

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs October 24, 2007

STATE OF TENNESSEE v. KATIA LENEH HARRIS a/k/a FUZZY

**Appeal from the Criminal Court for Marshall County
No. 17290 Robert Crigler, Judge**

No. M2006-02611-CCA-R3-CD - Filed November 16, 2007

JOSEPH M. TIPTON, P.J., concurring and dissenting.

I concur in the result and most of the reasoning in the majority opinion. I cannot agree, though, that the defendant committed the offense “to gratify the defendant’s desire for pleasure or excitement.” T.C.A. § 40-35-114(7).

The record reflects that P.F. said the defendant and Fasonia Radley a/k/a Rudy were talking about how they could get some money. P.F. said he needed money to see his sick grandmother. P.F. said he and Rudy both said they could rob the pizza man. J.R. said that he heard the defendant and Rudy talking about robbing a pizza delivery man to get some money. Radley said that she, the defendant, and P.F. were sitting outside when P.F. said he wanted to rob the pizza man. Radley said that she said that the defendant’s children needed some food and that she would make the call for the delivery.

At the sentencing hearing, the defendant’s testimony related to motive was as follows:

Direct Examination

Q: Who came up with the idea to rob the pizza man?

A: [P.F.] and my cousin Rudy.

Q: What did you say?

A. They came up with the idea of robbing the pizza man because Rudy, she wanted some money for some drugs or whatever.

I was like, well - - they was like, do you want to have a part in this? At first I told them, no, and then I was like, well, yea, why not? I will be the lookout.

Q: So you decided you might as well get some of it too, right?

A: Yeah.

Q: Does that sound right?

A: Yeah.

The defendant did not know how much money was taken, but she said she and Rudy got three dollars to buy cigarettes. On cross-examination, the defendant testified as follows:

Q: How long have you been on food stamps all together?

A: On and off about three or four years.

Q: How come you haven't worked more than you have? Did you always have a friend?

A: No, he hasn't always been there for me.

Q: What is this friend's name?

A: Dudley Jackson.

Q: Why didn't you ask Dudley Jackson for cigarette money if he was willing to support you?

...

A: I had cigarettes or whatever. I just - - being in that robbery was just something I wanted to do. He took care of everything, my bills and everything.

Q: Just something you wanted to do?

A: Something I just came up with.

Q: Exciting?

A: No. Not using my better judgment.

Q: Let's see what kind of judgment you used. Was it something that was exciting or thrilling or why did you decide you wanted to be involved in a robbery?

A: I don't know. I just decided just to be the lookout, that is all.

...

Q: How come you didn't eat any of the pizza or any of the food?

A: I was not hungry. I didn't want any of the pizza.

Q: And for some reason you just wanted money?

A: Pretty much I wanted what everybody else wanted.

The trial court applied enhancement factor (7) stating, "She said, 'This was just something I wanted to do.'" I believe the evidence of record preponderates against a finding that the defendant committed the offense to gratify her desire for pleasure or excitement. However, the remaining factor regarding prior criminal history justifies the nine-year sentence imposed by this court.

JOSEPH M. TIPTON, PRESIDING JUDGE