hardly ever capable of direct proof." Chambers v. State, 181 So. 3d 429, 434 (Ala. Crim. App. 2015).

In this case, the State presented evidence from which the jury could have found that Shirley aided and abetted Mareya and Candace's plan to rob Henry, and evidence indicating that, during or after the fight, Shirley took a bracelet and

necklace belonging to Henry. Either finding would be sufficient to establish the robbery element of felony murder.

Additionally, the State presented testimony from Mareya that he texted Shirley and told him to come to the house and later told him of the plan to beat up Henry and take the money and drugs Henry had. (R. 197-98.) That evidence, combined with Shirley's participation in the fight, was sufficient for the jury to conclude that Shirley had the requisite intent to be a participant in the robbery. Shirley's taking of Henry's jewelry is likewise sufficient to permit the jury to infer that Shirley had the intent to rob Henry and that he did rob Henry.

To the extent that Shirley is arguing that he did not have the intent to rob Henry when he arrived at the Hannah house, that argument fails. There is no requirement that the intent to commit a robbery be formed in advance, and the intent to commit the underlying felony may be formed during the murder. Padgett v. State, 668 So. 2d 78 (Ala. Crim. App. 1995). This Court has also recognized that "[c]ommunity of purpose may be formed in a flash, and participation and community of purpose may be shown by circumstantial evidence

or inferred from the conduct of the participants." Sanders v. State, 423 So. 2d 348, 351 (Ala. Crim. App. 1982).

The jury could reasonably have inferred that Shirley knowingly and intentionally participated in a robbery of Henry, in the process of which Henry was killed by one of the participants in the robbery. Shirley challenges the weight and credibility of the evidence against him, but the jury resolved those issues against him. The jury was free to disbelieve Shirley's explanation for his participation in the fight and robbery, and this Court will not second-guess that decision.

Conclusion

Based on the foregoing, the trial court's judgment as to Shirley's felony-murder conviction is affirmed; the judgment as to Shirley's first-degree-robbery conviction is reversed; and the case is remanded. The trial court is instructed to vacate the first-degree-robbery conviction and corresponding sentence. No return to remand need be filed.

AFFIRMED IN PART; REVERSED AND REMANDED IN PART.

Windom, P.J., and Kellum, McCool, and Minor, JJ., concur.