

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs April 12, 2016

STATE OF TENNESSEE v. JERRIE COLEMAN

**Appeal from the Circuit Court for Carroll County
No. 13CR56 Donald E. Parish, Judge**

No. W2015-01925-CCA-R3-CD - Filed June 15, 2016

The Defendant, Jerrie Coleman, was convicted by a Carroll County Circuit Court jury of aggravated burglary, a Class C felony, vandalism of property valued at more than \$500 but less than \$1000, a Class E felony, possession of less than one-half ounce of marijuana, a Class A misdemeanor, and possession of drug paraphernalia, a Class A misdemeanor. *See* T.C.A. §§ 39-14-403(a) (2014) (aggravated burglary), 39-14-408(a) (2010) (amended 2015) (vandalism), 39-17-418(a) (2010) (amended 2014, 2016) (possession of a controlled substance), 39-17-425(a)(1) (2010) (amended 2012) (possession of drug paraphernalia). The trial court sentenced the Defendant to an effective four years. On appeal, the Defendant contends that (1) the evidence is insufficient to support his convictions, (2) his speedy trial rights were violated by an investigatory delay, and (3) the arrest warrant was not supported by probable cause, the arresting officers committed an illegal entry of the house during the arrest, and the officers violated the Defendant's *Miranda* rights. We affirm the judgments of the trial court.

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

ROBERT H. MONTGOMERY, JR., J., delivered the opinion of the court, in which THOMAS T. WOODALL, P.J., and ALAN E. GLENN, J. joined.

Barton F. Robison, Paris, Tennessee, for the appellant, Jerrie Coleman.

Herbert H. Slatery III, Attorney General and Reporter; Zachary T. Hinkle, Assistant Attorney General; Matthew Stowe, District Attorney General; and Adam Jowers, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

This case arises from a November 25, 2011 burglary of the victim's house. Carroll County Sheriff's Deputy Alan Meggs testified that around 1:00 a.m., he responded to an alarm call at the victim's house. He said that when he arrived, he saw a window screen had been cut at the back of the house and that another cut screen was lying against the side of the house. He stated that the back entrance of the house consisted of an exterior screen door, a larger exterior door leading to a carport, and an interior door leading into the house. He said that the exterior doors were ajar and that when he entered the carport, he saw the interior door had been forced open. He stated that no one was present, that he secured the house, and that the police dispatcher contacted the homeowner, who was out of town. Deputy Meggs stated that he was unable to determine whether anything was missing from the house.

Deputy Meggs testified that before he went to the house, he saw a car in a ditch 200 to 300 yards from the house. He said that another officer stopped to investigate the car and that Deputy Meggs continued to the house. Deputy Meggs stated that after he secured the house, he returned to the car and saw Jessica Curtis with a teenage boy and a younger boy. Deputy Meggs said that he did not know the people and that they told him their car became stuck while turning around. Deputy Meggs stated that another officer thought the people might have been connected to the burglary. Deputy Meggs said that he did a "routine check" on the people, that the boys' mother was contacted, and that another officer took them home. Deputy Meggs stated that Sergeant Lee Bates conducted the follow-up investigation into the burglary. On cross-examination, when asked how he determined the inner door had been forced open, Deputy Meggs testified that "it opened to the inside, and it was . . . opened inward."

The victim testified that on the evening of November 23, 2011, he was out of town when he received a telephone call from his home security company. He said that the security company contacted the police, that the victim's nephew went to the house the next morning, that his nephew told the victim the door to the garage was open, and that his nephew said he had closed the door. The victim stated that early on the morning of November 25, the security company called him again, that the security company contacted the police, and that the police contacted the victim.

The victim testified that he returned to his house around 9:00 a.m. on November 25. The victim said the storm door had been pried open, the interior door had been kicked in, and the interior door frame was damaged. He said a television was missing from inside the house. He stated one window screen had been removed and another cut. The victim stated that he repaired the door frame and installed a new interior door at an estimated cost of more than \$1000.

The victim testified that Sergeant Bates investigated the burglary and collected fingerprints. The victim said that after Sergeant Bates left, the victim discovered a cell phone in the yard about twenty feet from the back door, that he notified Sergeant Bates, and that Sergeant Bates collected the phone.

The victim testified that he and the police saw fingerprints on the window without a screen. He said that the fingerprints were located “where we try to push up on” the window. The victim stated that fingerprints were collected from the bottom half of another window. The victim stated that before he left town, he locked all his doors and windows. He said that the Defendant did not have permission to go inside his house, damage the house, or take a television. The victim did not remember the Defendant’s previously visiting his house.

On cross-examination, the victim testified that his son, Scott, probably knew the Defendant, that the victim never told Scott not to testify at the trial, and that the victim never told Scott not to accept a subpoena. The victim said that when the security company first called him, no one had entered the house. The victim denied that his security alarm was triggered several times after the November 23 and 25 incidents. The victim said that his children had not played with friends in the backyard since they were young. The victim stated that he knew the Defendant because the Defendant lived in the same area as the victim’s nephew. The victim said that his nephew and the Defendant were friendly because they were related by marriage. The victim stated that he was unsure if the bicycle was taken during the burglary but that he included it in the police report.

Carroll County Police Sergeant Lee Bates testified that he responded to the victim’s house the morning of November 25, that the victim showed him the damaged door and the cut screens, and that Sergeant Bates photographed the scene. Sergeant Bates said that he noticed fingerprints on two of the windows, that he did not have equipment to collect the fingerprints, and that he told the victim he would return and not to touch the windows. Sergeant Bates said he collected the fingerprints the next day and sent them to the Tennessee Bureau of Investigation (TBI) crime laboratory for analysis on February 15, 2012.

Sergeant Bates testified that the officers examined the cell phone and called one of the contacts labeled “Dad” or “father,” who was later identified as the Defendant’s father. Sergeant Bates said that after his conversation with the Defendant’s father, he went to the Defendant’s house to ask the Defendant if he knew his phone’s location. Sergeant Bates stated that the Defendant told him the phone had been stolen from his backpack while the Defendant played basketball and that the Defendant had not seen the phone recently. Sergeant Bates informed the Defendant the phone was connected with a burglary investigation. Sergeant Bates said the Defendant denied knowledge of the burglary.

Sergeant Bates testified that the TBI completed the fingerprint analysis on September 8, 2012, that the fingerprints matched the Defendant, and that a warrant was issued for the Defendant's arrest. Sergeant Bates said that he did not participate in the Defendant's arrest. Sergeant Bates stated that he sent the cell phone to another sheriff's office, and later to the TBI, to be analyzed and that the TBI did not recover any information from the phone.

Sergeant Bates testified that he learned about Deputy Meggs's encounter with the people in the car during a September 9, 2013 hearing. Sergeant Bates said that he found Ms. Curtis, the driver of the car, and that she told him she and the Defendant were friends. Sergeant Bates stated that Ms. Curtis's car was located between 650 and 675 feet from the victim's house and that the Defendant's house was located between three and four miles from the victim's house.

On cross-examination, Sergeant Bates testified that he did not collect any fingerprints inside the victim's house. He said that many people had touched the two doors and that as a result, he did not collect fingerprints from the doors. He stated that he did not find any evidence the Defendant had entered the house other than associating the fingerprints and cell phone outside the home with the missing television. Sergeant Bates said that the TBI report on the phone reflected messages regarding insufficient funds to use the phone dating to six weeks before the burglary. He stated that the report did not reflect the Defendant had used the cell phone during that time. Sergeant Bates said the Defendant did not have any of the victim's property.

Sergeant Bates testified that the Defendant's arrest warrants incorrectly reflected that the burglary occurred on November 25, 2012, rather than 2011. Sergeant Bates denied lying on the affidavit to the arrest warrant. When asked whether he had evidence linking the stolen television to the Defendant, Sergeant Bates said, "I do have someone that mentioned that they heard that the TV was in [the Defendant's] room." Sergeant Bates acknowledged that the statement was hearsay and said that he did not have the information at the time of the preliminary hearing, during which he denied knowing a connection between the Defendant and the television.

Sergeant Bates testified that the police had responded to the victim's house on previous occasions but that the November 25, 2011 call was the first break-in. He said that police records reflected officers responded to the victim's house on November 28 and December 3 due to a triggered security alarm and a panic alarm, respectively. He stated that the police had been called to the victim's house previously on complaints of a prowler, a suspicious person, and vandalized property. Sergeant Bates said that he did not collect fingerprints inside the house. He stated that the TBI could not identify all of the fingerprints because some of them were of poor quality. When asked why he delayed sending the fingerprints, he said he was waiting to gather evidence from other cases in

order to limit the number of trips to Nashville. Sergeant Bates acknowledged that eventually, the police sent the fingerprints to Nashville by registered mail.

Sergeant Bates testified that the fingerprint analysis report was dated July 23, 2012. He said that the TBI required a report to be accessed in Nashville, that he and another officer traveled to Nashville, and that the other officer retrieved the fingerprints from the TBI. Sergeant Bates did not remember when he traveled to Nashville but said the trip would have been near the time the arrest warrant was issued. He said that it was common for one year to elapse between submitting fingerprints for analysis and obtaining the report. Sergeant Bates stated that the fingerprint report might have been in “the system” before November but that he did not view the report until he “went in the system looking for it.” Sergeant Bates said that generally, he did not try to access a report until the evidence had been retrieved from the TBI.

Sergeant Bates testified that the perpetrator of the burglary did not enter the victim’s house through either of the windows from which the fingerprints were recovered. Sergeant Bates acknowledged that when he submitted the cell phone to the TBI, it “[t]ook a long time to get that done.” He said that he did not attempt to collect fingerprints from the phone. When asked whether the phone records corroborated the Defendant’s claiming the phone was stolen, Sergeant Bates responded that he “couldn’t figure how that phone, if it was stolen by somebody else, would get to the very same house where his fingerprints were on the windows.” Sergeant Bates stated that the phone had power when it was recovered.

The TBI reports relative to the cell phone and fingerprint analysis were received as exhibits.

Sergeant Bates testified that when he submitted the cell phone to the TBI, he told them it was found at the scene of the burglary. He said that a September 14, 2011 text message from the phone was marked unsent and that a September 1, 2011 entry indicated the user accessed the internet. The last phone entry not consisting of an insufficient funds message occurred on September 14, 2011.

TBI Special Agent Harry Woods, an expert in latent fingerprint analysis, testified that he analyzed the fingerprints recovered from the victim’s windows, that he identified five fingerprints for analysis, and that he ran the fingerprints through the Automated Fingerprint Identification System (AFIS). He said that the fingerprints matched the Defendant’s left hand.

Carroll County Sherriff’s Deputy Jason Walker testified that he went to a house with another officer to serve the Defendant’s arrest warrant. He said that when the Defendant answered the door, the Defendant had “something” in his hand. Deputy

Walker stated that the Defendant ducked away from the door and turned around and that the officers went inside and handcuffed him.

Deputy Walker testified that when he searched the Defendant, he found digital scales and that the Defendant denied having any contraband on his person. Deputy Walker noted that possession of the scales alone was not illegal but that scales constituted drug paraphernalia when recovered in combination with illegal drugs. He said that the Defendant wore several layers of clothing and that the layers made a pat-down search difficult.

Deputy Walker testified that Deputy Carlton Cupples arrived to transport the Defendant and that when the officers began to place the Defendant in the police cruiser, a small bag of marijuana appeared at the Defendant's feet. The marijuana weighed 9.3 grams. Deputy Walker stated that in his experience, drug dealers simultaneously used several "throwaway" cell phones. He said Deputy Cupples reported that when they arrived at the jail, another officer found .25-caliber bullets on the Defendant's person. Deputy Walker stated that Deputy Cupples also found a loaded .25-caliber pistol underneath the backseat in his police cruiser.

On cross-examination, Deputy Walker testified that he had seen the Defendant's arrest warrant in police records several times over a two-month period and that the police had been unable to locate the Defendant. Deputy Walker said that when the Defendant opened the door, he turned away and appeared to put something in his waistband or jacket pocket. Deputy Walker stated that he searched the Defendant twice.

Deputy Walker testified that the police did not request an analysis and instead relied on their familiarity with marijuana to make the identification. Deputy Walker said other officers told him the bullets were found in the Defendant's pocket, that Deputy Walker patted down the Defendant's pockets and did not feel the bullets, and that Deputy Cupples did not search the Defendant before placing him in the police cruiser.

Carroll County Sheriff's Deputy Mark Boaz testified that he worked as a correctional officer at the jail and that on February 6, 2013, he booked and patted down the Defendant and found .25-caliber automatic, round nose bullets in his pockets. Deputy Boaz said that he and the transport officer searched the transport officer's police cruiser and found a loaded "chrome or nickel-plated and black automatic weapon[.]"

Carroll County Sheriff's Deputy Carlton Cupples testified that he transported the Defendant to the jail, that when Deputy Walker escorted the Defendant to the police cruiser, a bag of marijuana fell out of the Defendant's pants leg, and that Deputy Walker patted down the Defendant again. Deputy Cupples did not pat down the Defendant. Deputy Cupples said that when they arrived at the jail, Deputy Boaz searched the Defendant and found six .25-caliber bullets in his pocket. Deputy Cupples stated that

when he and Deputy Boaz searched the police cruiser, they found a .25-caliber automatic pistol under the right backseat. Deputy Cupples said that generally, he placed people on the right side of the backseat.

Upon this evidence, the Defendant was convicted of aggravated burglary, vandalism, possession of marijuana, and possession of drug paraphernalia. This appeal followed.

As a preliminary matter, we note that the jury rendered its verdict on May 27, 2015. The Defendant filed a motion to set aside judgment on June 5, which the trial court considered as a motion for a new trial. However, the sentencing hearing was not held until August 26, 2015, making the motion for a new trial premature. The State has not argued on appeal the premature filing renders the motion for a new trial untimely.

Tennessee Rule of Criminal Procedure 33(b) states that a motion for new trial is properly filed “within thirty days of the date the order of sentence is entered.” Our supreme court has concluded, however, that when the State does not raise the issue on appeal and no prejudice to the State is apparent, a court may consider a prematurely filed motion for a new trial to have been timely filed. *State v. Hatcher*, 310 S.W.3d 788, 800 (Tenn. 2010) (citing *State v. Siliski*, 238 S.W.3d 338, 374 (Tenn. Crim. App. 2007)).

I. Sufficiency of the Evidence

The Defendant contends that the evidence is insufficient to support his convictions. The State responds that the evidence is sufficient. We note that the Defendant’s brief frames the issue presented as a question of the sufficiency of the evidence relative to the aggravated burglary conviction, but his argument discusses aspects of each conviction. We will consider the sufficiency of the evidence relative to all of the convictions.

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)). A conviction may be based upon circumstantial evidence alone. *See Dorantes*, 331 S.W.3d at 380-381.

a. Aggravated Burglary

The Defendant contends that the evidence was insufficient to prove he entered the victim’s house or intended to commit theft. Aggravated burglary is defined as the burglary of a habitation. T.C.A. § 39-14-403. Burglary is defined as entering without the owner’s effective consent a building other than a habitation “not open to the public, with intent to commit a felony, theft, or assault[.]” *Id.* § 39-14-402(a)(1) (2014). A habitation is “any structure . . . designed or adapted for the overnight accommodation of persons[.]” *Id.* § 39-14-401(1)(A) (2014).

In the light most favorable to the State, the evidence shows that the victim’s door was forced open, two window screens were cut, one of the screens was removed, and a television was taken from inside the house. The Defendant’s fingerprints were located on one of the windows with a cut screen, and the Defendant’s cell phone was found in the victim’s backyard twenty feet from the entry door. Sergeant Bates testified that “someone . . . mentioned that they heard that the TV was in [the Defendant’s] room.”¹ Ms. Curtis, the Defendant’s friend, was found on the night of the burglary with her car in a ditch close to the victim’s house. The jury by its verdict credited the State’s evidence, including the hearsay testimony, and we will not reweigh the evidence on appeal. The evidence is sufficient. The Defendant is not entitled to relief on this basis.

b. Vandalism

The Defendant contends that the evidence is insufficient to prove he damaged the victim’s screens and doors. The State responds that the evidence is sufficient because the vandalism stemmed from the burglary.

Vandalism is defined as knowingly causing “damage to or the destruction of any real or personal property of another . . . knowing that the person does not have the owner’s effective consent.” *Id.* § 39-14-408(b)(1).

In the light most favorable to the State, the record reflects that Deputy Meggs found fingerprints, later identified as the Defendant’s, on one of the windows with a cut

¹ We note that although this testimony constituted hearsay, it was elicited by defense counsel and no objection was made. As a result, the jury was entitled to consider it as evidence. *See State v. Smith*, 24 S.W.3d 274, 280 (Tenn. 2000).

screen. The Defendant's cell phone was found twenty feet from the back door, which had been forced open. Sergeant Bates testified that an unidentified witness heard the television was in the Defendant's possession. The evidence is sufficient to establish that the Defendant caused the damage to the screens and the doors during the course of the burglary. The Defendant is not entitled to relief on this basis.

c. Possession of Marijuana and Possession of Drug Paraphernalia

The Defendant contends that the evidence is insufficient to support his convictions for possession of marijuana and drug paraphernalia, arguing that because the arrest warrant was not supported by probable cause, no evidence obtained during the arrest should have been admitted. The State responds that the evidence is sufficient. We address the Defendant's contentions relative to the arrest warrant in section III below.

Tennessee Code Annotated section 39-17-418(a) states, "It is an offense for a person to knowingly possess . . . a controlled substance[.]" *See id.* § 39-17-402(4) (Supp. 2011) (amended 2012, 2014, 2015) (controlled substance). Marijuana is a Schedule VI controlled substance. *Id.* § 39-17-415(a)(1) (Supp. 2011) (amended 2012, 2014, 2016).

Tennessee Code Annotated section 39-17-425 states, in relevant part, that it is unlawful "for any [unauthorized] person . . . to possess with intent to use, drug paraphernalia to . . . manufacture, compound, convert, produce, process, prepare, test, [or] analyze . . . a controlled substance in violation of this part."

In the light most favorable to the State, the record reflects that when Deputy Walker executed the arrest warrant, the Defendant turned away from the officers and appeared to place an object in his pocket or pants. When the officers searched the Defendant, they found digital scales. When the officers began placing the Defendant in the police cruiser, a small bag of marijuana fell from the Defendant's pants leg. A rational jury could have concluded beyond a reasonable doubt that the Defendant possessed marijuana. A rational jury also could have concluded beyond a reasonable doubt that the Defendant's possession of digital scales, when combined with the presence of marijuana and the Defendant's attempt to conceal the scales from the officers, was proof of his possessing the scales with the intent to use them as drug paraphernalia. The evidence is sufficient. The Defendant is not entitled to relief on this basis.

II. Speedy Trial

The Defendant contends that his right to a speedy trial was violated by the delay between the November 25, 2011 burglary and his February 6, 2013 arrest. The State responds that the Defendant waived the issue by failing to raise it in the trial court, that pre-arrest delay is not governed by speedy trial rights, and that the Defendant failed to demonstrate prejudice from the delay.

The United States and Tennessee Constitutions guarantee a criminal defendant the right to a speedy trial. U.S. Const. amend. VI; Tenn. Const. art. 1, § 9. In addition, the right to a speedy trial is guaranteed by statute in Tennessee. See T.C.A. § 40-14-101 (2012). The purpose of the right to a speedy trial is to protect a defendant from harm caused by “oppressive pretrial incarceration, anxiety and concern . . . , and the possibility that the accused’s defense will be impaired by dimming memories and loss of exculpatory evidence.” *Doggett v. U.S.*, 505 U.S. 647, 654 (1992) (internal quotations marks and citations omitted); see *State v. Utley*, 956 S.W.2d 489, 492 (Tenn. 1997). In determining whether a defendant’s right to a speedy trial has been violated, this court considers the length and reasons for the delay, whether a defendant asserted the right, and whether a defendant was prejudiced by the delay. *State v. Bishop*, 493 S.W.2d 81, 83-84 (Tenn. 1973); see *Barker v. Wingo*, 407 U.S. 514 (1972). Speedy trial rights attach when a defendant is arrested, and a delay of more than one year between a defendant’s arrest and the trial triggers the need for a speedy trial analysis. *Utley*, 956 S.W.2d at 494.

The record reflects that the Defendant did not file a pretrial motion objecting to the pre-indictment delay or include the issue in his motion for a new trial. We note that at the trial, defense counsel questioned witnesses regarding various investigatory delays. We agree with the State that this issue is not properly raised as a speedy trial violation because the relevant delay occurred before the Defendant’s arrest. The proper context is whether the Defendant’s due process rights were violated. We will consider the issue pursuant to the plain error doctrine.

Five factors are relevant

when deciding whether an error constitutes “plain error” in the absence of an objection at trial: “(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 did not waive the issue for tactical reasons; and (e) consideration of the error is ‘necessary to do substantial justice.’”

State v. Smith, 24 S.W.3d 274, 282 (Tenn. 2000) (quoting *State v. Adkisson*, 899 S.W.2d 626, 641-42 (Tenn. Crim. App. 1994)). All five factors must exist in order for plain error to be recognized. *Id.* at 283. “[C]omplete consideration of all the factors is not necessary when it is clear from the record that at least one of the factors cannot be established.” *Id.* In order for this court to reverse the judgment of a trial court, the error must be “of such a great magnitude that it probably changed the outcome of the trial.” *Id.*; *Adkisson*, 899 S.W.2d at 642.

In order to prove a violation of due process rights relative to a pre-indictment delay, a defendant must prove (1) the existence of a delay, (2) actual prejudice as a result of the delay, and (3) that the State caused the delay in order to gain a tactical advantage over or harass the defendant. *Id.* at 495 (quoting *State v. Dykes*, 803 S.W.2d 250, 255 (Tenn. Crim. App. 1990)).

In this case, the record reflects that defense counsel cross-examined witnesses regarding the reasons for the delay, but he did not establish that the Defendant suffered any resulting prejudice. As a result, no unequivocal rule of law was breached, and we conclude that plain error relief is not warranted.

III. Arrest Warrant

The Defendant contends for the first time on appeal that his arrest warrant was invalid, rendering his drug-related convictions invalid as fruit of the poisonous tree. He argues that the warrant was not supported by probable cause, that the officers conducted an illegal entry of the house when they executed the search warrant, and that the Defendant's *Miranda* rights were violated by the arresting officer's asking whether the Defendant carried contraband on his person. The State responds that the issue was waived and, alternatively, that the entry was proper and that the Defendant's *Miranda* rights were not violated. The State does not address whether the warrant was supported by probable cause.

Tennessee Rule of Criminal Procedure 12(b)(2)(C) states that a motion to suppress evidence must be raised before a trial. All of the Defendant's contentions relative to the arrest warrant and his arrest should have been raised in a motion to suppress before the trial. As a result, these issues are waived. The Defendant is not entitled to relief on this basis.

In consideration of the foregoing and the record as a whole, we affirm the judgments of the trial court.

ROBERT H. MONTGOMERY, JR., JUDGE