IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

DECEMBER 1999 SESSION

STATE OF TENNESSEE,	)	
	)	
Appellee,	)	C.C.A. No. 01C01-9807-CC-00289
	)	No. M1998-0112-CCA-R3-CD
vs.	)	Humphreys County
	)	
ROBERT LAWRENCE SIMPKINS, JR.,	)	Hon. Allen W. Wallace, Judge
	)	
Appellant.	)	(Facilitation of
	)	Second Degree Murder)

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OPINION FILED:_____

AFFIRMED

JAMES CURWOOD WITT, JR., JUDGE

OPINION

The defendant, Robert Lawrence Simpkins, Jr., appeals from his conviction of facilitation of second degree murder. The defendant received his conviction at the conclusion of a jury trial in the Humphreys County Circuit Court, at which he stood trial for the charged offenses of first degree felony murder and first degree premeditated and deliberate murder for the January 21, 1994 homicide of seventeen year-old David Shu Hwa Chung. See Tenn. Code Ann. §§ 39-13-202(a)(1), (2) (Supp. 1994) (amended 1994, 1995). The defendant received a twelve-year sentence, which he will serve consecutively to a previously imposed effective thirty-five year sentence for second degree murder and especially aggravated robbery convictions from Davidson County. In this direct appeal, the defendant raises three challenges:

1. Whether the trial court erred in declining his request for an instruction on accessory after the fact.

2. Whether the trial court erred in declining a request to instruct the jury that there was no direct evidence in the case.

3. Whether the evidence is sufficient to support the conviction.

We have reviewed the record, the briefs of the parties and the applicable law. We find each issue presented by the defendant to have been waived by failure to present sufficient argument, citations to applicable authority and citations to the record. Due to the potentially dispositive nature of the sufficiency of the evidence issue, we have nevertheless considered it and find it to be without merit. Accordingly, we affirm the judgment of the trial court.

In the light most favorable to the state, on January 21, 1994, the victim, the defendant and Jamie Cooley left a suburb of Birmingham, Alabama headed for Tennessee. The defendant and the victim were both seventeen years old, and Cooley was nineteen years old. The evidence does not clearly establish whether the victim voluntarily accompanied the defendant and Cooley, and if so, for what purpose. While *en route*, Cooley made statements to the defendant that he "was going to take care of" the victim. The defendant had previous knowledge that Cooley did not like the victim and had heard Cooley say he was "going to get" the victim. The defendant was also aware that Cooley was racist toward non-whites, and the victim was of Asian descent.

When the threesome reached Humphreys County, the victim was driving along a snowy, icy road in his Honda Prelude. Cooley was driving behind the victim in a Ford Tempo, and the defendant was a passenger in Cooley's vehicle. Cooley forced the victim's car off the road into a ditch. Cooley then jumped out of the Tempo and ran to the Prelude. The defendant heard two loud noises that he thought were shots and the victim screaming. Thereafter, Cooley returned to the Tempo with a bloody knife in his hand. Cooley then instructed the defendant to follow him in the Tempo.[1] Cooley drove the victim's Prelude, and the defendant followed in the Tempo. The defendant did not know whether the victim was still inside the Prelude or whether he had been left at the scene. After about ten minutes, Cooley and the defendant stopped the vehicles. Cooley instructed the defendant to assist him, and the defendant refused. Cooley left in the Prelude, and he returned on foot approximately an hour later.

The victim's Prelude was discovered in a remote area near a creek on January 22, 1994. The victim's badly decomposed body was discovered on a wooded hill in March 1994. A knife was discovered near a dumpster across the road from the hill where the victim's body was found. At trial, a witness identified the knife as Cooley's.

The pathologist who performed an autopsy of the victim's body testified that the victim had sustained a non-fatal laceration to the back of the head and a fatal incision to the neck with extensive soft tissue damage. The body was positively identified as that of the victim from the victim's dental records.

The defendant gave several inculpatory statements to law enforcement authorities from Tennessee and Alabama. He also accompanied officers to Humphreys County and identified the area where the victim's body was discovered.

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[1]According to a statement taken from the defendant, Cooley told the defendant he would not live unless he followed his instructions.

The state charged the defendant with first degree premeditated and deliberate murder and first degree felony murder. At trial, the jury acquitted the defendant of these charges but found him guilty of the lesser offense of facilitation of second degree murder. Thereafter, the defendant received a twelve-year sentence to be served consecutively to an effective 35-year sentence he is serving for Davidson County convictions.

Against this factual backdrop, the defendant appeals.

I

In his first issue, the defendant claims the trial court erred in failing to charge the jury with accessory after the fact as a lesser included offense. The defendant acknowledges this court's holding in State v. Hodgkinson, 778 S.W.2d 54, 63 (Tenn. Crim. App. 1989), in which we held that accessory after the fact is a separate offense, rather than a lesser included offense of first degree murder. However, the defendant does not explain how his case falls outside the holding of Hodgkinson. Furthermore, he has failed to include any citation to authority which would require the instruction, and there is no citation to the record. Perhaps most significantly, his substantive argument consists of one incomplete sentence. Under these circumstances, we hold that the defendant has waived appellate consideration of this issue.[2] See Tenn. R. Ct. Crim. App. 10(b); Tenn. R. App. P. 27(a)(7).

II

Next, the defendant contends that the trial court erred in failing to instruct the jury that the evidence was entirely circumstantial. As with the first issue, however, the defendant has failed to include any citation to the record or to

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[2]The defendant has failed to make adequate argument on each of the three issues presented. We take this opportunity to remind counsel that the penalties for failure to file a brief that does not "substantially conform" to the Rules of Appellate Procedure may include the striking of the deficient brief and the ordering that a new brief be filed within a fixed time. See Tenn. R. Ct. Crim. App. 10(a). Moreover, costs may be imposed upon the offending party *or attorney*. Id. (emphasis added). Willful noncompliance with the rules of this court may result in a contempt citation. Tenn. R. Ct. Crim. App. 16.

controlling authority which supports this bare claim. Furthermore, his two-sentence assertion is wholly deficient of any substantive argument supporting the issue. Our consideration of the defendant's contention has been waived. See Tenn. R. Ct. Crim. App. 10(b); Tenn. R. App. P. 27(a)(7).

In any event, the defendant's claim that there is no direct evidence in this case is erroneous as a matter of law. A defendant's confession to a crime is considered direct evidence. Monts v. State, 214 Tenn. 171, 186-87, 379 S.W.2d 34, 41 (1964). Had the instruction been given, it would have been erroneous.

III

The defendant's final challenge is to the sufficiency of the convicting evidence. When a criminal defendant challenges the sufficiency of the evidence, an appellate court's standard of review is whether, after considering 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, 324, 99 S. Ct. 2781, 2791-92 (1979); State v. Duncan, 698 S.W.2d 63, 67 (Tenn. 1985); Tenn. R. App. P. 13(e). This rule applies to findings of guilt based upon direct evidence, circumstantial evidence, or a combination of direct and circumstantial evidence. State v. Dykes, 803 S.W.2d 250, 253 (Tenn. Crim. App. 1990).

In determining the sufficiency of the evidence, this court should not reweigh or reevaluate the evidence. State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Questions concerning the credibility of the witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). Nor may this court substitute its inferences for those drawn by the trier of fact from the evidence. Liakas v. State, 199 Tenn. 298, 305, 286 S.W.2d 856, 859 (1956); Farmer v. State, 574 S.W.2d 49, 51 (Tenn. Crim. App. 1978). On the contrary, 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 which may be drawn from the evidence. Cabbage, 571 S.W.2d at 835.

In the present case, the defendant has, as with his previous issues, failed to support his argument with citation to the record and analogous authority. His substantive argument consists of one sentence and contains no explanation of those element(s) of the crime he contends were not supported by sufficient proof. As with the previous issues, our consideration is waived. See Tenn. R. Ct. Crim. App. 10(b); Tenn. R. App. P. 27(a)(7). Nevertheless, due to the potentially dispositive nature of this issue, we have elected to address it.

The Code says the following regarding the crime of criminal responsibility for facilitation of a felony:

> A person is criminally responsible for the facilitation of a felony if, knowing that another intends to commit a specific felony, but without the intent required for criminal responsibility under § 39-11-402(2) [criminal responsibility for conduct of another statute], the person knowingly furnishes substantial assistance in the commission of the felony.

Tenn. Code Ann. § 39-11-403(a) (1997). In pertinent part, second degree murder is the "knowing killing of another." Tenn. Code Ann. § 39-13-210(a)(1) (1997).

The evidence viewed in the light most favorable to the state demonstrates that the defendant knew that Cooley disliked and planned to "take care of" the victim. He heard the victim scream and saw Cooley coming away from the victim's vehicle carrying a bloody knife. By the defendant's own admission, he then helped Cooley dispose of the victim's body and vehicle in remote locations by driving Cooley's vehicle and waiting for Cooley for approximately an hour. The defendant admitted that the motive for the victim's murder had been robbery and that he received a Coke from the proceeds taken from the victim.[3] These facts all support the jury's conclusion beyond a reasonable doubt that the defendant was guilty of facilitation of second degree murder.

[3]Apparently, the defendant was aggrieved by the fact that Cooley kept money taken from the victim and gave him nothing but a Coke.

The judgment of the trial court is affirmed.

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JAMES CURWOOD WITT, JR., JUDGE

CONCUR:

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JOE G. RILEY, JUDGE

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ALAN E. GLENN, JUDGE