

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON
JULY 1999 SESSION

FILED
March 6, 2000
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,

* C.C.A. No. W1998-00618-CCA-
R3-CD

Appellee,

* SHELBY COUNTY

VS.

* Honorable Joseph Dailey, Judge

ERIC CHAMBERS,

* (First Degree Murder -
Two Counts; Especially
Aggravated Kidnapping)Appellant. *

FOR THE APPELLANT:

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OPINION FILED: _____

AFFIRMED

JOHN EVERETT WILLIAMS,
Judge

OPINION

The defendant, Eric Chambers, appeals from a guilty verdict returned by a Shelby County jury for Especially Aggravated Kidnapping, a Class A felony, and

two counts of Premeditated First Degree Murder, Class A felonies. See Tenn. Code Ann. §§ 39-13-305,-202. The defendant was sentenced to consecutive sentences of life without the possibility of parole for the murders and a consecutive sentence of twenty-five years for the especially aggravated kidnapping.¹ He appeals his conviction contending that:

- (1) There was insufficient evidence to find him guilty of the two counts of Premeditated First Degree Murder and the one count of Especially Aggravated Kidnapping, and
- (2) the trial court erred in refusing to allow the defendant the opportunity to present a co-defendant's guilty plea as evidence at trial.

After careful review of the briefs, the record, and the applicable law, we AFFIRM the judgment from the trial court.

FACTS

We set forth only a brief outline of the facts here; in our analysis of the defendant's sufficiency claims, we provide more in-depth review. Put simply, this case involves drugs, kidnapping and two murders. On October 28, 1996, the defendant, his two cousins, Dewayne Jordan and Anthony Phillips, and Mike Lawrence went out driving in Memphis to find some marijuana. They made contact with a cocaine-dealer, Woods, and arranged a meeting; at this meeting, in Woods's car parked in front of the home of Leandre Maclin, the defendant and Phillips drew guns on Woods. As Woods successfully fled on foot, Phillips fired several shots at him; Maclin was left with the defendant, his cousins and Lawrence. As Chambers and Phillips followed in Woods's car, Lawrence and Jordan with Maclin hostage drove to Woods's apartment. Once there Phillips, Chambers and Jordan with Maclin hostage left towards Woods's apartment. Minutes later, Chambers and Jordan returned to the car. Three minutes passed, a scream was heard and Phillips then returned. The four then made their escape.

¹ The first day of trial the defendant pled guilty to Aggravated Robbery, a Class B felony. See Tenn. Code Ann. § 39-13-402. He was sentenced to twelve years consecutive to all other sentences received.

Later, Woods returned to his apartment with his cousins, Terrence Jones and Ricky Ishmael. Once inside, they found the body of Woods's roommate, Chris Burchette, and the body of Maclin. Both had been shot and were lying on the floor of the ransacked apartment. Drugs and money were found missing from Woods's safe. Woods then called the police.

In early November 1996, Officer Otis Stewart received an anonymous tip regarding the whereabouts of one of the murderers. On November 3, 1996, Chambers was arrested hiding in the attic of a friend at the Kirby Oaks apartments in Memphis. In custody, he gave a statement implicating Jordan and Phillips, as well as himself. On the basis of this statement, the physical evidence at the scene and other investigation results, Chambers, Jordan, Phillips and Lawrence were all indicted on March 13, 1997, for the first degree murders and related robberies. Later on April 8, 1997, the grand jury added a further indictment for the especially aggravated kidnapping of Maclin.

Before Chambers' trial, Phillips pled guilty. Chambers was then tried and found guilty of both murders and the kidnapping on July 10, 1998, by a Shelby County jury. He was then sentenced on August 31, 1998, and now appeals as of right.

ANALYSIS

Sufficiency of the Evidence

The defendant first contends that there was insufficient evidence to convict him of two counts of premeditated first degree murder and especially aggravated kidnapping. We disagree.

When a defendant challenges the sufficiency of the evidence, this Court does not reweigh or reevaluate the evidence. See State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). A jury verdict approved by the trial judge

accredits the state's witnesses and resolves all conflicts in favor of the state. See State v. Bigbee, 885 S.W.2d 797, 803 (Tenn. 1994); State v. Harris, 839 S.W.2d 54, 75 (Tenn. 1992). On appeal, the state is entitled to the strongest legitimate view of the evidence and all legitimate or reasonable inferences which may be drawn therefrom. Id. This Court will not disturb a verdict of guilt due to the sufficiency of the evidence unless the defendant demonstrates that the facts contained in the record and the inferences which may be drawn therefrom are insufficient, as a matter of law, for a rational trier of fact to find the accused guilty beyond a reasonable doubt. See State v. Brewer, 932 S.W.2d 1, 19 (Tenn. Crim. App. 1996). Accordingly, it is the appellate court's duty to affirm the conviction if the evidence, viewed under these standards, was sufficient for any rational trier of fact to have the essential elements of the offense beyond a reasonable doubt. See Tenn. R. App. P. 13(e); Jackson v. Virginia, 443 U.S. 307, 317, 99 S.Ct. 2781, 2789 (1979); State v. Cazes, 875 S.W.2d 253, 259 (Tenn. 1994).

First Degree Murders

The defendant was convicted of the premeditated first degree murder of Christopher T. Burchette and Leandre Maclin under Tenn. Code Ann. § 39-13-202(a)(1):

First degree murder. ---

(a) First degree murder is:

(1) premeditated and intentional killing of another.

The state's theory is that Chambers, while not necessarily the principal offender or the actual triggerman, is nevertheless liable for the killings. See Tenn. Code Ann. § 39-13-202(a)(2) and § 39-11-401, -402. Generally, an accomplice is one who acts with the intent to promote or assist the commission of the offense and is liable not merely for the offense aided and abetted but also "for any other crime committed by the co-defendant as a natural and probable consequence of the crime originally aided and abetted." State v. Carson, 950 S.W.2d 951, 952 (Tenn. 1997).

The defendant, returning to the text of § 39-13-202(a)(1), argues that whatever the state's theory, it failed to prove beyond a reasonable doubt both "deliberation" and "premeditation." Further, the defendant adds that as Chambers was not charged with conspiracy nor "implicated therein," he is not properly held criminally responsible for the actions of his accomplices. Therefore, the defendant concludes that the murder convictions are not supported by the evidence.

We disagree with the defendant's arguments and find that both the applicable law and the evidence support the state's theory of the case. Specifically, we find that sufficient evidence existed to hold the defendant liable as an accomplice. See Carson at 952. Second, we find that the shooter's premeditation was proven by sufficient evidence.

First, we address the defendant's liability as an accomplice. The evidence presented at trial established that Chambers was an active and willing participant in the aggravated robbery which resulted in the first degree murders. A statement Chambers gave to the police was introduced at trial. In this statement, Chambers admitted to being present at and involved in the robberies and murders. Further, in this statement, Chambers admits that his intent was robbery, that he was involved in the planning of the offense, that he drove the stolen car, and that he contacted Woods.

The jury also heard the testimony of Woods. He identified Chambers as one of the robbers and stated that Chambers, in fact, pulled a gun and pointed it towards him.

Next, the jury heard the testimony of Michael Lawrence. He stated that he personally witnessed Chambers and Phillips steal Woods's car at gunpoint. He said that Chambers and Phillips followed him, Jordan and their hostage, Maclin, to Woods's apartment. Once there, he saw Chambers, Phillips, Jordan, and

Maclin walk off towards Woods's apartment, and he heard a scream. As they left, he said he knew that shots had been fired inside.

Further, the jury heard testimony from investigators and police relating information relevant to the crime scene and to Chambers' capture. And finally, the jury heard testimony from two of Chambers' associates, Adrienne Malone and Patrick Wallace, who both testified to their interactions with Chambers on days following the murders. Specifically, each pointed out suspicious activity of Chambers, and Wallace even stated that some of Chambers' comments about the murders concerned him as especially detailed.²

From all this evidence, it was clear to the jury that Chambers was an active participant in this robbery and execution-style murders of Burchette and Maclin. Whether Chambers was the actual triggerman or simply an accomplice to the robberies and murders is of no consequence; the evidence is sufficient to support his convictions on the basis of accomplice liability.

As for the defendant's next argument that the state failed to prove "premeditation" and "deliberation beyond a reasonable doubt," this Court again disagrees. For purposes of the October 28, 1996 first degree murder, the offense must have been premeditated, but contrary to the defendant's claim, the element of deliberation was not required. Deliberation as an element had been deleted by the legislature in 1995. See Tenn. Code Ann. § 39-12-202(a) (1991) (amended by Public Acts 1995, ch-460, effective July 1, 1995). "[T]he necessary elements of first-degree murder may be shown by circumstantial evidence." State v. Brown, 836 S.W.2d 530, 541 (Tenn. 1992). "Relevant circumstances" for evaluating state of mind include a deadly weapon used on an unarmed victim, weapons were procured to commit the killing, and, if appropriate, repeated shots to the victim. See id. at 541-42; see also State v. Pike, 978 S.W.2d 904, 914 (Tenn. 1998).

² That is, his statements included detail not found in newspaper accounts.

In this case, testimony established that the robbers entered the house with a gun, found their victims unarmed, tortured one of the victims, and killed the victims “execution style.” That is, the shooter shot both victims at close range in the back of the head³ with a pillow held between the gun and their head. This evidence is sufficient to support the jury’s verdict and establish “premeditation” and “deliberation.”

Kidnapping

The defendant was convicted of the especially aggravated kidnapping of Maclin under Tenn. Code Ann. § 39-13-305:

Especially aggravated kidnapping. ---

(a)

Especially aggravated kidnapping is false imprisonment, as defined in 39-13-302:

- (1) 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; . . .
- (4) Where the victim suffers serious bodily injury.

Again, the state’s theory of the case is that Chambers is liable for the especially aggravated kidnapping as an accomplice. See Tenn. Code Ann. §§ 39-11-401, -402. In response, the defendant repeats his argument that Chambers, not properly accessorially liable for the offense, was convicted on the basis of insufficient evidence. We disagree with the defendant’s argument and find that the state’s theory is supported by both the applicable law and the evidence.

Again, Chambers’ statement, Woods’s testimony and Lawrence’s testimony establish facts sufficient to support the kidnapping conviction: testimony established that (1) that Maclin was held at gunpoint in front of his home, (2) that Maclin was forced into the vehicle driven by Lawrence, (3) that Maclin was held in that vehicle and driven to Woods’s apartment, (4) that Maclin was taken to that apartment, and (5) that once there he was tortured and killed. Chambers was involved in all of these actions, and his intent was clear. While

³ Accordingly, Dr. Wendy Gunther testified to the victim’s injuries. She said that both were shot at extremely close range in the back of the head.

the defendant again points to perceived contradictions and gaps in the testimony, we conclude that the evidence, as described above, supports a finding of guilty on the count of especially aggravated kidnapping.

Exclusion of Evidence

Next, the defendant relying upon State v. Spurlock, 874 S.W.2d 602 (Tenn. Crim. App. 1993), contends that the trial court improperly restricted his use of Phillips' conviction. However, at trial the defendant did not seek use of Phillips' conviction but rather documentation of his guilty plea. The defendant may not now change the characterization from guilty plea to conviction. "He may not now change his strategy or position midstream and advocate a different ground in this Court." See State v. Dobbins, 754 S.W.2d 637, 641 (Tenn. Crim. App. 1988): see also State v. Aucoin, 756 S.W.2d 705, 715 (Tenn. Crim. App. 1988). We now review the trial court's exclusion of the guilty plea. Finding no error requiring reversal, we affirm the decision of the trial court.

At trial, before opening statements, defense counsel citing Spurlock stated his intention to introduce Phillips' guilty plea to the kidnapping and murders. The trial court stated that it would not permit such introduction ruling that while Chambers may certainly present proof that someone else committed the instant crimes, he may not simply offer into evidence Phillips' plea and sentence. The trial court concluded:

"I will allow you to stand up and say, ladies and gentlemen we've got proof that we're going to present, witnesses A, B and C, who are going to say that my client didn't do this, that actually Mr. Phillips did it or John Doe did it or whoever did it, and we're going to demonstrate that to you through these witnesses or the State – we're going to demonstrate by cross-examining the State's witnesses that Mr. Phillips did it or A, B and C did it. But just to stand up and make a bare bones statement about the guilty plea and the sentence received, no. Because that – that is irrelevant, because there could have been a lot of reasons for that guilty plea to have been entered. A fear of the death penalty, proof against him – but that doesn't necessarily touch on Mr. Chambers' involvement. That – it would be misleading, I think, to simply imply or even state directly that because of these two huge sentences that Mr. Phillips received, he obviously was the one that did this, send my client home. Look, why would this man enter two consecutive life without parole sentences if he didn't do this? My man is innocent. Send him home. That's the implication you are trying to leave without having—without fleshing it out with any sort

of proof, factual proof, and that's where I think the danger is, and that's where I think the clear distinction between the instant case and Spurlock [is].”

The defendant takes issue with this ruling and logic arguing that Spurlock requires the admittance of such evidence; he quotes,

“Evidence establishing that another person had motive to commit the offense or that another person actually committed the offense is admissible for purposes of creating a hypothesis that is inconsistent with the accused's guilt; weight to be given to such evidence must be determined by the trier of fact.”

Id. at 613. Accordingly, he argues that the trial court erred and seeks a new trial.

Generally, when we review a claim like this one questioning a trial court's exclusion of evidence on the grounds of irrelevance or prejudice, we will not disturb the decision of the trial court absent an abuse of discretion. See State v. Banks, 564 S.W.2d 947, 949 (Tenn. 1978). Under Tenn. R. Evid. 403, the trial court may exclude relevant evidence, “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Examining the trial court's application of Tenn. R. Evid. 403 in this case, we find no abuse of discretion.

First, this Court notes that Phillips' guilty plea is hearsay. See Tenn. R. Evid. 801-02. And while Tenn. R. Evid. 804(b)(3) sets forth an exception for “statements against interest,” in this case, that exception is inapplicable. Phillips, the declarant, was not, as required, unavailable. See Tenn. R. Evid. 804 (b)(3). Neither does this Court find that any other hearsay exception applies. Accordingly, on this basis the statement was properly excluded.

But further in this case, we are sensitive to the values and dictates of Spurlock; Spurlock affirms and protects the right of a defendant to present a defense, and, as such, it lies at the heart of our adversarial system. However, this case is not Spurlock. The trial court spoke clearly and wisely when it pronounced that the defendant would certainly be allowed to present proof

consistent with any theory that someone else committed the crime, including Phillips, but would not be allowed to make a bare introduction of Phillips' plea. The trial court acted in its discretion to find that such bare introduction would be misleading; the inference sought, Phillips pled guilty therefore let my defendant free, was in light of the facts and the law irrational, inconsistent and confusing. Quite simply, the defendant was not denied the right to present evidence essential to a defense but rather disallowed the opportunity to introduce potentially misleading and confusing hearsay-evidence. Spurlock does not permit the defendant the right to present any evidence, but rather that evidence Spurlock contemplates must first meet the standard admissibility requirements. Accordingly, it was properly excluded.⁴

CONCLUSION

We AFFIRM the decision of the trial court.

JOHN EVERETT WILLIAMS, Judge

CONCUR:

JOSEPH M. TIPTON, Judge

JAMES CURWOOD WITT, JR., Judge

⁴ Had this Court found this exclusion to be in error, we would nevertheless hold that error to be harmless. Again, Phillips' plea was in no way inconsistent with this defendant's guilt.