IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
October 22, 2024 Session

STATE OF TENNESSEE v. KENDRICK RODGERS

Appeal from the Criminal Court for Knox County
No. 116829 G. Scott Green, Judge

No. E2023-01503-CCA-R3-CD

The Defendant appeals his convictions for aggravated robbery, carjacking, and driving on a revoked license. He argues that (1) the trial judge erred in denying his motion for a mistrial and the trial judge to recuse itself; (2) the evidence adduced at trial was insufficient to support a guilty verdict on the carjacking charge; and (3) cumulative error warrants reversal of his convictions. After our review, we affirm the judgments of the trial court.

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

KYLE A. HIXSON, J., delivered the opinion of the court, in which JILL BARTEE AYERS and TOM GREENHOLTZ, JJ., joined.

Gerald L. Gulley (at motion for new trial and on appeal), and John M. Boucher, Jr., (at trial), Knoxville, Tennessee, for the appellant, Kendrick Rodgers.

Jonathan Skrmetti, Attorney General and Reporter; Garrett D. Ward, Senior Assistant Attorney General; Charme P. Allen, District Attorney General; and TaKisha M. Fitzgerald and G. Lawrence Dillon, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

I. FACTUAL AND PROCEDURAL HISTORY

A Knox County grand jury indicted the Defendant in December 2019, charging him with aggravated robbery (count 1); felon in possession of a firearm (counts 2 and 3); carjacking (count 4); employment of a firearm during the commission of a dangerous felony (counts 5 and 6); driving on a revoked license (count 7); and three criminal gang offense enhancements (counts 8 through 10). Tenn. Code Ann. §§ 39-13-402, -404; -17-1307, -1324; 55-50-504. Prior to trial, the State dismissed the criminal gang

enhancements, and counts 2 and 3 were severed. The Defendant proceeded to trial on the counts charging him with aggravated robbery, carjacking, employment of a firearm during the commission of a dangerous felony, and driving on a revoked license.

A. Proof at Trial

Based on the facts adduced at trial, in 2019, the victim—Antonio Hutchinson—and a crew of workers were renovating a house the victim had purchased on Brooks Avenue in Knoxville. The property shared a driveway with a neighboring property that was behind the victim's house. The victim's neighbor did not want to share a driveway, so the victim had arranged to have a new one paved. While renovating the house and paving the driveway, the victim had been parking his 2008 Yukon XL across Brooks Avenue in the parking lot of Sarah Moore Greene Magnet Academy ("SMG").

On October 22, 2019, the victim and William Smith, one of the workers, were standing by the driveway while the rest of the crew worked on the victim's house. The victim testified that he had noticed a black Chevrolet Impala drive by several times while he was talking to Mr. Smith. He saw the driver of the Impala park at SMG, and the victim called his girlfriend, Ayrrianna Jackson, to tell her about the car. The victim testified that the car had "black tint" with the "front windshield blacked out dark." He noted that it "just kept riding by" and that it "seemed suspicious." The driver then drove from SMG and pulled into the driveway next to the victim and Mr. Smith, and when the driver got out of the car, the victim was able to identify that individual as the Defendant.

When the Defendant walked up to the victim and Mr. Smith, he said, "Hey, what's up? I [] just want to talk." At this point, Mr. Smith walked to the back of the victim's house to continue the renovation. The victim and the Defendant began to talk about a previous burglary that had occurred at one of the victim's properties. The Defendant insinuated that he needed money, and he pulled out a gun. The other occupant of the Impala, later identified as Todd Lundy, also exited the car and pulled out a gun. The Defendant proceeded to take from the victim a watch, ring, phone, around $1,000 currency, and the car keys to the victim's GMC Yukon.

The State admitted security camera footage from SMG that depicted both SMG's parking lot and the victim's house and driveway, which were directly opposite each other on Brooks Avenue, a two-lane road. The video showed a black car traveling down Brooks Avenue and pulling up to the victim's house. At trial, the victim identified the car as the black Impala that the Defendant and Mr. Lundy occupied. The victim also identified his Yukon that was parked across the street in SMG's parking lot. The victim testified that the Defendant had a gun and took the victim's property before the Defendant and Mr. Lundy

left the driveway. According to the timestamp on the video, the black car backed out of the victim's driveaway onto Brooks Avenue at approximately 2:59 p.m., and less than one minute later, the victim's Yukon was driven over a narrow grassy area of SMG's parking lot and out of the frame down Brooks Avenue. A parked car in SMG's parking lot obstructed the security camera's view of the Yukon's driver's side door. The grassy area that separated the Yukon and Brooks Avenue was so narrow that the Yukon's back tire was still on the parking lot curb when its front tires were on Brooks Avenue.

The victim testified that after the Defendant and Mr. Lundy left, the victim ran to a neighbor's house and called Ms. Jackson, his girlfriend, with the neighbor's phone. Ms. Jackson sent her sister to pick up the victim. When Ms. Jackson's sister arrived, the victim used her phone to call 911. Of the property taken from the victim, only his Yukon was recovered.

According to Mr. Smith's trial testimony, he recalled seeing the black Impala repeatedly pass by the victim's house on Brooks Avenue. He noticed that the driver of the Impala pulled into the driveway while he was conversing with the victim. When the driver stated that he wanted to speak to the victim, Mr. Smith "turned around, [and] walked around back" to "[f]inish[] doing the roofing." Later at the victim's house, the police approached Mr. Smith and asked, "Who got robbed?" To which, Mr. Smith stated "I don't know what [] you're talking about." Mr. Smith affirmed that he had not seen what had happened in the front yard and that he did not see the victim or the victim's Yukon after the police showed up. He also affirmed that the victim had kept his Yukon parked across the street at SMG.

In addition, Mr. Smith testified that, previously that day, the victim had shown him a gun that had in his pocket. However, the victim denied having shown Mr. Smith a gun. When asked why Mr. Smith would testify that the victim had shown him a gun, the victim said that he did not "know where [Mr. Smith] got that from."

B. Recusal

Early in the victim's direct examination, he acknowledged that he had a prior felony drug conviction. During cross-examination, the victim explained that the conviction was from federal court and occurred in 2010. A jury-out hearing then ensued concerning the State's objection to the Defendant's line of questioning regarding the specifics surrounding the victim's prior conviction. During this jury-out hearing, the trial judge addressed the victim regarding his prior federal conviction, which included other "charge partners," as follows:

THE COURT: Who represented you over there?

[THE VICTIM]: I had Jeff Whitt.

THE COURT: Did he represent you all the way through?

[THE VICTIM]: Yeah.

THE COURT: Thought for a minute I did. I think I had somebody else [one of the victim's charge partners] in that deal. Okay.

[THE VICTIM]: I believe—I believe he [a charge partner] had Scott Green.

THE COURT: Huh?

[THE VICTIM]: He had Scott Green too.

THE COURT: That would be me.

[THE VICTIM]: Yeah, I thought that was you.

The trial judge, after recess, affirmed that he had represented the victim in a 2010 or 2012 conviction in federal court, but the judge stated that his representation of the victim was limited to the sentencing phase of the proceedings.

Upon this, the Defendant moved for a mistrial and for the trial judge to recuse himself from the case. After discussion, the trial judge stated,

> Although it's been, you know, ten or [eleven] years ago, it's–I represented him. I don't remember anything about that case other than I took over for [defense counsel at the time] and I finished the case out. The particulars of it, I don't remember.
>
> If it was just the straightforward issue of did I represent [the victim] in a prior unrelated matter ten years ago, it'd be one thing. But I have to at least acknowledge the fact that [defense counsel] attempted to get into the underlying facts of the federal drug conspiracy for which [the victim] suffered a conviction, and I sustained the State's objection.

> So[,] I've already directly ruled on matters which have a peripheral connection, at least an attempt to connect him peripherally to this matter.

The trial judge then recessed the trial to consider the issue overnight. Upon resuming court the following day, the trial judge denied the Defendant's motion for a mistrial and recusal of the trial judge. The trial judge stated the following on the record:

> But the question is, from an objective standpoint, would a casual observer saying—say, "Looking at this set of facts in its entirety, should that prior representation—does that—could that be perceived as affecting this judge's impartiality in the case?"
>
> . . . .
>
> But at the end of the day, I know that I'm not going to—this does not affect my impartiality. And at the end of the day, I think when you look at all the facts which led to this disclosure . . . and how that came about, I just don't believe an impartial person or a person looking at this would question this [c]ourt's impartiality.
>
> . . . .
>
> The final analysis is, I know personally it's not going to affect my impartiality. I haven't seen [the victim] in ten years, however long it's been since I [represented him]. He and I [have] not communicated during that period of time, and it's not going to affect how I rule on anything.

Later, the trial judge issued a written order memorializing its ruling denying the Defendant's motion for a mistrial and recusal of the trial judge.

C. Verdict and Post-Trial Proceedings

Following the conclusion of the proof, the jury convicted the Defendant of aggravated robbery, carjacking, and driving on a revoked license but acquitted him of employing a firearm during the commission of a dangerous felony. After a sentencing hearing, the trial court imposed an effective sentence of eighteen years' imprisonment with the sentences for all three counts to be served concurrently. The Defendant filed a timely motion for a new trial, alleging that the trial judge should have recused himself, that the evidence was insufficient to support a guilty verdict on his carjacking conviction, and that the trial court erred in its sentencing decision. The motion did not request relief based on

the cumulative error doctrine. Thereafter, the motion was denied, and this timely appeal followed.

II. ANALYSIS

A. Motion to Recuse

The premise of the Defendant's recusal claim is that the trial judge's previous representation of the victim calls the judge's perceived impartiality into question such that the judge should have granted his motion to recuse. He argues that the facts of the instant case magnify the question of impartiality because there were conflicts between the victim's and Mr. Smith's testimonies and because the trial judge "made several evidentiary rulings that favored [the victim]." The State responds that a reasonable observer, given the facts, would not question the trial judge's impartiality.

"No Judge of the Supreme or Inferior Courts shall preside on the trial of any cause in the event of which he may be interested[.]" Tenn. Const. art. VI, § 11. "Litigants in Tennessee have a fundamental right to a 'fair trial before an impartial tribunal.'" *Holsclaw v. Ivy Hall Nursing Home, Inc.*, 530 S.W.3d 65, 69 (Tenn. 2017) (quoting *State v. Austin*, 87 S.W.3d 447, 470 (Tenn. 2002)). Tennessee judges are required to perform the duties of judicial office "fairly and impartially." Tenn. Sup. Ct. R. 10, § 2.2. The Supreme Court Rules define "impartial" and "impartially" as the "absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge." Tenn. Sup. Ct. R. 10, Terminology.

Tennessee Supreme Court Rule 10, section 2.11(A) states that "[a] judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned[.]" Circumstances requiring recusal include situations where "[t]he judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding"; the judge "served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association"; or the judge "served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding[.]" Tenn. Sup. Ct. R. 10, § 2.11(A)(1), (6)(a), (b).

"[T]he test for recusal requires a judge to disqualify himself or herself in any proceeding in which 'a person of ordinary prudence in the judge's position, knowing all of the facts known to the judge, would find a reasonable basis for questioning the judge's impartiality.'" *State v. Griffin*, 610 S.W.3d 752, 758 (Tenn. 2020) (quoting *Davis v.*

Liberty Mut. Ins. Co., 38 S.W.3d 560, 564 (Tenn. 2001)). The test is an objective one "because the appearance of bias is just as injurious to the integrity of the courts as actual bias." *Id.* at 758 (Tenn. 2020) (quoting *State v. Cannon*, 254 S.W.3d 287, 307 (Tenn. 2008)). A trial judge's adverse rulings are not usually sufficient to establish bias. *Alley v. State*, 882 S.W.2d 810, 821 (Tenn. Crim. App. 1994). This court reviews a trial judge's denial of a motion to recuse de novo. Tenn. Sup. Ct. R. 10B, § 2.01.

Caselaw in Tennessee abounds with respect to questions of recusal where a trial judge was previously a criminal prosecutor, yet, whereas here, the trial judge had previous contact with the victim as defense counsel, the caselaw is scant. Of comparison, a panel of the Tennessee Court of Appeals in *Carroll v. Foster*, No. E2024-00525-COA-T10B-CV, 2024 WL 1794402, at *6 (Tenn. Ct. App. Apr. 25, 2024), *no perm. app. filed*, affirmed a trial judge's denial of a motion to recuse where the judge had previously represented an expert witness in an unrelated matter. The trial judge in *Carroll* stated on the record that it had been "approximately 30 years since [it] represented [the expert witness]" and that the representation was "brief and routine." *Id.* at *5. Conversely, this court in *Pannell v. State*, 71 S.W.3d 720, 725-26 (Tenn. Crim. App. 2001), determined that a trial judge should have recused itself where the trial judge had previously been a victim's step-parent by a prior marriage.

Turning to an analysis of the circumstances of this case, we are obliged to consider the relevant, nonexclusive factors set forth in Rule 2.11. First, the trial judge's previous representation of the victim is not a circumstance indicating he had a personal interest or prejudice concerning a party or lawyer such that recusal was required. *See* Tenn. Sup. Ct. R. 10, § 2.11(A)(1). Neither did the trial judge have personal knowledge of the disputed facts in the Defendant's trial based on his previous representation of the victim. *See id*. The trial judge also did not serve as a lawyer in connection with the instant case and was not associated with one who did. *See id.* (A)(6)(a). The trial judge had not been associated with the victim for almost a decade. Even when he served as counsel for the victim, the representation was limited to sentencing, and the matter was unrelated to the instant case. Indeed, nothing in the record indicates the trial judge had any contact with the victim since the prior representation was concluded. Even the victim apparently did not remember the representation. Similar to *Carroll*, the trial judge's prior representation was distant in time from the Defendant's trial, and the record does not show that it was anything more than brief and routine. *See Carroll*, 2024 WL 1794402, at *2. Further, this case certainly does not concern an instance where the trial judge has a familial relationship with a victim. *See Pannell*, 71 S.W.3d at 725-26.

As for the Defendant's arguments concerning the trial judge's rulings, we note again that "[a]dverse rulings by a trial court are not usually sufficient grounds to establish bias."

Alley, 882 S.W.2d at 821 (further providing that without more, even "erroneous, numerous and continuous" rulings do not require disqualification). The Defendant merely cites isolated rulings and alleges that they "favor[ed]" the victim. He has not established that the trial court's rulings objectively required disqualification.

In sum, the record does not suggest the trial judge was "bias[ed] or prejudice[d] in favor of, or against" any party to the present case, nor does it raise a question about the trial court's "maintenance of an open mind in considering issues that may come before a judge." Tenn. Sup. Ct. R. 10, Terminology. As such, we cannot conclude that a person of ordinary prudence in the trial court's position could reasonably question the trial court's impartiality. The Defendant is not entitled to relief on this issue.

B. Sufficiency of the Evidence

The Defendant asserts that the evidence at trial was insufficient to support the carjacking conviction. The evidence, he argues, could not prove that the victim was "in, on, or adjacent to" his 2008 Yukon, which was parked across the street from the victim's house. The State provides that the evidence was sufficient to support the conviction, notwithstanding the distance between the victim and his car.

The United States Constitution prohibits the states from depriving "any person of life, liberty, or property, without due process of law[.]" U.S. Const. amend. XIV, § 1. A state shall not deprive a criminal defendant of his liberty "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. 358, 364 (1970). In determining whether a state has met this burden following a finding of guilt, "the relevant question 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). Because a guilty verdict removes the presumption of innocence and replaces it with a presumption of guilt, the defendant has the burden on appeal of illustrating why the evidence is insufficient to support the jury's verdict. *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). If a convicted defendant makes this showing, the finding of guilt shall be set aside. Tenn. R. App. P. 13(e).

"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). Appellate courts do not "reweigh or reevaluate the evidence." *Id*. (citing *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978)). "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). Therefore, on appellate review, "the State is entitled to the strongest legitimate view of the trial evidence and all reasonable or legitimate inferences which may be drawn therefrom." *Cabbage*, 571 S.W.2d at 835.

Carjacking is defined as "the intentional or knowing taking of a motor vehicle from the possession of another by use of: (1) [a] deadly weapon; or (2) [f]orce or intimidation." Tenn. Code Ann. § 39-13-404. Our supreme court has interpreted the language "from the possession of another" to mean

> that the person from whom the motor vehicle was taken was in, on, or adjacent to the motor vehicle at the time of the taking or was in such physical proximity to the motor vehicle at the time of the taking that he or she could have immediately become in, on, or adjacent to the motor vehicle but for the defendant's actions in accosting the person and/or taking the motor vehicle.

State v. Edmondson, 231 S.W.3d 925, 932 (Tenn. 2007). In reaching this conclusion, the *Edmondson* court noted,

> We emphasize that our construction of the term possession to include some physical distance between victim and vehicle is congruent with one of the evils at which the proscription against carjacking is aimed: the instantaneous or nearly instantaneous taking of a vehicle from another's possession so as to create the dangers inherent in a rapid getaway. Hence, a prosecutor's focus should be not only on the victim's physical proximity to his or her vehicle, but also on the time involved between the attack on the victim and the taking of the car. If the duration of this period can be measured in seconds rather than minutes, and if the victim, but for the force or intimidation used, would otherwise be able to return to the vehicle and resist the taking, the taking may constitute a carjacking.

Id. The *Edmondson* court noted that, ultimately, the trier of fact determines whether someone accused of carjacking took the motor vehicle "from the possession of another," and suggested that juries be instructed with its interpretation of the statutory language when addressing this question. *Id*.; *see also* 7 Tenn. Prac. Pattern Jury Instr. T.P.I.—CRIMINAL 9.04 (28th ed. 2024).

In *Edmondson*, the victim drove her car to a store, parked at the sidewalk in front of the store, and left the car. 231 S.W.3d at 926. When she was "[a]bout three cars" away from her own car, a man demanded her money and keys. *Id.* Once he had the victim's keys, the man fled in her car. *Id.* In determining that the defendant took the car from the

possession of the victim, the court stated, "In this case, the victim had parked her car, retained possession of her car keys, and walked a few yards from her vehicle when she was accosted by the [d]efendant." *Id.* at 932-33. The court also determined, after analyzing the carjacking statute's legislative intent, that the "General Assembly intended carjacking to include forcible takings of motor vehicles from victims even when the victim is *some distance* from his or her car at the time of the taking." *Id.* at 928 (emphasis added).

The *Edmondson* court analyzed persuasive caselaw of other jurisdictions—many of which used statutory "possession" language that is more restrictive than what is found in Tennessee's statute—and noted that the courts of these jurisdictions had upheld carjacking convictions where the victims had been separated from their cars by significant distance. *Id.* at 931; *United States v. Kimble*, 178 F.3d 1163, 1168 (11th Cir. 1999) (affirming federal carjacking conviction where the defendants robbed a restaurant manager of his keys to his car parked outside restaurant); *United States v. Lake*, 150 F.3d 269, 273 (3d Cir. 1998) (affirming federal carjacking conviction where the victim's car was parked approximately one block away); *Bell v. Commonwealth*, 467 S.E.2d 289, 292 (Va. Ct. App. 1996) (affirming carjacking conviction where motor vehicle taken while victim was several houses away from the vehicle).

In the instant case, the victim's car was parked at SMG directly across Brooks Avenue, a two-lane road, from the victim's house. The victim testified that the Defendant took the victim's property, including his keys, at gunpoint. SMG's security camera footage showed the black car back out of the victim's driveway, and in less than one minute, the driver of the victim's vehicle drove over the narrow grassy area and onto Brooks Avenue. Thus, the duration of the period between the attack on the victim and the taking of the car can be measured in seconds, not minutes, as contemplated in *Edmondson*. *See* 231 S.W.3d at 932. Additionally, the proximity between the victim and his vehicle was such that, but for the Defendant's use of force and intimidation, the victim would have been "able to return to the vehicle and resist the taking." *See id*. Importantly, the trial court properly instructed the jury with the language set forth by our supreme court in *Edmondson*. As was their province, the jury concluded that the Defendant had taken the vehicle from the possession of the victim, and its conclusion on this point was not unreasonable. Construed in a light most favorable to the State, the evidence was sufficient to support the Defendant's conviction of carjacking. The Defendant is not entitled to relief on this issue.

C. Cumulative Error

The Defendant argues that the alleged errors, taken in the aggregate, warrant relief collectively even if they do not individually. The State observes that the Defendant only

presents two claims serving as the basis for his cumulative error argument, one of which does not lend itself to a cumulative error claim.

The cumulative error doctrine applies when there have been "multiple errors committed in trial proceedings, each of which in isolation constitutes mere harmless error, but which when aggregated, have a cumulative effect on the proceedings so great as to require reversal in order to preserve a defendant's right to a fair trial." *State v. Hester*, 324 S.W.3d 1, 76 (Tenn. 2010). To that end, more than one actual error in the trial court proceedings must exist before the cumulative error doctrine can apply. *Id.* at 77. The failure to raise cumulative error in the motion for new trial waives the issue on appeal. *State v. Davis*, 141 S.W.3d 600, 632 (Tenn. 2004). Here, the Defendant has waived review of cumulative error for failure to raise the issue in his motion for new trial. Despite waiver, the Defendant is unable to show multiple instances of trial court error adequate to warrant reversal under the cumulative error doctrine. *See State v. King*, --- S.W.3d ---, No. E2021-01375-CCA-R3-CD, 2024 WL 2881095, at *31 (Tenn. Crim. App. June 7, 2024) (observing that "a sufficiency of the evidence claim does not lend itself to cumulative error relief because it involves no error 'committed in trial proceedings' that impacted the jury's verdict"). The Defendant is not entitled to relief.

III. CONCLUSION

Based on the foregoing and the record as a whole, the judgments of the trial court are affirmed.

s/ Kyle A. Hixson
KYLE A. HIXSON, JUDGE