IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs September 7, 2023

STATE OF TENNESSEE v. DUSTIN LEN LOVELACE

Appeal from the Circuit Court for Decatur County
No. 19-CR-60 J. Brent Bradberry, Judge

No. W2022-01516-CCA-R3-CD

A Decatur County Jury found Dustin Len Lovelace, Defendant, guilty of facilitation of aggravated robbery. Defendant claims that the evidence was insufficient to support the conviction. After a thorough review of the record and applicable law, we affirm the judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

ROBERT L. HOLLOWAY, JR., J., delivered the opinion of the court, in which J. ROSS DYER, and TOM GREENHOLTZ, JJ., joined.

Samuel W. Hinson, Lexington, Tennessee, for the appellant, Dustin Len Lovelace.

Jonathan Skrmetti, Attorney General and Reporter; Lacy E. Wilber, Senior Assistant Attorney General; Neil Thompson, District Attorney General; and Matthew Stowe and K. Michelle Morris, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

In 2019, Dustin Len Lovelace, Defendant, and six codefendants were indicted for criminal responsibility to commit first degree murder, conspiracy to commit first degree murder, felony murder, and especially aggravated robbery. After issuance of a superseding indictment, Defendant was charged in Count 1 with conspiracy to commit aggravated robbery, in Count 2 with especially aggravated robbery, in Count 3 with felony murder in perpetration of aggravated robbery, and in Count 4 with tampering with evidence. Following a pretrial hearing, the trial court dismissed Count 1, and, upon motion to dismiss filed by the State, Count 4 was dismissed. The jury convicted Defendant in Count 2 of the lesser-included offense of facilitation of aggravated robbery. The trial judge declared a mistrial in Count 3 because the jury could not reach a unanimous verdict on felony murder.

Trial

On November 9, 2013, Defendant called 911 to report "someone just shot themselves" at Mike Conway's house. The "Call Card Report" shows that the call was received at 4:49:47 a.m. Defendant can be heard saying: "Oh my god. Oh my god. Oh you f***ing. Wesley. Oh, you f**k —fight, you motherf**ker." Defendant stated: "He shot his self (inaudible) left jaw." Defendant can be heard a short time later saying: "Oh my god. Keep breathing." Defendant told the 911 operator that the victim had "told me to call him at 4:45 to check on him. And I said, 'what's wrong with you.' He said, 'Nothing, I'm sorry.' I said, 'Are you sorry or are you sad.'" Defendant said that the victim was "still breathing but he's not gonna live." Defendant can be heard on the 911 call saying, "Keep breathing."

Derek Boyd, an Emergency Medical Technician (EMT), and his partner, David Wright, responded to the call and found Wesley Conway, "the victim", deceased with a gunshot wound to the back of his head. Defendant told Mr. Boyd that he had moved the victim's deer rifle. Because Mr. Boyd suspected "foul play" he waited for deputies from the Decatur County Sheriff's Office (DCSO) to arrive on the scene before moving the body.

Tennessee Bureau of Investigation (TBI) Special Agents Michael Parson and Ronnie Faulkner were assigned to the case. They met Sheriff Roy White at a location off Highway 100 and followed him to the crime scene. Agent Parson was designated as the lead investigator upon arrival at the scene. Agents Parson and Faulkner began the investigation by making a walk through the crime scene. Agent Parson testified that a black S-10 pickup truck was parked "in very close proximity to the barn, almost as if it was pulled up at an angle in front of it" with the victim's body in the driver's seat. Agent Parson said that "based on my training, education, and experience, within the first few minutes of just laying my eyes on that truck and the deceased individual inside the truck, it was clear to me it was a homicide. Clear. No doubt. It was a homicide."

Agent Parson agreed that he would get a statement from Defendant while Agent Faulkner began processing the crime scene by taking photographs and video. Defendant was sitting in the back of a patrol car. Agent Parson opened the rear door and introduced himself to Defendant. Defendant was not cuffed and had his cell phone. Agent Parson advised Defendant that he was not under arrest. Because it was very cold outside, Agent Parson asked Defendant to ride with the deputy to the Sheriff's Office so they could talk in comfort. Agent Parson followed the patrol car carrying Defendant to the Sheriff's office in his car. When Agent Parson arrived at the Sheriff's office, he again advised Defendant that he was not under arrest and explained that he wanted to speak with Defendant because

he was the person who called 911. Defendant agreed, and they went inside to the conference room.

Defendant told Agent Parson that he had been friends with the victim for six or seven years. Defendant said he lived with his parents at 2633 Mt. Lebanon Road and that the victim lived in a barn located at 2265 Mt. Lebanon Road which was owned by the victim's father. Defendant's father's house was located less than one-half mile from the barn. Agent Parson said that "right out of the gate, he makes a remark like, he didn't even see the gun when he got there, or when he was in the truck, he didn't see the gun." Agent Parson said Defendant then remarks something like: "why m***** f***** did you do this." Agent Parson said throughout the interview, Defendant kept insisting that the victim killed himself.

Defendant told Agent Parson that he went to bed around midnight and that the victim called around 2:09 a.m. asking if Mapco sold hunting license. The victim then called Defendant saying that he was going to McDonald's and asked Defendant if he wanted anything. Defendant asked the victim to bring him two spicy chicken sandwiches. Defendant said the victim arrived at his trailer with the food at 3:45 a.m. Agent Parson stated that Defendant was "adamant" about the arrival time stating: "I'm sure it's 3:45 a.m." Defendant stated that the victim left his trailer at 4:00 a.m. and that a "minute and thirty seconds later, he hears the boom," which he described as "the loudest gunshot he had ever heard before in his life." Defendant said at 4:05 a.m. he texted the victim: "Wat was it?" Because he got no response, ten or fifteen minutes later, he texted again: "Wat u shootn at?" Defendant said that because he worried about the victim, he told his father that he was "going down to check on him." His father told him to take his Jeep. Defendant said that the victim had earlier told Defendant to check on him at 4:45 a.m. Defendant said he left his house at 4:45 a.m. to go to the barn.

When Defendant arrived at the barn, he said the S-10 pickup truck was parked out front with its headlights on and that he parked the Jeep to the left of the S-10 pickup truck. He said the lights inside the barn were turned off, so he entered the barn carrying a flashlight. He said he knocked on the door to the victim's room for "some period of time." He exited the barn and turned off the Jeep. He said that was when he first realized the S-10 pickup truck was not running. He said he stood by the driver's side of the Jeep for three to five minutes during which time he saw a cell phone light at the top of the hill near where the victim's parents lived. Defendant then went over to the S-10 pickup and "jerked the door open and saw a shoulder or something, and that's when he realized that it was [the victim]." Defendant said that he reached under the victim's sweatshirt to feel for a heartbeat and checked his neck for a pulse. He said that he turned the truck's lights off. Defendant was adamant that he only touched three things inside the cab of the S-10 pickup—the truck's light switch, the victim's chest under his sweatshirt to check for a

heartbeat, and the victim's neck to check for a pulse. Defendant then called his father to tell him the victim "had shot himself." His father told him to call 911. Defendant said that he never saw a gun.

Defendant told Agent Parson that he knew that the victim grew and sold marijuana and that he knew where the victim hid his drugs. Defendant said he removed marijuana from under a loveseat and the victim's keys and black pouch from the ping-pong table in the barn. Although Defendant said that he did not see a gun, Agent Parson said there was a .270 deer rifle on the ping-pong table in the barn. Agent Parson said that Defendant had his cell phone during the interview and that Agent Parson did not look at the phone.

While Agent Parson interviewed Defendant at the Sheriff's Office, Agent Faulkner processed and videoed the crime scene. He also took numerous photographs and measurements from which he produced a diagram of the scene. He measured the distance from the mobile home where Defendant lived with his parents to be two thousand two hundred feet and thirty feet from the barn. He said that the S-10 pickup truck was parked next to and facing the barn entrance with the keys still in the ignition. The back glass window of the pickup truck was shattered, and there was a bullet hole through the driver's side headrest. The front windshield was cracked from the impact of the bullet which ricocheted, and a "copper-colored fired projectile" was recovered from the passenger side floorboard. Agent Faulkner photographed a "tissue or body material, reddish-brown stain" on the inside of the driver's side doorjamb of the S-10 pickup truck which he said indicated that the door was open when the victim was shot. Agent Faulkner examined the victim's hoodie and recovered two cell phones from the front pocket, a black Pantech cell phone and a red Blackberry AT&T cell phone ("the Blackberry cell phone"). There was a reddish-brown stain with what appeared to be a fingerprint on the Blackberry cell phone. A photograph of the phone with the stain and what appears to be a fingerprint was entered as an exhibit. As Agent Faulkner examined the Blackberry cell phone, a screen lit up showing a missed call from Defendant at 4:35 a.m. and other missed calls.

Agent Faulkner attempted to enter the room in the barn where Defendant said the victim slept but the door was locked. The victim's father did not have a key, so Agent Faulkner removed the hinges from the door to gain entrance. He said the room appeared to have "been ransacked or hurriedly searched" because items were scattered on the floor. Agent Faulkner said the bottom drawer of a gun safe in the bedroom was open and items that appeared to have been in the drawer were strewn across the floor. Agent Faulkner collected for evidence a deer rifle and a McDonald's coffee cup that were on the ping-pong table.

Agent Faulkner contacted the Medical Examiner's office in Nashville and arranged to have the victim's body transported to Decatur County Hospital for autopsy. After Agent

Parson returned from his interview of Defendant, Agent Faulkner contacted the Decatur County District Attorney who decided to have Defendant taken into custody. Agents Faulkner and Parson returned to the Sheriff's Office. When they arrived, Defendant was in the parking lot preparing to leave. They told him that he was under arrest, and after advising him of his *Miranda* rights, Defendant agreed to go back inside to make a statement.

During the second interview, Defendant told Agents Parson and Faulkner that he got "off work that previous Friday night at Cowboy Steakhouse around nine or nine thirty." He then went to the barn where he talked to the victim. Will Crawley arrived around 10:15 that night. A few minutes later Tony Conway, the victim's uncle arrived. Mr. Conway was a constable and was in uniform. Mark Holmes arrived next. Defendant said he left to go back to Cowboy Steakhouse and then went home. Shortly after Defendant got home, the victim and Mr. Holmes came to his trailer and stayed for about fifteen minutes. The victim said that they had unloaded an electric meter and pole at the barn. Defendant got a text message around midnight from the victim complaining about a dog barking, and he texted back that it was the neighbors across the street who he thought were cooking methamphetamine. Defendant said that he got a text message from the victim at 2:09 a.m. asking if Mapco sold hunting license. A short time later, he got a call from the victim asking if he wanted anything from McDonalds, and he responded that he wanted two spicy chicken sandwiches. Around 3:45 a.m., the victim arrived at his trailer with the sandwiches. Defendant said the victim "seemed depressed or angry" about something. The victim responded that he was "just tired." According to Defendant, around 4 a.m., the victim left to go back to the trailer. Defendant said that a couple of minutes later he said he heard "the loudest gunshot he had ever heard in his life." Defendant said it sounded like the victim's .270 rifle. Defendant sent a text to the victim at 4:03 a.m. asking: "What was that? Fifteen or twenty minutes later, Defendant sent a second text "What were you shooting at?" The victim did not respond. Defendant got up from bed and went into "his father's bedroom and told him that he heard a gunshot and that he feared that [the victim] had shot himself." His father told him to take his Jeep and go check on the victim. Defendant drove down to the barn. Defendant said he noticed that the headlights of the S-10 pickup truck were on but did not see the shattered rear windshield or the victim's body inside. He went inside the barn looking for the victim. After he could not find the victim, he went outside and noticed something inside the S-10 pickup truck. He said the driver's door was closed and that as he opened the door some glass fell out, and he saw the victim's body. He said he touched the victim's chest and neck to see if there was any movement. He turned the headlight of the S-10 pickup truck off, called his father to tell "him what [the victim] had done," and then called 911. Defendant admitted that he went into the barn took some marijuana from "under some stuff on the loveseat" and a set of keys and a black pouch containing drug paraphernalia from the ping-pong table and placed them in his Jeep.

He said that the lights were off in the barn, so he used a flashlight to find the items he eventually took.

As part of the investigation, Agent Parson obtained video from the security camera at the McDonald's drive-through which showed the victim arrived at 2:11 a.m. and left at approximately 2:14 a.m.

Agent Parson also obtained a search warrant for the victim's call record for the Blackberry cell phone ("the call record") and the Pantech cell phone. TBI Special Agent Nicholas Christian testified as an expert in computer and mobile device forensics. Agent Christian extracted and analyzed data from several cell phones and a laptop. From the victim's Blackberry cell phone, Agent Christian extracted "contacts, call logs, text messages, web bookmarks, Bluetooth devices, media locations, images, video, and audible." A list of the text messages received by the victim on November 9, 2013, was entered as Exhibit 26. The first text message on the list was sent at 3:45:56 a.m. by Defendant and said: "Wat was it?" At 3:56:40 a.m. another text message was sent by Defendant that said: "What you shooting at?" Both messages were unread as were all messages received from other callers after 3:56:40 a.m. Agent Christian said the "media card" of the Blackberry cell phone had been "wiped" and that all text messages before 12:01 a.m. and until 3:45:56 a.m. for November 9 had been deleted and could not be recovered. He said to delete text messages from the Blackberry cell phone a person could use "the touchpad and the menu option button to the left of the touchpad." Agent Parson asked Defendant for consent to search his phone during the interview. Agent Parson said that after Defendant consented, he grinned and looked at him and said: "You know about dumping phones, don't you Agent Parson?" He said all text messages between Defendant and the victim during the a.m. hours of November 9 before 3:45:56 were deleted and could not be recovered.

Agent Christian also identified a "Mobility Usage" report from AT&T showing all incoming and outgoing calls and texts for the victim's cell phone number for November 8 and 9, 2013. The Mobility Usage record for the a.m. hours of November 8 shows that the victim sent text to or called Defendant at 12:23, 12:33, 12:42, 1:53, and 2:00; and that Defendant sent text to or called the victim at 12:27, 12:30, 12:37, 12:41,12:45, 1:59, 2:02, 3:46, and 3:56. From 1:30 to 1:53 there were eight text exchanges or calls between Mr. Crawley and the victim. The only text messages not erased were the texts sent by Defendant to the victim at 3:45:56 and 3:56:40 and the text received by the victim after 3:56:40.

As part of the investigation, Agent Faulkner said that the TBI examined at least twenty weapons and submitted ten that were of a particular make or model for ballistic testing. None were the murder weapon.

TBI Special Agent Laura Boos from the DNA unit tested the red Blackberry cell phone recovered from the victim's shirt pocket which was stained with a reddish-brown substance which tested positive for blood. The DNA profile from the stained area matched the victim. She also found DNA traces on the red cell phone from three individuals. The major contributors were the victim and an unknown female.

TBI Special Agent Dabney Kirk testified as an expert in latent prints. She received a black cell phone and a red Blackberry cell phone from Agent Faulkner which she tested for latent prints. Agent Kirk also obtained known impressions for Defendant and the victim. Agent Kirk said there was a visible reddish-brown stain on the Blackberry cell phone with a clear fingerprint in the stain on the touch screen. Agent Kirk compared the fingerprint on the Blackberry cell phone to the impressions she had from Defendant and the victim. She identified one print from Defendant's right middle finger in the stain on the Blackberry cell phone. Agent Kirk also processed the black cell phone, the S-10 pickup truck, a Stevens rifle, and numerous items from the barn for latent prints but was unable to identify any other prints.

Mark Holmes was a friend of victim and last saw the victim on the night before he was murdered. Mr. Holmes and his cousin, Bart McBead, went to the barn where the victim lived. Defendant and Will Crawley were there when he arrived. He said the victim seemed like he was in a hurry but did not seem sad or depressed. He said the victim was excited about having a baby on the way. Mr. Holmes left the barn but after eating dinner went back to the victim's barn. He said Mr. Crawley and Defendant were still at the barn when he arrived, but that Defendant left to go home. Mr. Holmes said there was not a rifle or McDonald's cup on the ping-pong table when he left.

Dr. Thomas Deering was qualified as an expert in the field of forensic pathology. Dr. Deering performed an autopsy of the victim He said there was a gunshot entrance wound to the back of the victim's neck a little left of center and an exit wound in the left cheek. He said the bullet completely severed the victim's spinal cord which was the cause of death and that the manner of death was homicide. Dr. Deering opined that the victim "died either right away or a very, very short time, maybe a minute or so."

Dr. Eric Warren was qualified as an expert in ballistics. Dr. Warren examined a single bullet that was recovered from the crime scene. Based on certain characteristics, Dr. Warren said the bullet was "a .30 caliber bullet most consistent with, out of all the ammo that compared, a [W]inchester brand .30-06 caliber bullet." On cross-examination, Dr. Warren was asked if it "would have been impossible for a human being to hear that gunshot from two thousand two hundred some-odd feet away?" Dr. Warren answered that it would not have been impossible but that "it would have been very difficult to hear" the gunshot from that distance.

Michael Haag was qualified as an expert in the field of ballistics and crime scene reconstruction. Mr. Haag traveled to the crime scene in 2021. The S-10 pickup truck had been placed back at the scene based on measurements taken after the shooting. Using photographs of the scene taken on the day of the shooting, Mr. Haag was able to determine the approximate line of the direction from which the rifle was fired but not the distance from the truck.

Megan Lee testified that she was the victim's cousin and that she had previously dated Defendant, but that they were not dating at the time of the murder. She began dating Defendant again after he was released from jail. She said after his release, Defendant told her that he had owed a debt to "some Mexicans" but that "he got rid of it." She said she was interviewed by Agent Parson quite some time after the victim was murdered, and she told him what Defendant had told her.

Shannon Baxin said she was serving time in federal prison for conspiracy to commit drug trafficking. Ms. Baxin said Shane Rushing told her he had killed the victim. She said Mr. Rushing was attempting to sell her a rifle and that she said, "Oh, no. That might be the one that killed that boy." She said Mr. Rushing then said, "No. This is a .22. The one that killed the boy was a .30-06." She said by "that boy" she was referring to the victim. She asked what happened to the 30.06 rifle, and Mr. Rushing told her that we "drilled it down to the barrel of it to destroy it for the projectile pattern coming out, and that no one will ever find that gun." She said Defendant was present during this conversation.

The State recalled Agent Parson and questioned him about his interview of Ms. Lee. He said at the time of the victim's murder, the TBI policy was not to record interviews. He said the policy changed and that Agent Faulkner conducted a recorded interview with Ms. Lee. On cross-examination, Agent Parson said he had interviewed Ms. Baxin multiple times. Agent Parson reviewed a sworn statement of Ms. Lee in which she said that "Mr. Rushing and somebody he would not name destroyed the rifle." On re-cross, Agent Parson agreed Ms. Lee said: "didn't name" not "wouldn't name."

Mike Conway, the victim's father, testified about his son's love of hunting and how his death had affected him. He said he did not know Mr. Rushing and thought it odd that he was at the barn on the day his son was murdered. He said Defendant contacted him after he was released from jail and wanted to talk. Defendant came to his house and started telling him what happened. Defendant said he heard the shot, but that it was not unusual during muzzleloading season to hear a shot before daylight. Defendant said he planned to go hunting with the victim that morning, so he went to the barn and tried to find the victim. Defendant said he had a small flashlight and when he turned it on, he could see someone in the truck and "it looked like he was taking a nap." Defendant said he opened the truck door and saw that the victim had been shot, that he panicked and crawled into the truck and

shook the victim. Defendant said he realized the victim was gone and called 911. Mr. Conway said he did not believe Defendant's statement.

The jury convicted Defendant in Count 2 of the lesser-included offense of facilitation of aggravated robbery. The trial judge declared a mistrial in Count 3 because the jury could not reach a unanimous verdict on felony murder. Following a sentencing hearing the trial court sentenced Defendant as a Range I offender to six years' incarceration. Defendant timely appealed.

Analysis

Defendant claims that there was not sufficient evidence for the jury to convict him of facilitation of aggravated robbery. The State argues the evidence was sufficient. We agree with the State.

Our standard of review for a sufficiency of the evidence challenge is "whether, after viewing 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 (1979) (emphasis i Agent Faulkner he Staten original); *see also* Tenn. R. App. P. 13(e). Questions of fact, the credibility of witnesses, and weight of the evidence are resolved by the fact finder. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). This court will not reweigh the evidence. *Id.* Our standard of review "is the same whether the conviction is based upon direct or circumstantial evidence." *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011) (quoting *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009)) (internal quotation marks omitted).

A guilty verdict removes the presumption of innocence, replacing it with a presumption of guilt. *Bland*, 958 S.W.2d at 659; *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). The defendant bears the burden of proving why the evidence was insufficient to support the conviction. *Bland*, 958 S.W.2d at 659; *Tuggle*, 639 S.W.2d at 914. On appeal, the "State must be afforded the strongest legitimate view of the evidence and all reasonable inferences that may be drawn therefrom." *State v. Vasques*, 221 S.W.3d 514, 521 (Tenn. 2007).

"A person is criminally responsible for the facilitation of a felony, if, knowing that another intends to commit a specific felony, but without the intent required for criminal responsibility under [Tennessee Code Annotated section] 39-11-402(2), the person knowingly furnishes substantial assistance in the commission of a felony." Tenn. Code Ann. § 39-11-403(a) (2019).

> In Tennessee, "[a] person commits theft of property if, with intent to deprive the owner of property, the person knowingly obtains or exercises control over the property without the owner's effective consent." Tenn. Code Ann. § 39-14-103 (2006). "Robbery 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(a) (2006). Robbery becomes aggravated if it is "[a]ccomplished 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."

State v. Swift, 308 S.W.3d 827, 830 (Tenn. 2010).

Defendant admitted that, after the victim was murdered, he entered the barn where the victim lived and took marijuana, a set of keys, and a black pouch containing drug paraphernalia and placed them in his Jeep. Defendant stated that he knew the victim grew marijuana. Ms. Lee testified that after Defendant was released from jail, he told her that he had owed a debt to "some Mexicans" but that "he got rid of it." The proof was sufficient for the jury to determine beyond a reasonable doubt that Defendant exercised control over property of the victim without the victim's consent and intended to deprive the deceased victim of his property. *See State v. Farley*, No. M2003-02826-CCA-R3-CD, 2005 WL 366890, at *10 (Tenn. Crim. App. Feb. 16, 2005) (the victim's wallet was taken from his pants contemporaneously with the murder).

Ms. Baxin testified that Mr. Rushing told her he had killed the victim. She said that Mr. Rushing tried to sell her a .22 rifle. When she expressed concern that the .22 rifle was the weapon that killed the victim, Mr. Rushing told her that the victim was killed with a 30-06 rifle not a .22 rifle. She said Defendant was present during this conversation.

The proof at trial showed that Defendant arrived at the scene shortly after the murder. Based on his fingerprint in the blood stain on the victim's Blackberry cell phone, the evidence was sufficient for the jury to determine beyond a reasonable doubt that Defendant "wiped" all text messages sent to or by the victim on November 9, 2013, before 3:45:56 a.m. from the victim's Blackberry cell phone. Defendant also admitted that he wiped the messages that were sent or received by Defendant from his cell phone during this same period of time. The evidence was sufficient for the jury to determine that Defendant knowingly furnished substantial assistance to Mr. Rushing, that the theft of the victim's property by Defendant was contemporaneous with Mr. Rushing's use of a deadly weapon to murder the victim, and that Defendant was criminally responsible for the facilitation of aggravated robbery.

Conclusion

We affirm the judgment of the trial court.

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ROBERT L. HOLLOWAY, JR., JUDGE