IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs June 3, 2014

STATE OF TENNESSEE v. CHRISTOPHER A. HOWARD

Appeal from the Circuit Court for Dyer County
No. 10-CR-160 R. Lee Moore, Judge

No. W2014-00099-CCA-R3-CD - Filed July 30, 2014

The defendant, Christopher A. Howard, was convicted of attempted possession of .5 grams or more of cocaine with the intent to sell and aggravated robbery, for which he was sentenced to six years and twelve years, respectively, to be served concurrently. On appeal, he argues that there was insufficient accomplice testimony corroboration to sustain a conviction on either charge. Following our review, we affirm the judgments of the trial court.

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

ALAN E. GLENN, J., delivered the opinion of the Court, in which CAMILLE R. MCMULLEN, J., and JEFFREY S. BIVINS, SP.J., joined.

Thomas E. Weakley, Dyersburg, Tennessee, for the appellant, Christopher A. Howard.

Robert E. Cooper, Jr., Attorney General and Reporter; David H. Findley, Senior Counsel; C. Phillip Bivens, District Attorney General; and Lance E. Webb, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS

Malcolm Turner testified that, on April, 8, 2010, he and Marquawn Fletcher learned from the defendant that the defendant was going to drive from Sikeston, Missouri, to Dyersburg, Tennessee, to purchase nine ounces of cocaine from Omar DuBose in exchange for $9000. Turner testified that he and Fletcher devised a plan with the defendant to rob DuBose with guns and each take an ounce of cocaine, with the other seven ounces going to the defendant. The defendant provided Turner with a .38 revolver, and Fletcher obtained a nine-millimeter pistol. Turner admitted he planned to rob DuBose because he was mad about

some bad drugs he had previously bought from DuBose and wanted to get his money back.

Turner and Fletcher drove from Sikeston, Missouri, to Dyersburg, Tennessee, in one car while the defendant drove another, carrying only $1400. When they arrived in Dyersburg, DuBose called the defendant, after which they met at a motel. DuBose was with another man, Ronnie Mitchell. The defendant called Turner to tell him and Fletcher that he, DuBose, and Mitchell were going to Pizza Hut and to meet him there. After arriving at Pizza Hut, Turner jumped out of the car and approached the passenger side of the car in which the defendant and DuBose were seated. Turner then opened the door, and he and DuBose "got to tussling" when the gun went off, striking DuBose in the back of the leg. DuBose dropped the container of cocaine in which there were nine individual bags, each containing an ounce of cocaine. Additionally, Turner took a quarter of an ounce of cocaine from DuBose. Turner grabbed the container of cocaine while Fletcher robbed Mitchell of his jacket and cell phone. Turner and Fletcher finally jumped in the car and drove toward Missouri but were quickly apprehended by the police and taken into custody.

Turner said that, as a result of this arrest, he had pled guilty to aggravated robbery, for which he was sentenced to twelve years. Further, he pled guilty to related federal charges, for which he received a seven-year sentence.

Officer David Dodds of the Dyersburg Police Department testified that he stopped Turner's car going northbound from Dyersburg on I-55 and arrested both Turner and Fletcher at the scene. Officer Dodds found a large amount of cocaine behind the rear seat and two handguns in the glovebox. Officer Jerry Mealer searched Turner and Fletcher and testified that they only had about $150 between them. Officer Billy Williams recovered Mitchell's jacket, cell phone, and iPod, as well as a cell phone belonging to DuBose.

Dana Parmenter, who formerly worked as a Special Agent Forensic Scientist for the Tennessee Bureau of Investigation ("TBI") Crime Laboratory in Memphis, testified that she tested one of the nine bags recovered from Turner's car. The bag she tested weighed 27.7 grams, but the total amount submitted weighed 270.2 grams, or nine and a half ounces, and tested positive for cocaine.

Officer Anna Cantu of the Dyersburg Police Department testified that DuBose approached her, saying he had just been shot. The defendant said that he and DuBose were going to eat at Pizza Hut and that he was sitting in the driver's seat when he heard "pow-pow and he didn't know anything else from there."

Marquawn Fletcher testified that he agreed to plead guilty to the lesser-included offense of facilitation of aggravated robbery and accepted a sentence of eight years in

exchange for his truthful testimony regarding the April 8, 2010 incident. He admitted that he knew the defendant was parked at Pizza Hut in the same car as DuBose and that he and Turner left after Turner shot and robbed DuBose. Fletcher said DuBose had previously "shorted" him in a drug deal, and he wanted to get his money back. It was his idea to rob DuBose.

Omar DuBose testified that he had known the defendant for a "couple of months" but that he had never met Turner or Fletcher. DuBose admitted that he was involved in a drug deal to sell nine ounces of cocaine to the defendant for $9000 and was being driven by the defendant when he was shot and robbed of his cocaine.

Investigator Jim Joyner of the Dyersburg Police Department testified that based on his experience, a quantity as much as nine ounces of cocaine would be for resale, not personal use, and the street value of nine ounces of cocaine, or 270 grams, would be worth as much as $27,000. Investigator Joyner photographed the crime scene at Pizza Hut and collected one lead bullet from the front passenger seat of the car. He also found one hole in the front passenger seat of the car, a small scale in the grass behind the car, and a clear plastic bag, which contained white powder residue.

The defendant initially told Investigator Joyner that he did not know either Turner or Fletcher and then changed his story, claiming that he barely knew them. When the defendant was taken into custody, he only had about $1300 dollars on him. The defendant never said he had been robbed or that he was a potential target for the robbery. The defendant confirmed that after he arrived at the motel, DuBose called him and that he said, "I'm fixing to pull in the Pizza Hut and I'll holler at you when I get over there."

After the conclusion of the proof, the jury convicted the defendant of aggravated robbery and attempted possession of .5 grams or more of cocaine with the intent to sell.

ANALYSIS

On appeal, the defendant argues that without the accomplice testimony of Turner and Fletcher, on the aggravated robbery conviction, and DuBose, on the attempted possession of cocaine conviction, there is insufficient evidence corroborating their testimony to sustain a conviction on either charge. Specifically, the defendant alleges that the testimony of Turner and Fletcher was not corroborated by any other evidence entirely independent of the accomplices' testimony. Basing its theory for conviction upon criminal responsibility, the State disagrees, arguing that the proof corroborates the testimony of both DuBose and Turner beyond a reasonable doubt that the defendant intended to aid Turner and Fletcher in their plan to rob DuBose of his cocaine at gunpoint. The State contends that the totality of the

circumstances surrounding the involvement of Turner, Fletcher, and the defendant in the April 8, 2010 meeting with DuBose provides sufficient corroboration for the testimony of DuBose and Turner that the defendant, Turner, and Fletcher met with DuBose solely for the purpose of retrieving the nine ounces of cocaine for sale or delivery.

The defendant was convicted of aggravated robbery, the elements of which are set out in Tennessee Code Annotated sections 39-13-401(a) and 39-13-402(a): "Robbery is the intentional or knowing theft of property from the person of another by violence or putting the person in fear . . . [a]ccomplished with a deadly weapon or by display of any article used or fashioned to lead the victim to reasonably believe it to be a deadly weapon or [w]here the victim suffers serious bodily injury."

In considering this issue, we apply the rule that where sufficiency of the convicting evidence is challenged, the relevant question of the reviewing court 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 also Tenn. R.App. P. 13(e) ("Findings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt."); State v. Evans, 838 S.W.2d 185, 190-92 (Tenn.1992); State v. Anderson, 835 S.W.2d 600, 604 (Tenn. Crim. App. 1992). All questions involving the credibility of witnesses, the weight and value to be given the evidence, and all factual issues are resolved by the trier of fact. See State v. Pappas, 754 S.W.2d 620, 623 (Tenn. Crim. App. 1987). "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). Our 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, 219 Tenn. 4, 11, 405 S.W.2d 768, 771 (1966) (citing Carroll v. State, 212 Tenn. 464, 370 S.W.2d 523 (1963)). "A jury conviction removes the presumption of innocence with which a defendant is initially cloaked and replaces it with one of guilt, so that on appeal a convicted defendant has the burden of demonstrating that the evidence is insufficient." State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

A criminal defendant in Tennessee cannot be convicted solely on the uncorroborated testimony of an accomplice. State v. Bane, 57 S.W.3d 411, 419 (Tenn. 2001) (citing State v. Stout, 46 S.W.3d 689, 696 (Tenn. 2001); State v. Bigbee, 885 S.W.2d 797, 803 (Tenn. 1994)); State v. Robinson, 971 S.W.2d 30, 42 (Tenn. Crim. App. 1997). This principle has been described as follows:

> "[T]here must be some fact testified to, entirely independent of the accomplice's testimony, which, taken by itself, leads to the inference, not only that a crime has been committed, but also that the defendant is implicated in it; and this independent corroborative testimony must also include some fact establishing the defendant's identity. This corroborative evidence may be direct or entirely circumstantial, and it need not be adequate, in and of itself, to support a conviction; it is sufficient to meet the requirements of the rule if it fairly and legitimately tends to connect the defendant with the commission of the crime charged. It is not necessary that the corroboration extend to every part of the accomplice's evidence. The corroboration need not be conclusive, but it is sufficient if this evidence, of itself, tends to connect the defendant with the commission of the offense, although the evidence is slight and entitled, when standing alone, to but little consideration."

Bigbee, 885 S.W.2d at 803 (quoting State v. Gaylor, 862 S.W.2d 546, 552 (Tenn. Crim. App. 1992)). Whether sufficient corroboration exists is for the jury to determine. State v. Shaw, 37 S.W.3d 900, 903 (Tenn. 2001).[1]

After review, we agree with the State that, based on a theory of criminal responsibility, the proof corroborates the testimony of both DuBose and Turner beyond a reasonable doubt that the defendant intended to aid Turner and Fletcher in their plan to rob DuBose of his cocaine at gunpoint. Regarding the defendant's conviction for aggravated robbery, he does not assert that DuBose is an accomplice. Therefore, DuBose's testimony required no corroboration. DuBose admitted meeting the defendant for the purposes of selling him a large amount of cocaine for $9000. Furthermore, it is uncontroverted that the defendant only had about $1300 on him when he was arrested. The fact that the defendant had a significantly smaller amount of money on him than the agreed-upon price of $9000,

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[1] At trial, the jury was instructed as to criminal responsibility:

> The defendant is criminally responsible for an offense committed by the conduct of another if acting with the intent to promote or assist the commission of the offense or to benefit in the proceeds or results of the offense the defendant solicits, directs, aids, or attempts to aid another person to commit the offense.

and that the defendant, Turner, and Fletcher, both of whom had been supplied with pistols by the defendant, all drove from Sikeston, Missouri, to meet DuBose, merits the conclusion that the defendant lacked sufficient funds to purchase the cocaine and instead intended to rob DuBose. A reasonable jury could find that the defendant's lack of sufficient funds to purchase the drugs from DuBose corroborated the testimony of Turner that the defendant drove to Dyersburg solely for the purpose of robbing DuBose and that the defendant arranged for Turner and Fletcher to meet them at the Pizza Hut where they would approach DuBose and accomplish the robbery. Furthermore, Fletcher admitted testifying at his plea hearing that when he arrived in Dyersburg, he learned that the defendant and Turner knew DuBose was a drug dealer and that they planned to rob DuBose of his cocaine at gunpoint. Fletcher also admitted that the defendant called Turner and said, "[H]ey, I've got . . . DuBose with me. We're coming to Pizza Hut. He doesn't know you're going to be there. . . ." The fact that the defendant, Turner, and Fletcher all simultaneously arrived in the parking lot of the Pizza Hut in Dyersburg with DuBose and his cocaine warranted the jury's inference that the defendant, Turner, and Fletcher were working together to steal the cocaine from DuBose. Additionally, before the meeting at Pizza Hut, the defendant had already met with DuBose and drove DuBose to the Pizza Hut meeting in his car, while Mitchell followed in DuBose's car. Based upon this, a reasonable jury could have concluded that the defendant was a planner of and an active participant in the aggravated robbery of DuBose.

We, therefore, conclude that the evidence is sufficient to sustain both of the defendant's convictions.

CONCLUSION

Based upon the foregoing authorities and reasoning, we affirm the judgments of the trial court.

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ALAN E. GLENN, JUDGE