

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE  
April 24, 2007 Session

**STATE OF TENNESSEE v. HECTOR J. JAUREGUI**

**Appeal from the Criminal Court for Bradley County  
Nos. M-03-456, M-03-457    Carroll Ross, Judge**

---

**No. E2006-00868-CCA-R3-CD - Filed September 17, 2007**

---

The defendant, Hector J. Jauregui, was convicted by a Bradley County jury of criminally negligent homicide, aggravated robbery and aggravated criminal trespass.<sup>1</sup> The trial court sentenced the defendant as a Range I, standard offender to two years for the criminally negligent homicide conviction, ten years for the aggravated robbery conviction and eleven months, twenty-nine days for the aggravated criminal trespass conviction. The trial court further ordered the aggravated robbery conviction to be served consecutively to the remaining concurrent sentences, for a total effective sentence of twelve years. The defendant now challenges the sufficiency of the evidence to support his convictions for criminally negligent homicide and aggravated robbery. Additionally, he challenges the trial court's denial of his motion to sever the offenses in this case. Following our review, we find no merit to the defendant's challenges on appeal. However, we conclude that the judgments do not properly reflect the jury's verdict and the trial court's sentences. Therefore, we affirm the convictions and remand the case for correction of the judgments.

**Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court are Affirmed;  
Cases Remanded for Correction of Judgments**

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which JERRY L. SMITH and NORMA MCGEE OGLE, JJ., joined.

Ashley L. Ownby, Cleveland, Tennessee, for the appellant, Hector J. Juaregui.

---

<sup>1</sup> The defendant was also convicted of felony evading arrest and felony reckless endangerment in the same trial, stemming from events related to his apprehension for the offenses at issue in this appeal. The defendant assigns no error regarding these convictions.

Robert E. Cooper, Jr., Attorney General & Reporter, Cameron E. Hyder, Assistant Attorney General; Jerry N. Estes, District Attorney General; Steven Crump and John Williams, Assistant District Attorneys General, for the appellee, State of Tennessee.

## OPINION

On May 18, 2003, the Cleveland Police Department responded to the call of a possible homicide and home invasion at separate residences in the Blue Springs Road area of Cleveland, Tennessee. Upon their arrival at the first residence, the police found the homicide victim, Bill Presswood, lying on his front lawn, the apparent victim of a stabbing. Jackson Nye, Presswood's son, testified that he visited with his father on the afternoon of May 18, 2003 and stayed there until late evening. While there, Nye testified that the defendant knocked on the door and asked if Casey McKenzie, the neighbor's daughter, was there. Upon learning she was not, the defendant left. Later, when Nye left to get dinner, his father was asleep on the couch. Nye testified that was the last time he saw his father alive. He said he was only gone about fifteen minutes and came back to "[c]haos . . . [a]nd a slain father."

On cross-examination, Nye related that he, Presswood and McKenzie had spent the night before his father's death in Helen, Georgia and had returned earlier that afternoon. He stated that he did not know the defendant prior to the offense. However, he did know that McKenzie had obtained a restraining order against the defendant. He admitted that when the defendant came to the home in search of McKenzie, he was not armed nor was he angry with Nye or Presswood.

Tom Cavitt, the victim's cousin and neighbor, testified that his wife alerted him to something going on at the victim's home. He looked out the window to see Myra McKenzie, the victim's neighbor, waving her arms toward the victim's residence. He saw an individual named John walk up from the victim's home and approach Myra McKenzie. He then saw the defendant following behind in a white t-shirt covered in blood. Cavitt testified that he got his gun and went to the victim's house. Upon his approach, he noticed blood all around the front porch and steps. He then saw the victim lying on the ground. When he asked the victim what had happened, he stated that the victim told him "You're looking at a dead man." Cavitt recalled that after he called the emergency personnel to the scene he tried to stop the bleeding from the victim's neck wound but could not. After the emergency personnel arrived, he stepped out of the way. On cross-examination, Cavitt stated that it was not unusual for there to be "something going on" at the McKenzie residence and that there were often cars coming up to the house and blinking their lights. He added that the events of May 18 were unusual because Myra McKenzie was screaming and pointing towards the victim's house.

Todd Mull, Cavitt's son-in-law, testified regarding the events of May 18. He recalled a lady yelling for Cavitt to come over to the victim's house late in the afternoon. Mull went to the house with Cavitt to find the victim lying on the ground about thirty feet from his front porch. He also

observed people who were covered in blood leaving through the nearby woods. Mull described the victim as weighing about two hundred and twenty pounds at the most. Mull recalled that he noticed the defendant leave the area and return approximately three times before the incident occurred. He stated that he never saw the defendant armed or witnessed any altercation between the victim and the defendant. He testified that the men who were covered in blood went to Myra McKenzie's house.

Myra McKenzie testified that she lived next door to the victim and across the street from Cavitt. She stated that her daughter, Casey, had dated the defendant for about five years. She recalled that she was outside working on her flowerbed when she saw the victim who told her he was going to take a nap but would be over to visit later. She stated that the victim's son was going to pick up dinner for them. She stated that the defendant arrived soon thereafter and that he drove fast to the victim's house and quickly went into the victim's house. She said she "could tell [his] body language wasn't right." She recalled that it looked like the defendant had a gun in his hand. The defendant's brother then brought McKenzie's grandson, "carseat and all," to her front yard. McKenzie started screaming when she saw the defendant on the porch with what appeared to be a gun. She saw the defendant enter the victim's house and heard them arguing.

After McKenzie took her grandson to the safety of her basement with another family member, she went back outside to find the defendant coming into her house. She recalled that the defendant had a knife and that he grabbed her by the shoulders. She stated that the defendant kept asking where her daughter was and that told her that he was going to jail because "he did it." McKenzie testified that the defendant also expressed an intention to kill her daughter. She took the defendant to the sink and told him that she had called 911 and that he needed to leave. She helped him wash off the blood on his arms and hands as well as the knife. She was afraid that he would kill someone else because he still had the knife, so she pushed him out the door and did not see him again.

On cross-examination, McKenzie stated that her daughter had gone to Helen, Georgia with the victim and his son while the defendant took care of her child. She further related that the defendant did not know about the trip to Georgia. She said that the defendant had been to her house earlier that morning with her son and that he was not mad or upset at that time. McKenzie also testified that she never told the defendant where her daughter was because they had broken up two weeks before the incident after the defendant had assaulted her daughter. She admitted that initially she thought the defendant had a gun and that she heard gunshots from the victim's house when she called 911. She reiterated that she thought he intended to harm her daughter or anyone in her house when he entered covered in blood and carrying a knife, so she did what she could to keep him calm and encouraged him to leave her home.

Dr. Ronald Toolsie, Bradley County Medical Examiner, testified that the victim suffered a combination of many visible stab wounds that were both fatal and nonfatal. There were two fatal wounds to the neck that Dr. Toolsie described as "a stab and slash" which met perpendicularly to make a cross. The horizontal portion of the neck wound transected both the carotid artery and the

jugular vein. This injury caused “an enormous amount of profuse bleeding in a very short order of time.” Dr. Toolsie stated that victim bled to death as a result of the neck wounds. Additionally, the victim suffered numerous wounds to his torso, arms and legs plus one serious defensive laceration to his hand. Dr. Toolsie also testified that an assailant may often suffer superficial wounds to the interior of their fingers when wielding a knife covered in blood.

On cross-examination, Dr. Toolsie related that the toxicology report on the victim’s blood revealed positive results for methamphetamine and amphetamine. Dr. Toolsie stated that the levels detected were less than .25 – the lowest detectable amount – indicating that the victim had taken the drugs some time earlier or had only ingested a small quantity. Dr. Toolsie stated that the presence of low levels of both drugs in the victim’s blood did not alter his findings but admitted that both drugs could “exacerbate aggressive personalities.” Dr. Toolsie stated that the toxicology report on the defendant’s blood detected no presence of drugs.

Merve Carr testified that the defendant, whom he had never before seen, came to his back door covered in blood and demanded his car keys. He told the defendant that he was not getting any car keys so the defendant picked up a vase to hit him with it. Mr. Carr was able to deflect the vase and a struggle ensued. Both men fell to the ground on the patio and the defendant grabbed Mr. Carr’s neck with both hands. Mrs. Carr came outside to pull the defendant away. She went inside to get the car keys and the defendant released Mr. Carr to follow her into the house. Once in possession of the keys, he was gone. Mr. Carr went to check on his wife, who was uninjured but covered in blood from the defendant’s clothes and hands. On cross-examination, Mr. Carr admitted that the defendant was not soaked in blood but his clothes were splattered with blood. On redirect examination, Mr. Carr identified a letter of apology from the defendant received in July 2003.

Shirley Sue Carr testified similarly regarding the confrontation with the defendant. She stated that she had never seen him before and was afraid of him. She said that her hand was bloody from where the defendant had grabbed the keys from her but that she was not physically injured by the defendant.

D. R. Fetzer testified that the defendant attempted to pass him in the Carrs’ stolen vehicle while the police were chasing him, but the defendant hit him and sent him into an embankment on the shoulder of the road. Deputy Mark Sweitzer of the Bradley County Sheriff’s Department responded to the call regarding the defendant and the stolen vehicle. His pursuit of the defendant led him on a high speed chase, striking several other motorists, but ultimately the defendant crashed the car into a telephone pole. The defendant attempted to flee the scene but Deputy Sweitzer apprehended him. He acknowledged that he responded to the call as a shooting but did not find any guns or other weapons when he apprehended the defendant. He also stated that he observed “[j]ust a small amount” of blood on the defendant.

Officer Kevin Felton of the Cleveland Police Department testified that he processed the crime scene at the Presswood residence. He observed, documented and collected a large amount of blood leading from the porch into the residence. The living room showed that a struggle had occurred and

there was a large pool of blood near an end table. Bloody shoe prints were also found throughout the living room. Several areas contained blood spatter evidence indicating the victim's path to the front yard. Officer Felton also processed the McKenzie residence, where he collected items from the kitchen sink, and the Carr residence, where he collected a bloody handkerchief and blood from the door jam of the back door. Officer Felton processed the Carrs' stolen vehicle and found blood on the gear shift. After observing the crime scenes, Officer Felton had told authorities that the attacker would have a cut to his right hand. Officer Felton identified photographs of the defendant's hands that showed a cut.

Charles Hardy testified that he works in the serology and DNA unit of the Tennessee Bureau of Investigation Crime Lab in Nashville. Testing of the samples collected from the Presswood residence revealed the presence of the victim's blood as well as the defendant's blood. Testing of the items taken from McKenzie's sink and the Carr residence and vehicle revealed the presence of the defendant's blood.

Officer Kevin Felton was recalled and testified that there was no evidence of the use of a gun found at the Presswood residence. He recalled that the screen door at the Presswood house did not have a "shock absorber" to slow its closing and made a startling cracking noise when it closed. He also stated that the Carr residence was located about three hundred yards away from the Presswood residence through a cow pasture and wooded area. He stated that, at the time of the crime scene processing, he had no reason to believe methamphetamine was involved in the offense and did not search for drug-related items. He also opined that the Presswood residence did not appear to be the scene of any drug use. Officer Felton related that the knife was never recovered.

Dr. Joye Carter, a forensic pathologist, testified for the defendant that the neck wound suffered by the victim was not a typical homicidal knife cut because it did not extend across the entire neck and destroy the voice box. She stated that most of the victim's wounds were superficial and indicated an ongoing struggle between the victim and his assailant. She said that the use of methamphetamine could cause psychosis or violent behavior.

Hector S. Jauregui, the defendant's father, testified that his son is about five feet eight inches tall and weighs about one hundred and eighty pounds. He stated that he worked for a local car dealership in their maintenance and repair shop and that the defendant sometimes had permission to drive vehicles that were having problems. When asked if he had filed a stolen vehicle report on the one driven to the Presswood residence by the defendant, he could not recall whether he had.

The defendant testified that he had been to the McKenzie's home on Sunday morning to pick up his girlfriend's brother, Mark, to take a car to his father's shop to work on the brakes. He stated that Casey McKenzie called him and asked him to bring Blake, her son, to her mother's later that day. He related that although Blake was not biologically his child, he had raised him and still cared for him on weekends despite his breakup with Casey. When he returned with Blake later that day, he was looking for Casey because he did not want to leave Blake with Myra McKenzie due to her drug and alcohol abuse. He went to Presswood's home to ask if Casey was there and Presswood's

son told him no so he left. He then went to his apartment with Blake and the defendant's brother, John. He thought he might find Casey at the apartment despite the breakup they had recently gone through.

When he returned later, he claimed the victim called to him from the front door of his home so he told John to take Blake to Myra McKenzie's house while he went to talk to the victim. He stated that an altercation about Casey began as soon as he entered the house. He denied being angry or having any weapons when he went to the house. He claimed that he and the victim began struggling and, when he realized the victim had a knife, he grabbed the knife from him. He said the struggle ended on the couch with the victim on top of him with his forearm across the defendant's throat so he started stabbing to get the victim off of him. The defendant testified that "after I couldn't breathe and stuff for a little while, I don't know where I stabbed him, because I just couldn't breathe. I flipped out . . . ." After the wounds to the neck, the victim released the defendant and he ran out the door to Myra McKenzie's house. He recalled being scared of his own brother and just wanting to get out of Presswood's house. He only recalled that Myra McKenzie grabbed him and told him he needed to leave because the police were on their way. He denied threatening Casey in any way and testified that she had nothing to do with the altercation with the victim.

The defendant testified that he ran through the field to the Carr residence. He described trying to break into the Carrs' truck but denied ever picking up a vase to strike Mr. Carr. He said he only asked for the car keys because he "just wanted to get away."

The defendant stated that he has no idea why Presswood wanted to fight him but now theorizes that the victim wanted to fix his son up with Casey, the defendant's ex-girlfriend. The defendant read his letter of apology written to the Carrs to the jury. He expressed remorse to the Carrs for scaring them and expressed remorse to the Presswood family for all that had happened.

On cross-examination, the defendant admitted that he never called the police to report that he had been attacked or that the victim was injured and needed help. He admitted that he ran from the police instead. He claimed to have injuries to his face from the fight with the victim although there were no photographs taken to document the injuries. The state also questioned the defendant about a conviction for aggravated assault which he admitted to but claimed that no one was hurt.

Based upon this evidence, the jury acquitted the defendant of premeditated first degree murder but convicted him of the lesser included offense of criminally negligent homicide, related to his actions against Presswood. The jury acquitted the defendant of first degree murder in the perpetration of an aggravated burglary and any lesser included offenses, also related to his actions against Presswood. The jury acquitted the defendant of aggravated burglary but convicted him of the lesser included offense of aggravated criminal trespass, related to his actions against the Carrs. The jury convicted the defendant of a single aggravated robbery, related to his actions against the Carrs. On appeal, he contends that the evidence is insufficient to support his convictions and that the trial court erred in denying his motion to sever the offenses related to Presswood from those related to the Carrs.

## ANALYSIS

### *Remand for Correction of Judgments*

Initially, we note that there are substantial discrepancies and inconsistencies between the verdicts announced on the record by the jury, the sentence imposed by the trial court, and the judgments ultimately entered by the trial court. This court has been able to discern from the record that some of the confusion arises from the erroneous numbering and reference to indictment numbers contained in the jury instruction and verdict forms. In fact, the record shows that the trial court attempted to correct this confusion by filing an agreed order that correctly numbered the verdict forms to match the appropriate indictments prior to sentencing. However, we conclude that there still remain numerous errors requiring remand for correction of the judgments.

Relevant to this appeal, the defendant was indicted for the following offenses:

---

#### Indictment Number M-03-454

Count One: Felony Evading Arrest

Count Two: Driving While License Revoked or Suspended

Count Three: Felony Reckless Endangerment

Count Four: Leaving the Scene of an Accident

Count Five: Leaving the Scene of an Accident

---

#### Indictment Number M-03-456

Count One: Aggravated Burglary (intent to commit theft) (victim – Bill Presswood)

Count Two: Premeditated First Degree Murder (victim – Bill Presswood)

Count Three: First Degree Murder in the Perpetration of a Felony (victim – Bill Presswood)

---

#### Indictment Number M-03-457

Count One: Aggravated Robbery (victim – Merve Carr)

Count Two: Aggravated Robbery (victim – Susan Carr)

Count Three: Aggravated Burglary (intent to commit theft) (victims – Merve and Susan Carr)

---

#### Indictment Number M-04-644

Count One: Aggravated Burglary (intent to commit assault) (victim – Bill Presswood)

Indictment number M-03-454 relates to the events surrounding the defendant's apprehension. The state dismissed counts two, four and five of this indictment pretrial. The record reflects that the jury found the defendant guilty of the remaining counts of felony evading arrest and felony reckless endangerment. At sentencing, the trial court imposed sentences of two years for each conviction to be served concurrently to each other. The trial court also ordered that the sentences be served concurrently to the two year sentence for criminally negligent homicide and the eleven month, twenty-nine day sentence for aggravated criminal trespass. These sentences were ordered to be served consecutively to a ten year sentence for the aggravated robbery conviction. However, the

judgments for indictment number M-03-454 do not reflect this imposition regarding the manner of service. Upon remand, we direct the trial court to enter appropriate judgments that accurately reflect the sentences imposed.

Indictment numbers M-03-456 and M-04-644 relate to the offenses committed against Presswood. Once again, the state dismissed a count pretrial – count one of indictment number M-03-456, but the state then issued a superseding indictment in indictment number M-04-644. The announcement of the jury’s verdict shows some confusion regarding the homicide counts. Initially, the foreperson announced that the defendant was found not guilty of premeditated murder and any lesser included offenses, but found guilty of criminally negligent homicide as a lesser included offense of the felony murder count. Upon inquiry by the trial court regarding some discrepancies between the announcement and the verdict forms, the foreperson read from the verdict forms and announced that the defendant was found guilty of criminally negligent homicide as a lesser included offense of premeditated murder but not guilty of any offenses related to the felony murder count. The trial court then polled the jury and all jurors indicated that to be their verdict. The judgment in count two of indictment number M-03-456 accurately reflects that the defendant was found guilty of criminally negligent homicide as a lesser included offense of premeditated murder. However, the judgment erroneously reflects a sentence of two years to be served consecutively to the sentences for felony evading arrest, felony reckless endangerment, and aggravated criminal trespass. Therefore, upon remand the trial court is directed to correct this judgment to accurately reflect the sentence imposed at sentencing, to wit, a two year sentence to be served consecutively to the aggravated robbery sentence but concurrently to all other counts. Furthermore, the record contains a judgment for felony murder in count three of indictment number M-03-456 that indicates a guilty verdict but is silent as to the convicted offense and states that the conviction merges with the criminally negligent homicide conviction in count two. As previously detailed, the jury announced a not guilty verdict as to this count. Therefore, upon remand, the judgment should be corrected to accurately reflect the announcement by the jury. The judgment for indictment number M-04-644 correctly reflects the not guilty verdict found by the jury regarding the alleged aggravated burglary of Presswood.

Indictment number M-03-457 relates to the offenses involving the Carrs. The jury returned a guilty verdict as to a single aggravated robbery committed against both victims. The trial court sentenced the defendant to ten years. However, the judgment for count one of indictment number M-03-457 reflects a sentence of eight years. Upon remand, the trial court should correct the judgment to reflect a sentence of ten years as imposed at the sentencing hearing. Furthermore, the judgment regarding count two of indictment number M-03-457 for an additional aggravated robbery conviction should be stricken from the record because the jury did not return a guilty verdict regarding any additional aggravated robbery. The judgment for the aggravated criminal trespass conviction accurately reflects the eleven month, twenty-nine day sentence imposed at sentencing but, once again, shows an error as to the manner of service. As stated previously, the trial court imposed all sentences concurrently to one another except for the ten year aggravated robbery sentence, which is to be served consecutively. The judgment for aggravated criminal trespass erroneously reflects that all sentences are to be served consecutively. Upon remand, the trial court shall correct the



manner of service to accurately reflect the sentence announced at the sentencing hearing. With these errors regarding correction of judgments addressed, we now turn to the allegations of error raised on appeal by the defendant.

### *Sufficiency of the Evidence*

An appellate court's standard of review when the defendant questions the sufficiency of the evidence on appeal 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). The appellate court does not reweigh the evidence; rather, it presumes that the jury has resolved all conflicts in the testimony and drawn all reasonable inferences from the evidence in favor of the state. See State v. Sheffield, 676 S.W.2d 542, 547 (Tenn. 1984); State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). Questions regarding witness credibility, conflicts in testimony, and the weight and value to be given to evidence were resolved by the jury. See State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). A guilty verdict removes the presumption of innocence and replaces it with a presumption of guilt, and on appeal the defendant has the burden of illustrating why the evidence is insufficient to support the jury's verdict. Id.; State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

A person commits criminally negligent homicide whose criminally negligent conduct is the proximate cause of the victim's death. State v. Jones, 151 S.W.3d 494, 499 (Tenn. 2004); State v. Farner, 66 S.W.3d 188, 199 (Tenn. 2001) (citing Tenn. Code Ann. § 39-13-212(a)) (defining criminally negligent homicide as "[c]riminally negligent conduct which results in death"). A person acts "with criminal negligence with respect to the circumstances surrounding that person's conduct or the result of that conduct when the person ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur." Tenn. Code Ann. § 39-11-106(a)(4). "The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the accused person's standpoint[.]" Id. Furthermore, "[w]hen the law provides that criminal negligence suffices to establish an element of an offense, that element is also established if a person acts intentionally, knowingly or recklessly." Tenn. Code Ann. § 39-11-301(a)(2).

The defendant argues that there is no proof that the defendant "failed to perceive a substantial and justifiable risk" as is required to sustain a conviction for criminally negligent homicide because he had no reason to believe that an altercation would occur when he entered the victim's home. The defendant also argues that the jury simply chose to convict him of the lesser offense of criminally negligent homicide because the trial court failed to sever the Presswood offenses from the Carr offenses. The state contends that there is sufficient proof that the defendant committed a greater offense of homicide and cannot complain on appeal of being convicted of the lesser offense.

In the light most favorable to the state, the evidence shows that the defendant arrived at the victim's home hastily and quickly entered the home of the victim who, according to the testimony of at least one witness, was asleep on the couch. Myra McKenzie testified that the defendant

appeared to be armed in some way. Witnesses overheard an altercation in the home and the crime scene investigation revealed that a significant struggle occurred in the victim's living room. The victim suffered multiple stab wounds that culminated in two deep slashes to his throat which damaged both his carotid artery and jugular vein. The defendant fled from the victim's home covered in blood while the victim bled to death in his front yard. The defendant entered another home where he washed the weapon, which was never recovered, as well as his hands and arms. After being warned that the police were on their way, the defendant fled the scene to avoid apprehension. We conclude that the proof is sufficient to show that the defendant failed to perceive a substantial and justifiable risk that the victim would be fatally wounded in his altercation with the victim involving a knife and that this failure constituted a gross deviation from the standard of care used by an ordinary and prudent person. We conclude that there is overwhelming proof to support the defendant's conviction for criminally negligent homicide.

The defendant also contends that there is insufficient proof to support his conviction of aggravated robbery because the vase or yard ornament employed in the commission of the offense against the Carrs does not meet the definition of a deadly weapon provided by our statute. The state argues that the vase was utilized in a manner consistent with the definition of a deadly weapon and that the defendant obtained the car by placing the victims in fear for their safety.

Tennessee Code Annotated section 39-11-106 (a)(5)(B) defines deadly weapon as “[a]nything that in the manner of its use or intended use is capable of inflicting death or serious bodily injury[.]” A person commits aggravated robbery who commits a robbery pursuant to Tennessee Code Annotated section 39-13-401 through the use or display of a deadly weapon or “any article used or fashioned to lead the victim to reasonably believe it to be a deadly weapon[.]” Tenn. Code Ann. § 39-13-402(a)(1). Tennessee Code Annotated section 39-13-401 defines robbery as “the intentional or knowing theft of property from the person of another by violence or putting the person in fear.”

In the light most favorable to the state, the evidence showed that the blood-covered defendant, whom the Carrs had never met, attacked Mr. Carr with the vase in order to obtain the car keys. Mr. Carr was able to deflect the vase from its intended target, his head, but a struggle ensued between both men. Mrs. Carr testified that she came to the back door to find the defendant and her husband struggling on the patio with his hands around her husband's neck. She recounted that the defendant demanded the car keys from her and that she was scared of the defendant so she gave him the keys. The defendant then fled in the stolen vehicle. Clearly, the vase was used in a manner capable of inflicting serious bodily injury or death. It is also clear that the defendant accomplished the theft of the vehicle through the use of the vase and that the Carrs were in fear of the defendant. Therefore, we conclude that the evidence is sufficient to support the defendant's conviction for aggravated robbery.

#### *Severance of Offenses*

As his final allegation of error, the defendant contends that the trial court erred in denying his motion to sever the offenses for trial. He contends that the offenses related to Presswood should

not have been tried jointly with the offenses related to the Carrs and that the denial of his motion to sever caused irreparable prejudice. The state argues that the trial court did not abuse its discretion in denying the defendant's motion and that the case were properly joined as offenses arising from the same criminal episode.

The standard of review of a trial court's decision to consolidate or sever offenses is an abuse of discretion. State v. Shirley, 6 S.W.3d 243, 247 (Tenn. 1999). An appellate court will not interfere with the exercise of this discretion unless it appears on the face of the record that the accused was prejudiced by the court's ruling. State v. Wiseman, 643 S.W.2d 354, 362 (Tenn. Crim. App. 1982). The decision to grant or deny a severance "depends upon the facts and circumstances involved in the various crimes charged." State v. Morris, 788 S.W.2d 820, 822 (Tenn. Crim. App. 1990). The trial court is required to hold a pretrial hearing to determine the appropriateness of severance. State v. Hoyt, 928 S.W.2d 935, 944 (Tenn. Crim. App. 1995). The trial court must make a determination that the evidence of one crime is relevant to a material issue in the trial of the other. State v. Moore, 6 S.W.3d 235, 239 (Tenn. 1999). The court must then consider whether the probative value of the evidence outweighs any prejudicial effect. Hoyt, 928 S.W.2d at 944.

Rule 8(b) of the Tennessee Rules of Criminal Procedure allows for the permissive joinder of offenses and states that "[t]wo or more offenses may be joined in the same indictment, presentment, or information, with each offense stated in a separate count, or consolidated pursuant to Rule 13 if the offenses constitute parts of a common scheme or plan or if they are of the same or similar character." Tenn. R. Crim. P. 8(b). Additionally, Rule 13(a) of the Tennessee Rules of Criminal Procedure provides that "[t]he court may order consolidation of two or more indictments, presentments, or informations for trial if the offenses and all defendants could have been joined in a single indictment, presentment, or information pursuant to Rule 8." However, Rule 14 of the Tennessee Rules of Criminal Procedure states that "[i]f two or more offenses have been joined or consolidated for trial . . . , the defendant shall have a right to a severance of the offenses *unless the offenses are part of a common scheme or plan and the evidence of one would be admissible upon the trial of the others.*" Tenn. R. Crim. P. 14(b)(1) (emphasis added). Therefore, in order to deny a motion for severance the trial court must be satisfied in two findings: a common scheme or plan and the admissibility of evidence against one another in separate trials. See State v. Hallock, 875 S.W.2d 285, 289 (Tenn. Crim. App. 1993); see also, State v. Tolivar, 117 S.W.3d 216, 227-31 (Tenn. 2003).

The first prong of Rule 14(b)(1) of the Tennessee Rules of Criminal Procedure requires that the trial court find a common scheme or plan. In Tennessee, there are three categories of common scheme or plan evidence: (1) evidence showing a distinctive design or signature crime; (2) evidence demonstrating a larger, continuing plan or conspiracy; and (3) evidence that the offenses are part of the same transaction. Moore, 6 S.W.3d at 240. The trial court in this case found that the offenses constituted a common scheme or plan because they were part of the same transaction. Specifically, the trial court found that the defendant allegedly committed the offenses against the Carrs to facilitate his flight from the scene of the offense against Presswood. We conclude that the trial court was correct in this finding.

The second prong of Rule 14(b)(1) of the Tennessee Rules of Criminal Procedure is what the Tennessee Supreme Court has deemed the “primary inquiry” in any severance case: whether the evidence of one offense would be admissible in the trial of the other if the two offenses remained severed. State v. Burchfield, 664 S.W.2d 284, 286 (Tenn. 1984). Our supreme court has stated that “[u]nless [it is] expressly tied to a relevant issue, evidence of a common scheme or plan can only serve to encourage the jury to conclude that since the defendant committed the other crime, he also committed the crime charged.” Moore, 6 S.W.3d at 239 n.5 (quoting Hallock, 875 S.W.2d at 292). The court has also stated that “a common scheme or plan for severance purposes is the same as a common scheme or plan for evidentiary purposes.” Moore, 6 S.W.3d at 240 n.7. Therefore, Tennessee Rule of Evidence 404(b) is relevant to our analysis of this issue.

Rule 404(b) excludes evidence of “other crimes, wrongs, or acts” committed by the defendant when offered only to show the defendant's propensity to commit the crime charged. See Tenn. R. Evid. 404(b). Generally, evidence that the accused committed crimes independent of those for which he is on trial is inadmissible because such evidence lacks relevance and invites the finder of fact to infer guilt from propensity. See Moore, 6 S.W.3d at 239; see also Tenn. R. Evid. 404(b). Evidence of other crimes, wrongs, or acts, however, may be admissible for other purposes, such as “to show identity, guilty knowledge, intent, motive, to rebut a defense of mistake or accident, or to establish some other relevant issue.” Moore, 6 S.W.3d at 239 n.5 (quoting Hallock, 875 S.W.2d at 292). In this case, the defendant was indicted for the first degree murder of Presswood. Evidence of efforts to conceal the crime or to flee a crime scene is highly probative to establish the intent of a perpetrator. Therefore, we conclude that the evidence of the offenses committed against the Carrs would have been admissible at a separate trial for the offenses against Presswood.

Finally, the trial court must also conclude that the probative value of the evidence of other offenses is not outweighed by the prejudicial effect that admission would have on the defendant. Tenn. R. Evid. 404(b)(3). As stated previously, the evidence of the offenses committed against the Carrs was highly probative of the defendant’s intent in the homicide of Presswood. We conclude that the probative value of the evidence was not outweighed by the prejudicial effect. Therefore, we conclude that the trial court did not abuse its discretion in denying the defendant’s motion to sever offenses. The crimes were part of a single criminal episode and the evidence of the Carr offenses would be admissible in separate trial because the crimes against the Carrs were relevant to establish the defendant’s intent regarding the homicide of Presswood and the prejudicial effect of the evidence did not outweigh this probative value. Thus, the cases were properly tried jointly.

## CONCLUSION

We conclude that the evidence is sufficient to support the defendant’s convictions for criminally negligent homicide, aggravated robbery and criminal trespass. We also conclude that the trial court did not abuse its discretion in denying the defendant’s motion for severance. However, because the judgments do not correctly reflect the jury verdicts and the trial court’s imposition of sentences, we remand the case to the trial court for the entry of corrected judgments, as previously detailed in this opinion.

---

D. KELLY THOMAS, JR., JUDGE