

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

MARCH 1998 SESSION

FILED

September 9, 1998

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,
00202

) C.C.A. 03C01-9706-GR

) HAMILTON COUNTY

)

Appellee,

) Hon. Steven Bevil, Judge

)

vs.

) (First Degree Murder and

) Conspiracy to Commit

Aggravated

) Robbery)

) No. 202670 & 202672

MILTON LEE COOPER,

)

)

Appellant.

)

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FOR THE APPELLEE:

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OPINION FILED: _____

AFFIRMED

CORNELIA A. CLARK
Special Judge

OPINION

Defendant appeals as of right his convictions for first degree felony murder and conspiracy to commit aggravated robbery.¹ He raises eight issues on appeal: (1) whether the trial court erred in allowing members of the television media to broadcast video of the defendant trying on a jacket allegedly used in the robbery, and in failing thereafter to sequester the jury when requested to do so; (2) whether the trial court erred in allowing the prosecution to initiate a new line of questioning of a prosecution witness on redirect examination; (3) whether the trial court erred in allowing the prosecution to lead its witnesses and refresh their memories as to events critical to the prosecution's case; (4) whether the trial court improperly instructed the jury as to confessions; (5) whether the indictment for conspiracy is void; (6) whether the evidence is sufficient to support defendant's conviction of felony murder;

¹ We note that the words typed on the face of True Bill are "Conspiracy to Commit Especially Aggravated Robbery". A review of the reverse page indicates that the instrument actually charges the elements of conspiracy to commit aggravated robbery. No issue about this variance has been raised.

(7) whether there was improper contact between a member of the jury and other individuals sufficient to taint the proceedings; and (8) whether the trial court erred in allowing the introduction of evidence of the defendant's alleged involvement in theft or attempted theft earlier on the same day as the robbery. We affirm the judgment of the trial court.

Shortly before 11:00 p.m. on April 13, 1994, Edward Ray Horner was working as a clerk at the Golden Gallon convenience store in Red Bank. Two men entered the store. One man wore an athletic starter jacket and white cap. The other man, wearing a bulky jacket and a ski mask, engaged in a struggle with Mr. Horner which resulted in his receiving a shotgun wound to his abdomen. He died a short time later. The crime was captured in part on surveillance cameras, which showed that a number of items on the front sales counter were disarranged and/or had fallen onto the floor. The shooting also was witnessed by a customer, but he was unable to provide a description of the shooter.

As a result of the publicity received after the shooting, an individual came forward and provided the police with information about her niece, Emily Nealy, and Nealy's boyfriend, Senneca Harris. Further interviews led police to other persons ultimately identified as being involved in the murder, including the defendant, Milton Lee Cooper.

Three individuals involved in the events testified against the defendant at his trial: Emily Nealy, Timothy Gamble, and Odis Lawson, Jr. At the time of trial Gamble had already

entered a plea of guilty to being an accessory after the fact and Odis Lawson had pled guilty to criminal responsibility for facilitation of first degree murder. Nealy, a juvenile, had neither been charged nor reached any agreement with the state when she testified. The two men had prior criminal convictions, and Emily Nealy had a prior juvenile record.

According to the testimony of these three individuals, they all lived in or around the Westside projects in Hamilton County, Tennessee. Early on April 13, 1994, defendant Milton Lee Cooper, Timothy Gamble, and Senneca Harris decided to go to Hamilton Place Mall and snatch a purse. They used a car belonging to the defendant's girlfriend, Felicia Tremell. They asked Emily Nealy, Harris' girlfriend, to follow them in her automobile and act as a distraction so that they could more easily rob their victims. Nealy followed the three men in a separate car. On the way to the mall she changed her mind and returned to the Westside projects. The three men continued, however, and did rob an elderly woman of her purse. During this incident Timothy Gamble drove the car and Senneca Harris snatched the purse. Defendant remained in the back seat of the car. The three then returned to Westside and parked the car by a dumpster several blocks from the projects.

Because Cooper had used her car in the robbery, he told his girlfriend, Felicia Tremell, that her car had been stolen. She called and reported that fact to the police. While Tremell waited to speak to officers, the other individuals

left the vicinity.

Later that evening defendant Cooper, Nealy, Harris, Gamble and Lawson congregated again in Nealy's Mazda in a parking lot near the projects. They drank beer, smoked marijuana, and began discussing whether to commit armed robberies. Harris had with him a black athletic starter jacket. At one point defendant went to his house and returned to the car with a jacket and a sawed-off shotgun.

The group then traveled toward Hixson. They went to a Conoco gas station on Main Street and purchased more beer. They proceeded to drive by other gas stations as well, and Lawson went into one store. However, they observed no potential robbery victims. At some point Nealy again decided that she did not wish to be involved in the plan and was let out of her car near the river. She washed off in the river and then walked around and waited on the riverbank for the group to return and pick her up.

At about 10:15 p.m. a black male wearing a black Raiders starter jacket and ball cap entered a Golden Gallon convenience store where Sandra White worked as a clerk. Lawson testified that he was the man and that he borrowed the jacket from Harris because his own jacket had a distinctive symbol on it. White testified at trial and identified a photograph of Lawson. She stated that Lawson looked around the store, informed her that he could find no Red Bull beer, and asked her to check the cooler. White, being scared and suspicious, motioned toward a van just entering the parking lot and told

Lawson that her "friends" were coming. Lawson asked her about what market might stock Red Bull beer, and she immediately gave him directions to another Golden Gallon store.

The individuals then drove to the Golden Gallon store at which Edward Ray Horner was working. They parked the car and Odis Lawson went toward the store. Shortly thereafter he returned to the car and indicated that there were few people inside and no police in the vicinity. At that point defendant Cooper, carrying his sawed-off shotgun, exited the car with Senneca Harris

4

and headed toward the store. Cooper also took his jacket, which he normally wore inside-out. Harris was wearing his own starter athletic jacket and a white cap. Defendant and Harris entered the Golden Gallon store. One eyewitness saw the shooting but could not identify the shooter. Surveillance camera photographs showed a male in a ski mask and a jacket later identified as defendant's. That male engaged in a struggle with Horner and shot him. Officers who arrived on the scene later found that items on the front sales counter were moved around and knocked to the floor.

Defendant, still holding the shotgun, ran with Harris back to the car and told Gamble and Lawson to hurry. According to Gamble and Lawson, both men seemed nervous. Gamble testified that Harris asked defendant "Why did you shoot him?". Lawson drove the car away. The group then picked up Nealy at

the river, and returned to the Westside projects. According to Lawson, the defendant pulled the gun and his jacket out of the car, left, and then returned without the two items. The group then dispersed.

I.

Defendant first contends that the trial court erred in allowing television coverage of the trial and particularly a broadcast of the defendant, outside the presence of the jury, trying on the jacket allegedly worn during the murder and robbery.

Prior to trial defendant through counsel agreed to waive the sequestration of the jury. After the jury was sworn defense counsel learned that local television stations had requested the right to have cameras present in the courtroom. At the beginning of trial the next morning the defendant objected to the presence of television cameras in the courtroom. The trial court held that lack of sequestration was not a sufficient reason to deny video access under Tennessee Supreme Court Rule 30. The judge allowed the cameras to record the proceedings. He also provided specific instructions to the jury about not watching local television news broadcasts. The instructions were repeated at the close of each day's proceedings.

5

During a later jury-out period in the courtroom, defendant and his attorney were having a conference. Defendant, without his counsel's prior

knowledge, picked up and put on the jacket previously introduced as an exhibit and allegedly used in the attempted robbery. At the time the defendant took this action the television cameras were running. When counsel realized what had transpired, he moved to suppress the video, or, in the alternative, to sequester the jury in order to ensure that this action by the defendant could not be observed by jurors. The trial court denied the motion to suppress and the motion to sequester. At the end of that day the judge again instructed jurors not to watch local newscasts or read local newspapers.

When the jury returned the following morning, the trial judge inquired of the jurors if anything had occurred overnight that might influence their verdict. All jurors responded negatively. The judge also asked the jury as a group if anyone had seen anything on television or read anything regarding the case. All jurors again responded negatively. No contemporaneous request was made by defendant to question the jurors individually. No allegation was made by defendant that the incident actually had been broadcast.

In his motion for new trial defendant asserted that

a tape of defendant wearing the jacket linked to the shooting was played on the local news. Defendant had moved that the news media be ordered not to play the said tape during the trial. Defendant believes that the tape influenced the jury, resulted in an adverse jury verdict and ultimately resulted in unconstitutionally denying defendant of a fair trial.

During oral argument on this portion of the motion for new trial the following exchange occurred:

MR. DUVAL: Yes, sir, but there are two items on that motion, I guess, that we need to discuss today. One is Item 6, where we allege that the trial Court erred in allowing the - - or ordering the media not to play a tape on television of the defendant trying on the jacket, which was in evidence. As Your Honor might remember, the media continued to run its cameras during a recess, and I think I was out in the hall, but Mr. Meeks was in the courtroom and during the recess Mr. Cooper apparently, according to Mr. Meeks, had tried on the jacket, which was in evidence, and this was captured on camera and then apparently played on the evening news.

THE COURT: Now, when you say apparently, is there any indication that it was played? I saw the evening news, I never saw it.

6

MR. DUVAL: Well, that's --

THE COURT: So we can't assume that it was played on the evening news.

MR. DUVAL: All right. I understand. And that's something that we could confirm.

THE COURT: I just don't -- I don't -- I saw one of the evening news, I forgot which one it was, but they did not play it. Now, whether they played it on any of the others, I don't know.

MR. DUVAL: Well, that would be -- if Your Honor were to permit us to confer with jurors as to whether or not they had seen it, we would confirm first with the media that it was in fact played, but we just had a conference at the bench a minute ago wherein we --

THE COURT: Right.

MR. DUVAL: -- requested of the Court for us to have permission to discuss this matter with jurors, and for purposes of this motion, I guess we need to put this on the record.

THE COURT: All right. With a request to talking to the jurors about their verdict, unless there is -- unless there is some indication that there was some outside influence on the jury's verdict or it was a quotient verdict, did the jury consider anything other than the evidence

and the law, I'm not going to allow that.

First of all, even if they had seen it, there is nothing - the-- they indicated to me that they did to watch any TV, that they were not watching the news reports, and that is what I have to go on. That is the type of thing that, of course, the State could have brought in evidence in their case, anybody that had seen Mr. -- been in the courtroom and seen Mr. Cooper trying on that jacket, and they could put on evidence in that regard, and it would have been legitimate evidence presented at the trial.

Without some indication to the Court that the jurors saw something on TV in that regard, and considered it in their verdict, I'm not

going to allow the -- you know, disturbing the sanctity of the jury. If

there's some reason under the law to do that, I will allow it, but without

any, just speculation or just as a fishing expedition to talk to the jurors

to ask them if they considered anything else, I am not -- I'm going to

deny your request.

Defendant's argument on this issue must fail for two reasons. First, by consenting initially to jury separation, defendant waived his right to sequestration under Tenn. Code Ann. §40-18-116. See State v. Rickey Lee Nelson, Shelby County, No. 02-C-01-9103-CR-00050 (Tenn. Crim. App., Jackson, October 2, 1991). Second, defendant has not shown either actual impropriety or any prejudice. There is no proof in this record that the videotape of the defendant's action was ever broadcast publicly. Statements of an attorney do not constitute testimony, and no independent proof of broadcast

was offered. Additionally, the judge properly questioned the jurors about media exposure as soon as the issue was raised at trial. He received a negative response from each juror. He instructed them

properly about their obligations. Absent evidence to the contrary, a jury is presumed to have followed the judge's instructions. State v. Smith, 893 S.W. 2d 908, 914 (Tenn. 1994).

Defendant complains that he was not allowed, post-trial, to interview individual jurors to determine if there was outside improper influence on the verdict. See State v. Thomas, 813 S.W. 2d 395, 396 (Tenn. 1991). However, defendant never produced evidence that the videotaped proceedings were broadcast, seen by a juror, or considered during deliberations. See Patton v. Rose, 892 S.W. 2d 410, 414 (Tenn. App. 1994). The trial court did not abuse its discretion in failing to permit individual questioning of the jurors. This issue is without merit.

II.

Defendant next contends that the trial court erred by permitting the district attorney, on redirect examination of Emily Nealy, to inquire into new matters not covered on direct examination and not opened by the defense on cross-examination. Specifically, Ms. Nealy was handed the jacket introduced as Exhibit 8 and asked to identify it. She responded, "I've seen Milton Cooper wear that jacket before."

Defendant has waived this issue by failing to include any citation of authority in his brief.² Tenn. R. App. P. 27 (a)(7); Ct.

² Defendant's one-paragraph argument does contain a reference to Tenn. Code Ann. §39-11-201(d), which provides "Evidence produced at trial, whether presented on direct or cross-examination of state or defense witness, may be utilized by either party." In our view, however, this code section is not relevant to the issue being argued.

of Crim. App. Rule 10 (b). Moreover, the trial court has considerable discretion in controlling the presentation of evidence. Tenn. R. Evid. 611 (a). The trial judge determined that the questions properly related to an attempt by the defendant during cross-examination to challenge the witness's memory. This issue is without merit.

III.

Defendant also objects to the court's permitting the assistant district attorney to ask leading questions of a co-conspirator during direct examination. Specifically, the exchange occurred as follows:

Q (By Mr. Denny) Now, Mr. Lawson, I'm going to direct your attention back to the night of April the 13th of 1994, and also, I guess, earlier that same day. It's been almost two years. I want you to tell the jury what happened to you that day beginning with a trip out to Hamilton Place Mall or the -- at least begin with your meeting up with this defendant, a party named Tim Gamble, another party named Senneca Harris, another party named Emily Nealy.

MR. MEEKS: I object to the leading, Your Honor.

THE COURT: Well, I think he's just -- I think this is by way of background to -- for him to testify. Go ahead. I will allow it in this case.

Q (By Mr. Denny): So if you would just tell the jury did you meet up with these individuals back on that day?

A: That evening I did.

Q: All right. I want you to tell the jury how you came to meet up

with them and what you saw happen that night.

It is within the sound discretion of the trial judge whether to allow a party to examine a witness by leading questions.

Wilkerson v. Altizer, 845 S.W. 2d 744, 747 (Tenn. App. 1992).

Under Tennessee law, unless a question is not only clearly leading but clearly prejudicial, an appellate court will not interfere with a trial court's ruling. Hale v. State, 198 Tenn. 461, 476, 281 S.W. 2d 51, 58 (1955); Mothershed v. State, 578 S.W. 2d 96,99 (Tenn. Crim. App. 1978). The record reflects that although the court apparently overruled the objection, the prosecutor rephrased the question anyway. As posed, it is not clearly leading. Further, no prejudice has been shown. This issue is without merit.

IV.

Defendant next contends that the trial court erred in instructing the jury about confessions when he had not made a confession. The actual instruction given by the trial court was as follows:

Confession and/or admission against interest. Evidence has been introduced in this trial of a statement or statements by the defendant made outside the trial to show a confession or admission against interest. A confession is the statement by the defendant that he committed the crime charged. An admission against interest is a

9

statement by the defendant which acknowledges the existence or truth of some fact necessary to be proven to establish the guilt of the defendant or which tends to show guilt of the defendant or is evidence of some material fact, but not amounting to a confession.

Evidence of such statements should be received by

the jury

with caution. While this evidence has been received, it remains your

duty to decide if in fact such statement was ever made. If you believe

a statement was not made by the defendant, you should not consider it.

If you decide the statement was made by the defendant, you must judge the truth of the fact stated.

In so determining consider the circumstances under which the

statement was made. Also consider whether any of the other evidence

before you tends to contradict the statement in whole or in part. You must not, however, arbitrarily disregard any part of any statement, but

rather should consider all of any statement you believe was made and is true.

You are the sole judge of what weight should be given such

statement. If you decide a statement was made you should consider

it with all the other evidence in the case in determining the defendant's guilt or innocence.

To constitute a confession, a defendant must admit all the elements of the crime with which he is charged. State v. Lee, 631 S.W. 2d 453 (Tenn. Crim. App. 1982). An admission is an acknowledgment by the accused of certain facts that tend, along with other facts, to establish guilt. In Helton v. State, 547 S.W. 2d 564, 567 (Tenn. 1977), the Supreme Court said in this regard:

The distinction between an admission and a confession is blurred.

Generally, however, "a 'confession' is a statement by the accused

that he engaged in conduct which constitutes a crime an

admission is an acknowledgment by the accused of certain facts

which tend together with other facts, to establish his guilt; while a

confession is an acknowledgment of guilt itself. An admission,

then, is something less than a confession and, unlike a confession, ... an admission is not sufficient in itself to support a conviction.

The evidence demonstrates that when the defendant and Senecca Harris came running back to their car from the Golden Gallon where Horner was shot, Senecca Harris looked at the defendant and asked him why he shot [the clerk]. Defendant responded by telling Harris to keep quiet, and that Lawson and Gamble did not need to know what was going on. This exchange could be deemed an admission. The trial court correctly charged the difference between an admission and a confession. The court did not attempt to determine or define for the jury which statement, if either, existed in this case.

10

The court further instructed the jury to receive any evidence about admissions or confessions with caution. Under these circumstances, any error in the court's instruction was at worst harmless. See State v. Phillips, 728 S.W. 2d 21, 27 (Tenn. Crim. App. 1986); Tenn. R. App. 36(b). This issue is without merit.

V.

Defendant next contends that his indictment for conspiracy to commit aggravated robbery is void because it does not properly allege that each of the co-conspirators conspired to commit aggravated robbery, nor that each had the requisite *mens rea* for the offense.

The indictment charges, in pertinent part, as follows:

That Milton Lee Cooper and Odis Lee Lawson, Jr. and others unknown to the Grand Jury...on April 13, 1994...did unlawfully conspire to commit aggravated robbery, and in furtherance of this conspiracy the following overt acts...were committed:

(1)...the defendants and others drove around...with a sawed-off shotgun in their vehicle and planned to rob a place of business.

(2)...the defendants and others went to the Golden Gallon in Red Bank...the Conoco Station on Hixson Pike...and the Smile Station on Highway 153...for the purpose of deciding which business to rob.

(3)...the defendants and others returned to the Golden Gallon in Red Bank...at which time two of the persons took the sawed-off shotgun into the store with the intent to rob the clerk...and in the process of robbing him they shot and killed him...

In State v. Hill, 954 S.W. 2d 725 (Tenn. 1997), the Tennessee Supreme Court

held that an indictment is constitutionally valid if it provides sufficient information to enable an accused to know the accusation to which an answer is required, to furnish the court an adequate basis for the entry of the proper judgment, and to protect the accused from double jeopardy. The indictment in this case does adequately charge that each co-conspirator had the requisite *mens rea* for the underlying offense. See State v. Perkinson, 867 S.W. 2d 1 (Tenn. Crim. App. 1992). The defendant is clearly placed on notice as to the charge against which he must defend. This issue is without merit.

VI.

Defendant next contends that the evidence was

insufficient to support his conviction of felony murder. At the time of the killing, first degree felony

11

murder was defined as “[a] reckless killing of another committed in the perpetration of, or attempt to perpetrate any ... robbery ...”. Tenn. Code Ann. §39-13-202 (a)(2) (1991).

Defendant was charged with committing a reckless killing in the attempt to perpetrate an especially aggravated robbery, that is, a robbery accomplished with a deadly weapon where the victim suffers serious bodily injury. Tenn. Code Ann. §39-13-403(a)(1)-(2); State v. Lewis, 919 S.W. 2d 62, 65 (Tenn. Crim. App. 1995). Robbery itself is the “intentional or knowing theft of property from the person of another by violence or putting the person in fear.” Tenn. Code Ann. §39-13-401. Theft is knowingly obtaining or exercising control over property without the owner’s effective consent, with the intent to deprive the owner of the property. Tenn. Code Ann. §39-14-103. Under Tenn. Code Ann. §39-12-101, a person commits criminal attempt who,

acting with the kind of culpability otherwise required for the offense:

- (1) Intentionally engages in action or causes a result
what would constitute an offense if the circumstances surrounding
the conduct were as the person believes them to be;
- (2) Acts with intent to cause a result that is an element
of the offense, and believes the conduct will cause the result without
further conduct on the person’s part; or
- (3) Acts 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 offenses.

Defendant does not question the sufficiency of the proof of his use of a deadly weapon or the infliction of serious bodily injury on the victim. He contends primarily that no evidence was presented to the jury that he took anything.

When an accused challenges the sufficiency of the convicting evidence, the standard is whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). Questions concerning the credibility of the witnesses, the weight and value to be given the evidence, as well as all factual issues raised by the evidence, are resolved

12

by the trier of fact, not this court. State v. Pappas, 754 S.W.2d 620, 623 (Tenn. Crim. App. 1987). Nor may this court reweigh or reevaluate the evidence. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). A verdict of guilty by the jury, approved by the trial judge, accredits the testimony of the state's witnesses and resolves all conflicts in the testimony in favor of the state. See State v. Cates, 875

S.W. 2d 253,259 (Tenn. 1994).

Taken in the light most favorable to the state, the jury could rationally determine that the defendant entered the convenience store with a sawed-off shotgun and shot the clerk, causing serious bodily injury and ultimately his death.

Surveillance and crime scene photographs confirm that items were disrupted or moved on the sales counter. The cash register was manipulated and there were empty wrappers of food items found in front of the coolers and the snack stands. The photographs also show the defendant reaching over and around the sales counter. A rational jury could therefore also have concluded beyond a reasonable doubt that the defendant committed theft from the victim during the perpetration the crime. This issue is without merit.

VII.

Defendant next contends that a new trial should be ordered because of improper contact between the jury and other individuals, including the defendant, during trial. When such an allegation is made, the burden is on the defendant to show that as a result of the juror's contact with a third person, some extraneous prejudicial information, fact, or opinion was brought to bear on the juror.

State v. Blackwell, 664 S.W. 2d 686, 688 (Tenn. 1984).

This issue was not raised until the verdict had been rendered. At that time the defendant made claims in open court that a black male juror had seen and talked to the defendant in the elevator on the previous morning. The

defendant told the trial judge that, at that earlier time, the juror informed him that he was voting "not guilty." The defendant also asserted that he later saw a representative from the district attorney's office hand a letter to the same black male juror. Counsel for defendant expressed particular concern

13

because he felt the juror had hesitated when being polled about his guilty verdict.

The trial court judge asked the bailiffs if any person had made any contact with the jurors during the course of trial. The bailiffs responded in the negative. The court then brought the entire jury panel into the courtroom and conducted individual questioning. The particular juror in question responded and advised that he had seen the defendant in the elevator early one morning before court opened. The juror stated that he said "hey," but nothing more, to the defendant. He specifically denied indicating to the defendant any opinion as to his guilt or innocence. He also reaffirmed his agreement with the verdict of guilty.

Defendant has not carried his burden under Blackwell to show improper outside influence on this juror. This issue is without merit.

VIII.

Defendant finally contends that the trial court erred in allowing the jury to hear evidence about defendant's alleged involvement in a

theft or attempted theft which occurred earlier the same day. Co-conspirators in the case testified that earlier on the same day as the murder, the defendant and two other persons committed a purse snatching at Hamilton Place Mall. They drove a car belonging to the defendant's girlfriend. The defendant then parked the vehicle two blocks from his house and had his girlfriend report it as stolen, since it may have been identified in connection with the purse snatching. The defendant and his co-conspirators then vacated the area to avoid an encounter with police officers coming to obtain information about the stolen car. The group, utilizing Emily Nealy's car, met near the bus station and continued to search for robbery victims. The trial court found that this testimony of earlier activity was relevant concerning overt acts alleged as part of the offense of conspiracy.

The admission and exclusion of evidence are within the sound discretion of the trial judge. State v. Baker, 785 S.W. 2d 132 (Tenn. Crim.

14

App. 1989). This discretion will not be disturbed unless it is arbitrarily exercised. Tenn. R. Evid. 404 (b) contains an exception to the inadmissibility of evidence of other crimes, wrongs, or acts to prove the character of the person. The rule states: "It may, however, be admissible for other purposes."

The evidence introduced in this case was admissible pursuant to the co-

conspirator exception to the hearsay rule to establish the acts committed in furtherance of the conspiracy that existed between the co-conspirators. See State v. Shropshire, 874 S.W. 2d 634, 641 (Tenn. Crim. App. 1993); Tenn. R. Evid. 803 (1.2).

This issue is without merit.

For the reasons set forth above, we conclude that defendant's issues on appeal all lack merit. We therefore affirm the judgment of the trial court.

CORNELIA A. CLARK
SPECIAL JUDGE

CONCUR:

JOHN H. PEAY
JUDGE

PAUL G. SUMMERS
JUDGE

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MARCH 1998 SESSION

STATE OF TENNESSEE,) C.C.A. 03C01-9706-CR-
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Appellee,) Hon. Steven Bevil, Judge
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vs.) (First Degree Murder and
) Conspiracy to Commit
Aggravated)
) Robbery)
) No. 202670 & 202672
MILTON LEE COOPER,)
)
Appellant.)

JUDGMENT

_____ Came the appellant, Milton Cooper, by counsel and also came the attorney general on behalf of the State, and this case was heard on the record on appeal from the Criminal Court of Hamilton County; and upon consideration thereof, this court is of the opinion that there is no reversible error in the judgment of the trial court.

Our opinion is hereby incorporated in this judgment as if set out verbatim.

It is, therefore, ordered and adjudged by this court that the judgment of the trial court is AFFIRMED, and the case is remanded to the Criminal Court of Hamilton County for execution of the judgment of that court and for collection of costs accrued below.

Costs of this appeal will be paid by the appellant Milton Cooper for which let execution issue.

PER CURIAM

John H. Peay, Judge
Paul G. Summers, Judge
Cornelia A. Clark, Special

Judge