

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs December 4, 2018

STATE OF TENNESSEE v. NIKILO CONLEY

Appeal from the Criminal Court for Shelby County
No. 16-06097 James C. Beasley, Jr., Judge

No. W2018-00402-CCA-R3-CD

A Shelby County jury found the Defendant guilty of especially aggravated robbery, and the trial court sentenced the Defendant to serve twenty years in the Tennessee Department of Correction. On appeal, the Defendant asserts that the evidence is insufficient to sustain his conviction. After review, we affirm the trial court's judgment.

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

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

Tony N. Brayton (on appeal), Coleman Garrett (at trial), and Rodriguez Watson (at trial), Memphis, Tennessee, for the appellant, Nikilo Conley.

Herbert H. Slatery III, Attorney General and Reporter; Brent C. Cherry, Assistant Attorney General; Amy P. Weirich, District Attorney General; and Devon D. Lepeard and Chris West, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

I. Facts

This case arises out of a robbery and shooting that occurred on January 30, 2016, at the Decatur Apartments in Memphis, Tennessee. A Shelby County grand jury indicted the Defendant and two co-defendants, Tamente Coffey and Kaddarius Butler, for their roles in the offenses. The Defendant was charged with one count of especially aggravated robbery and two counts of aggravated assault. At trial, the parties presented the following evidence: Ronald Logan testified that on the afternoon of January 30, 2016, he was at the Decatur Apartments in Memphis, Tennessee, having his car detailed. As he sat in his car, Mr. Logan noticed a silver PT Cruiser parked nearby. Inside the

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vehicle were co-defendant Coffey and co-defendant Butler. Mr. Logan observed the Defendant walking away from the PT Cruiser. The Defendant approached Mr. Logan while he sat in his car and asked “for a change for a ten.” Mr. Logan responded that he did not have any change, and “about ten seconds later” his car door opened and the Defendant got into the back seat.

Mr. Logan testified that he recognized the Defendant and knew him by name. After the Defendant entered the back seat of the car, he took out a gun, hit Mr. Logan in the head with the gun, and ordered him to “drop it off.” Mr. Logan interpreted this statement as an instruction that Mr. Logan give the Defendant his money. Mr. Logan gave the Defendant “some” of his money because he was “scared” and believed that the Defendant was going to kill him. After Mr. Logan handed over the money, the Defendant told Mr. Logan to “crank [the] car up” and drive. Mr. Logan did so, believing that the Defendant was “going to try to take [him] somewhere and do something to [him].” As Mr. Logan drove, he observed the silver PT Cruiser following him. He identified co-defendant Coffey as the driver of the PT Cruiser and co-defendant Butler as the passenger.

Mr. Logan testified that he turned right out of the apartment complex, and then the Defendant shot him in the back of his right shoulder. As a result, Mr. Logan lost control of his car, crashed into a house, and the air bag deployed. Mr. Logan described a man, “Ham,” as pulling him from the vehicle following the crash. As he lay on the ground, co-defendant Butler approached him brandishing a gun and demanded “where the rest of it at?” Mr. Logan understood this statement to be a demand for the rest of his money. Mr. Logan explained that he still had \$80 to \$100 in cash. At some point, the homeowner came outside and a group of five or six people gathered at the crash site. An ambulance soon arrived, and Mr. Logan was transported to the hospital where he remained for three months. During this time, Mr. Logan underwent four surgeries; however, physicians were unable to remove the bullet lodged in his body. As a result of his gunshot injury, Mr. Logan remained paralyzed from the waist down. Due to his paralysis, Mr. Logan was unable to work and required daily assistance from a “health aide.”

Mr. Logan testified that about a month after the shootings, after his “trach” was removed, he identified the Defendant and the co-defendants in photographic line-ups. Mr. Logan identified co-defendant Coffey as the driver of the PT Cruiser, co-defendant Butler as one of the robbers, and the Defendant as the other robber and shooter.

Mr. Logan testified that, at the time of the shooting, he had been working for a “family business” installing drywall and painting houses. He was also “going to school for the heating and air.” On cross-examination, Mr. Logan clarified that he had not yet begun taking courses but “was planning to go.” He stated that he had applied online for

enrollment at Messick Vo-Tech. As to the robbery, Mr. Logan testified that he had approximately \$280.00 in his “left pocket” that he gave to the Defendant in response to his demand to “drop it off.” Mr. Logan denied having any marijuana on his person; however, he agreed that he had been smoking a “blunt” in the car and placed what remained of it in the car ashtray. Mr. Logan’s testimony reflected some uncertainty about his interaction with the police during his hospitalization, but he testified that he provided a police officer with a note that identified co-defendant Coffey as one of the suspects.

Margie Shields testified that on January 30, 2016, she was at her apartment located across the driveway from the Decatur Apartments. That afternoon, while standing on her balcony, Ms. Shields saw someone washing Mr. Logan’s red Cadillac in the parking lot of the Decatur Apartments. Later, she saw Mr. Logan sitting in the red Cadillac and “Kilo,” whom she later identified as the Defendant, walk up to the red Cadillac and speak with Mr. Logan. Ms. Shields then went downstairs and talked with her neighbor. As they talked, she heard a vehicle driving out of the apartment driveway fast and “skidding.” She saw that it was the red Cadillac driven by Mr. Logan. She said it was unlike Mr. Logan to drive fast through the parking lot due to the numerous potholes. Mr. Logan turned right out of the complex onto Decatur Street and soon after, Ms. Shields heard a “big bang.” Ms. Shields and her neighbor walked “up the street” toward the sound and found the red Cadillac crashed into a house.

On cross-examination, Ms. Shields testified that she saw only Mr. Logan in the red Cadillac when he drove quickly out of the apartment complex parking lot. Ms. Shields agreed that in her statement to the police she wrote that she observed the Defendant get into Mr. Logan’s car. She stated that it had “been awhile” since the incident and that, during her testimony, she did not remember the Defendant getting in the car. In her police statement, she referred to the Defendant as the “suspect.” She said that she did so because, while she was holding Mr. Logan’s hand after the car crash, he identified the Defendant as the shooter. Ms. Shields denied seeing co-defendant Butler rob Mr. Logan after the car crash.

Ms. Shields testified that she saw “Al” pull Mr. Logan from the car and lay him on the driveway. As she walked closer she could tell that Mr. Logan “was hurting,” so she held Mr. Logan’s hand until his brother arrived. Ms. Shields left the scene once the paramedics began attending to Mr. Logan, but she later went to the police station and provided a statement. While at the police station, the police showed Ms. Shields a photographic line-up, and she identified the Defendant’s picture in the line-up as the man she saw speaking to Mr. Logan in the parking lot.

Kamecha Douglas testified that on January 30, 2016, she was “[o]n Decatur Cove” “with some people.” At the time of the crash, Ms. Douglas was walking through “a cut”

on her way to the store. As she walked she heard “one little shot or something.” She looked “back” and did not see anything, so she continued walking. Seconds later, she heard more noise. She looked “back again” and saw that a Cadillac had driven through a fence and then watched as the Cadillac ran into a house. As Ms. Douglas watched, she saw someone wearing a black hoodie “jump[] out the car” and run toward the back of the house. At the time, she assumed that it was an unlicensed driver trying to flee from the scene of the crash. Ms. Douglas called 911 to report the accident. A recording of the phone call was played for the jury. On the recording Ms. Douglas reported to the 911 operator that a car crashed into a house. She stated that she observed a man jump out of the back seat and run toward the back of the house. She said that the vehicle was a red Cadillac and that someone had pulled out the other individual that had been in the car and laid him on the ground.

Kevin Jackson, a Memphis Police Department (“MPD”) officer, testified that he responded to the car crash on Decatur Street. When he arrived, he observed a red Cadillac that had driven through a fence and hit a house. He approached the car and found Mr. Logan, with a gunshot wound, lying outside of the car on the driveway. Officer Jackson began securing the crime scene by taping off the area and identifying potential witnesses. MPD Officer Christopher Slaughter photographed the crime scene and collected evidence. Among the evidence collected from the items found on Mr. Logan at Regional Medical Center was a small clear plastic baggie containing 6.4 grams of marijuana. MPD Officer Michael Coburn found a .40 caliber spent shell casing under the right front passenger seat of Mr. Logan’s red Cadillac.

V.B.,¹ who was sixteen at the time of the shooting and car crash, testified that she was at her house on North Decatur Street when Mr. Logan’s car crashed into her great-grandmother’s house on Decatur Street. V.B. was asleep at the time and woke up when the car hit the house. Initially V.B. was unsure of what had occurred, but when she heard screaming, she went outside and saw the red Cadillac had crashed into her great-grandmother’s house. V.B. estimated that it took the police approximately fifteen to twenty minutes to arrive at the crash site.

Darrell Cherry, an MPD officer, testified that he attempted to speak with Mr. Logan at the hospital the day after the shooting, January 31, 2016; however, the Defendant was unable to talk due to his injuries and the insertion of a trachea tube. Officer Cherry attempted to speak with Mr. Logan again on February 9, 2016, but he was informed that Mr. Logan was on a ventilator and unconscious. On February 15, 2016, Mr. Logan was conscious but still unable to speak. In response to Officer Cherry’s question about how many suspects were involved, Mr. Logan held up three fingers.

¹ It is the policy of this court to refer to minors by their initials.

Based upon information gathered at the crime scene, Officer Cherry knew that Mr. Logan had identified the Defendant as a shooter. Mr. Logan also identified co-defendant Coffey as "Mente." Based upon this nickname, Officer Cherry developed co-defendant Coffey as the second suspect and prepared a photographic line-up containing a picture of co-defendant Coffey. Mr. Logan identified co-defendant Coffey in the photographic lineup as a participant in the robbery.

Officer Cherry testified that he developed co-defendant Butler as the third suspect on March 1, 2016, and showed a photographic line-up containing a picture of co-defendant Butler to Mr. Logan. Mr. Logan identified co-defendant Butler as a participant in the robbery. Finally, on March 11, 2016, Officer Cherry showed Mr. Logan a photographic line-up containing the Defendant's picture. The photographic line-up is contained in the record and reflects that Mr. Logan identified the Defendant. On cross-examination, Officer Cherry denied ever receiving a handwritten note from Mr. Logan implicating co-defendant Coffey in the crime.

James Bradley, a Memphis Fire Department ("MFD") paramedic firefighter, testified that he was dispatched to a car crash on Decatur Street. When he arrived, he found Mr. Logan lying on the ground outside the vehicle. Mr. Bradley located a single gunshot wound in the back of Mr. Logan's left shoulder by his scapula. He noted one entry wound with no exit wound. The paramedics then rolled Mr. Logan onto a spine board. Mr. Logan was moved to the ambulance where paramedics conducted a more thorough trauma assessment. During this assessment, Mr. Bradley found a small laceration on the back of Mr. Logan's head and a minor abrasion on one of his legs. Mr. Bradley checked Mr. Logan's legs for "a pulse motor sensory function." Mr. Logan reported no feeling from his chest down to his toes. Paramedics transported Mr. Logan to "Med Trauma" where a trauma team was waiting for Mr. Logan.

Before closing the State's case-in-chief, the State offered and the trial court admitted certified Regional One Health Center medical records for Mr. Logan. The defense presented evidence that, at a hearing related to co-defendant Coffey, Mr. Logan testified that he first saw the Defendant "when he was at [the car] window."

After hearing this evidence, the jury convicted the Defendant of especially aggravated robbery, and the trial court sentenced the Defendant to serve twenty years in the Tennessee Department of Correction. It is from this judgment that the Defendant appeals.

II. Analysis

On appeal, the Defendant asserts that the evidence is insufficient to sustain his conviction because the conviction is “based upon the uncorroborated testimony of the named victim, Ronald Logan.” He further asserts that Mr. Logan was not a credible witness. The State responds that the evidence is sufficient to support the conviction. We agree with the State.

When an accused challenges the sufficiency of the evidence, this Court’s standard of review is whether, after considering the evidence in the light most favorable to the State, “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 Tenn. R. App. P. 13(e); *State v. Goodwin*, 143 S.W.3d 771, 775 (Tenn. 2004) (citing *State v. Reid*, 91 S.W.3d 247, 276 (Tenn. 2002)). This 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) (citing *State v. Dykes*, 803 S.W.2d 250, 253 (Tenn. Crim. App. 1990)). In the absence of direct evidence, a criminal offense may be established exclusively by circumstantial evidence. *Duchac v. State*, 505 S.W.2d 237, 241 (Tenn. 1973). “The jury decides the weight to be given to circumstantial evidence, and ‘[t]he inferences to be drawn from such evidence, and the extent to which the circumstances are consistent with guilt and inconsistent with innocence, are questions primarily for the jury.’” *State v. Rice*, 184 S.W.3d 646, 662 (Tenn. 2006) (quoting *Marable v. State*, 313 S.W.2d 451, 457 (Tenn. 1958)). “The standard of review [for sufficiency of the evidence] ‘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)).

In determining the sufficiency of the evidence, this Court should not re-weigh or reevaluate the evidence. *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Nor may this Court substitute its inferences for those drawn by the trier of fact from the evidence. *State v. Buggs*, 995 S.W.2d 102, 105 (Tenn. 1999) (citing *Liakas v. State*, 286 S.W.2d 856, 859 (Tenn. 1956)). “Questions concerning the credibility of witnesses, the weight and value to be given the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact.” *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). “A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State.” *State v. Grace*, 493 S.W.2d 474, 476 (Tenn. 1973). The Tennessee Supreme Court stated the rationale for this rule:

This well-settled rule rests on a sound foundation. The trial judge and the jury see the witnesses face to face, hear their testimony and observe their demeanor on the stand. Thus the trial judge and jury are the primary

instrumentality of justice to determine the weight and credibility to be given to the testimony of witnesses. In the trial forum alone is there human atmosphere and the totality of the evidence cannot be reproduced with a written record in this Court.

Bolin v. State, 405 S.W.2d 768, 771 (Tenn. 1966) (citing *Carroll v. State*, 370 S.W.2d 523, 527 (Tenn. 1963)). This Court must afford the State of Tennessee the “strongest legitimate view of the evidence” contained in the record, as well as “all reasonable and legitimate inferences” that may be drawn from the evidence. *Goodwin*, 143 S.W.3d at 775 (quoting *State v. Smith*, 24 S.W.3d 274, 279 (Tenn. 2000)). Because a verdict of guilt against a defendant removes the presumption of innocence and raises a presumption of guilt, the convicted criminal defendant bears the burden of showing that the evidence was legally insufficient to sustain a guilty verdict. *State v. Carruthers*, 35 S.W.3d 516, 557-58 (Tenn. 2000) (citations omitted).

Especially aggravated robbery “is the intentional or knowing theft of property from the person of another by violence or putting the person in fear. . . . (1) Accomplished with a deadly weapon; and (2) Where the victim suffers serious bodily injury.” T.C.A. § 39-13-401, -403(a)(1)-(2) (2014). “‘Serious bodily injury’ means bodily injury which involves: (A) A substantial risk of death; (B) Protracted unconsciousness; (C) Extreme physical pain; (D) Protracted or obvious disfigurement; or (E) Protracted loss or substantial impairment of a function of a bodily member, organ or mental faculty.” T.C.A. 39-11-106(a)(34) (2014). “‘Deadly weapon’ means [a] firearm or anything manifestly designed, made or adapted for the purpose of inflicting death or serious bodily injury.” T.C.A. § 39-11-106(a)(5).

The evidence, viewed in the light most favorable to the State, showed that the Defendant approached Mr. Logan’s car under the guise of getting change for a ten dollar bill. He then entered the back seat of the car from the passenger door, hit Mr. Logan in the head with a gun, and demanded Mr. Logan’s money. In fear for his life, Mr. Logan complied. The Defendant then ordered Mr. Logan to drive. Mr. Logan drove out of the Decatur Apartment parking lot at a high rate of speed, turned onto Decatur Street, and the Defendant shot Mr. Logan from behind in the shoulder. Mr. Logan lost control of the vehicle, drove through a fence, and crashed into a house. The Defendant exited the vehicle and fled toward the back of the house. Mr. Logan, bleeding from the gunshot wound, was pulled from the vehicle and laid on the ground while waiting for medical assistance. At the scene, Mr. Logan exhibited signs of paralysis to the lower half of his body. He was transported to the hospital where he remained for three months and underwent four surgeries. Despite these surgeries, doctors were unable to remove the bullet lodged in Mr. Logan’s body. At the time of trial, Mr. Logan was paralyzed from the waist down, could no longer work, and required medical assistance on a daily basis.

Based upon this evidence, we conclude that a rational jury could find, beyond a reasonable doubt, that the Defendant, while brandishing a gun, stole money from Mr. Logan and then shot him, causing Mr. Logan serious bodily injury, namely the loss of the use of his legs.

As to the Defendant's assertions that Mr. Logan was not credible and his testimony was "full of contradictions and out right falsehoods," we reiterate that this court does not "reweigh or reevaluate the evidence" and all "[q]uestions concerning the credibility of witnesses, the weight and value to be given the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact." *Bland*, 958 S.W.2d at 659 (Tenn. 1997). The jury heard the inconsistencies the Defendant now complains of and, by its verdict, accredited the testimony of the victim. Moreover, we note that the Defendant's testimony at trial was corroborated by Ms. Shields and Ms. Douglas. Nonetheless, this Court does not second-guess the weight, value, or credibility afforded to the evidence by the jury. Accordingly, we conclude that the State presented sufficient evidence to support the Defendant's conviction. The Defendant is not entitled to relief.

III. Conclusion

In accordance with the aforementioned reasoning and authorities, we affirm the judgment of the trial court.

ROBERT W. WEDEMEYER, JUDGE