

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs March 13, 2018

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Clerk of the
Appellate Courts

STATE OF TENNESSEE v. ROGER REED

Appeal from the Criminal Court for Shelby County
No. 16-02946 James M. Lammey, Jr., Judge

No. W2017-00266-CCA-R3-CD

Aggrieved of his Shelby County Criminal Court jury convictions of first degree premeditated murder, felony murder, and especially aggravated robbery, the defendant, Roger Reed, appeals. In this appeal, he contends that the trial court erred by permitting certain testimony in violation of Tennessee Rule of Evidence 404(b) and that the evidence was insufficient to support his convictions. Because we discern no reversible error, we affirm the judgments of the trial court.

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

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which ALAN E. GLENN and TIMOTHY L. EASTER, JJ., joined.

Laurie W. Hall (on appeal and at trial) and Juni Ganguli (at trial), Memphis, Tennessee, for the appellant, Roger Reed.

Herbert H. Slatery III, Attorney General and Reporter; Zachary T. Hinkle, Assistant Attorney General; Amy P. Weirich, District Attorney General; and Glen Baity and Samuel Winnig, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

A Shelby County Criminal Court jury convicted the defendant of the November 1, 2014 first degree murder and especially aggravated robbery of the victim, Don Smith.

The evidence adduced at the defendant's trial established that the victim's partially-clothed body was discovered in a wooded area in Memphis by a man walking his dog. An autopsy established that the victim suffered a single gunshot wound to the

head. The bullet entered the victim's right ear and "went through the right side of the skull," traveled "across over to the left side of the brain," "angled a little towards the back," and came to rest "in some blood overlying the surface of the brain on the left side." Because "there was some fairly dense gunshot powder stippling around this wound, . . . the distance between the muzzle and the actual skin surface where the bullet entered" was "probably within about three feet." The doctor who performed the autopsy opined that the victim's death from the gunshot wound would "have been immediate or probably within a few minutes." Bruising underneath the victim's arms would have been consistent with someone picking him up under the arms.

Officers from the Memphis Police Department ("MPD") contacted the Greenville, Mississippi Police Department ("GPD") to alert that department that they were "looking for a white vehicle that was involved in a homicide from Memphis." The GPD issued a "be on the lookout" for a car matching the description of the victim's car. On November 5, 2014, GPD Officer Terrence Wigfall observed "a white Buick LaCrosse parked at" the "King Stop" service station in Greenville. When the driver of the vehicle, later identified as the defendant, noticed Officer Wigfall's cruiser, "he backed out and just took off," and Officer Wigfall gave chase. Officers found the victim's vehicle in a ditch near an abandoned house; a right tire had burst. A short time later, officers found a woman named Lashonda Williams "on the left side of the highway in the ditch area towards the field." Although she initially tried to run away, Ms. Williams eventually surrendered and was placed under arrest. The defendant was apprehended several hours later after he emerged from the woods near a vocational school.

Officers conducting a search of the defendant's grandmother's residence discovered a watch inside a plastic bag.

Officers later learned that Ms. Williams "may have dropped [her] purse in the wooded area just behind the house where they ditched the vehicle they were driving." A search of the area revealed a purse that contained items that belonged to Ms. Williams and a .22 caliber handgun. Forensic examination established that because the bullet recovered from the victim's brain "had the same class characteristics" and "some similar individual characteristics" as the gun recovered from Ms. Williams's purse, it was "highly likely" that the bullet was fired by that gun.

Twenty-five-year-old Lashonda Williams testified that she began dating the defendant during the summer of 2014 while she was living in Greenville, Mississippi, and that the two moved to Memphis with Ms. Williams' two young children in October 2014. The couple and the children moved into an apartment with the defendant's father. Neither Ms. Williams nor the defendant had a job or a car, but Ms. Williams had monthly income in the form of a Social Security Disability check. At the end of October 2014,

“[t]hings weren’t going right,” so the couple decided to return to Greenville. To facilitate their return, the couple went to an “ATM” late on the evening of October 31, 2014, to withdraw money from Ms. Williams’ account. Ms. Williams and her children planned to take the bus back to Greenville on the following day, but the defendant “didn’t want to” take the bus “[b]ecause he said he had warrants.” Ms. Williams testified that the defendant “said he was gonna carjack someone” to get a car to make the return trip to Greenville.

After Ms. Williams withdrew money from her account, the couple began walking back to the defendant’s father’s house. As they walked, Ms. Williams noticed the same white car drive by “three or four times down the same street looking at” them. Eventually, the victim, who was driving the car, asked “[w]hat we was trying to do,” which Ms. Williams interpreted to mean that the man “wanted sex with both of us.” After the defendant negotiated the details of the transaction with the victim, the defendant and Ms. Williams got into the car, with Ms. Williams getting into the middle of the backseat. The victim demanded that both the defendant and Ms. Williams “touch his penis to see . . . that we wasn’t the cops.” They complied, and Ms. Williams began manually stimulating the victim’s penis with her hand. Ms. Williams then leaned over the console to begin performing oral sex on the victim “when [the defendant] shot” the victim using Ms. Williams’ .22 caliber handgun. Ms. Williams said that she was alarmed and told the defendant, ““You almost could have shot me.””

After shooting the victim, the defendant moved the victim’s body into the backseat and told Ms. Williams to drive. The defendant then directed Ms. Williams to a field. When they stopped, they dragged the victim from the backseat and into the field before going through the victim’s pockets. The defendant took \$40 and the victim’s watch and then directed Ms. Williams to drive the victim’s car back to his father’s house. Once there, they “got the kids and the clothes, and he drove to Mississippi.” Ms. Williams confirmed that the watch found during the search of the defendant’s grandmother’s house was the watch the defendant took from the victim.

Following their arrival in Greenville, the defendant and Ms. Williams drove around in the victim’s car for several days. Ms. Williams identified photographs of herself, the defendant, and the defendant’s daughter inside the victim’s car. The defendant and Ms. Williams are smiling and laughing in the photographs. On November 5, 2014, the defendant and Ms. Williams were spotted by the police in the victim’s car at the King Stop service station. When the defendant saw the police car, “[h]e took off fast.” After the car’s tire blew out, the couple “bailed out” of the car, and, as they did so, the defendant “told [her] to throw him the purse.” She did as he asked.

Ms. Williams testified that while they were incarcerated in Washington County, Mississippi, she and the defendant were able to communicate “[t]hrough the doors” and that the defendant had written letters to her that were passed to her by members of his family who worked at the jail. The warden of the Washington County Correctional Facility confirmed that officers conducting a “shake down” of Ms. Williams’ cell discovered three letters that appeared to have been written by the defendant. Ms. Williams identified the letters at trial. In one letter, the defendant proclaimed, “We both are going down. I can’t change nothing.” In another, he said, “I know I did it, but I just want . . . you to go with me.” Ms. Williams insisted that she had not been offered any leniency by the State in exchange for her testimony and that she “decided to tell the truth.”

Forensic examination established the presence of the defendant’s fingerprints throughout the interior of the victim’s car.

The defendant testified that his grandmother took him and Ms. Williams and Ms. Williams’ children to Memphis to stay with the defendant’s father in September 2014. The defendant said that he hoped to obtain a job working at FedEx with his father. By the end of October 2014, his relationship with Ms. Williams had deteriorated because she had argued with his father’s girlfriend and because he had reconnected with an ex-girlfriend via Facebook. By October 31, 2014, he said, the couple “really wasn’t [sic] together” and that on that day he was in the “front room playing a video game while she was in the back on the phone . . . telling them that she was . . . gettin’ ready to come back home to Greenville.” The defendant insisted that he did not intend to return to Greenville and maintained that, even if he had desired to leave Memphis, he would have asked his father to drive him to Greenville. At some point late in the evening, Ms. Williams asked him to walk to the ATM with her so that she could withdraw funds “off her card – disability card.”

The defendant said that he and Ms. Williams walked to the ATM, which he said was a 15 to 20 minute trip, and then walked to the Texaco, where the defendant purchased cigars and chips. After they left the Texaco, Ms. Williams crossed the street without the defendant and began speaking to someone in a white car. By the time the defendant had crossed the street, “she got in the car, and the car pulled off.” The defendant said that he initially believed that “maybe that was the person she was on the phone with, and she asked to come and meet her so she could get in the car with him.” Although he was angry, the defendant decided to walk back to his father’s house. As he walked, the same white car passed by, and he saw Ms. Williams in the car with a man. A short time later, the car “came back up, and it just came to a complete[] stop,” and Ms. Williams called his name. The defendant said that when he went to the car, he saw Ms.

Williams sitting in the passenger's seat and the victim sitting in the driver's seat. The victim appeared to be dead.

The defendant testified that Ms. Williams pleaded with him to help her with the victim's body and that he agreed to do so because he loved her. He said that he helped move the victim's body into the backseat, and Ms. Williams drove the victim's car to the field where they disposed of the victim's body. He described what happened next:

When she got the front part of the body underneath his arms, she was like, "Get his legs." And so I got out of the passenger side of the seat and came around the car and grabbed his legs. She then turned around, and it was like I was walking towards like the inside of the ditch like close to a little pond area. And . . . we placed him on the ground. After we placed him on the ground, she went back and got up in the car. I stood outside of the car trying to catch my breath because, you know, I was kind of exhausted about what just happened, and that was like my first time ever seeing a dead body close to me like that.

The defendant denied taking the victim's wallet or money but admitted that when they got back into the victim's car, Ms. Williams gave him the victim's watch. At that point, Ms. Williams "said that we just gonna leave and go to Greenville" and then drove to his father's house. She put her children and her belongings into the victim's car, and the four of them drove directly to a motel in Greenville. The defendant insisted that once they were in Greenville, Ms. Williams retained control of the victim's vehicle. He admitted, however, that he rode in the car when she asked him to do so. He acknowledged taking the photographs inside the victim's car but insisted that he had done so only because it was Ms. Williams' birthday and that he "had to make the pictures look good for her."

The defendant said that on the day of his arrest, Ms. Williams drove them in the victim's car to the King Stop and asked him to go inside and buy some things for her. While he was inside, Ms. Williams got into the passenger's seat. When he returned to the car, the defendant got into the driver's seat. He said that when he noticed the police car behind them, he told Ms. Williams, and she ordered him to flee. The defendant claimed that he did as she asked because she had the gun she had used to murder the victim in her purse. He admitted that he also had an outstanding warrant for his arrest. The defendant denied possessing the weapon at that or any other point in time. He insisted that he had never carried the weapon, which Ms. Williams acknowledged belonged to her. The defendant admitted that he led police on a high-speed chase but denied crashing the car. Instead, he said that he parked the car "underneath a garage in . .

. an abandoned house which Lashonda told me her auntie used to stay.” He then ran into the woods behind the abandoned house in an attempt to reach his grandmother’s house.

The defendant denied writing any letters to Ms. Williams after they were arrested. The defendant acknowledged that Ms. Williams had difficulty reading the letters when called to do so during her testimony, but he insisted that she had forged the letters.¹ The defendant also denied that he and Ms. Williams had the opportunity to speak to each other after the arrest. The defendant adamantly denied that he wanted to be known to other inmates as the Smiling Face Killer.

Based upon this evidence, the jury convicted the defendant of one count of first degree premeditated murder, felony murder, and especially aggravated robbery. The trial court, acting as thirteenth juror, approved the verdicts. The court merged the two murder verdicts into a single conviction and imposed an automatic sentence of life imprisonment. Following a sentencing hearing, the trial court imposed a sentence of 21 years for the robbery conviction to be served consecutively to the life sentence. The defendant filed a timely but unsuccessful motion for new trial followed by an untimely notice of appeal. This court waived the timely filing of the notice of appeal in this case.

In this appeal, the defendant contends that the trial court erred by permitting the State to elicit testimony that the defendant had an outstanding warrant for his arrest in Greenville, Mississippi, in violation of Tennessee Rule of Evidence 404(b). He also challenges the sufficiency of the convicting evidence, arguing that the “jury relied heavily on the testimony of Lashonda Williams, an accomplice” and that “his testimony provided a much more detailed account of what happened on the night of the murder, and that the details provided add credibility, which the jury should have considered.” We consider each claim in turn.

I. Rule 404(b)

As indicated, the defendant contends that the trial court erred by permitting the State to elicit testimony that the defendant had an outstanding warrant at the time of the murder. Prior to trial, the State asked the trial court to permit Ms. Williams to testify that the defendant believed there were outstanding warrants for his arrest in Greenville, Mississippi, and that that is why he did not want to travel back to Greenville by bus. The prosecutor asked that the witness be allowed to say something “as simple as he couldn’t take the bus because he had warrants, obviously not disclosing what the warrants were.” The defendant objected. Although the trial court initially expressed concern that the

¹ During direct-examination, Ms. Williams testified that she had been placed in “special resources” in school, that she dropped out of school in the ninth grade, and that she received Social Security Disability benefits because she was a “slow learner.”

probative value of the evidence was outweighed by the danger of unfair prejudice, the trial court eventually concluded that the evidence was “much more probative” as to motive. The court ruled that the State would be allowed to show that the defendant “believed he had an outstanding warrant,” not that he actually had one, and prohibited the State from showing that the defendant actually had a warrant.

During her direct examination testimony, Ms. Williams testified that the defendant “didn’t want to” take the bus “[b]ecause he said he had warrants.” During cross-examination of the defendant, the prosecutor asked the defendant if the outstanding warrants prevented his traveling by bus to Greenville. The defendant replied, “I knew I had a warrant. But I didn’t want to get on the bus and go back to Greenville. I never even said anything about getting on a bus to go to Greenville.” Later, the prosecutor asked the defendant whether his running from the police was motivated by the outstanding warrants, and the defendant denied that it was.

Tennessee Rule of Evidence 404(b) provides that “[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity with the character trait.” Tenn. R. Evid. 404(b). The rationale underlying the general rule is that admission of such evidence carries with it the inherent risk of the jury’s convicting the defendant of a crime based upon his bad character or propensity to commit a crime, rather than upon the strength of the evidence. *State v. Thacker*, 164 S.W.3d 208, 239 (Tenn. 2005). This rule is subject to certain exceptions, however, including “evidence of a pertinent trait of character offered by an accused or by the prosecution to rebut the same.” Tenn. R. Evid. 404(a)(1). In addition, “[e]vidence of other crimes, wrongs, or acts” may be admissible for “other purposes,” such as proving identity, criminal intent, or rebuttal of accident or mistake. The rule specifies three prerequisites to admission:

- (1) The court upon request must hold a hearing outside the jury’s presence;
- (2) The court must determine that a material issue exists other than conduct conforming with a character trait and must upon request state on the record the material issue, the ruling, and the reasons for admitting the evidence; and
- (3) The court must exclude the evidence if its probative value is outweighed by the danger of unfair prejudice.

Tenn. R. Evid. 404(b). A fourth prerequisite to admission is that the court must find by clear and convincing evidence that the defendant committed the other crime or bad act.

Id., Advisory Comm'n Comments; *State v. DuBose*, 953 S.W.2d 649, 654 (Tenn. 1997); *State v. Parton*, 694 S.W.2d 299, 303 (Tenn. 1985).

When the trial court substantially complies with the procedural requirements of Rule 404(b), this court will overturn the trial court's ruling only when there has been an abuse of discretion. *See Thacker*, 164 S.W.3d at 240; *see also DuBose*, 953 S.W.2d at 652. If, however, the strict requirements of the rule are not substantially observed, the reviewing court gives the trial court's decision no deference. *See id.*

In this case, the trial court fully complied with the procedural requirements for Rule 404(b) and concluded that the testimony about the warrants was probative of the defendant's motive for stealing a car and that it would be admissible for this purpose. To be sure, the State exceeded the scope of the trial court's ruling by inquiring whether the warrants motivated the defendant's flight from the GPD. That being said, it is our view that any error predicated by the admission of this evidence was harmless in light of the overwhelming evidence of the defendant's guilt.

II. Sufficiency

The defendant argues that the evidence was insufficient to support his convictions because it was based almost entirely on the testimony of Ms. Williams, which testimony, he argues, was less credible than his own.

We review the defendant's claim of insufficient evidence mindful that our standard of review is whether, after considering 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. Tenn. R. App. P. 13(e); *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *State v. Winters*, 137 S.W.3d 641, 654 (Tenn. Crim. App. 2003). This standard applies to findings of guilt based upon direct evidence, circumstantial evidence, or a combination of direct and circumstantial evidence. *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011).

When examining the sufficiency of the evidence, this court should neither re-weigh the evidence nor substitute its inferences for those drawn by the trier of fact. *Id.* Questions concerning the credibility of the witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact. *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978). Significantly, this court must afford the State the strongest legitimate view of the evidence contained in the record as well as all reasonable and legitimate inferences which may be drawn from the evidence. *Id.*

As charged in this case, “[f]irst degree murder is . . . [a] premeditated and intentional killing of another” or “[a] killing of another committed in the perpetration of or attempt to perpetrate any . . . robbery.” T.C.A. § 39-13-202(a)(1)(2). “Especially aggravated robbery is robbery as defined in § 39-13-401 . . . [a]ccomplished with a deadly weapon; and [w]here the victim suffers serious bodily injury.” *Id.* § 39-13-403(a). “Robbery is the intentional or knowing theft of property from the person of another by violence or putting the person in fear.” *Id.* § 39-13-401(a).

It is well settled “that a conviction may not be based solely upon the uncorroborated testimony of an accomplice to the offense.” *State v. Bane*, 57 S.W.3d 411, 419 (Tenn. 2001) (citing *State v. Stout*, 33 S.W.3d 531 (Tenn. 2001); *State v. Bigbee*, 885 S.W.2d 797, 803 (Tenn. 1994); *Monts v. State*, 379 S.W.2d 34, 43 (Tenn. 1964)). Indeed, “[w]hen the only proof of a crime is the uncorroborated testimony of one or more accomplices, the evidence is insufficient to sustain a conviction as a matter of law.” *State v. Jones*, 450 S.W.3d 866, 888 (Tenn. 2014) (citing *State v. Collier*, 411 S.W.3d 886, 894 (Tenn. 2013) (citing *State v. Little*, 402 S.W.3d 202, 211–12 (Tenn. 2013))). By way of explanation, our supreme court has stated:

There must be some fact testified to, entirely independent of the accomplice’s testimony, which, taken by itself, leads to the inference, not only that a crime has been committed, but also that the defendant is implicated in it; and this independent corroborative testimony must also include some fact establishing the defendant’s identity. This corroborative evidence may be direct or entirely circumstantial, and it need not be adequate, in and of itself, to support a conviction; it is sufficient to meet the requirements of the rule if it fairly and legitimately tends to connect the defendant with the commission of the crime charged. It is not necessary that the corroboration extend to every part of the accomplice’s evidence.

Bane, 57 S.W.3d at 419 (quoting *Bigbee*, 885 S.W.2d at 803); see also *State v. Fowler*, 373 S.W.2d 460, 463 (Tenn. 1963).

Importantly, the defendant does not argue that Ms. Williams’ testimony was the sole basis of his conviction, only that the jury “relied heavily” on her testimony. Although there can be no doubt but that Ms. Williams was an accomplice in the victim’s murder, the State produced sufficient corroborating evidence to “fairly and legitimately . . . connect the defendant with the commission of the crime charged.” *Bane*, 57 S.W.3d at 419. Immediately upon spotting the police, the defendant, who was driving the victim’s

stolen car, drove away at a high rate of speed and led officers on a high speed chase that ended several hours later when the defendant finally emerged from the woods where he had been hiding. Officers discovered the victim's watch at the defendant's grandmother's house and the defendant's fingerprints throughout the victim's car. Photographs showed the defendant and Ms. Williams as well as the defendant's daughter inside the victim's car. The defendant acknowledged that he participated in the disposal of the victim's body and that he drove the victim's car following the murder. As indicated, the defendant does not contend that the State failed to establish the elements of the conviction offenses but instead argues that his own testimony was more credible than that provided by Ms. Williams. The jury, as was its prerogative, rejected the defendant's version of events, and we decline, as we must, the defendant's invitation to revisit the credibility determinations made by the jury. *See Cabbage*, 571 S.W.2d at 835 (observing that reviewing court is not "free to re-evaluate the evidence as it pleases. 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") (quoting *State v. Grace*, 493 S.W.2d 474, 476 (Tenn. 1973)).

Conclusion

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

JAMES CURWOOD WITT, JR., JUDGE