

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs June 27, 2023

FILED

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Clerk of the
Appellate Courts

STATE OF TENNESSEE v. THAKELYN J. TATE

Appeal from the Criminal Court for Knox County
No. 114932 Kyle A. Hixson, Judge

No. E2022-00601-CCA-R3-CD

The Defendant, Thakelyn J. Tate, was convicted by a jury of conspiracy to possess more than twenty-six grams of cocaine with the intent to sell or deliver in a drug-free zone. *See* T.C.A. §§ 39-17-417(c) (2018) (subsequently amended) (possession of a controlled substance) (2018), 39-17-432 (2018) (subsequently amended) (drug-free zone), 39-12-103 (2018) (conspiracy). The jury likewise determined that the Defendant committed a criminal gang offense, enhancing the felony classification of the conviction. *See id.* § 40-35-121 (2019). The court imposed a fifteen-year sentence. On appeal, the Defendant contends that the evidence is insufficient to support the criminal gang enhancement. We affirm the judgment of the trial court.

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

ROBERT H. MONTGOMERY, JR., J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and ROBERT L. HOLLOWAY, JR., JJ., joined.

Gerald Gulley (on appeal), Knoxville, Tennessee; and Clinton E. Frazier (at trial), Maryville, Tennessee, for the Appellant, Thakelyn J. Tate.

Jonathan Skrmetti, Attorney General and Reporter; Abigail H. Rinard, Assistant Attorney General; Charme Allen, District Attorney General; Ta Kisha M. Fitzgerald and Lawrence Dillon, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

This case relates to several criminal investigations and traffic stops which resulted in the recovery of guns, ammunition, and drugs that were used in the sale of narcotics by the Defendant and other members of the Tree Top Pirus gang. In a presentment, the

Knox County Grand Jury charged the Defendant, along with codefendants Sidarius Jackson, Decoiso Clark, Robert Cody, Raffell Griffin, and Zephaniah Nyane. The Defendant was charged with conspiracy to possess cocaine with the intent to sell or deliver in a drug-free zone between September 1, 2017, and September 30, 2018, employing a firearm during the commission of a dangerous felony, and engaging in an enterprise of racketeering activity. The presentment also specified that the State was seeking enhanced punishment under the criminal gang offenses statute. The racketeering count was dismissed before trial.

At trial, law enforcement officers testified that two searches of Charles Arnold's home at the Walter P. Taylor Homes apartments in September and December of 2017 revealed drug scales, cash, drugs, drug paraphernalia, guns, and ammunition. Mr. Arnold testified that crack cocaine was manufactured and sold from his home, and he identified the Defendant, also known as "Earz," as one of the individuals who manufactured and sold crack cocaine. Mr. Arnold stated that he allowed his home to be used for drug sales in exchange for crack cocaine. Mr. Arnold said that he saw the Defendant possess guns, including rifles. Other evidence established that Mr. Arnold's home was located within a drug-free zone.

Mr. Arnold identified codefendant Cody as another person who manufactured and sold crack cocaine from Mr. Arnold's home. Codefendant Cody was arrested during a traffic stop in May 2018. The Defendant was a passenger in the car, and both the Defendant's and codefendant Cody's cell phones were confiscated by law enforcement. That same month, officers conducted a search of codefendant Nyane's home, where an assault-style rifle, ammunition, and drug paraphernalia were found. Codefendant Nyane was arrested, and his cell phone was confiscated.

Robert Crowe testified that he lived on Louise Avenue during 2017 and 2018. Mr. Crowe said that Lola Garrett introduced him to codefendant Cody and that Mr. Crowe allowed codefendant Cody and the Defendant to begin "cooking" and selling crack cocaine from Mr. Crowe's home, in exchange for crack cocaine. When asked why the Defendant was at Mr. Crowe's home, Mr. Crowe stated that the Defendant was "associated with everybody else, sold drugs, too." Other evidence established that Mr. Crowe's home was in a drug-free zone.

Knoxville Police Department (KPD) Investigator Thomas Thurman testified that he interviewed the Defendant in November 2018, that the Defendant said he was a member of the Tree Top Pirus gang, and that he had been "for a number of months." Investigator Thurman said the Defendant consented to a search of his cell phone, which showed photographs and videos of the Defendant and several codefendants at Mr. Crowe's home. Investigator Thurman stated that the Defendant said codefendant Nyane introduced him to the gang.

KPD Investigator Philip Jinks, an expert in narcotics investigations and gang identification and investigation, testified that Tree Top Pirus is a national gang organization with a presence in East Knoxville, primarily around Walter P. Taylor Homes and along Louise Avenue. Investigator Jinks identified drug paraphernalia, a large stack of cash, guns, digital scales, razor blades, ammunition, cocaine, and processing material for manufacturing crack cocaine during a search of Mr. Arnold's home. Investigator Jinks said the house also contained a crack cocaine "cookie," which could be cut into smaller pieces with a razor blade for sale and distribution. Investigator Jinks described Mr. Arnold's home as a "trap house," where "addicts and users come to purchase and use controlled substances and a place where drug dealers congregate to sell controlled substances."

Investigator Jinks testified that the Defendant and the codefendants were members of Tree Top Pirus. Investigator Jinks stated that codefendant Cody was the leader of the local Tree Top Pirus gang. Investigator Jinks said that in the course of his investigation, he confiscated cell phones belonging to codefendants Jackson and Clark and collected cell phones previously seized from the Defendant, codefendants Nyane and Cody, and other individuals in the car when codefendant Cody was arrested.

Investigator Jinks testified that the cell phones contained photographs, videos, and text messages that were created in 2017 and 2018. Investigator Jinks identified videos from the Defendant's phone depicting the Defendant and various codefendants at Mr. Arnold's home and at the Louise Avenue home. Investigator Jinks stated that many of the messages sent from the Defendant's phone to phones belonging to members of Tree Top Pirus and to other individuals were regarding the sale of crack cocaine. Because the messages utilized what Investigator Jinks identified as gang nomenclature, he interpreted the messages for the jury.

According to Investigator Jinks, text messages related to the sale of crack cocaine were sent in 2018 from the Defendant's cell phone to a person identified as "Heather." Investigator Jinks stated that Heather requested "a ball," meaning one-eighth of an ounce of crack cocaine, that the Defendant named a price consistent with this amount of crack cocaine, and that they discussed the time required to cook crack cocaine. Investigator Jinks stated that one-eighth of an ounce of crack cocaine was an amount likely to be sold to someone for distribution. Investigator Jinks testified that, in his opinion, many of the Defendant's messages between the Defendant and other individuals were regarding the sale of crack cocaine, including price negotiations, discussions regarding how much cocaine would be lost in the cooking process, and questions about the availability of powder cocaine. Investigator Jinks identified messages exchanged between the Defendant and a codefendant that involved trading guns for drugs. Investigator Jinks

identified another exchange in which the Defendant informed a Tree Top Pirus member that codefendant Griffin had traveled to California to look for a new drug supply source.

Investigator Jinks testified that there were several text messages exchanged between the Defendant and codefendant Cody during 2017 and 2018. Investigator Jinks said that in one message, the Defendant called codefendant Cody his “big homie,” meaning someone of higher rank in a gang. In another message, the Defendant referred to codefendant Cody as an “OG,” which, according to Investigator Jinks, meant “original gangster” and identified a gang leader. Investigator Jinks also discussed other messages in which the Defendant and the codefendants discussed needing “some work,” meaning more crack cocaine to sell.

In an April 2018 text message exchange between the Defendant and codefendant Griffin, the Defendant asked if the Defendant could go to the “trap” and was told that he should not go because too many people were there. Investigator Jinks stated that a gang frequently limited the number of people in a place where drugs were sold to avoid alerting the police to suspicious activity. Investigator Jinks stated that a 2018 photograph extracted from a cell phone showed codefendants Clark and Jackson and the Defendant displaying large amounts of money, while codefendant Clark made a letter “T” with his arms, referencing Tree Top Pirus.

Investigator Jinks testified that there was a conspiracy among Tree Top Pirus members to distribute crack cocaine in an amount greater than twenty-six grams in Knoxville, that guns were used by the gang members in the protection of drug interests, and that the goal of the Tree Top Pirus gang was to make money through the distribution of drugs.

At the conclusion of proof, the trial court granted the Defendant’s motion for a judgment of acquittal as to the employing a firearm during the commission of a dangerous felony charge and instructed the jury on the lesser-included offense of possession of a firearm during the commission of a dangerous felony. *See* Tenn. R. Crim. P. 29. The jury convicted the Defendant of conspiracy to possess more than twenty-six grams of cocaine with the intent to sell or deliver in a drug-free zone and acquitted him of the firearm charge.

In a bifurcated proceeding, the jury heard evidence regarding the applicability of the criminal gang enhancement statute. During the gang enhancement phase of the trial, Stephanie Ogle with the Knox County Criminal Court Clerk identified certified judgments of felony convictions for (1) Bernard Walker (aggravated assault); (2) Walter Smith (possession with the intent to sell more than a half gram of a Schedule II substance, cocaine); (3) Demarkus Lowe (first degree murder); (4) Michael May (second degree murder); (5) Galven Siler (possession with the intent to sell a Schedule III

controlled substance) (possession with the intent to sell a Schedule IV controlled substance); (6) Arterious North (manufacture, delivery, sale or possession of a Schedule VI controlled substance) (four counts of attempted voluntary manslaughter); (7) Montiere King (two counts aggravated burglary); and (8) codefendant Griffin (attempted aggravated arson). The court received the judgments as evidence. All of the offenses had been committed within a five-year period. Ms. Ogle stated that only the judgment related to Mr. King was marked as being gang-related.

KPD Investigator Mark Taylor, an expert in gang identification and intelligence gathering, testified that Tree Top Pirus was affiliated with the Bloods gang in California and operated in East Knoxville at Walter P. Taylor Homes and the Louise Avenue area. He stated that individual gangs dressed and communicated in distinctive ways and that it was common for Tree Top Pirus members to stress the letter "T" by doubling that letter in words.

Investigator Taylor testified that law enforcement used a checklist to determine the likelihood that an individual is a gang member, such as whether the individual wore certain colors, admitted to gang membership, used certain hand signals, and had branding or tattooing. He said that the nature of criminal offenses could help determine gang membership. Utilizing the checklist, Investigator Taylor stated that the individuals named in the judgments of conviction about which Ms. Ogle testified were Tree Top Pirus members. Investigator Taylor stated that the gang's main source of income was narcotics trafficking and that narcotics trafficking was consistent with the use of weapons and gang activity.

Investigator Taylor testified that the Defendant had admitted to being a Tree Top Pirus member and that the Defendant associated with known Tree Top Pirus members, including the codefendants. Investigator Taylor said that the Defendant's cell phone contained gang nomenclature, references to known gang members, references to criminal activity consistent with gang activity, and references to purchasing a gun. Investigator Taylor said that, in his opinion, the Defendant was a Tree Top Pirus member "[b]ased upon [the Defendant's] admission, based upon [the Defendant's] frequenting areas, the home area or turf of the Tree Top Pirus, based upon [the Defendant's] criminal activity, [and] based upon [the Defendant's] association with members . . . of the Tree Top Pirus."

On cross-examination, Investigator Taylor noted that his office maintained files on gangs, gang members, and suspected gang members. He acknowledged that he did not have a "gang file" on the Defendant but said that the Knox County Sheriff's Office did. Investigator Taylor said that the Tree Top Pirus gang was a prominent subset of the Bloods, that it had approximately forty members in the Knoxville area, and that its members knew each other.

Investigator Taylor testified that he had no information that the Defendant knew Mr. Walker, Mr. Lowe, Mr. May, or Mr. Siler. Investigator Taylor said that in the Defendant's cell phone records, the Defendant referred to several Tree Top Pirus members, including Mr. North, Mr. King, codefendant Nyane, and codefendant Griffin, who was the Defendant's cousin. Investigator Taylor believed the Defendant knew Mr. Smith because the Defendant referenced a vigil for Mr. Smith's sister in his phone records. Investigator Taylor stated that one of the factors he considered when determining whether the Defendant was a member of Tree Top Pirus was that the Defendant frequented Walter P. Taylor Homes, which was also in the part of Knoxville where the Defendant lived.

On redirect examination, Investigator Taylor testified that Tree Top Pirus maintained specific dwellings at Walter P. Taylor Homes from where it conducted criminal enterprises. Investigator Taylor stated that he was aware that the Defendant met with other Tree Top Pirus members on two occasions. On May 4, 2018, the Defendant was seen at codefendant Nyane's home with codefendants Clark and Jackson. On June 1, 2018, the Defendant was seen at a concert at the Mill & Mine with codefendants Griffin, Cody, and Clark, and other known gang members. Investigator Taylor stated that the Defendant and codefendant Griffin "rapped" together at the concert and that the Defendant referred to codefendant Griffin as "big homie." Investigator Taylor said, when considering whether the Defendant was a gang member, he also considered that on February 2, 2019, the Defendant was arrested in a stolen vehicle with a loaded gun, marijuana, and scales.

The jury found that the Defendant met the criteria for criminal gang enhancement. The trial court imposed a fifteen-year sentence. This appeal followed.

The Defendant contends that the evidence is insufficient to support the jury's criminal gang enhancement determination because there is no evidence to establish a nexus between the State's proof and the Defendant's alleged gang activity. Specifically, the Defendant argues that the State failed to prove that the eight convictions offered as evidence in support of the gang enhancement statute were, in fact, gang-related and that no nexus existed between the crimes and the gang or the Defendant. The State counters that the evidence is sufficient to support the jury's gang enhancement verdict. We agree with the State.

In determining the sufficiency of the evidence, the standard of review 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); *see State v. Vasques*, 221 S.W.3d 514, 521 (Tenn. 2007). The State is "afforded the strongest legitimate view of the evidence and all reasonable inferences" from that evidence. *Vasques*, 221 S.W.3d at 521. The

appellate courts do not “reweigh or reevaluate the evidence,” and questions regarding “the credibility of witnesses [and] the weight and value to be given the evidence . . . are resolved by the trier of fact.” *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997); *see State v. Sheffield*, 676 S.W.2d 542, 547 (Tenn. 1984).

“A crime may be established by direct evidence, circumstantial evidence, or a combination of the two.” *State v. Hall*, 976 S.W.2d 121, 140 (Tenn. 1998); *see State v. Sutton*, 166 S.W.3d 686, 691 (Tenn. 2005). “The 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)).

The criminal gang enhancement statute applies if the Defendant is a criminal gang member who commits a criminal gang offense that is at the direction of, in association with, or for the benefit of the Defendant’s criminal gang or a member of the Defendant’s criminal gang. *See* T.C.A. § 40-35-121.

As relevant to this appeal, the statute provides

(a) As used in this section, unless the context otherwise requires:

(1) “Criminal gang” means a formal or informal ongoing organization, association or group consisting of three (3) or more persons that has:

(A) As one (1) of its primary activities, the commission of criminal gang offenses;

(B) Two (2) or more members who, individually or collectively, engage in or have engaged in a pattern of criminal gang activity;

(2) “Criminal gang member” is a person who is a member of a criminal gang, as defined in subdivision (a)(1), who meets two (2) or more of the following criteria:

(A) Admits to criminal gang involvement;

....

(D) Resides in or frequents a particular criminal gang’s area, adopts their style or dress,

their use of hand signs or their tattoos and associates with known criminal gang members;

....

(G) Is identified as a criminal gang member by physical evidence such as photographs or other documentation;

(3) “Criminal gang offense” means:

....

(B) The commission or attempted commission, facilitation of, solicitation of, or conspiracy to commit any of the following offenses on or after July 1, 2013:

....

(xxv) Possession of a controlled substance or controlled substance analogue with intent to sell, deliver, or manufacture, as defined in § 39-17-417(a)(4) and § 39-17-454;

....

(4)(A) “Pattern of criminal gang activity” means prior convictions for the commission or attempted commission of, facilitation of, solicitation of, or conspiracy to commit:

- (i) Two (2) or more criminal gang offenses that are classified as felonies; or
- (ii) Three (3) or more criminal gang offenses that are classified as misdemeanors; or
- (iii) One (1) or more criminal gang offenses that are classified as felonies and two (2) or more

criminal gang offenses that are classified as misdemeanors; and

- (iv) The criminal gang offenses are committed on separate occasions; and
- (v) The criminal gang offenses are committed within a five-year period;

(B)(i) As used in this subsection (a), “prior conviction” means a criminal gang offense for which a criminal gang member was convicted prior to the commission of the instant criminal gang offense by the defendant and includes convictions occurring prior to July 1, 1997;

....

(b) A criminal gang offense committed by a defendant shall be punished one (1) classification higher than the classification established by the specific statute creating the offense committed if:

- (1) The defendant was a criminal gang member at the time of the offense; and
- (2) The criminal gang offense was committed at the direction of, in association with, or for the benefit of the defendant’s criminal gang or a member of the defendant’s criminal gang.

....

Id.

In the light most favorable to the State, the evidence shows that Tree Top Pirus was a criminal gang which operated in East Knoxville and had locations from which it manufactured and sold crack cocaine. Investigator Jinks testified that guns were used by gang members to protect their drug interests and that the goal of the gang was to make money through the distribution of drugs. Investigator Taylor testified that the gang was affiliated with the Bloods gang in California and that it operated at Walter P. Taylor Homes and in the Louise Avenue area.

The evidence further shows that the Tree Top Pirus gang had at least two members who participated in criminal gang activity. Judgments of conviction for enumerated criminal gang offense felonies committed between September 2010 and October 2014 for eight gang members were admitted into evidence. Although the Defendant contends that the State failed to establish a nexus between the gang and the gang members' criminal convictions, this argument fails because the statute does not require a nexus between the gang and the convictions used to show a pattern of criminal gang activity, as long as the convictions were committed by gang members during a five-year period. *See State v. John Foxx*, No. E2020-01711-CCA-R3-CD, 2022 WL 678607, at *6 (Tenn. Crim. App. Mar. 8, 2022), *perm. app. denied* (Tenn. June 8, 2022). The proof is sufficient to establish that the Tree Top Pirus was a criminal gang. *See* T.C.A. §§ 40-35-121(a)(1)(B), -35-121(a)(4)(A).

In the light most favorable to the State, the record reflects that the Defendant was a member of Tree Top Pirus. The Defendant admitted to officers that he was a member of the gang, and that he had been a member "for a number of months." Photographs and video recordings depicted the Defendant with known gang members at locations used by the gang for the manufacture and sale of crack cocaine. The Defendant was identified by officers as a Tree Top Pirus member based upon their training and experience. The proof is sufficient to establish that the Defendant was a Tree Top Pirus gang member. *See id.* § 40-35-121(a)(2).

In the light most favorable to the State, the evidence shows that based on the testimony of Mr. Arnold, Mr. Crowe, and Investigator Jinks, the Defendant participated in the acquisition, manufacture, and sale of cocaine from locations maintained by Tree Top Pirus in East Knoxville. Based upon trial evidence, the jury found the Defendant guilty of conspiracy to possess with intent to sell or deliver cocaine, which is one of the enumerated criminal gang offenses. The proof is sufficient to establish that the Defendant committed a criminal gang offense. *See id.* § 40-35-121(a)(3)(B).

We likewise conclude that in the light most favorable to the State, the Defendant was a gang member at the time of the offense and that he participated in the sale of drugs at the direction of, and in association with, or for the benefit of the gang. In a text message to a person identified as Heather, the Defendant quoted a price for the sale of crack cocaine and referenced the time necessary to cook it. Messages between the Defendant and codefendant Cody reflected that the Defendant participated in the purchase and sale of crack cocaine in conjunction with other gang members. The Defendant spent time at Walter P. Taylor Homes and the Louise Avenue home, the locations of the gang's activity, with other gang members and with drugs, cash, and guns. The Defendant sent a text message asking another gang member for permission to go to a gang "trap" location at Walter P. Taylor Homes. Another message reflected that the Defendant knew that codefendant Griffin had gone to California to look for a new drug

supply. Investigators Jinks and Taylor testified that the gang's primary goal was to make money through drug sales and distribution. The proof is sufficient to establish that the Defendant was a gang member at the time of the conspiracy and acted at the direction of, in association with, or for the benefit of the gang by participating in the gang's drug activity. *See id.* § 40-35-121(b).

In conclusion, the record supports the jury's determination that the Defendant committed a criminal gang offense. The Defendant is not entitled to relief.

In consideration of the foregoing and the record as a whole, the judgment of the trial court is affirmed.

ROBERT H. MONTGOMERY, JR., JUDGE