

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
August 4, 2015 Session

STATE OF TENNESSEE v. CALVIN ROGERS

**Appeal from the Criminal Court for Shelby County
No. 11-03839 James C. Beasley, Jr., Judge**

No. W2014-01715-CCA-R3-CD - Filed February 10, 2016

The defendant, Calvin Rogers, was convicted of first degree felony murder, two counts of attempted second degree murder, aggravated robbery, employing a firearm during the commission of a dangerous felony, and felon in possession of a handgun. He was ordered to serve an effective sentence of life without parole plus fifty years. On appeal, he argues the unconstitutionality of Tennessee Code Annotated section 39-13-203 and that the trial court erred in denying his motion to declare him ineligible for the death penalty, that the State should not have been allowed to present proof of a prior consistent statement of one of the victims, and that the evidence is insufficient to sustain the convictions. Following our review, we affirm the judgments of the trial court.

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

ALAN E. GLENN, J., delivered the opinion of the court, in which ROGER A. PAGE and ROBERT H. MONTGOMERY, JR., JJ., joined.

Robert Parris (on appeal and at trial) and Charles Mitchell (at trial), Memphis, Tennessee, for the appellant, Calvin Rogers.

Herbert H. Slatery III, Attorney General and Reporter; Jeffrey D. Zentner, Assistant Attorney General; Amy P. Weirich, District Attorney General; and Reginald Henderson and Pamela Stark, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

FACTS

The proof at trial showed that during the late night hours of September 17, 2010, the defendant and his co-defendant, Scott Lee,¹ followed and fired multiple shots at a car occupied by the three victims after they declined the defendants' offer to provide drugs and prostitutes. As a result of the attacks, the defendant was indicted for the first degree murder of Ameer Althaibani in the perpetration of a robbery; the attempted second degree murder and aggravated robbery of Dhaiban Mohammed; the attempted second degree murder of Fazil Rahman; employing a firearm during the commission of a dangerous felony; and felon in possession of a handgun.

Sultan Althaibani, father of the deceased victim, testified that he last spoke with his son on September 17, 2010, when the victim was working at the store owned by his cousin, Dhaiban Mohammed. Mr. Althaibani learned early the next morning that his son had been murdered.

Dhaiban Mohammed testified that on September 17, 2010, he picked up Ameer Althaibani and Fazil Rahman from their jobs in Bartlett, Tennessee, to take both men home. As Mr. Mohammed was driving on Sam Cooper Boulevard in his Nissan Maxima, he missed the Highland Street exit because he was talking with the other men and not paying attention. He got off at the next exit, Hollywood Street, and then drove to Poplar Avenue where he stopped at a gas station to buy a soda.

At the gas station, Mr. Mohammed noticed two men, later identified as the defendants, in a silver, older model car. The driver of the other car got out and talked with the gas station clerk. As Mr. Mohammed was returning to his car, the defendants hailed him over to their car and invited him and his friends to a party. Mr. Mohammed declined the invitation and walked back to his car, which was parked next to a gas pump. The defendants then pulled their car up beside Mr. Mohammed's car with their car facing the opposite direction. The driver spoke to Mr. Mohammed, offering "some drugs and trying to offer [him] girls." Mr. Mohammed responded that he needed to get home because it was late and he had to work the next morning.

Mr. Mohammed left the gas station, driving on Hollywood Street toward Sam Cooper Boulevard. He turned right off Hollywood Street and observed the car from the gas station pass him. The car stopped at a stop sign, and Mr. Mohammed stopped behind it. The defendant and the co-defendant got out of their vehicle, each holding a gun. The defendant approached the driver's side, and the co-defendant approached the passenger's side where Mr. Althaibani and Mr. Rahman were sitting. On the driver's side, the defendant pointed a gun at Mr. Mohammed's head and demanded money. Mr.

¹The co-defendant, Scott Lee, was tried separately and convicted of multiple crimes regarding the same three victims. State v. Scott Lee, No. W2014-00986-CCA-R3-CD, 2015 WL 3932418, at *1 (Tenn. Crim. App. June 25, 2015).

Mohammed gave money to the defendant, who then threatened to kill them and tried to open the door. Thinking he was going to die, Mr. Mohammed hit the gas pedal and drove away.

As Mr. Mohammed's vehicle fled, both defendants fired shots at his car. Mr. Althaibani was hit with a bullet on his right side, and blood started pouring out of his mouth. Mr. Mohammed drove to the first open gas station that he saw and called 911. He remained there until the police and an ambulance arrived, but Mr. Althaibani was already dead. The police transported Mr. Mohammed to the police station, where he was interviewed. The next day, the police visited Mr. Mohammed's house and showed him a photographic array, from which he identified the defendant as the man who stood on the driver's side door and pointed a gun at him. He said that he only paid attention to the man on his side of the car.

Fazil Rahman, a passenger in the vehicle, testified as to the incident. He said that he was working in Bartlett, Tennessee, on September 17, 2010. His car was not operable, so two classmates, Mr. Mohammed and Mr. Althaibani, picked him up from his job around 11:00 p.m. Mr. Rahman sat in the backseat on the passenger side, and Mr. Althaibani sat in the front passenger seat. Mr. Mohammed drove down Sam Cooper Boulevard toward Highland Street, but he missed his exit because the three were talking and joking. Mr. Mohammed then took the exit for Hollywood Street and drove toward Poplar Avenue. When they reached that street, Mr. Mohammed stopped at a gas station to buy some snacks. Mr. Rahman walked toward the store to buy a drink but stopped when he saw two men talking to Mr. Mohammed. One of the men, later identified as the defendant, was bald, wore a white tee shirt, held a puppy on a leash, and was standing outside a silver, four-door Honda, talking to the store clerk. The co-defendant sat inside the silver Honda and had dreadlocks. Mr. Mohammed told Mr. Rahman that the men had asked if they "want[ed] girls or . . . need[ed] drugs," but Mr. Mohammed responded that they were not interested. Mr. Mohammed purchased a soda at the store, but Mr. Rahman decided to return to the car instead. After Mr. Mohammed got back to the car, the defendants pulled their car up next to Mr. Mohammed's car and again asked the victims if they wanted anything. Mr. Rahman responded that they did not.

Mr. Mohammed drove away from the gas station. Mr. Rahman suggested that they take what he believed to be a shortcut back to Sam Cooper Boulevard, rather than drive down Poplar Avenue all the way to Highland Street. They drove down Hollywood Street and then turned on another street, thinking it was a shortcut. As Mr. Mohammed approached a stop sign, out of nowhere the silver car from the gas station passed quickly in front of their car and stopped near the stop sign. The victims had not realized that the silver car had been following them until that point. One of the men in the silver car turned off the car's headlights and turned on the interior lights.

Mr. Rahman told Mr. Mohammed to be careful and not turn off the car engine. Mr. Rahman saw the defendant, the driver of the silver car, approach Mr. Mohammed on the driver's side, point a gun at him, and demand all of his money. When Mr. Rahman looked up, he saw the co-defendant, the silver car's passenger, standing on the passenger's side of Mr. Mohammed's car, demanding that he and Mr. Althaibani give him money. Mr. Rahman tried to give the co-defendant his wallet, money, and keys but stopped when the defendant ordered Mr. Mohammed to step out of the car and threatened, "[Y]'all gonna get killed."

Mr. Rahman heard the defendant click his gun and, believing they were "going to get killed anyway," quietly told Mr. Mohammed to push the gas pedal. As he did so, bullets hit and penetrated the car from both sides. Mr. Rahman estimated that he heard seventeen or eighteen gunshots. A bullet hit Mr. Althaibani during their escape, and Mr. Rahman, seeing blood coming from Mr. Althaibani's mouth, placed his hand on Mr. Althaibani's neck. He then felt a bullet hit his leg.

Mr. Mohammed pulled into a service station, and they called the police and reported they had been carjacked and robbed. Police officers transported Mr. Rahman first to the hospital to have his leg examined and then to the police station where they took his statement. The following day, at his house, the police showed Mr. Rahman a photographic array, from which he identified the defendant as the driver of the silver car and noted that he was 75% sure of his identification. Mr. Rahman said he had not been focused on the defendant because he had stood on Mr. Mohammed's side of the car.

Lieutenant James Max of the Memphis Police Department testified as to his participation in the investigation of the crimes. As part of his investigation, Lieutenant Max viewed the surveillance video from the Shell service station at the corner of Poplar and Hollywood. The video showed three views: one focusing on the cashier, one focusing on the business's front door, and an outside view facing east on Hollywood. At the time of the video, the store was locked and in security mode, meaning customers were not allowed in the store and all purchases had to be made at a window. The video showed the store clerk, Vernadette Neeley, talking to the defendant who was holding a small dog. She unlocked the door, stepped outside, and continued to talk to him.

Based on what he saw on the surveillance video, Lieutenant Max prepared a photographic array that included the defendant's photo and showed it to Mr. Mohammed at his home. In order to protect the integrity of the case, another officer visited Mr. Rahman at his home and showed him the same array at the same time that Lieutenant Max showed the array to Mr. Mohammed. The officers made every effort to show Mr.

Mohammed and Mr. Rahman the arrays simultaneously. Mr. Mohammed immediately identified the defendant from the array of six photographs.

Within a couple of days, the co-defendant was developed as the other suspect. Arrest warrants were obtained, and Lieutenant Max sent a task force to search for the two suspects. The co-defendant was arrested approximately six weeks after the incident, and the defendant was arrested approximately six months after the incident.

Officer Christopher Sanders, a crime scene investigator with the Memphis Police Department, processed and collected evidence from both the scene where the shooting occurred as well as the scene to where the victims fled to seek aid. Officer Sanders collected one spent .380 shell casing and eight nine-millimeter shell casings from the scene of the shooting. Officer David Payment, also a crime scene investigator with the Memphis Police Department, processed the victims' vehicle and noted the damage. He collected several projectiles and bullet fragments from the car.

Vernadette Neeley, the defendant's former girlfriend, testified that she was working at the Flash Market service station at the corner of Hollywood and Poplar on September 17, 2010. Her shift began at 11:00 p.m., at which time the store was locked and she served customers from a window. That night, she spoke with the defendant outside the store, and he brought her a puppy. Ms. Neeley recalled that there was another man in the defendant's vehicle, a dark-skinned man with dreadlocks and a thick mustache.

Sergeant Catherine Price of the Memphis Police Department testified that she was involved in the investigation regarding the defendant. She met with Mr. Rahman at the hospital, where he was receiving treatment. He told her he had been riding in a car, as it was approaching Sam Cooper Boulevard, when another car "cut him off" and "[t]wo guys got out, armed with guns."

Emilio Lopez testified that he was eighteen years old and, in September 2010, was living at the intersection of Merton and Hollins in Memphis. Shortly before midnight on September 17, 2010, he was playing video games on his bed when he heard a car door slam and a voice say, "[G]et out [sic] the car." This was followed, a few seconds later, by approximately nine gunshots.

Reverend Steve Dodson testified that he was a church pastor and had married the defendant's mother approximately thirty-five years earlier, when the defendant was about eight years old. He said that, on the morning of September 19, 2010, when he and his wife returned from church, they found in their door a card from a police officer, whom Reverend Dodson then called and learned the police were looking for the defendant.

Reverend Dodson and the defendant's mother contacted the defendant and asked that he "turn himself in." However, he did not do so. Reverend Dodson learned that the defendant had gone to Chicago, where he had relatives. They had no contact with the defendant between then and the time he was arrested.

Dr. Marco Ross, a forensic pathologist with the Shelby County Medical Examiner's Office, performed an autopsy on Mr. Althaibani on September 18, 2010. Dr. Ross detailed the gunshot wound sustained by Mr. Althaibani, the bullet having passed through the upper right arm, penetrating the victim's right side, and then passing through the right lung, heart, and left lung.

Special Agent Steve Scott testified that he was a forensic scientist in the Firearms Identification Unit of the Tennessee Bureau of Investigation and had tested the evidence in the case. He concluded that cartridge cases recovered from the scene were fired from two different weapons.

Following this testimony, the State rested its case in chief.

Regarding the night of the shooting, the defendant testified that he had gone to the house of his co-defendant's mother for dinner. After dinner, she sat in her yard with him, as they drank beer. He told his co-defendant he would pay him \$10 for a ride to the service station where Ms. Neeley was working. The defendant and Ms. Neeley had broken up, and he hoped to repair the relationship. However, she had not yet arrived at her workplace, so the defendant and his co-defendant went to the residence of Ruby Mynatt, where they stayed until about 11:00 p.m. and then returned to Ms. Neeley's workplace. The defendant took with him a puppy, thinking that Ms. Neeley might like to replace a dog which had been stolen. After the defendant had gone to his vehicle and returned to Ms. Neeley with the puppy, he noticed Mr. Mohammed, who motioned the defendant over to his vehicle to ask about buying marijuana. The defendant said he did not know of such a place and asked his co-defendant if he had marijuana, who responded that he did. The defendant told the victims to follow in their vehicle as he drove up the street, where both vehicles then parked and turned off their lights. The defendant and his co-defendant got out of their vehicle and walked back to the victims' car, with the defendant going to the driver's side. At that vehicle, Mr. Mohammed tried to give \$20 to the defendant, who told him the money should go to the co-defendant, since he was the one selling the marijuana. Then, the victims left, and the co-defendant began shooting at their car. The defendant said that he neither had a firearm nor fired at the victims. After his co-defendant had stopped shooting, the defendant took the puppy from the car and, as the co-defendant drove off, walked toward Airways Boulevard and then to his home. The following morning, Ms. Neeley came to his house and got the puppy. About an hour later, she telephoned the defendant and asked why the police were looking for him. The

defendant explained to her what had happened. He said that he then went to Chicago because he felt that he had not gotten justice regarding his aggravated assault charge and he was scared. Pastor Dodson asked him several times to return to Memphis, but he was afraid to do so. His mother gave him the telephone number of a detective, apparently in Memphis, and Pastor Dodson called and left a message but did not receive a return call. The defendant said that, after he had been taken into custody, he explained to officers the events of the evening of the shootings, just as he had done during his courtroom testimony.

Following the defendant's testimony, the State presented rebuttal witnesses.

Lieutenant Anthony Mullins of the Memphis Police Department testified that in March 2011, he was assigned to the Homicide Bureau. On March 28, 2011, six months after the homicide, he interviewed the defendant and asked him what type of pistol the co-defendant had used during the incident. The defendant said he believed the co-defendant had a .380 pistol, because that was what he used to carry, and denied that he, himself, had a pistol during the incident. He said he did not see the co-defendant with two weapons that night. The defendant said he was talking to the driver, and the co-defendant to the passenger, when the co-defendant began shooting.

Arlethia Robertson testified that she was the defendant's first cousin and the mother of the co-defendant. She said that on September 17, 2010, the evening of the crimes, she was living in the Claiborne Homes and was at work that evening. Contrary to the defendant's testimony, she said she had not seen him that day, did not have dinner with him, or drink beers with him in her backyard. She said that the co-defendant did not own a vehicle and, as far as she knew, did not have access to one. She had never seen him drive a four-door Honda and was not aware that any of his friends had such a vehicle.

Gabrielle Lee, the co-defendant's sister, testified that she was the defendant's cousin. She saw the co-defendant on the evening of September 17, 2010, in front of her mother's house. He was not driving a car, and she had never seen him drive a silver, four-door Honda. The defendant did not visit her home that evening or have dinner with her mother, who was at work.

Following the conclusion of the proof, the jury convicted the defendant as charged of first degree felony murder in the perpetration of robbery, two counts of attempted second degree murder, aggravated robbery, employing a firearm during the commission of a dangerous felony, and felon in possession of a handgun.

ANALYSIS

I. Constitutionality of Tennessee Code Annotated section 39-13-203(a)

As we have set out, the trial in this matter proceeded with a death-qualified jury. Prior to the trial, defense counsel filed a motion asserting that the defendant was ineligible for the death penalty because he met the statutory definition for intellectual disability defined by Tennessee Code Annotated section 39-13-203(a). A hearing was held on the defendant's motion, during which proof was presented by both sides. Following that hearing, the trial court entered a lengthy written order concluding that the defendant had failed to demonstrate by a preponderance of the evidence that he had "significant deficits in adaptive behaviors" or that he met the criteria of Tennessee Code Annotated section 39-13-203(a). In his motion for new trial, the defendant argued that, although he was sentenced to imprisonment rather than the death penalty, the trial court erred in denying his earlier motion alleging disqualification for the death penalty, "which caused the defense to alter trial strategy and prejudiced the defendant because of the manner in which defense counsel had to pick a death qualified jury." After the trial court denied his motion for new trial, the defendant filed his direct appeal, again raising the claim that he had been ineligible for the death penalty.

On appeal, the defendant asserts that "the T.C.A. § 39-13-203 threshold requirement of a 70 point I.Q. is unconstitutional under the Eighth Amendment of the United States Constitution." The State responds that this argument is not before this court because the death penalty was not imposed, and, even if this were the case, the statute is not unconstitutional. As we will explain, we agree that the defendant lacks standing to challenge this statute, meaning that the issue is not before this court.

Courts employ the doctrine of standing to determine whether a litigant is entitled to have a court decide the merits of a dispute or of particular issues. Warth v. Seldin, 422 U.S. 490, 498 (1975); Knierim v. Leatherwood, 542 S.W.2d 806, 808 (Tenn. 1976) (holding that courts use the standing doctrine to decide whether a particular plaintiff is "properly situated to prosecute the action"); City of Brentwood v. Metropolitan Bd. of Zoning Appeals, et al., 149 S.W.3d 49, 55 (Tenn. Ct. App. 2004). Grounded upon "concern about the proper – and properly limited – role of the courts in a democratic society," Warth, 422 U.S. at 498, the doctrine of standing precludes courts from adjudicating "an action at the instance of one whose rights have not been invaded or infringed." Mayhew v. Wilder, 46 S.W.3d 760, 767 (Tenn. Ct. App. 2001). Further, "a plaintiff must show . . . a distinct and palpable injury." City of Brentwood, 149 S.W.3d at 55-56.

In this matter, the defendant's only claim of a "distinct and palpable injury" is the assertion in his appellate brief that "he should not have [had] to face the potential of a jury who could consider death." Even combining this claim with that in his motion for new trial that his trial strategy was altered because the trial court did not conclude that he was ineligible for the death penalty, the defendant still has failed to establish that he has standing to challenge Tennessee Code Annotated section 39-13-203(a), for his alleged injury is dependent upon conjecture and speculation.

We further decline to review this statute because it is not necessary for this court to determine the constitutionality of Tennessee Code Annotated section 39-13-203(a) in resolution of the defendant's appeal because he received a life sentence, rather than death. See Keough v. State, 356 S.W.3d 366, 371 (Tenn. 2011) ("This Court decides constitutional issues only when absolutely necessary for determination of the case and the rights of the parties.").

Accordingly, we conclude that this claim is without merit because the defendant lacks standing to raise the constitutionality claim and, thus, we are able to resolve his claims on appeal without reviewing the statute.

II. Prior Consistent Statement of Fazil Rahman

The defendant argues that the trial court erred by allowing the State to present testimony of Sergeant Price as to a prior consistent statement of Mr. Rahman. According to the defendant, this ruling had the effect of bolstering the testimony of the witness. The State responds that the "prior consistent statement was admissible to rebut the inference of dishonesty the defendant's cross-examination raised."

The circumstances under which a prior consistent statement can be utilized were explained in State v. Hodge, 989 S.W.2d 717, 725 (Tenn. Crim. App. 1998):

It is true that ordinarily prior consistent statements of a witness are not admissible to bolster the witness' credibility. State v. Braggs, 604 S.W.2d 883, 885 (Tenn. Crim. App. 1980). However, "prior consistent statements may be admissible . . . to rehabilitate a witness when insinuations of recent fabrication have been made, or when deliberate falsehood has been implied. State v. Benton, 759 S.W.2d 427, 433 (Tenn. Crim. App. 1988). Before prior consistent statements may be admissible, the witness' testimony must have been assailed or attacked to the extent that the witness' testimony needs rehabilitating. Benton, 759 S.W.2d at 434.

At trial, this matter first developed when, on cross-examination, Mr. Rahman was

asked whether, regarding the victims' vehicle being stopped by the defendants, there had been an "agreement to buy anything." Mr. Rahman responded that there had not been such an agreement. Later in the trial, the State advised the court that Sergeant Price would be called as a rebuttal witness to testify that, when questioned at the hospital, Mr. Rahman testified that, just prior to the shooting, the defendant's vehicle had pulled in front of the victims' car, and two men with guns had gotten out of it and approached both sides of the victims' car. According to the State, this testimony would refute that of the defendant that the "victims had followed the defendants over to the place that they met in order to I guess purchase drugs was the insinuation and obviously the two guns." Defense counsel argued that he had asked Mr. Rahman only if the meeting between the groups had been "arranged" and specific questions as to how and where he had seen the gun. The trial court then explained why the State would be allowed to elicit this testimony as rebuttal proof:

In light of what the State is proposing that they want to put before the jury from this witness, I can see the purpose of that. Normally what I am confronted with in this situation is I want to put in a whole four-page statement when there's only been one or two questions that there was some inconsistencies on and a lot of other things that they want to put in and I would have a huge problem with that in this case.

Simply to put on the fact that, you know, he has consistently said somebody pulled around him and stopped and got out of the car and walked back toward him, in light of the direction in which even by implication that it appears that the defense is heading, I don't find that that's inappropriate and I do think that in order to at least rehabilitate him to the extent that that's been his story consistently that this car pulled around him and stopped and got out of the car, if that's as far as it's going, I will allow that.

Following this ruling, Sergeant Price proceeded to testify that she visited Mr. Rahman at the hospital, where he was being treated for his gunshot wound, and he told her that "he was riding in a car and was approaching Sam Cooper [Boulevard] when another car cut him off. Two guys got out armed with guns." After several other relatively brief witnesses testified for the State, the trial court provided an instruction regarding Sergeant Price's testimony:

All right. Ladies and gentlemen, before they call the next witness in, let me tell you something I should have told you a few minutes ago.

When Officer Price testified, I allowed her testimony simply for the fact to testify to the statement she took from Mr. Rahman at The Med. It is

not offered as a true statement. In other words, you don't consider it for the truth of what was stated in that statement, simply it goes to whether or not you believe his testimony in here on yesterday. It goes strictly to his credibility. It's not offered to you as a statement of fact. It's offered to you as a statement of corroboration. And you give it whatever weight you choose to give it. I meant to tell you that and I neglected.

Based upon the record and the analysis and explanation of the trial court as to why this testimony would be allowed, we cannot conclude that the court abused its discretion with this ruling.

III. Sufficiency of the Evidence

The defendant argues that the evidence is insufficient to sustain the convictions. His basic argument is that the State's proof, including discrepancies in the evidence, failed to overcome the defendant's explanation of the events of the evening. Other than that, he does not point to any specific elements of the crimes which were not proven.

In considering this issue, we apply the rule that where sufficiency of the convicting evidence is challenged, the relevant question of the reviewing court 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); see also Tenn. R. App. P. 13(e) ("Findings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt."); State v. Evans, 838 S.W.2d 185, 190-92 (Tenn. 1992); State v. Anderson, 835 S.W.2d 600, 604 (Tenn. Crim. App. 1992). The same standard applies whether the finding of guilt is predicated upon direct evidence, circumstantial evidence, or a combination of direct and circumstantial evidence. State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990).

A criminal offense may be established entirely by circumstantial evidence. State v. Majors, 318 S.W.3d 850, 857 (Tenn. 2010). It is for the jury to determine the weight to be given the circumstantial evidence and the extent to which the circumstances are consistent with the guilt of the defendant and inconsistent with his innocence. State v. James, 315 S.W.3d 440, 456 (Tenn. 2010). In addition, the State does not have the duty to exclude every other reasonable hypothesis except that of the defendant's guilt in order to obtain a conviction based solely on circumstantial evidence. See State v. Dorantes, 331 S.W.3d 370, 380-81 (Tenn. 2011) (adopting the federal standard of review for cases in which the evidence is entirely circumstantial).

All questions involving the credibility of witnesses, the weight and value to be given the evidence, and all factual issues are resolved by the trier of fact. See State v. Pappas, 754 S.W.2d 620, 623 (Tenn. Crim. App. 1987). “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). Our 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 (1966) (citing Carroll v. State, 370 S.W.2d 523 (1963)). “A jury conviction removes the presumption of innocence with which a defendant is initially cloaked and replaces it with one of guilt, so that on appeal a convicted defendant has the burden of demonstrating that the evidence is insufficient.” State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

In arguing that the evidence is insufficient to sustain his convictions, the defendant points to certain proof presented at the trial. He notes that he testified he had dinner the evening of the crimes with the mother of his co-defendant. As we have previously set out, however, she testified that this was not true. Further, the defendant’s version of his dealings with the victims was that Mr. Mohammed sought to purchase marijuana from the defendant and then followed his vehicle to consummate the sale. Mr. Mohammed, however, testified that the defendant robbed and shot at them, denying both there was any agreement to buy marijuana or that they had followed the defendant’s vehicle. Further, the defendant points to certain additional proof which was contrary to the victims’ explanations of what occurred. The jury heard all of this evidence, believed the victims and disbelieved the defendant, as we conclude a reasonable jury could have done. Accordingly, we conclude that the evidence is sufficient to sustain the verdicts.

CONCLUSION

Based upon the foregoing authorities and reasoning, we affirm the judgments of the trial court.

ALAN E. GLENN, JUDGE