IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

AUGUST 1996 SESSION

STATE OF TENNESSEE,	*	C.C.A. # 02C01-9509-CR-00280
Appellee,	*	SHELBY COUNTY
VS.	*	Hon. H.T. Lockard, Judge and
STEVEN D. KING,	*	Hon. Carolyn Wade Blackett, Judge
Appellant.	*	(Especially Aggravated Robbery)

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OPINION FILED:_____

AFFIRMED

GARY R. WADE, JUDGE

OPINION

The defendant, Steven D. King, was convicted of especially aggravated kidnapping, especially aggravated robbery, and felony murder. The trial court imposed concurrent sentences of 25 and 23 years for the kidnapping and robbery and a consecutive life sentence for the felony murder.

In this appeal of right, the defendant questions the sufficiency of the evidence on each count and presents the following additional issues for review:

(1) whether the pretrial statement of the defendant was properly admitted into evidence;

(2) whether there was a knowing and intelligent waiver of the defendant's right to remain silent; and

(3) whether an instruction on the law of flight was warranted by the evidence.

We affirm the judgment of the trial court.

On June 8, 1992, at approximately 6:00 P.M., the Memphis Police Department was notified of the disappearance of the 65-year-old victim, Mary Cuches, who was last seen a few hours earlier driving a blue 1984 Buick LaSabre. Within minutes, Officer Emmett Ward found the car and four occupants at a shopping mall. The driver of the vehicle sped away before eventually stopping in a church parking lot. Two black male occupants fled, leaving two young females in the backseat of the stolen vehicle.

Earlier that afternoon, between 3:30 and 4:00 P.M., sisters Nakisisa and Tametrice Brown saw the defendant and two of his companions outside their apartment building; he explained that he was driving his aunt's car. His companions, Tyrone James and Greg Jackson, left for fifteen or twenty minutes and

then returned for the defendant. About one and one-half hours later, the defendant and James returned and invited the sisters to join them at a McDonald's Restaurant. From there, they went to the mall where they were discovered by the police.

At trial, Nakisisa Brown testified that she had seen the defendant hand Jackson a pistol before Jackson left with James; when he got back, Jackson returned it to the defendant who then took it to a neighbor's house. Ms. Brown recalled that she thought the defendant was joking when he said "there was a dead woman in the back of the trunk."

When he learned the next morning from his mother that he was wanted by police, the defendant, age seventeen, contacted authorities. During an hour of questioning, he signed a statement acknowledging that he, Jackson, and James saw the victim in the Kroger parking lot, put her in the trunk, and stole her car. The defendant confessed that he shot the victim with a .22 caliber revolver when, about thirty minutes after her abduction, the victim banged noisily on the trunk of her car. The defendant told officers that Jones and Jackson disposed of the body "in the woods."

The victim, found in a heavily wooded area, had been shot in the neck and behind the right ear. A pathologist determined that either of the wounds could have been fatal. There were bloodstains in the trunk of her car.

The police located the pistol, serial number 44446; it contained six live rounds and one spent round. Expert testimony established that one of two bullets taken from the body was fired from this .22 pistol. The other bullet had too much damage for an accurate assessment.

When called as a defense witness, James invoked his right to remain silent. The defendant did not testify.

The defendant first contends that the evidence was insufficient to support any of the three convictions. We disagree. When one using a deadly weapon "knowingly removes or confines another unlawfully so as to interfere with ... liberty" and causes serious bodily injury, the offense is especially aggravated kidnapping. Tenn. Code Ann. §§ 39-13-302(a), -304(a)(4), -305(a)(1). Here, the defendant confessed to forcing the victim into the car trunk and, after about thirty minutes of confinement, shooting her. That proof was sufficient.

A robbery involves the intentional or knowing theft of property from a person through violence or placing the victim in fear. Tenn. Code Ann. § 39-13-401(a). A robbery accomplished with a deadly weapon and involving serious bodily injury to the victim is an especially aggravated robbery. Tenn. Code Ann. §§ 39-13-401, -403.

First degree murder includes a "reckless killing of another committed in the perpetration of, or attempt to perpetrate any first degree murder, arson, rape, robbery, burglary, theft, kidnapping, or aircraft piracy...." Tenn. Code Ann. § 39-13-202(a)(2). Here, the defendant acknowledged that he shot the victim. Forensic analysis and other testimony linked the defendant to the murder weapon. Thus, the evidence was sufficient.

In summary, a rational trier of fact could have found beyond a reasonable doubt that the defendant was guilty of especially aggravated kidnapping, especially aggravated robbery, and felony murder. The defendant's claim that the

evidence was insufficient is without merit.

I

The defendant insists that his pretrial statement was acquired in violation of Tenn. Code Ann. § 37-1-115 which provides, in pertinent part, as follows:

> A person taking a child into custody shall give notice thereof, together with a reason for taking the child into custody, to a parent, guardian or other custodian and to the court....

Tenn. Code Ann. § 37-1-115(a)(2). He argues that he was held by police for an unreasonable period of time. The statute does in fact provide that the arresting officer must release a juvenile to his parents or otherwise bring the juvenile to a court within a reasonable time. Tenn. Code Ann. § 37-1-115(a); see Colyer v. State, 577 S.W.2d 460 (Tenn. 1979); State v. Gordon, 642 S.W.2d 742 (Tenn. Crim. App. 1982).

Here, the defendant was arrested at approximately 11:00 A.M. on the day after the murder. Officers initiated their interrogation at approximately 1:00 P.M. and concluded their questioning just over an hour later. The period of time before police initiated their investigation included travel from the place of arrest to the police station. At the suppression hearing, it was established that the defendant's mother had been notified of his arrest. The defendant informed officers that she was at work and was, therefore, unable to be present during the interrogation.

Sergeant A.J. Pinnow testified that he advised the defendant of his constitutional rights and that the defendant, after acknowledging that he understood his rights, signed the waiver. Sergeant Pinnow confirmed that the defendant was literate before he gave a four-page statement. The defendant signed the statement and initialed each of the pages. Officer Pinnow described the defendant as stable,

cooperative, and remorseful during the interview. He testified that the defendant acknowledged prior offenses as a juvenile and, therefore, "understood ... his rights" and "how the criminal justice system worked." Upon cross-examination, Sergeant Pinnow denied that any threats had been made during the interrogation. While acknowledging that the defendant had been handcuffed during questioning in accordance with established policy, he contended that he would have allowed the defendant to use the restroom or the phone, had the defendant asked.

At the suppression hearing, the defendant testified that he was at the police station for about two or three hours. While acknowledging that he had signed the statement, the defendant said that he had no recollection of signing a waiver of rights form and claimed that he had "never been too good of a reader." He claimed, however, that he never read the statement he had made and, despite acknowledging that he had initialed each of the pages, could not account for how that had happened. The defendant claimed that he had asked twice to make telephone calls and had been denied on each occasion. He testified that he asked officers to have his mother present and claimed that the officers had lied when they told him they had already called his mother. The defendant complained that he was handcuffed to a chair during the interrogation and that the officers had threatened to "fire my ass," "blow ... the top of my head off," and "pour ... coffee on me."

The trial court ruled as follows:

> The question that should be asked in this case is: whether under the totality of the circumstances the defendant's confession was the result of a knowing and intelligent waiver of his constitutional rights. The answer to this question is yes. Mr. King is well acquainted with the juvenile system because of previous crimes. Mr. King was read his rights and understood them as evidenced by his signature on the statement.

(Citations omitted). The trial court also held that it was not necessary to have a

parent or guardian present at the questioning for a statement to be admissible.

In Gordon, 642 S.W.2d at 745, this court ruled that, when full Miranda warnings had been given and understood, the voluntariness and admissibility of a juvenile's confession is not dependent upon the presence of his parents at the interrogation. See State v. Turnmire, 762 S.W.2d 893 (Tenn. Crim. App. 1988). A four-hour delay between the arrest and the execution of a confession in the Gordon case was held to have been a reasonable delay.

The applicable standard for admissibility is "whether the reasonable time requirements of the statute have been met and whether, under the totality of the circumstances, the ... confession was the result of a knowing and intelligent waiver of ... constitutional rights." State v. Lundy, 808 S.W.2d 444, 446 (Tenn. 1991). While this defendant did not have a parent present at the time of his interrogation, the evidence does not preponderate against the trial court's finding that the waiver of his right to counsel and his right against self-incrimination was knowingly and intelligently made.

The defendant had a tenth grade education. He could read and write. He executed a waiver of rights document, signed a four-page confession, and initialed each of the pages. At the time of his interrogation, he acknowledged prior encounters with police and familiarity with the criminal justice system. Taking into account some period of time for transportation and processing, the three-hour period of police custody does not appear to be unreasonable. In other words, the evidence does not preponderate against the findings of the trial court. Had there been a violation of the statute requiring notice to a parent, that alone would not preclude the introduction of the defendant's confession as evidence at trial. Lundy,

808 S.W.2d at 446; Colyer, 577 S.W.2d at 462.

II

In a closely related issue, the defendant also contends that the trial court erred by ruling that his confession was knowingly and voluntarily entered. The defendant argues that because he could not recall signing the waiver and was not a proficient reader, the evidence preponderates against the findings of the trial court.

The Rules of Juvenile Procedure provide that a parent or guardian should be present during questioning of a juvenile, if feasible, and that "no child ... shall be interrogated ... unless [he] intelligently waives in writing the right to remain silent." Rule 7(d), Tenn. R. Juv. P. The voluntariness of a statement is not, however, dependent upon the presence of a parent. Braziel v. State, 529 S.W.2d 501, 506 (Tenn. Crim. App. 1975). Instead, the relevant issue is whether "a juvenile's confession or admission [had been] voluntarily given to police ... after being fully warned and advised [of] his constitutional rights." Id.

In short, the record supports the trial court's ruling that the defendant knowingly and voluntarily signed a waiver of his rights. Moreover, the trial court accredited Sergeant Pinnow's assertion that there were no threats made to the defendant during the interrogation. The record supports that claim.

The defendant relies upon the ruling in McCall v. Dutton, 863 F.2d 454, 459 (6th Cir. 1988). In that case, the Circuit Court of Appeals tested the admissibility of the confession based upon three factors: whether "'the police extorted [the confession] from the accused by means of coercive activity'"; whether the presence of "'coercion'" affected the accused; and whether police misconduct

was the "'crucial motivating factor'" in eliciting the confession (alteration in original) (citations omitted). The court ruled that when all three factors had been established, the confession should be suppressed. In our view, none of the factors are present in this case. The record simply does not preponderate against the ruling of the trial court.

III

The defendant next complains that the facts did not warrant an instruction to the jury on the law of flight. He argues that the failure of police to activate the blue lights and siren suggests that there was no attempt to make an arrest.

In Hall v. State, 584 S.W.2d 819, 821 (Tenn. Crim. App. 1979), this court quoted 29 Am. Jur. Evidence § 280 at 329 on the issue of flight:

> "The fact that a defendant after the commission of a crime concealed himself or fled from the vicinity where the crime was committed, with knowledge that he was likely to be arrested for the crime or charged with its commission, may be shown as a circumstance tending to indicate guilt."

Earlier, in Rogers v. State, 455 S.W.2d 182, 187 (Tenn. Crim. App. 1970), this court adopted the view set out in 22A C.J.S. Criminal Law § 625:

> "The law makes no nice or refined distinction as to the manner or method of a flight; it may be open, or it may be a hurried or concealed departure, or it may be a concealment within the jurisdiction. However, it takes both a leaving the scene of the difficulty and a subsequent hiding out, evasion, or concealment in the community, or a leaving of the community for parts unknown, to constitute flight."

The defendant here was in a stolen car when the police began to follow. The record established that the defendant accelerated across a parking lot,

crossed a road, entered another parking lot, drove onto a highway and then into a church parking lot. Meanwhile, the police officers continued to follow. After stopping the car, the defendant ran. One of the officers pursued on foot but was unable to apprehend the defendant. The defendant left the stolen vehicle and subsequently hid for several hours. The defendant contacted police the next day only after learning that he was being sought for questioning. Those facts met the two-prong test described in Rogers, 455 S.W.2d at 187. See State v. Payton, 782 S.W.2d 490 (Tenn. Crim. App. 1989), for a more recent discussion of this two-prong test. Thus, the jury instruction on flight was warranted by the facts.

Accordingly, the judgment is affirmed.

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Gary R. Wade, Judge

CONCUR:

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William M. Barker, Judge

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Jerry L. Smith, Judge