IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
February 26, 2002 Session

STATE OF TENNESSEE v. STEVIE LAWSON

Appeal from the Criminal Court for Hawkins County
No. 7829 James E. Beckner, Judge

No. E2001-01841-CCA-R3-CD
May 28, 2002

Convicted of facilitation of aggravated burglary, theft, and contributing to the delinquency of a minor, the defendant appeals and claims that (1) the trial court erroneously admitted the videotape deposition of the aggravated burglary and theft victim, (2) the jury's verdicts were inconsistent, and (3) the testimony of an accomplice was not adequately corroborated. On the issue of the admission of the victim's videotape deposition that was taken to preserve his testimony, we hold that the assistant district attorney general who took the deposition lacked authority to administer the oath to the deponent and that the lack of authority effectively resulted in no deposition being taken. However, we hold that the resulting videotape was a hearsay statement that was admissible into evidence for lack of a timely objection and that no plain error review is warranted. We also hold that the verdicts are valid despite any apparent inconsistency among them and that the testimony of an accomplice was adequately corroborated. Finding no reversible error, we affirm.

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

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which JERRY L. SMITH and ROBERT W. WEDEMEYER, JJ., joined.

C. Christopher Raines, Mt. Carmel, Tennessee, for the Appellant, Stevie Lawson.

Paul G. Summers, Attorney General & Reporter; Angele M. Gregory, Assistant Attorney General; C. Berkeley Bell, Jr., District Attorney General; and Doug Godbee and Jack Marecic, Assistant District Attorneys General, for the Appellee, State of Tennessee.

OPINION

The defendant, Stevie Lawson, was indicted in Hawkins County Criminal Court for the aggravated burglary of the home of Frank Burton, theft of Mr. Burton's property, and

contributing to the delinquency of a minor female, DH.[1] A jury convicted the defendant of facilitation of aggravated burglary, a Class D felony, *see* Tenn. Code Ann. §§ 39-14-402, -403; 39-11-403 (1997); theft of property valued under $500, a Class A misdemeanor, *see* Tenn. Code Ann. §§ 39-14-103, -105(1) (1997); and contributing to the delinquency of a minor, a Class A misdemeanor, *see* Tenn. Code Ann. § 37-1-156 (2001). The trial court sentenced the defendant as a multiple offender to six years in the Department of Correction on the facilitation of aggravated burglary and to respective eleven-month, twenty-nine-day sentences on the misdemeanors. These sentences run concurrently, but the effective six-year sentence runs consecutively to an unrelated Hawkins County conviction.

In the light most favorable to the state, the evidence at trial showed that, on January 25, 2001, Rogersville Police Officer Doug Nelson answered a burglary call at the home of Frank Burton, who is disabled by paraplegic paralysis and other ailments. Officer Nelson found Mr. Burton in bed and testified that Mr. Burton said, "I've had a lot of stuff taken . . . . I saw Stevie Lawson run out the front door." The victim indicated to Officer Nelson that the victim's wallet and prescription medication were taken.

Officer Nelson went to the Sandman Motel, located a third of a mile away from the victim's home. Upon going to a room registered to the defendant and knocking on the door, he heard movement inside the room and detected someone trying to peek through the closed curtains. The defendant opened the door three or four minutes later. The defendant said he was alone in the room. The officer saw a pill bottle on the night stand and a purse or pouch with a waist strap on a table. A pair of panties and a brassiere lay on the floor. Officer Nelson testified that the defendant wore wet blue jeans that had a long mud stain on one leg. The defendant was "real nervous," but he permitted the officer to come in to look around. The pill bottle on the night stand bore a label which had Frank Burton's name on it, and the pouch-type purse contained an address book that also bore the victim's name. The defendant had in his pocket a leather strap key ring. In the toilet tank, the officer found another pill bottle bearing the victim's name. He found a bottle of Early Times liquor in a freezer.

The officer arrested the defendant. Then, after noticing a displaced ceiling tile in the room, the officer looked above the suspended ceiling and discovered DH hiding above the ceiling tiles. After she came down, she took the officer to a place about 100 yards from the victim's house where she indicated a wallet could be found. The officer found a wallet containing a credit card and a voter registration card that both bore the name of the victim. Officer Nelson testified without objection that the victim identified the wallet and the leather key-ring as his.

A youth services officer testified that, at the time DH was discovered in the defendant's motel room, she had been a runaway from state custody since November 6, 2000. DH was born February 8, 1984.

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[1] We decline to identify the minor by name.

Without objection from the defendant, the state introduced and played for the jury a videotaped deposition of the victim which had been taken the day before the trial. The record reflects that the victim was unable to attend the trial due to his health and disability, and the trial court ordered that his testimony be preserved by taking his deposition via videotape. The deposition was taken by an assistant prosecutor in the presence of a second assistant prosecutor and the defendant's counsel. The defendant waived his personal presence at the deposition.

On the videotape, the victim said that he had known the defendant for three or four years and that he knew DH, who had visited in his home on several occasions. On January 24, 2001, DH phoned him and asked what time he went to bed. He told her that he retired between 11:00 pm and 1:00 am. At about 3:00 or 4:00 am on January 25, 2001, the victim awoke when he heard someone rummaging through his bedroom. He saw a male but could not see his face, and although he could not be sure who the person was, the man's build reminded the victim of the defendant. The intruder was approximately 5'11'' tall and weighed approximately 180-90 pounds. The victim yelled, and the man fled the house. The victim identified photographs of his wallet, pill bottles, address book, key ring, pouch, and the bottle of Early Times liquor.

DH testified that she had pleaded guilty to the January 25, 2001 burglary of the victim's home and to an unrelated burglary. She was the defendant's girlfriend and was staying with him in January 2001. The defendant told her that he was going into the victim's house to steal the victim's medicine. When the defendant returned to the motel, he said that the victim had caught him. DH accompanied him to the place where he had left the stolen items. She and the defendant left the wallet but took the other items.

DH testified that she had been in the victim's house a number of times and that the victim had given her drugs "[e]very time I went up there. That's the reason I went up there." She testified that the victim had given her Valium in the evening before the burglary. She admitted that she called the victim and asked him what time he went to bed but denied that she did so as a means of determining when the house could be burgled. DH said that she hid in the ceiling when the police came to the motel because she was a runaway juvenile.

The defendant testified that he knew the victim but had only been to his house three or four times. On January 25, 2001, he was staying in the motel with DH. He had gone to the room on the afternoon of January 24 and had remained there until late that night when DH brought back the pill bottles and the waist pouch. The police arrived fifteen or twenty minutes later. The defendant testified that his delay in opening the door was due to his concern that DH was a runaway and not because he had burgled the victim's house. He denied going to the victim's house that night. He stated that he had the leather key ring in his pocket because DH gave it to him. The defendant testified that he is 29 years old, is 6'2" or 6'3" tall, and weighs 207 pounds.

After hearing the above evidence, the jury convicted the defendant of facilitation of aggravated robbery, theft of property under $500 in value, and contributing to the delinquency of a minor.

I. The Admission of the Victim's Deposition.

Relying upon Tennessee Code Annotated section 24-9-136, the defendant asserts on appeal that the victim's deposition, taken by the assistant district attorney general, was void and, therefore, inadmissible as evidence.[2] Whereas Code section 24-9-135 enumerates the persons who are authorized to take depositions, Code section 24-9-136 enumerates persons who, though they may be otherwise authorized, are disqualified to take depositions because of a special interest or relationship to the parties or the case. Tenn. Code Ann. § 24-9-136(a), (b) (2000). It provides that a deposition taken by a person who is disqualified "shall be void" and that the disqualified taker of the deposition commits a Class C misdemeanor. *Id.* § 24-9-136(c), (e).

The record reflects that the defendant waived his personal presence at the deposition but that his counsel appeared and cross-examined the deponent. The deposition was taken the day before trial. The record reflects that the defendant made no objection either at the deposition or at trial to it being taken by the assistant district attorney general. The defendant raised the issue for the first time in his motion for new trial.

We begin by reviewing the fundamental concept that a witness's testimony must be predicated upon his or her oath or affirmation. "Before testifying, every witness shall be required to declare that the witness will testify truthfully *by oath or affirmation*, administered in a form calculated to awaken the witness's conscience and impress the witness's mind with the duty to do so." Tenn. R. Evid. 603 (emphasis added). "An 'oath' signifies the undertaking of an obligation to speak the truth." *D.T. McCall & Sons v. Seagraves*, 796 S.W.2d 457, 463 (Tenn. Ct. App. 1990).

The requirement of an oath or affirmation applies with equal force when the proposed witness does not appear "live" in court. Testimony of an out-of-court declarant generally runs afoul of the hearsay rule, which declares inadmissible an out-of-court declarant's statements "offered in evidence to prove the truth of the matter asserted." Tenn. R. Evid. 801, 802. As an exception to the hearsay rule, however, an out-of-court declarant's statements may be admitted when the declarant is unavailable for live testimony and the offered statements consist of "*testimony given as a witness* at another hearing . . . or in a deposition taken in compliance with law in the course of the same or another proceeding. . . ." *Id.* 804(b)(1) (emphasis added). A deposition comprises the "testimony" of a person, *see* Tenn. R. Civ. P. 30.01, and for specified purposes and in certain circumstances, depositions are "admissible under the rules of evidence applied as though the witness were then present and testifying. . . ." *Id.* 32.01. Of course, the Rules of Evidence include Rule 603's requirement of an oath or affirmation. Thus, to avoid the bar of the hearsay rule, a threshold

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[2] The parties and the trial court agreed that the victim was unavailable to testify at the defendant's trial and that "due to [these] exceptional circumstances . . . [it was] in the interest of justice that the testimony of [the victim, a prospective witness,] be taken and preserved for use at trial." *See* Tenn. R. Crim. 15(a); *see id.* 15(e) (governing use of the deposition, based upon the deponent's unavailability). Pursuant to Rule 15, the trial court ordered the victim's deposition to be taken via videotape. With certain limitations, such a "deposition shall be taken and filed in the manner provided in civil actions except as otherwise provided" in the Rules of Criminal Procedure. *Id.* 15(d).

requirement for the use in evidence of "former testimony" of an unavailable out-of-court declarant is that the declarant formerly *testified upon oath or affirmation*.

The oath or affirmation must be "administered," Tenn. R. Evid. 603, and our law authorizes specified persons to administer oaths. *See generally* Tenn. Code Ann. § 16-1-102(5) (l994) (conferring on "every court" the power to "[a]dminister oaths whenever it may be necessary in the exercise of its powers and duties"); *id.* § 18-1-105(a)(9) (1994) (conferring on court clerks the "duty" to administer "all oaths and affidavits in relation to causes or proceedings pending" in the court); *see, e.g., id.* § 50-7-702 (1999) (authorizing the commissioner of labor to administer oaths and affirmations in the discharge of duty); *id.* § 58-1-234 (1989) (authorizing certain National Guard officers to administer oaths); *id.* § 65-3-117 (1993) (authorizing the Public Service Commission to "take depositions"); *id.* § 67-1-305 (1998) (authorizing the Board of Equalization to administer oaths).

In this vein, persons who are duly commissioned as notaries public are empowered to administer oaths. *Id.* § 8-16-302 (1993). Additionally, Code section 24-9-135 provides that depositions "shall be taken before: (1) A hearing examiner; (2) A judge, clerk, commissioner, or official court reporter of a court; (3) A notary public; or (4) Before other persons and under other circumstances authorized by law." *Id.* § 24-9-135 (2000). The law does not *per se* authorize prosecutors, their assistants or attorneys in general to administer oaths.

In the present case, the deposition of the victim was taken by an assistant district attorney general. The videotape reveals that the assistant district attorney general administered an oath to the deponent.[3] The record does not reflect that this assistant district attorney general was commissioned as a notary public or that he enjoyed some other conferred power to administer oaths. As a consequence, we must conclude that he was not authorized to administer the oath required by Tennessee Rule of Evidence 603 and Tennessee Rule of Civil Procedure 32.01. We hold that the out-of-court statements of the victim that are presented on the videotape do not qualify as "former testimony" pursuant to the hearsay rule exception set forth in evidence Rule 804(b)(1). Because we hold as a threshold matter that the person who "took" the deposition was not authorized to administer the oath or affirmation to the deponent, we do not reach the issue of whether he was *disqualified* by virtue of special interest or connection to the case. *See* Tenn. Code Ann. § 24-9-136 (2000) (disqualifying, *inter alia,* parties to the action and their relatives, employees, or attorneys from taking the deposition); Tenn. R. Civ. P. 28.03 (disqualifying, *inter alia*, relatives, employees or

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[3] "Taking" a deposition generally refers to a combination of two separate activities: (1) administering the oath to the deponent and (2) memorializing the testimony, such as by audiotape or shorthand recording followed by a printed transcript. *See* Tenn. R. Civ. P. 30.03. The advent of videotaped depositions, however, has brought about a severance of these activities. "Any lawyer" can apparently "operate" the videocamera equipment and thus memorialize the testimony. *Id*. 28.01, 30.02(4)(B). The rules allowing counsel to operate the video equipment do not, however, empower counsel to administer the oath, and as we have noted, no other provision of law authorizes lawyers in general or district attorneys general in particular to administer oaths. Thus, the issue in this case focuses upon the oath-administering aspect of "taking" a deposition. Neither the defendant nor this court takes any issue with counsel's operating the video equipment.

attorneys of parties). As such, we do not encounter the provision in Code section 24-9-136(c) that depositions taken by *disqualified* persons are deemed to be void. *See* Tenn. Code Ann. § 24-9-136(c) (2000). Essentially, no deposition was ever taken for the want of an authorized person to administer the oath to the witness.[4]

Now having concluded that the victim's out-of-court statement lacks the imprimatur of a *deposition* or of *testimony*, we must recognize that it was offered *de facto* into evidence as nothing more dignified than any other rank hearsay offering, such as would be a statement penned by an out-of-court declarant. Because we see no other hearsay rule exception that would authorize the admission of the victim's "statement," we conclude that, had a timely objection been made at trial, it would have been excluded as inadmissible hearsay. *See* Tenn. R. Evid. 801, 802.

At this juncture, we confront an established principle of Tennessee law that, although hearsay evidence is objectionable and inadmissible, it is nevertheless probative and justiciable if no objection is made.

> When a party does not object to the admissibility of evidence, though, the evidence becomes admissible notwithstanding any other Rule of Evidence to the contrary, and the jury may consider that evidence for its "natural probative effects as if it were in law admissible." If [the hearsay evidence] does not fall within a recognized exception to the hearsay rule, for example, it is certainly subject to objection as hearsay and limitation under the Rules of Evidence. Merely being subject to objection, however, does not mean that such evidence cannot be considered for its substantive value when no objection is raised.
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> In cases of hearsay evidence in particular, this Court has stated that when such evidence is admitted without objection, "it is, therefore, rightly to be considered as evidence in the case and is to be given such weight as the jury think[s] proper."

State v. Smith, 24 S.W.3d 274, 280 (Tenn. 2000) (internal citations omitted).

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[4] We decline to apply any of the provisions which might appear to require the defendant to object to the taker's authority during the deposition or be deemed to have waived his objection. Tennessee Rule of Criminal Procedure 15(f) requires "objection to deposition testimony or evidence or parts thereof" to be stated at the time of the deposition, but it is unclear whether an objection to the efficacy of an oath is included within objections to *testimony*. Similarly, Tennessee Rule of Civil Procedure 32.02(2) provides that objections based upon disqualifications of the officer" are waived unless made before the deposition begins, but it is unclear whether "disqualification of the officer" embraces the officer's *prior* lack of authority. Also, Rule of Civil Procedure 32.04(3)(B) provides that objections to "[e]rrors and irregularities occurring at the oral examination . . . in the oath or affirmation" are waived "unless seasonable objection . . . is made," but it is unclear whether errors or irregularities "in the oath or affirmation" include the *absence* of an effective oath. We leave these issues unresolved.

Thus, in the present case, the victim's out-of-court, videotaped statement was admissible as evidence in the absence of a timely objection by the defendant, and the trial court's action in admitting this evidence is not generally reviewable on appeal as error. *See* Tenn. R. App. P. 36(a).

On the other hand, we acknowledge that our "plain error" rule allows us to review an otherwise non-reviewable "error" to determine if we should notice the error despite the appellant's failure to properly preserve or raise the issue. *See* Tenn. R. Crim. P. 52(b). Assuming that the plain error rule applies to the issue at hand, we have analyzed the issue for plain error treatment. In doing so, we considered several factors, including whether: (1) the record clearly establishes what occurred in the trial court pertaining to the issue; (2) a clear and unequivocal rule of law has been breached; (3) a substantial right of the accused has been adversely affected; (4) the accused waived the issue for tactical reasons; and (5) consideration of the error is necessary to do substantial justice. *See State v. Adkisson*, 899 S.W.2d 626, 641 (Tenn. Crim. App. 1994).

We conclude that a claim to plain error review is not supported because no substantial right of the defendant was adversely affected and consideration of the issue is not necessary to do substantial justice. We reach this conclusion for two reasons. First, the victim's pretrial statement contained on the videotape was not the only evidence in the case that established the *corpus delicti* for aggravated burglary and theft and that implicated the defendant as the offender. Officer Nelson was allowed to testify without objection that the victim told him that the victim's house was burgled, that the defendant was the intruder, and that the intruder stole certain items. Officer Nelson also testified that the victim later identified some of the recovered items. In important respects, the videotaped statement was duplicative of testimony already before the jury. *See id.* at 280.[5]

Second, the "deposition" tendered by the state was not necessarily immutably flawed. Mr. Burton had only rendered his videotaped statement the day before trial from his home in Rogersville. Rogersville is the county seat of Hawkins County and the location of the courthouse where the defendant was tried. Had the defendant moved pretrial *in limine* – or even during trial – for exclusion of the videotape, the state apparently would have had a meaningful opportunity to repair the oath-poor statement. In the present case, the defendant's failure to timely object to the use of the videotape, especially coupled with his failure to object during the deposition the day before, denied not only the trial court an opportunity to review the issue, but also deprived the state of a chance to rehabilitate its evidence.[6]

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[5] Indeed, in one sense, the videotaped statement aided the defendant. Officer Nelson testified that the victim said that the defendant was the intruder; however, on the videotape, the victim stated that he could not say that the defendant was the burglar.

[6] We have considered that the state, as the sponsor of Mr. Burton's testimony and the party bearing the burden of proof at trial, had the responsibility of assuring that the deponent was effectively sworn and that, accordingly, the state should not be assisted by the defendant's failure to object at trial. However, although we have not *applied* against the defendant any rules of waiver based upon his failure to object to the oath deficiency during the deposition, (continued...)

In short, we are unpersuaded that the situation before us merits plain error review. Accordingly, we hold that the defendant has demonstrated no reversible error based upon the trial court's admission into evidence of the victim's videotaped statement.

II. Inconsistent Verdicts.

The defendant next claims that some or all of his verdicts should be set aside because they are intrinsically inconsistent. Essentially, he argues that, when the jury convicted the defendant of facilitation of aggravated burglary, it determined that he did not have the intent to promote or assist the commission of the aggravated burglary and found that DH was the perpetrator of the burglary. *Compare* Tenn. Code Ann. § 39-11-402(2) (1997) (a person has criminal responsibility for the conduct of another and is punishable as a principal when, acting with "intent to promote or assist the commission of the offense, or to benefit in the proceeds or results of the offense," he "solicits, directs, aids, or attempts to aid another person to commit the offense") *with id.* § 39-11-403 (1997) (a person is not guilty as a principal offender who merely facilitates the offense by "knowing that another intends to commit a specific felony, but without the intent required for criminal responsibility under § 39-11-402(2), the person knowingly furnishes substantial assistance in the commission of the felony"). He then posits that a finding that DH was the principal actor in the burglary contradicts a finding that the defendant committed theft and contributing to the delinquency of a minor. *See* Tenn. Code Ann. § 39-14-103 (1997) (one commits theft who, "with intent to deprive the owner of property, . . . knowingly obtains or exercises control over the property without the owner's effective consent"); *Id.* § 37-1-156(a) (2001) (one commits contributing to the delinquency of a minor who is an adult and who "contributes to or encourages the delinquency or unruly behavior of a child whether by aiding or abetting or encouraging the child in the commission of an act of delinquency or unruly conduct or by participating as a principal with the child in an act of delinquency, unruly conduct or by aiding the child in concealing an act of delinquency or unruly conduct").

The defendant's claim rings hollow. Simply put, "[i]nconsistent jury verdicts are not fatal to a conviction." *State v. Gennoe*, 851 S.W.2d 833, 836 (Tenn. Crim. App. 1992). "Consistency in verdicts for multiple count indictments is unnecessary as each count is a separate indictment. . . . An acquittal on one count cannot be considered *res judicata* to another count even though both counts stem from the same criminal transaction." *Id.* Thus, none of the jury's verdict

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[6](...continued)
see n. 3, we discern that the defendant's failure to object during the deposition could have reasonably spawned a good faith belief by the state that the defendant effectively waived any objection to the assistant prosecutor's authority to administer the oath and/or to any disqualification from exercising any such authority.

is legally infirm because one may be viewed as inconsistent with the others.[7] Moreover, we find that sufficient evidence supports each verdict.

III. Accomplice Corroboration.

In his final issue, the defendant claims that the evidence at trial did not adequately corroborate the testimony of DH, an accomplice to the crimes of facilitation of aggravated burglary and of theft.

The defendant correctly asserts that a conviction may not be based upon the uncorroborated testimony of an accomplice. *State v. Bigbee*, 885 S.W.2d 797, 803 (Tenn. 1994). An accomplice is an individual who knowingly, voluntarily and with common intent participates with the principal offender in the commission of an offense. *State v. Lawson*, 794 S.W.2d 363, 369 (Tenn. Crim. App. 1990). "[A] common test [of complicity] is whether the alleged accomplice could have been indicted for the offense." *State v. Anderson*, 985 S.W.2d 9, 16 (Tenn. 1997)(quoting *State v. Perkinson*, 867 S.W.2d 1, 7 (Tenn. Crim. App. 1992)). Some cases define the test of complicity as whether the alleged accomplice could have been convicted of the offense. *See, e.g., Lawson*, 794 S.W.2d at 369. The evidence in the present case showed that DH called the victim to ascertain his bedtime, and she helped the defendant move the stolen items to the motel room. She also admitted that she pleaded guilty to the burglary of the victim's house. Thus, we agree with the defendant that the evidence supports his claim that DH was an accomplice. However, we disagree that DH's accusation went uncorroborated.

An accomplice's testimony is corroborated when "'some fact [is] testified to, entirely independent of the accomplice's evidence, 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.'" *Anderson*, 985 S.W.2d at 16 (quoting *Clapp v. State*, 94 Tenn. 186, 195, 30 S.W. 214, 217 (1895)). In the present case, the police officer discovered the defendant in a motel room a third of a mile away from the victim's house in the early morning hours, wearing wet blue jeans with a long mud stain. The defendant also had in his pocket a key ring that belonged to the victim. These facts in evidence alone link the defendant to the burglary and robbery and corroborate DH's testimony, *see id.*, but we also may consider the victim's claim that the burglar was a male who resembled the defendant in build and body style.[8] All in all, DH's testimony was abundantly corroborated.

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[7] We note that the conviction for contributing to the delinquency of DH could have been based upon a claim that the defendant merely "encourag[ed] the child in the commission of . . . unruly conduct." *See* Tenn. Code Ann. § 37-1-156 (2001). "Unruly" conduct includes a juvenile remaining away from lawful custody or being a "runaway." *Id.* § 37-1-102(23)(A) (2001). Had this been the basis for the contributing conviction, the defendant's "participating as a principal with the child in an act of delinquency" is not required. *See id.* § 37-1-156. Because we were not favored with the opening and closing arguments of counsel, we are unable to discern what the state's theory of contributing to the delinquency of a minor was.

[8] The issue of accomplice corroboration is one of sufficiency of the convicting evidence. *See Tarran* (continued...)

Finding no reversible error in the record before us, we affirm the judgments of the trial court.

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JAMES CURWOOD WITT, JR., JUDGE

[8](...continued)

Kyles, No. W2000-02152-CCA-R3-PC, slip op. at 3 (Tenn. Crim. App., Jackson, Sept. 6, 2001); *Terry Lee Charlton v. State*, No. M1998-00087-CCA-MR3-PC, slip op. at 8-12 (Tenn. Crim. App., Nashville, Feb. 4, 2000). In reviewing the sufficiency of the evidence, the appellate court considers the evidence admitted at trial, even if that court also concludes that some of the evidence was erroneously admitted. *State v. Longstreet*, 619 S.W.2d 97, 101 (Tenn. 1981), overruled on other grounds by *State v. Leveye*, 796 S.W.2d 948 (Tenn. 1990). Thus, any review of the accomplice corroboration issue properly embraces the videotaped statement, even if we err in finding no trial court error in admitting that evidence.