IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs September 17, 2019

STATE OF TENNESSEE v. KAVARIS LEQUAN KELSO

Appeal from the Circuit Court for Bedford County
No. 18385 Forest A. Durard, Jr., Judge

No. M2018-00494-CCA-R3-CD

The Defendant, Kavaris Lequan Kelso, was indicted on one count each of aggravated burglary, premeditated first degree murder, and first degree felony murder. See Tenn. Code Ann. §§ 39-13-202, -14-403. The Defendant was convicted as charged after a jury trial, and the trial court imposed a total effective sentence of life plus six years. In this appeal as of right, the Defendant contends that (1) the evidence was insufficient to sustain his convictions; and (2) the trial court erred by declining to instruct the jury on duress. Following our review, we affirm the judgments of the trial court.

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

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS, P.J., and CAMILLE R. MCMULLEN, J., joined.

Matthew J. Crigger (on appeal), Brentwood, Tennessee; and Mitchell J. Ferguson (at trial), Murfreesboro, Tennessee, for the appellant, Kavaris Lequan Kelso.

Herbert H. Slatery III, Attorney General and Reporter; M. Todd Ridley, Assistant Attorney General; Robert J. Carter, District Attorney General; and Michael D. Randles, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION
FACTUAL BACKGROUND[1]

This case arises from the September 14, 2015 murder of Angela Kibble, the mother of Michael Sales. The evidence at trial established that the victim's murder occurred in retaliation for the September 6, 2015 killing of twenty-year-old Capone

[1] The testimony in this case was extensive and, in large part, dealt with events preceding the murder in an effort to establish consistency between witnesses and to provide context for the relevant events. We have reordered and summarized the witness testimony for clarity and succinctness.

Caruth by Mr. Sales.[2] Mr. Caruth was a known affiliate[3] of the "Gangster Disciples," and Mr. Sales was known to be involved with a "Crip" gang. Mr. Caruth's murder was apparently provoked by the two men's colliding with one another in a nightclub.

Between Mr. Caruth's death on September 6 and the victim's murder on September 14, Mr. Sales had a conversation with the Defendant, in which Mr. Sales reportedly stated that he had "killed one in Fayetteville, he [was] going to kill [two] more in Tullahoma." Both Mr. Sales and his mother, the victim, were friends of the Defendant's family, and the Defendant referred to Mr. Sales as his cousin. The victim had previously allowed the Defendant to live with her for a period of time.

On September 13, 2015, Mr. Sales was arrested in Shelbyville by the Tennessee Bureau of Investigation (TBI) around 10:50 p.m.; TBI Special Agent Zachary Burkhart noted at trial that the arrest occurred with some urgency because he had received information that certain unidentified people were looking for Mr. Sales.

Several hours prior on that same evening, a group of people, mostly Gangster Disciple affiliates, began to gather in search of Mr. Sales. The group originally consisted of Lakisha Denham and Marie Eshbaugh, who were asked to drive but not gang affiliated; and David Fletcher, Cory Eddings, Antonio Taylor, Danny Allen, Desean Askins, all of whom were identified by at least one witness as having been affiliated with the Gangster Disciples at some point. The testimony was conflicted regarding whether the Defendant was affiliated with the Gangster Disciples. Mr. Eddings averred that the Defendant was an affiliate; Mr. Taylor did not know; and Ms. Denham and Ms. Eshbaugh were unfamiliar with the Defendant before the night of the murder.

The group traveled from Tullahoma to a Shelbyville Kangaroo gas station, where Mr. Eddings, Mr. Taylor, and Mr. Allen made purchases; they then continued to Chase Gross's house, where Mr. Gross and Raheem Maxwell[4] joined them. The group next drove to the Defendant's apartment, where the Defendant, Octavius Ransom,[5] and Allen

[2] Mr. Sales had been convicted of the first degree murder of Mr. Caruth prior to the Defendant's trial.

[3] There was an unspecified difference between gang affiliation, which was repeatedly mentioned at trial, and full membership.

[4] Mr. Gross and Mr. Maxwell were also identified as Gangster Disciple affiliates by some witnesses.

[5] There was no testimony that Mr. Ransom was gang affiliated, only that he was friendly with the Defendant.

Carney were playing video games.[6] The Defendant and Mr. Ransom joined the group before all traveling to the victim's apartment.

Three vehicles were involved in the group's travels: Ms. Denham's silver Chevrolet Malibu sedan, Ms. Eshbaugh's maroon Nissan Rogue SUV, and Mr. Gross's white Mercedes SUV. Surveillance recordings from the Kangaroo gas station and a number of other businesses were compiled by police and reflected the group's stopping at the gas station, traveling in the vicinity of Mr. Gross's house, and driving near the Defendant's apartment. Further recordings established that the caravan of cars traveled toward the victim's apartment, with the last recording being from a business four blocks away. The recordings corroborated the witnesses' statements regarding the order in which the cars drove and the order of the stops made during the evening.

Ms. Denham, Ms. Eshbaugh, Mr. Eddings, Mr. Taylor, and Mr. Ransom testified at trial; Mr. Eddings, Mr. Taylor, and Mr. Ransom were all in custody and averred that they had been promised no consideration for their testimony. Mr. Taylor was facing the same charges as the Defendant, and Mr. Ransom had unspecified charges in relation to this case, as well as an unrelated auto burglary charge. Mr. Eddings had been charged in federal court with possession of a firearm by a convicted felon.

The witnesses gave the following collective account of the evening's events: On September 13, 2015, Ms. Denham, Mr. Askins, Mr. Taylor, Mr. Allen, Mr. Eddings, Mr. Fletcher, and Ms. Eshbaugh were at a gathering at an apartment in Tullahoma. Mr. Fletcher asked Ms. Denham to drive him to Shelbyville; she initially refused but later allowed Mr. Fletcher to drive her silver Malibu. Ms. Eshbaugh was under the impression that they were going to pick up some people and go to a party. It was understood by some members of the group that they were going to look for Mr. Sales to "jump on" him and that they were "meet[ing] up" with the Defendant because he would know Mr. Sales's whereabouts.

At the Kangaroo gas station, Ms. Eshbaugh saw Mr. Eddings place a black and silver handgun in her glove compartment before entering the convenience store; Mr. Eddings denied having a gun that evening. Mr. Eddings noted that he was wearing a t-shirt with a photograph of Mr. Caruth's face and the caption "Gone Too Soon."

The group then traveled to the Defendant's apartment at Park Trail Apartments in Shelbyville. Ms. Eshbaugh stated that Mr. Eddings retrieved his gun before going into the Defendant's apartment; however, Mr. Eddings maintained that he did not have a gun.

[6] Most of these individuals were known by one or more nicknames, but it was well established at trial which person was being discussed at any given point.

Inside the apartment, Ms. Denham stated that she saw a black handgun on the counter; Mr. Ransom said that a black and chrome gun was on the couch; Mr. Taylor stated that a black and chrome gun was on a table; Mr. Eddings and Ms. Eshbaugh did not see a gun at all. Mr. Taylor heard Mr. Fletcher ask the Defendant if he had a gun, and the Defendant responded that Mr. Carney had one. The Defendant picked up the gun, handed it to Mr. Fletcher, put on a pair of pants over his shorts, and took the gun back and placed it in his sweatshirt pocket. Mr. Eddings, Mr. Taylor, and Mr. Ransom all noted that the Defendant and Mr. Fletcher went to a back room and spoke privately.

Ms. Eshbaugh stated that at some point, the Defendant told everyone, "[O]kay it is time to go[,] or let's go." Mr. Fletcher asked the Defendant why he allowed Mr. Sales to make the statement about killing "one in Fayetteville" and "[two] more in Tullahoma"; the Defendant said that Mr. Sales had a gun at the time. Mr. Taylor then asked the Defendant why he needed a gun, but the Defendant did not answer. The Defendant said that Mr. Sales might be at the victim's house, and Mr. Fletcher asked the Defendant where she lived. Mr. Ransom, who left with the group, did not know any of the group members aside from the Defendant, but he knew there was a conflict with Mr. Sales and "guess[ed]" that the men wanted to fight.

After leaving the apartment, the Defendant and Mr. Eddings rode in Ms. Eshbaugh's car, and the Defendant gave her directions to Southgate Apartments, which was next to Oak Hill Apartments, where the victim lived. Ms. Eshbaugh led the way followed by the Malibu, then the white SUV. Mr. Fletcher, who rode with Ms. Denham, asked Ms. Eshbaugh to back into the parking spot at Southgate Apartments. Ms. Denham, Ms. Eshbaugh, and Mr. Eddings stayed in their respective cars.

Mr. Taylor stated that the Defendant led the way to the victim's apartment. Mr. Ransom's TBI statement indicated that Mr. Fletcher told the Defendant to kick in the victim's door; Mr. Taylor stated that the Defendant kicked the door about three times before the victim opened it. The Defendant and the rest of the group entered without having received permission to do so, and the victim sat down on her couch. Mr. Ransom's TBI statement also indicated that Mr. Fletcher held the door and closed it behind Mr. Ransom, who was at the back of the group. Mr. Taylor stood directly behind the Defendant, who stood in front of the victim. Both Mr. Taylor and Mr. Ransom heard the Defendant ask the victim twice about Mr. Sales's whereabouts.[7] She responded that she did not know. The Defendant pulled out the gun, and Mr. Taylor told him not to do anything he would regret. The Defendant then shot the victim once, and the men fled the apartment. Mr. Ransom did not see the shooting, and neither he nor Mr. Taylor looked at the victim before running away. Mr. Taylor stated that the Defendant tried to hand him

[7] Mr. Ransom told the TBI that Mr. Fletcher also asked the victim for Mr. Sales's location.

the gun as they ran, that Mr. Taylor asked the Defendant what he was doing, and that Mr. Taylor gave the gun back to the Defendant.

Mr. Taylor denied that he or Mr. Fletcher threatened the Defendant or ordered him to kill the victim. Mr. Taylor did not anticipate that the victim would be harmed. Mr. Ransom also denied that anyone threatened the Defendant inside the victim's apartment, and he did not see anyone else with a gun there. Ms. Denham, Ms. Eshbaugh, and Mr. Eddings all denied hearing anyone threaten the Defendant during the evening. Mr. Eddings specifically denied that the Defendant ever mentioned having been threatened "to go over and murder" the victim, and he said that the Defendant appeared to have gone with the group to the victim's apartment willingly. When asked who "direct[ed] the activities" of the group upon leaving the Defendant's apartment, Mr. Taylor stated that Mr. Fletcher talked to the Defendant. Mr. Taylor did not hear Mr. Fletcher ask the Defendant any questions between the time they left the Defendant's apartment and arrived at the victim's apartment. All the witnesses denied having seen anyone other than the Defendant with a gun that evening.

Although Ms. Denham and Mr. Eddings did not notice anything amiss when the men returned to the cars, Ms. Eshbaugh testified that after the men were gone for fifteen or twenty minutes, she "heard a scuffle or something around the corner," looked in her rearview mirror, and saw "a bunch of people running like maniacs for no reason." The men got into the respective vehicles; Mr. Askins and the Defendant joined Ms. Eshbaugh in her SUV, and Mr. Eddings told Ms. Eshbaugh to follow the white SUV. Ms. Eshbaugh asked what was going on and was not given an answer. Ms. Denham drove Mr. Fletcher, Mr. Taylor, and Mr. Askins back to Tullahoma, and eventually Fayetteville. Ms. Denham noted that discussion occurred during the ride about what happened at the victim's apartment, although she was not permitted to testify about the contents of the conversation. Ms. Eshbaugh eventually dropped off the Defendant at his apartment.

The next morning, one of the victim's neighbors discovered her body after he noticed that she was not outside at her normal time and that her door was ajar. Shelbyville Police Officer Tory Moore and Detectives Brian Crews and Sam Jacobs responded to the crime scene and noted that the victim, who had clearly been deceased for some time,[8] had coagulated blood coming from a wound to the left side of her head and pooling on her neck and blouse. Detective Crews was personally acquainted with the victim and stated that police immediately suspected "[t]hat this was a specific hit . . . to possibly retaliate for" Mr. Caruth's murder. He noted that a shell casing was found next to the apartment's rear door, which led to a private balcony, and that a fired bullet was found near a table and chair. Detective Crews stated that no damage to the victim's door,

[8] It was estimated that the murder occurred just after midnight, according to the surveillance recording time stamps and noises the victim's neighbors heard in the night.

doorframe, latch, or deadbolt was evident. Detective Jacobs collected the shell casing, spent bullet, cigarette butts, and a sunflower seed from the crime scene.

TBI Agent Miranda Gaddes, an expert in trace evidence examination, testified that she collected about four distinct partial right shoeprints from the door; she noted that the impressions were "dusty" and would have been easily damaged if disturbed. She determined that a Reebok I-3-DMX Allen Iverson shoe, which contained the phrase "only the strong survive" on the sole, made the impressions. Agent Gaddes eventually compared them to a pair of Reebok Allen Iverson shoes the Defendant provided to Agent Burkhart. Because the Defendant's shoe did not have sufficient unique characteristics, Agent Gaddes could not eliminate the possibility that another shoe created the marks. However, she stated that she would "find it highly unlikely that another pair of shoes could have made these impressions." When asked why she could not make a conclusive identification of the shoe, Agent Gaddes stated that she "did not have enough individual characteristics or the uniqueness of the individual characteristics for [her] to feel comfortable identifying that shoe."

TBI Special Agent Jessica Hudson, an expert in firearms identification, testified that she examined the .40-caliber cartridge casing and a .40-caliber bullet from the crime scene. Her results indicated that both the cartridge casing and the bullet were Smith & Wesson Hornady Critical Duty brand and had been fired. She noted that no test existed to determine whether the bullet came from the cartridge casing. Agent Hudson noted that this type of hollow-point bullet typically contained a red nylon insert, and the insert was not present. She determined that the bullet was fired by one of three models of Smith & Wesson, two of which were semiautomatic pistols available in black and chrome. No gun was submitted for comparison to the shell casing or bullet. The casing and bullet were not tested for fingerprints or DNA; typically, fired cartridge casings did not retain fingerprints.

Davidson County Assistant Medical Examiner Dr. David Zimmerman, an expert in forensic pathology, testified that the cause of the victim's death was a single gunshot to the left side of the head, which penetrated the skull, brain, and brain stem, and exited the victim's neck on the right side. The shot was fired from between one and two feet away and at a downward angle, and soot and gunpowder stippling were present; the manner of death was homicide. The wound would have been instantly fatal. Dr. Zimmerman identified multiple bullet fragments recovered from the victim's head, including "red fragments of rubber," which in his experience came from some types of hollow-point bullets.

TBI Forensic Biologist Dr. Laura Boos, an expert in forensic biology and serology, testified that she tested cigarette butts and a sunflower seed collected at the crime scene, the Defendant's Allen Iverson shoes, and a shirt and pair of shorts provided

by the Defendant for DNA. The majority of the cigarette butts matched the victim and her daughter, according to Dr. Boos. All other DNA testing was inconclusive, except for that the victim's DNA was excluded as a possible contributor to female DNA present on the Defendant's clothing and that the Defendant and several other members of the group were excluded as possible contributors to male DNA found on one cigarette butt. Dr. Boos noted that several DNA profiles were on the Allen Iverson shoes. On cross-examination, Dr. Boos acknowledged that although she compared the DNA samples to those of several of the involved parties, she was not given all of the parties' DNA samples.

Special Agent Burkhart testified that he was involved in investigating both Mr. Caruth's and the victim's murders. Agent Burkhart had interviewed the victim on September 10, 2015, regarding Mr. Sales. On September 20, 2015, Agent Burkhart located the Defendant, and he gave a voluntary statement. In the statement, the Defendant said that Mr. Sales was his cousin, that he knew the victim, and that on the night in question, he went to buy cigarettes and was "confronted by individuals in hoodies," who told him at gunpoint to show them where the victim lived. The Defendant stated that he took the men to the victim's apartment and that he kicked the door two or three times. He said, though, that after kicking the door he went downstairs and left.

Agent Burkhart asked the Defendant to show him the shoes he wore that night. The Defendant took Agent Burkhart to his apartment, signed a consent form, and initially produced a pair of Nike tennis shoes, but after being questioned further, the Defendant gave Agent Burkhart a pair of Allen Iverson tennis shoes.

Agent Burkhart interviewed numerous other witnesses and used the surveillance recordings to corroborate their statements. Agent Burkhart thereafter attempted unsuccessfully to contact the Defendant again. The Defendant was eventually located and arrested in Pennsylvania.

The Defendant waived his rights and gave a second statement, in which he said that Mr. Fletcher, Mr. Taylor, Mr. Eddings, two men with dreadlocks,[9] Mr. Gross, Mr. Ransom, and Mr. Maxwell came to his house and instructed the Defendant to take them to the victim's apartment complex "where [Mr. Sales] could be found." Mr. Fletcher asked the Defendant if he had a gun, and the Defendant responded that Mr. Carney had one. Mr. Carney handed a chrome and black gun to Mr. Fletcher, who handed it to the Defendant. The Defendant handed it back to him in order to put on a pair of pants. The Defendant said that he rode in the maroon SUV.

[9] Mr. Allen and Mr. Askins both wore dreadlocks.

In the Defendant's statement, he said that the maroon car led the way, and a silver sedan and Mr. Gross's white SUV followed. The Defendant noted that Mr. Gross, Mr. Maxwell, and Mr. Ransom were in the white SUV, and Mr. Fletcher, Mr. Taylor, the second man with dreadlocks, and an African-American woman were in the silver sedan. The three cars parked in a parking lot behind the victim's apartment complex. Mr. Fletcher told the Defendant to show them in which apartment the victim lived. The Defendant, Mr. Fletcher, Mr. Taylor, Mr. Ransom, the two men with dreadlocks, and Mr. Maxwell went to the apartment. The Defendant said that Mr. Fletcher "made [him]" kick in the front door and that Mr. Fletcher and Mr. Taylor had guns. The victim came to the door, and everyone went inside. The Defendant stated that Mr. Fletcher and Mr. Taylor asked where Mr. Sales was located but that the victim did not know. He further stated Mr. Taylor or Mr. Fletcher handed him Mr. Carney's gun and "made [him] shoot her in the head." The Defendant said that Mr. Fletcher told him "to shoot her or he would shoot [the Defendant]." The Defendant confirmed that he was "the one who shot [the victim] in the head." Afterward, they all ran down the stairs and Mr. Taylor took the gun from the Defendant. Mr. Eddings drove the Defendant back to his apartment. The Defendant noted that he had told his pastor and his mother that he had been forced to shoot the victim. The Defendant drew a diagram depicting his location next to the couch in the apartment during the shooting. Agent Burkhart stated that no gun was recovered, even after searching a nearby body of water.

In the numerous interviews conducted in this case, the only time Agent Burkhart heard about other guns being present during the victim's murder was from the Defendant. He acknowledged, though, that Ms. Eshbaugh had been generally truthful and that Mr. Eddings's placing a gun in her glove box could have been accurate. He noted that Ms. Eshbaugh and Mr. Eddings showed a "little animosity" toward one another during their respective interviews. Agent Burkhart acknowledged that in the Defendant's second statement, it was not clear whether the Defendant told the men where Mr. Sales could be found or whether the men already knew where they wanted to go. Agent Burkhart noted that the Defendant likely did not load the gun and that no physical evidence related to the bullet would have revealed who pulled the trigger.

At the conclusion of the proof, defense counsel requested a jury instruction on duress. The State responded that duress was not a defense to homicide and that, therefore, a duress instruction was inappropriate. The State requested an instruction that duress was not a defense to homicide, and defense counsel argued that if this special instruction was given, a general duress instruction should also be given. The trial court found that the duress defense was unavailable in homicide cases because "case law specifically reference[d] homicide as being excluded because the harm caused is as great as the harm sought to be avoided." The court noted that another consideration was whether the Defendant "[i]ntentionally, knowingly or recklessly [became] involved in a

situation in which it was probable that [he] would be subjected to compulsion." See Tenn. Code Ann. 39-11-504(b). The court stated that unless closing arguments created the need for further instructions, it would not give either requested instruction. The State cautioned that if counsel lodged a duress argument in closing, it would renew its request for the special jury instruction. Defense counsel did not discuss duress in his closing argument. The Defendant was thereafter convicted as charged.

Following a sentencing hearing, the trial court merged the first degree murder convictions and imposed a statutory life sentence. The court ordered a consecutive sentence of six years for the aggravated burglary conviction, a Class C felony. See Tenn. Code Ann. § 39-14-403. The Defendant filed a timely motion for a new trial raising only the sufficiency of the evidence, which was denied. This appeal followed.

ANALYSIS

I. Sufficiency of the Evidence

The Defendant contends that the evidence was insufficient to sustain his convictions, arguing that his police statement and the accomplice testimony were not adequately corroborated; the witnesses were not credible; the State never introduced a recording of the Defendant's police statement or produced the murder weapon; the State could not "conclusively" match the Defendant's shoe to the footprint on the victim's door; and the forensic evidence did not link the Defendant to the crime scene. The State responds that the evidence was sufficient.

An appellate court's standard of review when the defendant questions the sufficiency of the evidence on appeal 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). This court does not reweigh the evidence, rather, it presumes that the jury has resolved all conflicts in the testimony and drawn all reasonable inferences from the evidence in favor of the State. See State v. Sheffield, 676 S.W.2d 542, 547 (Tenn. 1984); State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). Questions regarding witness credibility, conflicts in testimony, and the weight and value to be given to evidence were resolved by the jury. See State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997).

A guilty verdict "removes the presumption of innocence and replaces it with a presumption of guilt, and [on appeal] the defendant has the burden of illustrating why the evidence is insufficient to support the jury's verdict." Bland, 958 S.W.2d at 659; State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). A guilty verdict "may not be based solely upon conjecture, guess, speculation, or a mere possibility." State v. Cooper, 736 S.W.2d 125, 129 (Tenn. Crim. App. 1987). However, "[t]here is no requirement that the State's

proof be uncontroverted or perfect." State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983). Put another way, the State is not burdened with "an affirmative duty to rule out every hypothesis except that of guilt beyond a reasonable doubt." Jackson, 443 U.S. at 326.

The foregoing standard "applies to findings of guilt based upon direct evidence, circumstantial evidence, or a combination of [both] direct and circumstantial evidence." State v. Pendergrass, 13 S.W.3d 389, 392-93 (Tenn. Crim. App. 1999). Both "direct and circumstantial evidence should be treated the same when weighing the sufficiency of such evidence." State v. Dorantes, 331 S.W.3d 370, 381 (Tenn. 2011). The duty of this court "on appeal of a conviction is not to contemplate all plausible inferences in the [d]efendant's favor, but to draw all reasonable inferences from the evidence in favor of the State." State v. Sisk, 343 S.W.3d 60, 67 (Tenn. 2011).

First degree murder, in this instance, is defined as "[a] premeditated and intentional killing of another." Tenn. Code Ann. § 39-13-202(a)(1). A person acts intentionally "when it is the person's conscious objective or desire to engage in the conduct or cause the result." Tenn. Code Ann. § 39-11-302(a). Premeditation "is an act done after the exercise of reflection and judgment. 'Premeditation' means that the intent to kill must have been formed prior to the act itself. It is not necessary that the purpose to kill preexist in the mind of the accused for any definite period of time." Tenn. Code Ann. § 39-13-202(d).

Relative to this case, felony first degree murder is defined as the "killing of another committed in the perpetration of or attempt to perpetrate any . . . burglary[.]" Tenn. Code Ann. § 39-13-202(a)(2). Aggravated burglary occurs, in relevant part, when a defendant enters into a habitation without the effective consent of the owner with the intent to commit a felony or assault. Tenn. Code Ann. §§ 39-14-401, -402, -403.

It is well-established in Tennessee that "a conviction may not be based solely upon the uncorroborated testimony of an accomplice." State v. Shaw, 37 S.W.3d 900, 903 (Tenn. 2001) (citing State v. Bigbee, 885 S.W.2d 797, 803 (Tenn. 1994); Monts v. State, 379 S.W.2d 34,43 (Tenn. 1964)). To qualify as an accomplice, it is not enough that the witness possess guilty knowledge, be morally delinquent, or even have participated in a separate but related offense. See State v. Lawson, 794 S.W.2d 363, 369 (Tenn. Crim. App. 1990). The test is whether the alleged accomplice could be indicted for the same offense with which the defendant is charged. State v. Green, 915 S.W.2d 827, 831 (Tenn. Crim. App. 1995); Pennington v. State, 478 S.W.2d 892, 897-98 (Tenn. Crim. App. 1971) (citations omitted). Our supreme court has described what is required to establish sufficient corroboration as follows:

> [T]here must be some fact testified to, entirely independent of the accomplice's testimony, which, taken by itself, leads to the inference, not only that a crime has been committed, but also that the defendant is implicated in it; and this independent corroborative testimony must also include some fact establishing the defendant's identity. This corroborative evidence may be direct or entirely circumstantial, and it need not be adequate, in and of itself, to support a conviction; it is sufficient to meet the requirements of the rule if it fairly and legitimately tends to connect the defendant with the commission of the crime charged. It is not necessary that the corroboration extend to every part of the accomplice's evidence.

Shaw, 37 S.W.3d at 903 (quoting Bigbee, 885 S.W.2d at 803). The corroborating evidence need only be "slight." State v. Griffs, 964 S.W.2d 577, 589 (Tenn. Crim. App. 1997). While "[e]vidence which merely casts a suspicion on the accused . . . is inadequate to corroborate an accomplice's testimony," the "evidence is sufficient if it connects the accused with the crime in question." Id. Whether there is sufficient corroborating evidence is a question for the jury. Shaw, 37 S.W.3d at 903.

In this case, Mr. Taylor and Mr. Ransom were accomplices who were or could have been charged with the same offenses as the Defendant. However, portions of their testimony were corroborated not only by one another, but by Ms. Denham and Ms. Eshbaugh, who did not participate in the evening's criminal events and were able to confirm most details of the sequence of events and the people present before and after the murder. In addition, the detailed surveillance recording compilation corroborated their accounts of the group's movements and the order in which the cars traveled on their way to the victim's apartment. Finally, the Defendant's second police statement was generally consistent with the other witness statements, except for the Defendant's claiming to have shot the victim under duress. The accomplice testimony was adequately corroborated in this case.

The Defendant's other alleged grounds of insufficiency relate to the credibility of the witnesses and the weight of the evidence presented, both of which are the province of the jury. The State's burden was to prove the elements of the offenses beyond a reasonable doubt; no element of the charged offenses required presentation of the murder weapon, a conclusive DNA or shoeprint match, or any other specific piece of evidence the Defendant named. The jury weighed the evidence and, by its verdict, accredited the State's witnesses and resolved any conflicts in testimony in favor of the State.

In the light most favorable to the State, the evidence established that a group of people set out that evening to locate and confront Mr. Sales following the death of Mr. Caruth; that the Defendant knew where the victim lived and led the group to her; that the Defendant was carrying a gun; that the Defendant kicked the victim's door multiple times

until she answered, at which point he and the other men entered her apartment without invitation; and that he shot the victim after she was unable to provide them with Mr. Sales's whereabouts. Afterward, the Defendant gave a false statement to police and left the State before he ultimately confessed to the killing while also attempting to diminish his responsibility. The murder weapon was not recovered.

The suggestion of duress raised by the Defendant's second police statement was rejected by the jury. All witnesses denied that they heard any threats directed toward the Defendant, including inside the victim's apartment. The Defendant rode in a separate car from Mr. Fletcher, the primary person he alleged to have threatened him. Mr. Ransom and Mr. Taylor denied having guns or seeing anyone other than the Defendant with a gun inside the victim's apartment.

A reasonable juror could have found that the Defendant had the opportunity for reflection prior to the act of killing, thereby committed premeditated murder, and that he committed felony first degree murder by killing the victim after committing aggravated burglary by entering her apartment without her consent. The evidence was sufficient, and the Defendant is not entitled to relief on this basis.

II. Duress Instruction

The Defendant contends that the trial court erred by declining to instruct the jury on duress, arguing that he raised the defense in his second police statement, which indicated that Mr. Fletcher threatened to shoot the Defendant if he did not kill the victim. The Defendant acknowledges that this issue was not raised in the motion for a new trial and requests plain error review.

As a preliminary matter, the Defendant argues that if this court "credits" the Defendant's confession in rejecting his sufficiency of the evidence argument, we should "credit" it "as sufficient to merit a duress instruction." It is not the province of this court to credit or discredit evidence or testimony on appeal.

The Defendant correctly notes that he failed to raise this issue in his motion for new trial and did not mention it during the motion for new trial hearing and that he has waived full appellate review. See Tenn. R. App. P. 3(e) (providing "that in all cases tried by a jury, no error presented for review shall be predicated upon error in the . . . jury instructions granted or refused . . . unless the same was specifically stated in a motion for new trial"). Therefore, we review this issue solely to determine if plain error review is warranted.

The doctrine of plain error applies when all five of the following factors have been established:

(a) the record must clearly establish what occurred in the trial court;
(b) a clear and unequivocal rule of law must have been breached;
(c) a substantial right of the accused must have been adversely affected;
(d) the accused must not have waived the issue for tactical reasons; and
(e) consideration of the error must be "necessary to do substantial justice."

State v. Page, 184 S.W.3d 223, 230-31 (Tenn. 2006) (quoting State v. Terry, 118 S.W.3d 355, 360 (Tenn. 2003)) (internal brackets omitted). "An error would have to [be] especially egregious in nature, striking at the very heart of the fairness of the judicial proceeding, to rise to the level of plain error." Id. at 231.

Here, the Defendant has failed to establish that a clear and unequivocal rule of law was breached. A trial court is required to instruct a jury on a general defense such as duress only when it has been "fairly raised by the proof." Tenn. Code Ann. § 39-11-203(c). Tennessee's courts have noted several times that duress is not a defense to homicide. See, e.g., State v. Robinson, 622 S.W.2d 62, 73 (Tenn. Crim App. 1980) (stating that the trial judge "would have been justified in instructing the jury that . . . duress is not a defense to the crime of homicide"); Mallicoat v. State, 539 S.W.2d 54, 56 (Tenn. Crim App. 1976) (discussing the inapplicability of duress as a defense to murder); Leach v. State, 42 S.W. 195, 197 (Tenn. 1897) (holding that if a defendant was threatened with death if he did not murder the victim, "it was his duty to spare [the victim]" and that he "could not with any degree of legal palliation elect a course absolutely safe to himself, and slay an innocent man, rather than take some risk to himself in an equal combat with a relentless companion").

The Defendant urges this court to conclude that the duress defense is not per se inapplicable to homicide offenses. However, in order to establish duress, a defendant must demonstrate that "the desirability and urgency of avoiding the harm" outweighed, "according to ordinary standards of reasonableness, the harm sought to be prevented by the law proscribing" the criminal offense committed. Tenn. Code Ann. § 39-11-504(a). The danger of death cannot reasonably outweigh the harm of causing a death; therefore, duress in a homicide case cannot be fairly raised by the proof, regardless of whether the Defendant was being threatened at the time he shot the victim. The trial court did not breach a clear and unequivocal rule of law by declining to give a jury instruction on a defense that was not fairly raised by the proof. The Defendant is not entitled to plain error relief on this basis.

CONCLUSION

Upon consideration of the foregoing and the record as a whole, the judgments of the trial court are affirmed.

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D. KELLY THOMAS, JR., JUDGE