IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

APRIL 1996 SESSION

STATE OF TENNESSEE,	)	No. 01-C-01-9504-CR-00120
	)	
APPELLEE,	)	Davidson County
	)	
v.	)	Thomas H. Shriver, Judge
	)	
LESLIE HUEL SMITH,	)	(Second-Degree Murder, and
	)	Theft of Property under $10,000)
APPELLANT.	)	

FOR THE APPELLANT:

Terry J. Canady
211 Printer's Alley Bldg.
Suite 400
Nashville, TN 37201
(On Appeal)

Mark J. Fishburn
Parkway Towers, Suite 2121
404 James Robertson Parkway
Nashville, TN 37219
(At Trial)

FOR THE APPELLEE:

Charles W. Burson
Attorney General & Reporter
450 James Robertson Parkway
Nashville, TN 37243-0497

Christina S. Shevalier
Assistant Attorney General
450 James Robertson Parkway
Nashville, TN 37243-0493

Victor S. Johnson, III
District Attorney General
222 Second Avenue North, Suite 500
Nashville, TN 37201-1649

Jon P. Seaborg
Assistant District Attorney General
222 Second Avenue North, Suite 500
Nashville, TN 37201-1649

Patty S. Ramsey
Assistant District Attorney General
222 Second Avenue North, Suite 500
Nashville, TN 37201-1649

OPINION FILED: _____

AFFIRMED

Joe B. Jones, Presiding Judge

O P I N I O N

The appellant, Leslie Huel Smith, was convicted of murder in the second degree, a Class A felony, and theft under $10,000, a Class D felony, by a jury of his peers. The trial court found that the appellant was a standard offender and imposed the following Range I sentences: (a) murder second degree, confinement for twenty-five (25) years in the Department of Correction and (b) theft, confinement for eight (8) years in the Department of Correction. These sentences are to be served consecutively to an Alabama sentence. In this case, the appellant presents three issues for review. He contends that the evidence is insufficient to support his convictions, the trial court erred in denying his motion to dismiss on the ground the state did not try him within the time constraints of the Interstate Compact on Detainers, and he was denied his constitutional right to the effective assistance of counsel. After a thorough review of the record, the briefs of the parties, and the authorities governing the issues, it is the opinion of this Court that the judgment of the trial court should be affirmed.

The victim, Albert Rose, lived in a remote area of Davidson County near the Cheatham County line. The cabin was situated on a wooded bluff overlooking the Cumberland River. The appellant had lived with the victim for a month prior to the events in question. Neighbors saw the victim and the appellant together in the victim's station wagon.

On the evening of June 29, 1991, a neighbor heard several popping noises, similar to the sounds made by firecrackers, and what appeared to be "yells" coming from the direction of the victim's cabin. On the morning of June 30, 1991, another neighbor observed the victim's station wagon leaving the victim's cabin at a high rate of speed. The neighbor did not know who was driving the station wagon, but it was obvious to the neighbor that the victim was not driving the vehicle.

The appellant drove the victim's station wagon to Alabama. The station wagon was filled with items taken from the victim's cabin. He also was in possession of the victim's wallet and credit cards. On the afternoon of June 30 1991, the appellant came in contact with two hitchhikers outside of Decatur, Alabama. He told these two individuals that he

was a certified public accountant from Louisiana, and he had been to Nashville on vacation. The hitchhikers accompanied the appellant when the appellant went to a flea market near Boaz, Alabama, and sold some of the victim's property. They were also with the appellant when he went to the home of his former wife and gave her one of the items that he had taken from the victim's cabin. One of the hitchhikers related the appellant's explanation of how he acquired the victim's vehicle and property:

> He said the night before, he was hitchhiking here in Nashville and a gentleman picked him up -- an older gentleman picked him up and mentioned or wanted to go out drinking. So they went to a liquor store, got some whiskey and they started drinking. And the older gentleman told him . . . that he could drive. He said the older gentleman had got so drunk, at the point of passing out, and he had -- he looked over and the gentleman was gasping for breath like he was having a heart attack. And he said he reached over and hit him real hard in the chest and then brought him back or he started breathing again. He said he took him to a hospital and dropped him off and left him and left. . . . He said he didn't know. . .if he was dead or alive or what. . . . [H]e said if. . .the older man had come to, he could -- he might report the car stolen.

The appellant and the hitchhikers used the victim's credit cards to purchase beer on several occasions. They tried unsuccessfully to obtain money with the victim's ATM card. The appellant and the hitchhikers decided that they would go to Florida.

On July 1, 1991, the appellant was stopped by an Alabama State Trooper near Bay Minnette, Alabama. The appellant was arrested for driving while under the influence. He told the officer that he was Albert Rose. When the trooper discovered that the appellant had identification showing that he was "Johnny Allen," the trooper became suspicious. The trooper called the victim's sister, advised her what had occurred, and inquired if the appellant was in fact her brother. The victim's sister advised the trooper that the person he had arrested was not her brother.

Family members went to the victim's cabin. The interior and exterior of the cabin were in total disarray. Trash and furniture were strewn about the inside of the cabin and the grounds surrounding the cabin. There were dried pools of blood and blood splatters in the living room. The victim's body was found inside the cabin. The family notified the Metropolitan Police Department.

The appellant admitted that he lived with the victim in the victim's cabin. A

pathologist testified that the cause of the victim's death was blunt trauma to the head.

I.

When an accused challenges the sufficiency of the convicting evidence, this Court must review the record to determine if the evidence adduced at trial is sufficient "to support the finding by the trier of fact of guilt beyond a reasonable doubt." Tenn. R. App. P. 13(e). This rule is applicable 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.), per. app. denied (Tenn. 1990).

In determining the sufficiency of the convicting evidence, this Court does not reweigh or reevaluate the evidence. State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App.), per. app. denied (Tenn. 1990). Nor may this Court substitute its inferences for those drawn by the trier of fact from circumstantial evidence. Liakas v. State, 199 Tenn. 298, 305, 286 S.W.2d 856, 859, cert. denied, 352 U.S. 845, 77 S.Ct. 39, 1 L.Ed.2d 49 (1956). To the contrary, this Court is required to 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. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978).

Questions concerning the credibility of the 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, not this Court. Cabbage, 571 S.W.2d at 835. In State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973), our Supreme Court said: "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."

A criminal offense may be established exclusively by circumstantial evidence. State v. Raines, 882 S.W.2d 376, 380 (Tenn. Crim. App.), per. app. denied (Tenn. 1994); State v. McAfee, 737 S.W.2d 304, 306 (Tenn. Crim. App. 1987); State v. Hailey, 658 S.W.2d 547, 552 (Tenn. Crim. App.), per. app. denied (Tenn. 1983). However, before an accused can be convicted of a criminal offense based on circumstantial evidence alone, the facts

and circumstances "must be so strong and cogent as to exclude every other reasonable hypothesis save the guilt of the defendant. . . ." State v. Crawford, 225 Tenn. 478, 482, 470 S.W.2d 610, 612 (1971). In other words, "[a] web of guilt must be woven around the defendant from which he cannot escape and from which facts and circumstances the jury could draw no other reasonable inference save the guilt of the defendant beyond a reasonable doubt." Crawford, 225 Tenn. at 484, 470 S.W.2d at 613.

Since a verdict of guilt removes the presumption of innocence and replaces it with a presumption of guilt, the accused, as the appellant, has the burden in this Court of illustrating why the evidence is insufficient to support the verdicts returned by the trier of fact. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). This Court will not disturb a verdict of guilt due to the sufficiency of the evidence unless the facts contained in the record are insufficient, as a matter of law, for a rational trier of fact to find that the accused is guilty beyond a reasonable doubt. Tuggle, 639 S.W.2d at 914.

The direct and circumstantial evidence contained in the record is sufficient to support a finding by a rational trier of fact that the appellant murdered the appellant and stole his property beyond a reasonable doubt. Tenn. R. App. P. 13(e); Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

This issue is without merit.

II.

While the appellant was in custody following his arrest for driving while under the influence, Alabama authorities discovered that the appellant was an escapee from the Alabama Prison System. The appellant was subsequently released to prison authorities.

The appellant contends that the trial court erred in denying his motion to dismiss the prosecution. He argues that the State of Tennessee failed to try him for these offenses within the time prescribed by the Interstate Compact on Detainers.

The fallacy in the appellant's argument is that the State of Tennessee had not placed a detainer against the appellant when he made an effort to comply with the compact. The Alabama prison authorities returned the documents to the appellant with the

explanation that Tennessee had not filed a detainer. In short, the appellant failed to establish that (a) the State of Tennessee filed a detainer or (b) the State of Tennessee received his request for an expedited trial.

The appellant furnished the documents he prepared to the Alabama prison officials on April 20, 1991. The appellant was indicted on May 26, 1992. The extradition of the appellant commenced on June 8, 1992. The Governor of Tennessee subsequently forwarded a warrant to the Alabama authorities on or about July 14, 1992. Tennessee took custody of the appellant on September 4, 1992.

It is an elementary principle of law that the time constraints of the Interstate Compact on Detainers do not commence until the receiving state has (a) filed a detainer to prevent the prisoner's release and (b) actually received the prisoner's request for a disposition of the detainer. The burden is upon the prisoner to show that a detainer was filed, he gave notice to the receiving state pursuant to the Compact, and the state failed to try him within the time constraints of the Compact. State v. Moore, 774 S.W.2d 590, 594-95 (Tenn. 1989); see also State v. Wood, 924 S.W.2d 342, 344 n. 6 (Tenn. 1996); Dillon v. State, 844 S.W.2d 139, 141 n. 1 (Tenn. 1992); State v. Hill, 875 S.W.2d 278, 281 n. 4 (Tenn. Crim. App. 1993), per. app. denied (Tenn. 1994); State v. Lock, 839 S.W.2d 436, 441 (Tenn. Crim. App. 1992). In this case, the appellant failed to establish that the State of Tennessee had placed a detainer with the Alabama authorities before he gave the documents to the Alabama authorities. In addition, he failed to establish that the State of Tennessee was made aware of his request.

This issue is without merit.

III.

The appellant contends that trial counsel failed to provide him with the effective assistance of counsel as contemplated by the United States and Tennessee Constitutions. He argues that trial counsel failed to obtain a mental examination, fell short in the cross-examination of a police officer, failed to ask for the report of another officer as Jencks material, and did not permit him to testify in support of his defense.

An evidentiary hearing was conducted by the trial court post-trial. The appellant and trial counsel testified at the hearing. The trial court accredited the testimony of trial counsel. Moreover, assuming arguendo that counsel's performance fell below the appropriate standard, the appellant has failed to establish that he was prejudiced by any act committed by trial counsel.

The appellant failed to establish how he was prejudiced by the failure of counsel to obtain another mental evaluation. The appellant was examined prior to trial and found to be competent. Furthermore, the only reason advanced by the appellant for the second examination was that he wanted to change the medication he was being given while confined to the Davidson County Jail. He did not seek the examination to determine his sanity at the time of the murder or to determine his competency to stand trial. Nor did he establish that he was prejudiced by the failure to cross-examine the officer. There is nothing to establish how he was prejudiced by the failure to obtain and introduce the officer's report. The record is devoid of evidence that trial counsel would not permit him to testify in support of his defense.

This issue is without merit.

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JOE B. JONES, PRESIDING JUDGE

CONCUR:

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JOHN H. PEAY, JUDGE

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DAVID G. HAYES, JUDGE