

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON  
August 6, 2013

**STATE OF TENNESSEE v. CURTIS KELLER**

**Appeal from the Criminal Court for Shelby County  
No. 10-02756 Chris Craft, Judge**

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**No. W2012-01457-CCA-R3-CD - Filed November 6, 2013**

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After a jury trial, the defendant was found guilty of three counts of especially aggravated kidnapping, three counts of aggravated robbery, four counts of attempted aggravated robbery, one count of aggravated burglary, and one count of evading arrest. He received an effective sentence of three hundred years. The defendant was convicted on the theory of criminal responsibility for the conduct of another as he was not physically present in the home during the violent home invasion. On appeal, the defendant claims that the evidence is insufficient to support his convictions, that his convictions should be reversed because the State failed to establish the chain of custody of a ski mask containing the defendant's DNA that was recovered from the getaway vehicle after the crimes, and that the trial court erred by failing to declare a mistrial after a witness made a general remark to the effect that the defendant had engaged wrongful behavior in the past. After review, we find that the defendant's claims lack merit. The judgments of the trial court are affirmed.

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

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which THOMAS T. WOODALL and CAMILLE R. MCMULLEN, JJ., joined.

R. Todd Mosdley, Memphis, Tennessee (on appeal); Mark Mesler, Memphis, Tennessee (at trial), for the appellant, Curtis Keller.

Robert E. Cooper, Jr., Attorney General and Reporter; Sophia S. Lee, Senior Counsel; Amy P. Weirich, District Attorney General; and Paul Hagerman, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

## FACTS AND PROCEDURAL HISTORY

On April 22, 2010, the defendant, Curtis Keller, was indicted along with several co-defendants on seventeen counts stemming from a violent home invasion that occurred on June 12, 2008. In all, the defendant was indicted on three counts of especially aggravated kidnapping (against Jeffrey Land Sr., Claire Land, and Jeffrey Land Jr.) in violation of Tennessee Code Annotated section 39-13-305, Class A felonies; three counts of aggravated robbery (against Thoeurn Chan, MomHouon Chan, and Jeffrey Land Jr.) in violation of Tennessee Code Annotated 39-13-402, Class B felonies; four counts of attempted aggravated robbery (of Naree Chan, Dara Chan, Jeffrey Land Sr., and Claire Land) in violation of Tennessee Code Annotated section 39-12-101, Class C felonies; four counts of aggravated assault (Thoeurn Chan, Naree Chan, Dara Chan, and Claire Land) in violation of Tennessee Code Annotated section 39-12-101, Class C felonies; one count of aggravated burglary (of the habitation of Thoeurn Chan) in violation of Tennessee Code Annotated section 39-14-403, a Class C felony; one count of evading arrest in violation of Tennessee Code Annotated section 39-16-603, a Class D felony; and one count of theft of property (of a motor vehicle belonging to Sunrise Pontiac) with a value less than \$10,000 in violation of Tennessee Code Annotated section 39-14-103, a Class D felony.

At the defendant's trial, the State presented the testimony of numerous witnesses, including five victims, two accomplices, and numerous law enforcement investigators. The State began by presenting testimony concerning a stolen vehicle that was allegedly used as a getaway car after the crimes. Mr. Matthew Madson testified that he worked at Sunrise Pontiac car dealership and that he called police on February 4, 2008, to report a stolen vehicle. He testified that the missing white 2007 Ford E150 Cargo Van had been stolen from the dealership sometime earlier that week.

The first victim to take the stand, Ms. Mom Houon, testified that she was married to Mr. Thourn<sup>1</sup> Chan and that they had lived together at a specific address in Germantown for ten years. Ms. Houon testified that living with her in the home were her two children, Naree Chan and Dara Chan, and a family friend, Jeffrey Land Sr., as well as his Mr. Land's son and daughter, Jeffrey Land Jr. and Claire Land.

Ms. Houon testified that on the evening of June 28, 2008, at approximately 3:00 a.m., she awoke to hear the sound of breaking glass coming from her exercise room. She testified that she jumped out of her bed and saw approximately seven men enter her residence, one at a time. She testified that the men entered her room and placed a gun to her head. They

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<sup>1</sup> Mr. Thourn Chan's first name was apparently misspelled as "Thoeurn" in the indictment.

also placed a gun to her husband's head. The intruders told her that they were F.B.I. agents and instructed her to stay calm. After making her and her husband lie face down on the floor, the intruders proceeded to the second floor, where they found her daughter and son as well as Jeffrey Land Jr., and then on to the third floor, where they found Jeffrey Land Sr. and Clare Land. They forced all these individuals to go downstairs. Ms. Houon testified that she heard her daughter scream when the invaders found her on the phone talking with police. She testified that each of the seven residents of her home had a gun aimed at them.

Ms. Houon testified that after all of the hostages had been gathered together in one place, she heard her husband beg the intruders not to hurt them. She testified that the intruders did not respond. She testified that the intruders repeatedly asked her where their safe was located. When she responded that the family did not have a safe, the intruders went through her room, opened her purse, and removed approximately \$5000. She testified that the intruders remained in the residence for approximately ten minutes before she heard one of them say "hurry up, hurry up, man, the police coming." After this, they left one by one through the same door they had entered. The police arrived at the residence at almost the same time. While she was on the stand, Ms. Houon authenticated several photographs of her residence, and she pointed out in those photographs the locations where the intruders had entered the residence and where the hostages had been held.

Mr. Thorne Chan testified that he was fifty-four years old and had come to the United States from Cambodia in 1984. He testified that he was the owner of three jewelry stores/pawn shops in the Memphis area. He testified that he lived at a specific address in Germantown in Shelby County, Tennessee, along with his wife and five others.

Mr. Chan testified that on the evening in question, he was awakened in the middle of the night by the sound of falling glass. He testified that he initially assumed that the noise had been caused by the TV in his wife's exercise room falling to the ground, and he got up to check on it. He testified that he saw several individuals with their faces covered by masks who were carrying flashlights and looking right at him. He testified that the intruders were wearing dark uniforms and carrying guns. He testified that he was not sure how many intruders there were in total, but he was sure that there were more than four or five. He testified that the intruders kept screaming the word "officer" at him, which he understood to mean that they were identifying themselves as police officers.

Mr. Chan testified that one of the intruders forced him to the ground and pushed a gun directly into his face. He testified that he was very scared. He testified that the intruders placed him in handcuffs which were "really, really tight." He testified that his wife was next to him on the ground, and she also had a gun pointed at her head. He testified that the intruders began to scream at him, asking him "where the money, where the jewelry, where's

the safe.” He testified that he told the intruders that he did not have any money and that all the jewelry that he owned was kept at his store. He testified that he begged the intruders to take whatever they wanted and leave.

After a few minutes, the intruders took the five other residents downstairs and threw them on the ground close to him. Mr. Chan testified that all of them were lined up on the floor “execution style.” He testified that he continued to beg for his life and offered to take the intruders to his store and give them whatever they wanted. He testified that the men did not respond. He testified that he heard one of the intruders ask his daughter if she had called the police, and he heard his daughter respond, “yes.” He testified that the intruder took his daughter’s cell phone and threw it on the floor. He testified that soon afterward, all of the intruders left through the same door that they had entered. He testified that the last intruder to leave was carrying a brown bag slung over his shoulder. Mr. Chan testified that before they left, the intruders took his watch and about \$1500 cash that he had kept in a chest close to his bed.

Mr. Chan testified that he was familiar with an individual named Mr. Calvin White because Mr. White was a customer who had come into his store on several occasions. Mr. Chan was shown a photograph of Mr. White while he was on the stand, and he identified him.

Mr. Dara Chan (Mr. Chan’s son), Mr. Jeffrey Land Sr., and Mr. Jeffrey Land Jr. each also testified concerning the home invasion in a manner generally consistent with the testimony of Ms. Houon and Mr. Chan. Mr. Jeffrey Land Jr. added that the invaders stole his wallet, which was eventually recovered by a police officer somewhere along the highway, completely intact and still containing money.

Detective Hugh Hatley of the Germantown Police Department testified that he responded to a call on June 12, 2008, concerning a burglary in progress at a specific address on the east side of Germantown. He testified that he arrived at the scene within three minutes of receiving the call. When he arrived, he saw several individuals who appeared to be victims standing in the foyer with their hands behind their backs yelling for help. He testified that once he entered the residence, he discovered that all seven of the victims were handcuffed. He testified that Mr. Chan complained that his wrists were hurting. He removed the handcuffs from the victims.

Detective Hatley testified that he interviewed the victims and broadcast all of the information he obtained to other officers. He testified that he did not participate in the ensuing chase of the perpetrators. While he was on the stand, he authenticated a photograph of a pair of handcuffs and identified them as one of the pairs that had been removed from the

victims. On cross-examination, Detective Hatley testified that he did not witness anyone leaving the residence that evening.

Detective Jason Heath of the Germantown Police Department testified that he responded to a call concerning a possible home invasion on the night in question. He testified that as he turned down a particular street near the residence, he saw a suspicious vehicle—a white cargo van—driving away from the crime scene at a high rate of speed. He testified that as the vehicle passed him, he saw four of the five visible occupants of the van drop down and lie flat on the floor of the van. He testified that he activated his blue lights, which automatically turned on his vehicle's camera. He authenticated the video from this camera, which was played for the jury while he testified. Detective Heath described the path taken by the vehicles during the ensuing police chase.

Detective Heath testified that the police pursuit was “very long,” beginning in Germantown and ending in Memphis and encompassing both highway and residential areas. He estimated that the distance covered was between six and twelve miles. He testified that the vehicles involved reached speeds of seventy or eighty miles an hour. He testified that the occupants of the van opened and shut the doors periodically throughout the chase, as if they were going to “bail out.” He testified that the chase ended when the van struck a Memphis Police Department patrol car, and everyone inside the van fled. He testified that he exited his own vehicle and pursued one of the fleeing suspects on foot. Detective Heath testified that this individual jumped several fences and ran down various driveways before he managed to apprehend him. Detective Heath testified that the individual he caught was later identified as Mr. Jeremiah Hoskins, and he transported this individual to jail. He testified that in all, five individuals were caught by various police officers that evening.

Mr. Jeremy Munson testified that he was nineteen years old at the time of the incident. He testified that he participated in the crimes committed that evening, was charged in connection with the case, and was guilty of those charges. He testified that his involvement began in June of 2008, when he was shooting dice and waiting to get his hair cut over at a “partner's” house. While playing the game, he lent \$20 to an individual named Mr. Jeremiah Hoskins, who promised to repay him when his “boss” arrived. A short time later, Mr. Hoskins' “boss” pulled up, and he saw the boss give some money to Mr. Hoskins. Mr. Munson testified that the “boss,” whom Mr. Hoskins called “Curly,” but who was later identified as Mr. Calvin White, told Mr. Hoskins “that they got a room and they going to watch the playoffs with some females supposed to be coming over, and if we ain't doing nothing we can come over and join.” Mr. Munson testified that he understood from these remarks that he was being invited to a playoff party at a hotel room. Mr. Munson testified that he eventually agreed to attend.

Mr. Munson testified that he and Mr. Hoskins received a ride to the hotel room from Mr. Curtis Hayes, another individual that Mr. Munson knew from the neighborhood. He testified that when he arrived at the hotel room, there were four other individuals already inside watching television and drinking. He testified that he did not know these individuals. He testified that after a few hours, he saw the defendant, whom the others referred to as “Big Daddy.” On this occasion, the defendant entered the room accompanied by Mr. Calvin White and briefly looked around before leaving without saying anything. He testified that Mr. Calvin White was carrying a duffle bag.

Mr. Munson testified that Mr. Calvin White dumped the contents of the duffle bag out on a table. Mr. Munson saw black masks, guns, handcuffs, and flashlights. He testified that he and Mr. Hoskins were the only ones who appeared to be surprised by the contents of the bag. Mr. Calvin White commented that it was “still early” but they were “fixing to get the money.” Mr. Calvin White told him, “don’t worry, you ain’t to do no nothing, just go in, we need you all, we need more people, we going to need you all, you ain’t got to do nothing, just be cool.”

Mr. Munson testified that around two in the morning, the group set out. He testified that he, Mr. Cameron White,<sup>2</sup> and Mr. Hoskins all got in the back of a van that was being driven by Mr. Calvin White, with Mr. Hayes in the passenger seat. He testified that the duffel bag was in the middle of the van, which did not have any seats. He said once the van was moving, Mr. Cameron White opened the duffel bag and started issuing gear to everyone. He testified that he did not receive a gun. He testified that someone told him, “just be cool, just be cool, we just need you all because it’s a big lick.”<sup>3</sup>

Mr. Munson testified that they pulled up in the driveway of the residence, and Mr. Calvin White left the vehicle to check the house. He testified that Mr. Calvin White returned, told them everything was okay, and asked if they were ready. He testified that they all exited the van, and Mr. Calvin White grabbed a sledgehammer and prepared to smash out a window near the back patio of the house. He testified that the entire group waited for a minute for Mr. Hayes to check on an alarm wire before Mr. Calvin White busted out the window. He testified that he, Jeremiah Hoskins, Quintrail Cathy, Robert Gilliam, and Cameron White were all present when the house was breached.

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<sup>2</sup> We glean from the witness’s testimony that Mr. Calvin White and Mr. Cameron White are two different individuals, although only Mr. Calvin White’s name appears on the group indictment, and the record is not entirely clear on the subject.

<sup>3</sup> “Hitting a lick” is well-known street slang for engaging in an act of robbery or burglary.

Mr. Munson testified that Mr. Calvin White pushed him into the house through the broken window, cutting his eye in the process. He testified that he and Mr. Cameron White went to the third floor and found a man sleeping in a room. He testified that he woke the man up while Mr. Cameron White held a gun on him. He testified that Mr. Cameron White handcuffed the man, and then they instructed the man to follow them, which he did. He testified that the man mentioned having a wallet in his room, and Mr. Cameron White sent him back upstairs to look for it. He testified that he could not find the wallet, and by the time he came back downstairs, everyone except he and the hostages had left. Mr. Munson testified that he was lost in the house, bleeding profusely from the cut on his eye, until one of the men came back and grabbed him.

Mr. Munson testified that once he was back in the van, he heard someone say, “I caught her on the phone, I caught her on the phone, we got to leave.” He testified that they had all just left, with Mr. Calvin White driving the van, when they were spotted by police and a chase ensued. He testified that everyone threw their masks out of the window except him; he kept his on so other members of the group would not notice that he had cut his eye, because he was afraid they would believe that he had left evidence behind. He testified that Mr. Hayes threw guns, flashlights, and other items out of the passenger side window. He testified that Mr. Cameron White started saying, “I can’t go back to the penitentiary,” and was threatening to shoot the police until Mr. Hayes threw his gun out of the window.

Mr. Munson testified that the chase ended when they crashed into a police car. He testified that everyone left the van and ran away. He testified that he “hopped” two fences and hid underneath a car. There, he fell asleep, but he was awoken by a police dog biting him on the neck and otherwise encouraging him to emerge. He was taken into custody afterward.

After giving this testimony, Mr. Munson identified each member of the group from photographs. He also testified that he was “one hundred percent” certain that the defendant, who had been in the court room earlier,<sup>4</sup> was the man known as “Big Daddy” and was the man he had seen walk into the hotel room the night that the robbery occurred.

On cross-examination, Mr. Munson testified that the occupants of the hotel room were all smoking marijuana when he arrived. He acknowledged that he also smoked marijuana

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<sup>4</sup> The defendant, who had already been sentenced to more than 200 years in prison for his role in another violent home invasion in an earlier case, refused to attend his own trial. The record reflects that he physically and verbally assaulted his own counsel and that a crisis team in full riot gear was required to move him from his holding cell to the courtroom for purposes of witness identification. To avoid any possible prejudice to the defendant, this was all done outside the presence of the jury.

that evening. He testified that the defendant was in the hotel room for approximately one minute before leaving and that he did not talk to anyone while he was there. He testified that there was no discussion of a robbery or home invasion before the defendant entered the room. The witness agreed that he did not see the defendant for the rest of the evening after he walked out of the hotel room. He also agreed that the defendant was not in the van when they left for the home invasion. He testified that there were six or seven guys in the van in all. Mr. Munson acknowledged that he hoped to receive favorable treatment from the prosecution in exchange for his testimony.

Mr. Curtis Hayes testified that he had been in jail since June 12, 2008, and that he was charged in the same indictment as the defendant for committing the home invasion at issue. He testified that he was a burglar and a thief who was guilty of committing the offenses at issue, and he discussed his criminal history—which included numerous felonies—in detail. While on the stand, Mr. Hayes was shown a picture of the defendant, and he identified him as Curtis Keller, also known as “Big Daddy.” He testified that he had known the defendant for about a year before the home invasion. He also identified Mr. Calvin White, Mr. Robert Gilliam, Mr. Jeremiah Hoskins, Mr. Antwan Miller, Mr. Quintrail Cathy, and Mr. Jeremy Munson from photographs and testified that they all participated in the home invasion.

Mr. Hayes testified that while he had known the defendant for over a year, they did not have much contact with each other, and “[t]he only way I got in contact with him is when we were going to go scope out something or do something wrong.” When the witness finished that sentence, defense counsel requested a sidebar and objected on the grounds that the witness had mentioned other crimes committed by the defendant. The trial court offered to take a recess but pointed out that this would draw the jury’s attention to what had occurred. The transcript reflects that the trial court stated “[l]et’s just stay away from that,” and the trial continued.

Mr. Hayes testified that his involvement with the crimes started about a month prior to the home invasion, when the defendant and Mr. Calvin White, who were “tight with each other,” came over to his house. He stated that the two men told him they had been “scoping out a jewelry store owner,” and they requested that he come along. He testified that they all left and drove by a jewelry store and a particular house a few times. He testified that the two men told him that they were “just waiting on some feedback for something,” which he understood to mean they were going to check the alarm. He testified that they drove in the defendant’s truck, a blue Dodge Ram, when they were casing the house. Mr. Hayes testified that the two men decided that “[t]hey needed a couple more guys.”

Mr. Hayes testified that about a month after they had finished scoping out the house, he met up with the two men at a Motel 6 near the penal farm. He testified that there were



three or four additional men in the room, and he was not familiar with any of them. He testified that he stayed in the room with the men while the defendant and Mr. Calvin White went to the residence to ensure that the family was sleeping. He testified that Mr. Calvin White returned and informed everyone that they were “ready to roll.” He testified that they loaded up into the van and drove to the residence. He testified that the defendant was in his truck at the time, and he drove three or four cars in front of them on the way to the residence. He testified that when they saw a police vehicle near the residence, they returned to the motel room. Eventually, they all went home.

A few days later, some of the individuals that had been involved in the aborted home invasion informed the group that they were “backing out” of the plan. Mr. Hayes testified that while they waited, he passed his time by stealing catalytic converters from underneath cars. Eventually, the defendant and Mr. Calvin White came over and told him they wanted to make another attempt on the residence and asked him if he knew anyone else that would participate. Mr. Hayes told them that Jeremiah Hoskins, his “little burglary partner,” would do so.

Mr. Hayes was informed that Mr. Calvin White had previously “stashed” a van that he had stolen by “switching keys” at a car lot. The three men picked up the van from the location where it had been stashed and traveled to another location, where Mr. Hayes wanted to buy some “dope.” There Mr. Hayes saw Jeremiah Hoskins playing basketball with three men he had not met previously: Jeremy Munson, Quinrail Cathy, and Antwan Miller. After some conversation, the group decided to meet up again at a time and place to be determined. Some days later, Jeremiah Hoskins, Quinrail Cathy, and Antwan Miller drove up to Mr. Hayes’ house and asked him, “what’s up with Big Daddy?” Afterward, they all drove together to a Mapco. While they were there, Mr. Calvin White called Mr. Hayes and told him to bring everyone to a hotel where Mr. Hayes—at the defendant’s direction and using his money—had reserved a room the day before. Mr. Hayes testified that he did so, and the defendant was waiting for them in the hotel room when they arrived. Shortly thereafter, the defendant left the room and went to wait in his truck.

Mr. Hayes testified that he, Calvin White, Cameron White, Robert Gilliam, Antwan Miller, Jeremiah Hoskins, Jeremy Munson, and Quinrail Cathy all waited in the hotel room, smoking marijuana, from 11:00 p.m. that evening until around 2:00 a.m. the following morning. He testified that the younger members of the group were aware that they were there to commit a robbery, but they did not know the time, place, or location. At one point, Mr. Calvin White and the defendant called Mr. Hayes down to the defendant’s truck, where they instructed him to drive four or five cars behind the defendant’s truck to the location of the robbery. Mr. Hayes testified that he was made to understand that the defendant would be acting as a lookout during the robbery. He testified that the plan was to get another hotel

room after the robbery to split up the proceeds. Mr. Hayes testified that he was instructed not to reveal the plan to anyone else because the defendant “ain’t want them young n-----s to know him” and “was already stressed about them seeing him when we first went into the room, he was constantly saying that.”

Mr. Hayes testified that he returned to the hotel room, and Mr. Calvin White returned a short time later with a gym bag containing masks, guns, handcuffs, *etc.* Mr. Hayes testified that the group entered the van and followed the defendant’s truck all the way to the target residence, with Mr. Calvin White driving the van and staying in constant communication with the defendant. Mr. Hayes testified that the defendant drove past the residence and eventually told them it was safe to proceed. Mr. Calvin White drove the van into the driveway of the residence and turned off the engine so as not to wake the occupants.

Mr. Hayes testified concerning the details of the home invasion in a manner consistent with the testimony of Mr. Munson and the victims. Mr. Hayes added some perspective concerning the daughter’s phone call to police, explaining that he was on the other side of the residence, preparing to tell the rest of the team to abort the burglary, when he heard the sound of breaking glass and saw a woman who appeared to have a cell phone hanging out of the top window, as if trying to get a signal. In response, he ran back around to the other side of the residence and started trying to pull the team out. Mr. Hayes also testified that the defendant stayed in constant phone communication with the van during the high speed police chase, reporting police activity to the van’s driver. At one point during the pursuit, the fleeing van almost collided with the defendant’s truck.

Mr. Hayes testified that he managed to elude capture that night by running from the van to his house during the confusion. The next day, he called the defendant and asked him to give him a ride back to the hotel so that he could pick up his truck, which was still parked at that location. He testified that the defendant picked him up and they traveled to the hotel, where they became spooked by the presence of a suspicious vehicle parked near the truck. Mr. Hayes testified that the defendant pulled into a McDonald’s parking lot near the hotel, and he got out to walk back over to check on his truck. He was arrested by police when he entered his vehicle. In conclusion, Mr. Hayes testified that the defendant was the mastermind behind the home invasion and had helped all of the individuals involved commit the burglary.

On cross-examination, Mr. Hayes admitted that he had lied to police on numerous occasions following his arrest. He also acknowledged that he had assured the police that he was telling the truth on numerous occasions even though he knew he was lying. He discussed the various lies that he told the police in detail, and he admitted that he never mentioned “Big Daddy” as a person who had been in the hotel room during his initial police interview.

Detective Robert Fisher of the Germantown Police Department testified that he re-traced the path of the police chase later that morning all the way from the victim's home to the site of the crash, looking for items that might have been thrown from the fleeing vehicle. He testified that he discovered a broken flashlight, a stainless steel Smith & Wesson .357 revolver, a black facemask, and a green knit ski mask during the search.

Detective Fisher further testified that he was informed that a hotel room key had been found on one of the suspects. He testified that he was informed that the hotel room was rented out to a Mr. Curtis Hayes. He testified that he staked out that hotel room, and he eventually saw Mr. Hayes near a vehicle in the hotel's parking lot. He testified that he approached Mr. Hayes, and Mr. Hayes agreed to come to the police station for an interview.

Detective Anthony Kemp of the Germantown Police Department testified that he collected evidence relating to the investigation of the home invasion that occurred on June 12, 2008. He testified that he was present when a pair of brown gloves, a green ski mask, some work gloves, and a blue glove were placed in sealed bags. He identified these items as they were shown to him on the stand, and they were entered into evidence. He testified that on December 2, 2008, he took a significant amount of evidence relating to the case to the Tennessee Bureau of Investigation ("TBI") crime laboratory in Nashville for further analysis. On cross-examination, Detective Kemp testified that he did not personally collect any of the items of evidence, and he was not on the scene when they were found.

Detective Jeff Gammill of the Germantown Police Department testified that he investigated a residence that had been the scene of a home invasion. He testified that the house appeared to have been ransacked when he arrived, and he discovered blood in various spots inside. He testified that he took samples of the blood. He also testified that he investigated the white van used as a getaway vehicle, and he interviewed Mr. Matthew Madson from Sunrise Pontiac in conjunction with that investigation. He testified that he determined that the van that was chased by police following the home invasion was the same van that had been stolen from the car dealership months earlier because the two vehicles had matching vehicle identification numbers. He testified that he discovered a mask, a tire tool, a hammer, a glove, and a duffel bag containing a flashlight and some other items inside of the van.

Dr. Qadriyyah Debnam testified that she was a special agent forensic scientist dealing in serology and DNA analysis who worked at the TBI's Memphis crime laboratory. She testified that she obtained a sample of DNA off of a ski mask that was sent to her from the Nashville crime laboratory. She testified that this sample was a "mixed" profile, meaning that it likely contained the DNA of more than one individual, but she was able to isolate a single individual's DNA from that mixture. She testified that the DNA profile of this

unknown subject was kept in the TBI's records.

On cross-examination, Dr. Debnam testified that the envelope that she had received containing the ski mask that she subsequently tested was sent from the TBI's Nashville crime laboratory. She testified that the package containing the ski mask had been opened and then resealed in Nashville. She testified that she did not know what testing, if any, had been performed on the ski mask in Nashville. She also acknowledged that the mixed sample of DNA that she discovered on the mask indicated that there was possibly another person's DNA on the ski mask.

Following this testimony, defense counsel moved to exclude the DNA analysis of the ski mask on the grounds that a proper chain of custody of the evidence had not been established. Defense counsel argued that Dr. Debnam had testified that when she received the ski mask from the Nashville crime lab, she could tell that the package containing it had been opened and resealed there, and no one had testified concerning who had done so. Under these circumstances, defense counsel argued that the State had failed to establish a proper chain of custody. The State countered by arguing that such concerns went to the weight of the evidence and not its admissibility. The trial court denied the defendant's motion.

Mr. Lawrence James, a special agent forensic scientist for the TBI, testified that he analyzed a sample of DNA represented to him as having been taken from the defendant on May 27, 2011, and determined that it was a match with a DNA profile already on file that had been discovered by Dr. Debnam on a ski mask. He testified that the likelihood of another African-American male having the same DNA profile as the defendant was approximately one in two hundred twelve trillion nine hundred billion. On cross-examination, Mr. James admitted that DNA can stay on clothing and fabric for an extended period of time, and there was no way to determine how long the DNA recovered from the ski mask had been there.

In addition to this testimony, Officer Hubbard of the Memphis Police Department testified that he was responding to a call to join the police pursuit on the evening in question when a white van "t-boned" his vehicle on the side and flipped him over, causing him injuries. Mr. Robert Dunham, an investigator with the District Attorney's Office, testified that he took a cheek swab of the defendant as a DNA sample. Officer Star Handley testified that he conducted surveillance of the defendant in January of 2009, and he observed the defendant driving a blue 2006 Dodge ram truck during that time period. Ms. Rachel Bowen testified that she was employed by the Shelby County Sheriff's Department, Criminal History, Records and Identification Division, and her duties included maintaining fingerprints of all the individuals arrested in Shelby County. Ms. Bowman testified that a few moments prior to giving her testimony, she had taken the fingerprints of the individual

in the jail holding cell and determined that he was the defendant, Curtis Keller.<sup>5</sup>

Following this testimony, the State rested. The defendant was advised of his right to testify in his own defense pursuant to the procedures established in *Momon v. State*, 18 S.W.3d 152, 162-64 (Tenn. 1999). The defendant repeatedly refused to answer the trial court's inquiries concerning whether he wished to testify in his own defense and only responded by complaining of "massive corruption" and accusing his attorney of conspiring against him with the prosecutor and the judge. Eventually, the trial court found that the defendant had refused to waive his right to remain silent, and since the court could not compel him to testify, it ordered him removed from the courtroom. The defense rested, the parties gave closing arguments, the jury was instructed, and court was adjourned for the day so that the jury could begin its deliberations the following morning. The following day, the jury returned with a verdict finding the defendant guilty as charged of sixteen of the seventeen counts in the indictment, finding him not guilty only on the charge of theft of a motor vehicle.

At a sentencing hearing held on May 8, 2012, the trial court merged the defendant's aggravated assault convictions with his convictions for aggravated robberies and attempted aggravated robberies. The trial court then sentenced the defendant to 25 years on each of his three aggravated robberies, 13 years on each of his four attempted aggravated robberies, 50 years on each of his three especially aggravated kidnappings, 13 years for his aggravated burglary, and 10 years for intentionally evading arrest. After finding that the defendant was a dangerous offender who had no hesitation committing crimes that posed a great risk to human life, the trial court ordered the defendant to serve each of his sentences consecutively, for a total effective sentence of three hundred years.

The defendant filed a motion for new trial, which was denied. He filed a timely notice of appeal. Satisfied that the matter is properly before us, we proceed to consider the defendant's claims.

## ANALYSIS

The defendant argues that the evidence is insufficient to support his convictions. After review, however, we conclude that the record contains sufficient evidence to support each of the defendant's convictions. The defendant also argues that the trial court erred by

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<sup>5</sup> This somewhat unusual testimony was deemed appropriate because the defendant apparently fought any and all attempts to take him into the courtroom, even for identification purposes. The record also reflects that the defendant physically resisted having his fingerprints taken, and according to the trial court, "it took a lot of people to get those prints from him."

admitting DNA evidence recovered from a ski mask found in the getaway vehicle because the State failed to establish a proper chain of custody with respect to that piece of evidence. However, the State is not required to call as a witness every individual who handles a particular piece of evidence in order to establish a chain of custody, and we believe that the chain of custody of the ski mask was adequately established by the testimony of the State's witnesses. Finally, the defendant argues that the trial court abused its discretion by failing to order a mistrial after one witness testified that he only had contact with the defendant "when we were going to scope out something or do something wrong." Trial courts have broad discretion concerning whether to grant a mistrial, however, and the defendant failed to move for mistrial after the statement was made. The trial court's failure to declare a mistrial was well within its discretion under these circumstances.

## I.

The defendant claims that the evidence is insufficient to support his convictions. "Findings of guilt in criminal actions . . . shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt." Tenn. R. App. P. 13(e). "When the sufficiency of the evidence is challenged, the relevant question is whether, after reviewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Dorantes*, 331 S.W.3d 370, 379 (2011); *see also Jackson v. Virginia*, 443 U.S. 307, 319 (1979). "Because a guilty verdict removes the presumption of innocence and replaces it with a presumption of guilt, on appeal a defendant bears the burden of showing why the evidence is insufficient to support the conviction." *State v. Wagner*, 382 S.W.3d 289, 297 (Tenn. 2012). During appellate review, the State must be afforded the strongest legitimate view of the evidence, and all reasonable inferences that may be drawn from that evidence must be drawn in favor of the State. *See id.* The jury, not a reviewing court, is responsible for assessing the credibility of the witnesses, deciding what weight to accord their testimony, and reconciling any conflicts in the proof; a reviewing court may not re-weigh the evidence or draw different inferences from that evidence than those drawn by the jury. *See id.*

The defendant was convicted of three especially aggravated kidnappings, three aggravated robberies, four attempted aggravated robberies, aggravated burglary, and evading arrest. We address the necessary elements of each in turn.

"Especially aggravated kidnapping is false imprisonment . . . [a]ccomplished with a deadly weapon or by display of any article used or fashioned to lead the victim to reasonably believe it to be a deadly weapon." T.C.A. § 39-13-305 (a)(1). "A person commits the offense of false imprisonment who knowingly removes or confines another unlawfully so as to interfere substantially with the other's liberty." T.C.A. § 39-13-302(a).

“Robbery is the intentional or knowing theft of property from the person of another by violence or putting the person in fear.” T.C.A. § 39-13-401. Robbery is aggravated if it is “accomplished with a deadly weapon or by display of any article used or fashioned to lead the victim to reasonably believe it to be a deadly weapon” or “the victim suffers serious bodily injury.” T.C.A. § 39-13-402. Crimes, including aggravated robbery, are considered attempted when an individual, “acting with the kind of culpability otherwise required for the offense . . . [a]cts with intent to complete a course of action or cause a result that would constitute the offense, under the circumstances surrounding the conduct as the person believes them to be, and the conduct constitutes a substantial step toward the commission of the offense.” T.C.A. § 39-12-101(c).

State law provides that: “A person commits burglary who, without the effective consent of the property owner . . . [e]nters a building and commits or attempts to commit a felony, theft or assault. . . .” T.C.A. § 39-14-402(a). “Aggravated burglary is burglary of a habitation.” T.C.A. § 39-14-403(a).

Finally, “[i]t is unlawful for any person, while operating a motor vehicle on any street, road, alley or highway in this state, to intentionally flee or attempt to elude any law enforcement officer, after having received any signal from the officer to bring the vehicle to a stop.” T.C.A. § 39-16-603 (b)(1). “A violation of [this section] is a Class E felony unless the flight or attempt to elude creates a risk of death or injury to innocent bystanders or other third parties, in which case a violation . . . is a Class D felony.” T.C.A. § 39-16-603(b)(3).

The record reflects that the defendant never entered the residence on the night of the invasion, nor was he driving the van during the ensuing police chase. All of the defendant’s convictions were based on the theory that he was liable for the criminal acts committed by the home invaders. Tennessee law provides that a person may be held liable for the criminal acts of another when, “[a]cting with intent to promote or assist the commission of the offense, or to benefit in the proceeds or results of the offense, the person solicits, directs, aids, or attempts to aid another person to commit the offense. . . .” T.C.A. § 39-11-402. This statute codified common law theory, which “provided equal criminal liability for principals, accessories before the fact, and aiders and abettors,” and justified this liability on grounds that aiders and abettors should be held accountable for the criminal harms they intentionally facilitated or helped set in motion. *See State v. Howard*, 30 S.W.3d 271, 276 (Tenn. 2000).

We have already summarized the evidence presented at the defendant’s trial, and we believe that evidence is sufficient to establish the defendant’s criminal responsibility for the acts of the home invaders and supports the jury’s conclusions with respect to the essential elements of all of the offenses. With respect to the defendant’s convictions for the especially aggravated kidnappings of Jeffery Land, Sr., Claire Land, and Jeffrey Land, Jr., there is

sufficient evidence to establish that the home invaders committed these crimes. Mr. Thourn Chan and Ms. Mom Houon both testified that Jeffery Land, Sr., Claire Land, and Jeffrey Land, Jr., were taken from their respective locations in the upstairs of the Chan residence at gunpoint and forced to lay down on the floor downstairs. Ms. Houon specifically testified that each of the residents had a gun pointed at them when they were brought downstairs. Mr. Jeffrey Land, Sr., testified that he was awoken on the night of the incident by a man with a flashlight who handcuffed him, “jerked [him] out of bed,” “marched [him] downstairs,” and “forced [him] down, face down, onto the floor.” He further testified that a short time later he heard his daughter crying and heard someone yell, “shut up or I’ll kill you,” before other intruders brought her and laid her face down on the floor. Jeffrey Land, Jr., testified that on the night of the incident he was forced out of bed, handcuffed, and had a gun pointed at his head before “they forced [him] out of the bedroom.” He also testified that he saw some of the intruders bring his sister downstairs and lay her down on the floor. From all this testimony, a reasonable jury could conclude that the home invaders knowingly removed and confined all three individuals and did so by using deadly weapons.

Likewise, there is sufficient evidence that the home invaders committed aggravated robberies against Mr. Jeffrey Land, Jr., Mr. Thourn Chan, and Ms. Mom Houon. Mr. Thourn Chan testified that the intruders took his watch and \$1500 from his wallet before they fled. Ms. Mom Houon testified that the intruders removed \$5000 from her purse, which Mr. Thourne testified she had been keeping in there at his request for use in his business. Finally, Mr. Jeffrey Land, Jr., testified that the intruders stole his wallet. That the invaders’ threatened the victims with firearms to accomplish these thefts is supported by the testimony of all five of the residents who took the stand at trial. From this testimony, a reasonable jury could conclude that the invaders intentionally stole property from the victims by displaying deadly weapons and placing them in fear.

The jury’s conclusion that the invaders attempted to commit aggravated robberies against Naree Chan, Dara Chan, Jeffrey Land, Sr., and Claire Land is supported by similar evidence. Indeed, it is apparent from the trial testimony of five of the residents and two of the intruders that the only reason these four individuals were not robbed that evening was because the home invasion was interrupted by the approaching police. Mr. Munson specifically testified that, at the behest of another of the intruders, he went back up into the room occupied by Jeffrey Land, Sr., and searched for his wallet so the intruders could steal it. However, he was unable to find it before the others left. Consequently, it is clear from the record that the home invaders intended to rob all of the occupants of the house, and they took substantial steps toward that goal when, *inter alia*, they broke into the residence and placed the occupants in handcuffs at gunpoint. Record evidence supports the jury’s conclusion that the invaders satisfied all of the elements of attempted aggravated robbery.



The jury's conclusion that the home invaders committed aggravated burglary is supported by the testimony of Mr. Munson and Mr. Hayes, who testified in detail concerning the manner in which the defendant and others cased the building prior to the assault and the methods used by the invaders to gain ingress, which included examining the building's alarm system and breaking out one of the building's windows with a sledgehammer. That the building at issue was a habitation (*viz.*, a private residence) was a fact attested to by numerous witnesses.

With evidence sufficient to support a conclusion by a reasonable jury that the home invaders committed all of the crimes at issue, the only remaining issue is whether a reasonable jury could have concluded that the defendant sufficiently directed and supported the intruders' crimes to share in their criminal liability. Mr. Hayes testified in detail concerning the defendant's involvement in the planning and execution of the crimes. Mr. Hayes' testified, *inter alia*, that the defendant "scoped out" the target residence, picked the date of an aborted attempt to burglarize said residence, acted as a lookout during the same aborted burglary attempt, ordered him to secure a hotel room to act as a base of operations before the actual home invasion, gave him instructions concerning how to conduct the home invasion, and acted as a scout and lookout during the home invasion itself. Mr. Munson's testimony supports the testimony of Mr. Hayes in that he also placed the defendant at the location of the invaders' base of operations on the evening in question. A reasonable jury, choosing to accredit this testimony, could readily determine that the defendant directed and aided the home invaders in their efforts to commit the crimes at issue and did so intending to assist the intruders in their tasks. Consequently, record evidence supports the jury's conclusion that the defendant was sufficiently involved in the home invasion to share criminal liability for the crimes committed on the evening in question.

Finally, even though the record reflects that the defendant was not present in the getaway vehicle during the police chase, sufficient evidence exists to support the defendant's conviction for evading arrest. Evidence sufficient to support a finding by a reasonable jury that the van driver committed the crime of evading arrest was contained in the testimony of Detective Heath and Officer Hubbard, who testified in detail concerning the van driver's extensive attempts to elude police during the course of an extended police chase, as well as the damage he caused and the danger he posed to members of the public. Moreover, the actions of the van's driver throughout the entirety of the police chase were captured on video by an officer's dashboard camera and played for the jury. With respect to the defendant's criminal liability for the driver's criminal acts, Mr. Hayes' testimony that the defendant remained on the phone with the driver throughout the chase—acting as a lookout and providing advice—amply suffices to support the jury's conclusion in this regard.

The defendant also argues as part of his sufficiency claim that his convictions cannot

stand because his identity was established only by the uncorroborated testimony of his accomplices. However, the longstanding rule that “[a] defendant cannot be convicted upon the uncorroborated testimony of an accomplice,” *State v. Gaylor*, 862 S.W.2d 546, 552 (Tenn. Crim. App. 1992), is a separate legal issue from sufficiency of the evidence and should be analyzed separately, as far different legal standards apply.

The corroboration requirement pertaining to accomplice testimony has been described by our supreme court as follows:

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.

*State v. Bane*, 57 S.W.3d 411, 419 (Tenn. 2001). In this case, the fact that the crimes were committed was attested to by the five victims, and the testimony concerning the defendant’s DNA being discovered on a ski mask used in the robbery amply suffices to implicate the defendant in those crimes. The defendant argues that the trial court erred by admitting the DNA evidence because of the State’s failure to establish proper chain of custody of the ski mask, and he urges that without such evidence, the State cannot corroborate the defendant’s accomplices’ account with respect to identity. However, for the reasons that follow, we hold that the trial court did not err in admitting the DNA evidence. Consequently, the testimony of the defendant’s accomplices was adequately corroborated. Both the defendant’s claim that the evidence is insufficient to support his convictions and his claim that the testimony of his accomplices is insufficiently corroborated are denied.

## II.

The defendant argues that the trial court erred by admitting testimony concerning DNA evidence recovered from a ski mask because the State failed to establish a proper chain of custody over that evidence. In this regard, the defendant directs our attention to the testimony of Dr. Debnam, who stated that the envelope she examined indicated that the package containing the ski mask had been opened and re-sealed at the Nashville crime lab

before it was sent to her in Memphis. We review trial court decisions concerning the admissibility of evidence under an abuse of discretion standard. *See State v. Robinson*, 146 S.W.3d 469, 490 (Tenn. 2004). A trial court does not abuse its discretion unless it applies an incorrect legal standard or reaches an illogical decision that causes an injustice to the complaining party. *See id.* We discern no abuse of discretion here.

“[I]t is ‘well-established that as a condition precedent to the introduction of tangible evidence, a witness must be able to identify the evidence or establish an unbroken chain of custody.’” *State v. Scott*, 33 S.W.3d 746, 760 (Tenn. 2000) (quoting *State v. Holbrooks*, 983 S.W.2d 697, 701 (Tenn. Crim. App. 1998)) (emphasis added). The chain-of-custody requirement has been explained by our supreme court as follows:

The purpose of the chain of custody requirement is “to demonstrate that there has been no tampering, loss, substitution, or mistake with respect to the evidence.” *See State v. Braden*, 867 S.W.2d 750, 759 (Tenn. Crim. App. 1993). The identity of tangible evidence, however, need not be proven beyond all possibility of doubt, *see State v. Holloman*, 835 S.W.2d 42, 46 (Tenn. Crim. App. 1992), and the State is not required to establish facts which exclude every possibility of tampering, *see State v. Ferguson*, 741 S.W.2d 125, 127 (Tenn. Crim. App. 1987). The evidence may be admitted when the circumstances surrounding the evidence reasonably establish the identity of the evidence and its integrity. *Holloman*, 835 S.W.2d at 46. Absent sufficient proof of the chain of custody, however, the “evidence should not be admitted . . . unless both identity and integrity can be demonstrated by other appropriate means.” Neil P. Cohen, et al., TENNESSEE LAW OF EVIDENCE § 901.12, at 624 (3d ed. 1995).

*Id.* Moreover, “[a]n item is not necessarily precluded from admission as evidence if the State fails to call all of the witnesses who handled the item.” *State v. Cannon*, 254 S.W.3d 287, 296 (Tenn. 2008).

After reviewing the record, we believe this case is simply one where the State failed to call all of the individuals who handled the evidence to the stand, rather than a case where the State failed to establish an unbroken chain of custody. Detective Jeff Gammill identified the ski mask as the same one he retrieved from the driver’s side floorboard of the white van the day following the robbery. Detective Kemp testified that he delivered the mask to the TBI lab in Nashville, and Dr. Debnam testified that she received the mask from that location. Every link in the chain of custody over the evidence was thus established. While Dr. Debnam testified that the packaging indicated that the package containing the ski mask was opened in Nashville, she also testified that the analyst who had opened the package had

initialed it, that she was familiar with this individual, and that she knew what kind of testing this individual normally conducted (although she could not say for certain that this type of testing had been conducted on the mask). Considering the testimony of the State's witnesses together, the location of the ski mask is known at all times, as is the identity of the custodian. The State's mere decision not to call this unidentified-but-known analyst to the stand (who presumably could add nothing of relevance to the State's case) is not, standing alone, sufficient to establish a break in the chain of custody over the evidence.

We have no real doubts concerning the integrity of the evidence at issue. As the trial court pointed out, the defendant was not a suspect when the package containing the ski mask was opened by the analyst in Nashville, nor was he a suspect when Dr. Debnam developed the unknown subject's DNA profile from DNA found on that ski mask. The defendant's DNA was not obtained until more than a year after the alleged break in the chain of custody. Consequently, it strains credulity to suggest that the defendant's DNA was somehow planted on the item or that the item might have somehow been accidentally contaminated with the defendant's DNA. The defendant's claim that the trial court abused its discretion by admitting DNA evidence pertaining to the ski mask is denied.

### III.

The defendant claims that the trial court erred by failing to grant a mistrial when the defendant's accomplice, Mr. Hayes, testified that he and the defendant only had contact when they "were going to go scope out something or do something wrong." We disagree.

"The decision of whether to grant or deny a motion for a mistrial rests within the sound discretion of the trial court" and will not be reversed "absent a clear showing that the trial court abused its discretion." *State v. Robinson*, 146 S.W.3d 469, 494 (Tenn. 2004). In this case, while the defendant objected to the testimony at issue, he did not move for a mistrial, and it appears from the record that the defendant has waived the issue. *See* T.R.A.P. Rule 36(a) ("Nothing in this rule shall be construed as requiring relief be granted to a party responsible for an error or who failed to take whatever action was reasonably available to prevent or nullify the harmful effect of an error.").

Even absent waiver, declaring a mistrial is only appropriate when an error has occurred which is so grave that "a trial cannot continue, or a miscarriage of justice would result if it did." *Robinson*, 146 S.W.3d at 494 (*quoting State v. Land*, 34 S.W.3d 516, 527 (Tenn. Crim. App. 2000)). "[T]he burden of establishing the necessity for mistrial lies with the party seeking it," *Land*, 34 S.W.3d at 527, and in this case we can find no fault in the trial court's failure to declare a mistrial *sua sponte*.

Tennessee Rule of Evidence 404(b) provides: “evidence 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). Evidence of a defendant’s prior crimes or bad acts may, however, be used by the State for other purposes, provided the procedures specified in Rule 404(b) are substantially followed. In this case, it does not appear that the State intended to elicit the general comment at issue, so naturally those procedures had not been followed.

No matter how carefully the State prepares its trial witnesses, there will doubtlessly be occasions on which, through no fault of the State, a witness will mention a prior crime or bad act that was committed by the defendant. Declaring a mistrial in every such case is unwarranted and would soon bring the wheels of justice to a grinding halt.

The trial court in this case appears to have followed reasonable and proper procedure. Upon hearing the defendant’s objection to the witness’s general reference to the defendant doing “something wrong” in the past, the trial court stopped the proceedings and held a dialogue with the witness in which he explained the purpose of Rule 404(b) and admonished the witness not to talk about any other crimes he had committed with the defendant or any drugs they had done together. After the witness indicated that he understood, the trial continued without further incident. In light of the vagueness of the witness’s comment and the trial court’s prompt action to correct it, a mistrial was plainly not warranted on these facts. The defendant’s claim that the trial court abused its discretion by failing to declare a mistrial is denied.

### **CONCLUSION**

For the foregoing reasons, the judgments of the trial court are affirmed.

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JOHN EVERETT WILLIAMS, JUDGE