IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
August 18, 2009 Session

STATE OF TENNESSEE v. SHANE MICHAEL GROGGER

Appeal from the Circuit Court for Overton County
No. 5990 Leon C. Burns, Jr., Judge

No. M2008-02015-CCA-R3-CD - Filed November 17, 2009

The Defendant, Shane Michael Grogger, was convicted by an Overton County jury of two counts of first degree premeditated murder, two counts of first degree felony murder, one count of especially aggravated robbery, and two counts of abuse of a corpse. The trial court merged the convictions for first degree premeditated murder and felony murder. For these convictions, the Defendant received an effective sentence of life imprisonment plus fifteen years. In this direct appeal, the Defendant raises the following issues for our review: (1) whether the trial court properly denied his motion to suppress the evidence, arguing that the use of "felony-stop" procedures exceeded the constitutionally permissible scope of his detention; and (2) whether the evidence was sufficient to support his murder convictions. Following a review of the record and the applicable authorities, we affirm the judgments of the trial court.

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

DAVID H. WELLES, J., delivered the opinion of the court, in which JERRY L. SMITH and ROBERT W. WEDEMEYER, JJ., joined.

Patrick Johnson, Nashville, Tennessee, for the appellant, Shane Michael Grogger.

Robert E. Cooper, Jr., Attorney General and Reporter; Deshea Dulany Faughn, Assistant Attorney General; William E. Gibson, District Attorney General; John A. Moore and Anthony Craighead, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Factual Background

This case arises from the shooting deaths of forty-two-year-old Sandra Ann Looper and her husband, seventy-one-year-old Lonzo "L.J." Looper ("Sandra," "L.J.," or "the victims"), occurring on about April 1, 2005. Following discovery of the bodies and police investigation pointing to the Defendant, an Overton County grand jury indicted the Defendant, along with his co-defendant,

Sandra's father, Harold Johnson,[1] ("Johnson") for two counts of each of the following: first degree premeditated murder, first degree felony murder, especially aggravated robbery, and abuse of a corpse. See Tenn. Code Ann. §§ 39-13-202, -13-403, -17-312(a)(1).

Thereafter, the Defendant filed a motion to suppress the evidence removed from his automobile, the statements he made in the back of the patrol car, the two statements he later made to authorities, and the clothing seized from his person at the jail. He argued that law enforcement officers exceeded the scope of the "investigatory stop" by handcuffing the Defendant and placing him in the back of a patrol car and, therefore that his subsequent warrantless arrest was not supported by probable cause. A hearing on the motion was conducted.

Deputy Todd Logan of the Putnam County Sheriff's Department testified that, on the morning of April 3, 2005, he was involved in investigating a suspected homicide. His job was to survey the home of Diane Stone, Johnson's girlfriend, at 9000 Silers Vickers Road, because law enforcement believed Johnson to be inside. Deputy Logan was given Johnson's name; he did not personally know Johnson. When asked what information he had about the potential homicide investigation, he responded,

> What I was told was that the two people that were missing were, the possible suspects in a homicide, and that one of the victims was a sibling, or daughter of one of the subjects, and that they had been missing for a couple of days; and that they were possibly armed with a shotgun . . . .

Following his instructions, he proceeded to a cemetery located on Dobbs Cemetery Road, "just off of Austin Bottom Road[,]" in Putnam County. Around 8:00 or 9:00 a.m., he joined other officers, Deputies Chuck Ledbetter and Ed Henley, who were already on the scene. They were watching "a mobile home trailer, located on that road just the opposite side of where [the officers] were sitting." According to Deputy Logan, Deputy Ledbetter had gone across the cemetery and was observing the residence through binoculars. Twenty to thirty minutes after Deputy Logan's arrival, Deputy Ledbetter returned and told them that "he had seen an older man and a young man get in this white car." About that time, a white Oldsmobile passed the officers, and Deputy Ledbetter said, "Well, that's the car[.]" Both individuals inside the car waved at the officers; the officers waved back.

Deputy Logan called Detective Doug Burgess and told him of the events happening at the residence. According to Deputy Logan, Det. Burgess then instructed them to conduct a "felony stop" of the vehicle. Deputy Logan acknowledged that there were no arrest warrants at the time and no other reason to stop the vehicle. Having lost sight of the vehicle, the officers returned to their cars and proceeded to Austin Bottom Road. Deputy Ledbetter went south on the road, and Deputy Logan, followed by Deputy Henley, went north on the road, toward Cookeville. Deputies Logan and Henley spotted the vehicle on Cookeville Boatdock Road and activated their blue lights. This occurred at

[1] The Defendant and Johnson were tried separately. The motion to suppress hearing was a joint hearing involving both men; therefore, the facts are substantially similar in both of the opinions issued by this Court.

10:01 a.m. Both officers exited their respective cars with their guns drawn. The driver of the vehicle, the Defendant, was instructed to exit the vehicle, throw his keys away from the vehicle, and walk backwards toward the officers. Ultimately, the Defendant was ordered to drop to his knees, and he complied. He was handcuffed and placed inside Deputy Logan's car; Deputy Henley then went to the passenger side of the vehicle, opened the door to the vehicle, handcuffed Johnson, and placed him in the other patrol car. Deputy Logan stated that he followed this arrest procedure for safety reasons, believing that these two individuals might be armed and dangerous, as someone had previously made reference to a shotgun. He said he was "trying to take these two people into custody without any harm." When asked if at any time Johnson and the Defendant were free to leave, Deputy Logan replied in the negative.

Within minutes, more officers arrived on the scene: Putnam County Sheriff David Andrews, Deputy Ledbetter, and Tennessee Bureau of Investigation (TBI) Agent Bob Krofssik. It was determined that the vehicle belonged to the Defendant. After Deputy Logan read the Defendant his Miranda[2] rights and the Defendant signed a waiver of rights form, Deputy Logan requested consent to search the vehicle. He read the form to the Defendant, and the Defendant signed the consent to search form at 10:21 a.m. According to Deputy Logan, all of this occurred within minutes after the Defendant was placed inside the patrol car. At some point thereafter, Johnson was moved into Deputy Logan's patrol car along with the Defendant. Deputy Logan "Mirandized" Johnson once inside the car, and Johnson likewise signed a waiver of rights form. Then, Deputy Logan asked Johnson where his residence was located and, acting upon the Sheriff's direction, asked for consent to search that residence, 1036 Copeland Cove Road in Livingston, Overton County; Johnson thereafter signed a consent to search form. During this process, Johnson inquired of Deputy Logan "why this was all taking place," and Deputy Logan explained that they were searching for two missing persons.

Deputy Logan testified that sometimes two individuals were placed in the back of the same patrol car and that he believed another superior officer on the scene instructed him to move Johnson to his car. Deputy Logan did so because his car had operational recording equipment, whereas Deputy Henley's car did not. According to Deputy Logan, the initial reason to move Johnson was to record the giving of his Miranda rights. After that, the Defendant and Johnson were left alone in the car, and their conversation was taped. The Defendant and Johnson made statements indicating some knowledge about the murders. Deputy Logan's report reflected that they were arrested at 10:57 a.m. and transported to the jail for questioning.

Deputy Logan participated in the search of the vehicle. Inside a plastic Wal-Mart shopping bag seen in the trunk of the car, the officers discovered a pair of jeans, with a pair of yellow gloves in the pocket. There were blood stains on these items. They photographed the items, which were left inside the car. Deputy Logan confirmed that no weapons were found in the car. A wrecker was called to the scene, and the vehicle was towed for further investigation. The items found at the stop

[2] See Miranda v. Arizona, 384 U.S. 436 (1966)

site were later removed from the vehicle at 8:40 p.m., and additional items were removed at a later date. The items were sent to the TBI for testing.

Next to testify was TBI Agent Krofssik. He received a call on early Sunday morning, April 3, to assist Agent Steve Huntley with an investigation in Overton County, following the discovery of two dead bodies. He proceeded to the Putnam County Sheriff's Department and met with the Sheriff, who updated him on the investigation. He then went with the Sheriff to the site were the bodies had been found: Johnson's residence at 1036 Copeland Cove Road. Prior to going to the scene, Agent Krofssik learned that family members of the victims had reported them missing and that they had concerns as to their whereabouts, believing "foul play" to be involved.

Upon his arrival at the scene, Agent Krofssik was informed that the victims' vehicle, a burgundy, four-door Dodge Stratus, was parked on the side of Johnson's house, that the window of the vehicle was "broken out," that there was a lot of blood inside the car, and that the license plate had been removed. The victims' bodies were found under a "brush pile" several hundred feet from the house. Through other members of law enforcement, Agent Krofssik also learned that the Loopers' other vehicle, a Toyota sport utility vehicle (SUV), had been seen parked in front of Johnson's girlfriend's house and that, previously, Johnson had been located at her home. A dispatcher had contacted Johnson at that residence, and Johnson relayed that he knew where the Loopers had gone, that they were not missing but on a "long" vacation, and that they did not want anyone to know where they were. Johnson further stated that the Loopers had sold him the Toyota SUV so they would have some money to go on vacation.

Agent Krofssik also testified that, on April 1, family members had gone inside the victims' home. There, they discovered the victims' medicine, dirty dishes, a cell phone, and other personal items that they would have taken with them had they gone on a trip. Moreover, the victims did not tell family members they were leaving, "which they would have normally done." Agent Krofssik did not find Johnson's version reasonable.

Based upon all of the information received at this point during the investigation, Johnson was the primary suspect in this case. Agent Krofssik did not know what Johnson looked like; however, he did know that Johnson was at Ms. Stone's residence. Agent Krofssik and Sheriff Andrews left the Sheriff's Department, going to Ms. Stone's residence to speak with Johnson, and anyone else in the house, about the murders. While en route, the officers conducting surveillance of the residence communicated to them that an older man and a younger man had gotten into a vehicle and were leaving the residence; Agent Krofssik instructed the officers to follow the vehicle and conduct a "felony stop." Agent Krofssik and Sheriff Andrews arrived on the scene of the stop shortly thereafter.

When asked if the two men were under arrest at the time Agent Krofssik arrived, he stated,

> They were never told that they were under arrest, and, in fact, I had asked Deputy Logan to make sure that he advised them of their rights, and to make sure he got it

> on a recording device, so that it was recorded. I also told him to, after he had done that, to put both the defendants . . . in the same vehicle and to leave the recording device going.

Agent Krofssik stated that he did not order a full arrest in conjunction with the traffic stop. Although he himself did not tell the officers, he believed the officers knew that Johnson might be in possession of a shotgun, which was the reason for the "felony stop rather than a normal traffic stop." Agent Krofssik confirmed that the Defendant and Johnson were not free to leave; "They're being detained for sure." He further relayed, "If they had asked to leave, I would have arrested both of them."

Agent Krofssik advised the Defendant and Johnson that he and his colleagues were investigating the disappearance of Johnson's daughter and that they wanted to talk to them about that. They both agreed to speak with Agent Krofssik and agreed to be transported to the Sheriff's Department for an interview; they were both cooperative. According to Agent Krofssik, Johnson again said that the victims were on a trip; he recalled that the Defendant and Johnson were in separate vehicles at the time. Agent Krofssik also relayed that it was his decision to place the Defendant and Johnson in the same patrol car because there was recording equipment in there and because he "wanted to catch what they said" about the murders.

After leaving the scene of the stop, Agent Krofssik went to interview Ms. Stone and her daughter and also conducted a search of that residence. Upon returning to the Sheriff's Department, Agent Krofssik interviewed the Defendant beginning at 5:10 p.m.; Agent Huntley was also present. The Defendant was again "Mirandized," stated that he understood his rights, and signed a consent form. The interview was recorded. The same procedure was followed with Johnson, and Agent Huntley took the lead in interviewing him while Agent Krofssik was present. At some point during the Defendant's interview, Agent Krofssik asked the Defendant if he could collect certain items of his clothing for examination purposes, and the Defendant agreed and signed a consent to search form. According to Agent Krofssik, the Defendant never requested to leave and was willing to talk with law enforcement. Agent Krofssik confirmed that he did not coerce the Defendant prior to the interview. According to Agent Krofssik, Johnson denied any knowledge of the events.

Agent Huntley then testified. He interviewed Johnson at the Putnam County Jail, after Johnson was taken into custody. According to Agent Huntley, Johnson was cooperative, never asked to leave, and was not threatened or coerced into talking with law enforcement. He confirmed that Johnson was "Mirandized" before his interview and that Agent Krofssik and Overton County Sheriff William J. "Bud" Swallows were present during the interview. When Johnson asked for an attorney during the interview, the interview ceased.

Agent Huntley confirmed that the Defendant signed a consent to search form following his interview and gave his boots and jacket to Agent Huntley for examination. The following day, the Defendant gave a second statement to Agent Huntley, wherein he described his participation in the murders. Agent Huntley testified that an arrest warrant was issued and that the Defendant was officially arrested at 12:05 a.m. on April 4.

A TBI report prepared by Agent Huntley was introduced into evidence. According to the report, a wrecker was called to the scene on Cookeville Boatdock Road at 10:10 a.m., eleven minutes prior to when the Defendant gave his consent to search his vehcile.

Following the conclusion of the evidence, the trial court denied the Defendant's motion. Thus, the resulting evidence was admissible against the Defendant, and he proceeded to trial.

The evidence at trial established that, at the end of March through the beginning of April 2005, the Defendant was staying at Diane Stone's house; the Defendant was dating Ms. Stone's daughter, Beth Ann Dobbs. Johnson was dating Ms. Stone, and he was also staying at the residence. Ms. Stone had known the Defendant for about two months before the victims' deaths and, during that time, the Defendant was not "holding down a job."

According to Ms. Stone, Johnson and victim Sandra Looper operated a yard sale business together. Johnson had previously told Ms. Stone he was going to purchase the victims' vehicle.

In the week prior to April 1, the Defendant and Johnson went to Johnson's residence to work "cutting trees, cutting wood, doing some, like taking scrap metal to the place to sell it and stuff." On Friday, April 1, the Defendant and Johnson left in the Defendant's white Oldsmobile around 9:00 a.m. to go to Johnson's residence. They returned at approximately 12:00 p.m. with the Loopers' SUV. Johnson gave Ms. Stone the keys to the vehicle and said, "Here, this is yours." Johnson also gave her the title to the vehicle. Although the title was unsigned, he said he would get L.J. or someone to sign it. Moreover, the Defendant and Johnson appeared "[d]amp, dirty kind-of looking, like they had been working"; Johnson had a cut on his arm.

After the Defendant and Johnson showered, the foursome went to eat at a Ruby Tuesday's restaurant. The Defendant ordered a hamburger and was eating it, when Ms. Dobbs commented about how rare the hamburger was and how "pink-looking on the inside." The Defendant became withdrawn, did not take another bite, and began drinking alcohol. For the rest of the meal, Johnson stared at the Defendant. After eating, Johnson paid for the meal, and they then returned to Ms. Stone's residence. Thereafter, the Defendant and Ms. Dobbs left and went to visit Ms. Dobbs' sister; they "stayed up there quite a while[,]" eventually returning to Ms. Stone's house late that evening.

The following day, the Defendant, Ms. Stone, and Ms. Dobbs left in the SUV and went to Wal-Mart store in Cookeville; they were gone about three hours. The Defendant's car remained at the residence, but he had the keys in his possession. Ms. Stone's car was there, but it was not operational. Once they returned to Ms. Stone's residence, the Defendant and Ms. Dobbs again left the house until "[l]ate afternoon, early morning . . . ." Johnson and Ms. Stone were watching television alone in the house, when the telephone rang twice. It was the sheriff's office inquiring about the victims' whereabouts; Johnson had told Ms. Stone that the victims had gone on vacation.

On Sunday morning around 7:00 or 7:30 a.m., Johnson kept talking about wanting to return to his residence to do some work. Johnson kept asking Ms. Dobbs if the Defendant had awoken yet.

She woke him up, and the Defendant and Johnson then left in the Defendant's car to go to Johnson's residence at approximately 9:00 a.m.

A neighbor of the victims, Ms. Chris Hooks, testified that on Thursday, March 31, 2005, around 3:30 p.m., she spoke with Sandra and that she observed L.J. outside in the yard. She also testified that Sandra telephoned her later on that evening; however, March 31 was the last time she saw or spoke to either of the victims. According to Ms. Hooks, the victims' vehicles were not at their house on April 1, and she opined that, because it was "check day," they had left early to get and cash their checks.

Barbara Hayes was Sandra's daughter and Johnson's granddaughter. Ms. Hayes testified that she had a good relationship with her mother and they talked frequently throughout the day. She spoke with her mother on March 31, and they planned to meet the following day around lunchtime. However, she was unable to reach her mother on Friday, April 1, after phoning her numerous times. When her mother still had not returned to her residence, she reported the victims missing shortly after midnight on Saturday, April 2, 2005.

After Ms. Hayes' phone call, Deputy Ron Harris arrived at the victims' residence. Upon his arrival, Ms. Hayes and Deputy Harris went inside the victims' home. They looked around the house, and all of the victims' things were still inside, including a cell phone, clothes, suitcases, and L.J.'s diabetic supplies to check his blood, and Sandra's medicine she was to keep on her person "because of her being Cumadine dependent." The breakfast dishes were still dirty, and pots and pans were still on the stove.

During her search for her mother, Ms. Hayes had spoken with her aunt, Barbara Threet, who had told her that the victims were supposed to go to Johnson's that morning to sell him the SUV. According to Ms. Hayes, Johnson had been "pretty persistent" about purchasing the vehicle, and Sandra decided to sell the automobile because Johnson "wouldn't leave her alone." After going to Johnson's house, the victims were then supposed to go to Ms. Threet's house, but they never showed up.

Ms. Hayes frantically searched for her mother throughout the day on April 2, and she ultimately obtained the address of Ms. Stone. She drove over to Ms. Stone's house and observed the Toyota SUV parked out front. Ms. Hayes notified the authorities; a police dispatcher, Gina Parker, then telephoned the residence. When asked if he had information about the victims' whereabouts, Johnson stated that they were upset with Ms. Hayes and that was why they did not tell her they were going on a trip.

During the early morning hours of Sunday, April 3, Deputy Jacob Bozwell was contacted by Deputy Lee Swallows. Deputy Swallows had driven by Johnson's residence on Copeland Cove and observed a burgundy-colored car sitting beside the left-side of the house. It was still dark outside at this time. Deputy Bozwell met with Deputy Swallows, and they proceeded to the residence. Deputy Bozwell knocked on the front door several times, but no one answered. He then went around

the house to the back door. Deputy Swallows had gone to look at the vehicle and called Deputy Bozwell to come take a look as he was walking around to the back of the house. Once there, Deputy Bozwell noticed that the passenger-side window of the car was "busted out" of the vehicle. He also observed human tissue, hair, and blood inside the car. The deputies, fearing for their safety, then left the residence until further assistance arrived. When asked about other vehicles on the property, Deputy Bozwell stated that he saw a tractor and a pick-up truck on the property, but that the pick-up truck did not appear to be operational.

After Sheriff Swallows and Chief Deputy DeWayne Winnigham arrived, they conducted a search of Johnson's residence and discovered the bodies of the victims in a "brush pile." Sheriff Swallows noted that it had been raining that day, and there were fresh tire tracks from the tractor back and forth from the Dodge Stratus to the brush pile. It was noted that Sandra was a particularly large woman and assistance would have been needed to move her. The tractor on the property had a scoop attachment, which appeared to have blood and tissue matter on it. Sheriff Swallows also testified that he saw another "burn pile" behind the house, which appeared to contain burnt clothes. Officers also found blood, tissue matter, a twenty-gauge shotgun shell, Sandra's wallet, and glass fragments in and around Johnson's driveway.

It was later determined that Sandra had been shot five times with a twenty-gauge shotgun, two to her face, one to her left shoulder, one to her breast area, and one to her chest. L.J. suffered two gunshot wounds, one below his left ear at close range. Both died as a result of these wounds, and both had evidence of additional, blunt-force injuries, such as fractures, lacerations, bruises, and abrasions. There was extensive damage to Sandra's fingers and her left arm. Many of these injuries were believed to have occurred after their deaths. Upon examination of Sandra's body, ten one-hundred-dollar bills were found in her bra.

Following the evidence observed on Johnson's property, officers conducted the vehicle stop of the Defendant and Johnson outlined in detail above. Deputy Logan gave a similar account of the events at trial. The audiotape of the Defendant's and Johnson's conversation in the back of the patrol car was played for the jury and admitted as an exhibit. Johnson made statements to the Defendant such as "don't say a word," "they're gonna have to charge us to hold us," "stay real quiet," "just don't ever tell them where they're at," "did they get that bag out yet," and "if you'd got back last night, . . .we'd have gone up there and done that last night." After officers found the bag in the trunk of the car, Johnson asked the Defendant if he was going to claim the pants as his own, to which the Defendant replied, "guess I'll have to, won't I?" Johnson said, "Yep."

After Johnson consented to the search of his house, officers discovered L.J.'s wallet and two spent shotgun shells inside a wood-burning stove. Agent Huntley found the license plate from the Dodge, the keys to the car, and Sandra's cell phone between Johnson's mattress and box-spring. He also located a twenty-gauge shotgun in three different pieces; it was determined that the shotgun was operational and capable of firing. Later TBI testing revealed that the spent shotgun shells in the driveway matched the ones found inside Johnson's residence.

As previously stated, Agent Huntley then returned to the jail and assisted in the interview of the Defendant. The Defendant was given his Miranda warnings and signed a waiver of rights form. Initially, the Defendant denied any involvement, stating that they had met the victims at McDonald's to buy a vehicle and the clothes in his car were from a "tree-topping" accident. The Defendant later admitted to his involvement in the victims' murders, admitting that he knew Johnson was going to shoot the victims for their SUV because Johnson was in debt. They discussed how to carry out the murder, and Johnson gave him one hundred dollars after the shootings to keep his "damn mouth shut." The Defendant claimed he was afraid of Johnson, although he told the officers that Johnson was a "good guy." A recording of this conversation was played for the jury and admitted into evidence. Following the interview, Agent Huntley, with the Defendant's consent, collected the jacket and boots the Defendant was wearing.

The next day, Agent Huntley returned to the jail and interviewed the Defendant again. After again being advised of his rights, the Defendant gave a written statement recounting the circumstances of the murders and his involvement in the crimes, including attempting to put Sandra in the bucket of the tractor, placing the wallet and shells in the fireplace, receiving money from Johnson to keep his "mouth shut," and inventing the story that they bought the truck for forty-two hundred dollars at McDonald's. He also stated that Johnson had informed him previously that he was going to kill the victims for money and the vehicle and that Johnson paid for dinner with the victims' money.

Agent Huntley also collected blood samples from the Defendant and Johnson for DNA comparison analysis. Clothing was recovered from Ms. Stone's house for testing.

Tests confirmed that gunshot residue was found on the Defendant's blue jeans and gloves, but none was found on Johnson's clothing. Additional testing showed that blood from the victims was located on the Defendant's blue jeans, boots, and jacket. Glass fragments were discovered in the Defendant's blue jeans and gloves, which were consistent with the "optical properties" of the window of the victims' vehicle.

According to Agent Huntley, Johnson spoke of the murders while in jail. Richard Stedam, an inmate, relayed that he was talking with Johnson and that Johnson said on several occasions he would kill the Defendant "and feed him to the hogs" if he got out of jail. Johnson told Stedam that he killed his daughter and son-in-law because he "got pissed over a car deal" and that he cut them up into pieces with a chainsaw. Johnson told Chris Cook, an inmate, that he had killed his daughter and son-in-law and that, if he got out of jail, he would kill "eight more." Inmate Johnny Edward Parks testified that the Defendant told him that he "could not leave because Johnson said he would kill him too, along with his family" and that the Defendant admitted he helped move the bodies.

In addition to his own testimony, the Defendant presented two witnesses on his behalf. First, Putnam County Sheriff's Department dispatcher Gina Parker testified. After Ms. Hayes saw the victims' SUV in Ms. Stone's driveway, she telephoned Ms. Stone's residence. Ms. Stone answered and then gave the phone to Johnson. Johnson told her that the victims had gone on vacation, that

he had purchased the vehicle from them, and that the victims needed to get away, "that people had been stealing from them and things like that." He also claimed that he knew where they were but did not want anyone else to know.

Next, Beth Ann Dobbs, the Defendant's girlfriend, testified for the Defendant. She stated that she met the Defendant at a drug rehabilitation center around December 2004 and that they began dating. She described the Defendant as "a good man[,]" polite, and helpful.

Ms. Dobbs affirmed that, in the week before April 1, the Defendant and Johnson and been working together. When the Defendant returned on the morning of April 1, he was dirty and proceeded to shower. She confirmed that they then went to eat lunch at Ruby Tuesday's, followed by a trip to her sister's house that evening. The next day, they went to Wal-Mart and, later, again went to visit her sister.

During the weekend, the Defendant drank several beers, which was unusual. He also awoke on Saturday night asking for a glass of water; his hand was shaking. Ms. Dobbs attributed it to him being tired. She admitted that, when asked by officers about the Defendant's behavior during this time, she said that the Defendant "didn't act shocked or scared" and that he "seemed fine."

After the Defendant's arrest, he sent Ms. Dobbs a letter. In the letter, the Defendant relayed that he had been forced into helping Johnson after Johnson shot the victims. Ms. Dobbs had burned the letter after she read it.

The Defendant testified on his own behalf. He stated that, on the morning of April 1, he and Johnson went to a bank to withdraw money. They then proceeded to Johnson's residence. Johnson told him to call the victims to bring the vehicle out to the property in order for Johnson to buy it. The Defendant claimed that, when the victims showed up, Johnson went inside and retrieved the shotgun. According to the Defendant, who was on the front porch of the residence, Johnson told him to "stay back, and everything will be okay."

The Defendant asserted that he did not know that Johnson intended to shoot the victims. When asked why he did not stop Johnson, the Defendant replied that he "feared for [his] life"; therefore, he hid behind a tractor during the episode. The Defendant claimed that he only helped Johnson because he was forced and that Johnson gave him one hundred dollars and told him to keep quiet. Furthermore, the Defendant relayed that Johnson threatened to kill Ms. Stone and Ms. Dobbs if the Defendant reported the murders.

At the conclusion of the proof, the jury found the Defendant guilty as charged on all counts except for the especially aggravated robbery of Sandra. His felony murder counts were merged with the premeditated murder counts, and he was sentenced to concurrent terms of life with the possibility of parole. His sentence of fifteen years for the especially aggravated robbery conviction was ordered to be served consecutively to the life sentences. He was also sentenced to one year for each abuse of a corpse conviction, which sentences were ordered to be served concurrently with one another and

concurrently with all other sentences. Following the denial of his motion for a new trial, the Defendant filed a notice of appeal to this Court. The case is now properly before us for our review.

Analysis

I. Motion to Suppress

On appeal, the Defendant argues that the trial court erred by denying his pretrial motion to suppress the evidence obtained as a result of his arrest. Specifically, he contends that his detention exceeded the proper scope of an "investigatory stop" and that his warrantless arrest was not supported by probable cause. Therefore, he submits that the evidence obtained following his illegal arrest should be suppressed under the "fruit of the poisonous tree" doctrine.

When this Court reviews a trial court's ruling on a motion to suppress, "questions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996). "The party prevailing in the trial court is entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from that evidence." Id. A trial court's findings of fact in a suppression hearing will be upheld unless the evidence preponderates otherwise. State v. Williams, 185 S.W.3d 311, 314 (Tenn. 2006) (citing Odom, 928 S.W.2d at 23). The application of the law to the facts, however, is a question of law which this Court reviews de novo. Williams, 185 S.W.3d at 315; State v. Yeargan, 958 S.W.2d 626, 629 (Tenn. 1997).

In its written order denying the Defendant's motion to suppress, the trial court determined as follows:

> [T]he stop of the [D]efendant Shane M. Grogger's automobile by law enforcement authorities in Putnam County on April 3, 2005, was proper and did not amount to an illegal stop. The [c]ourt further finds that law enforcement officials had probable cause at the time of the stop to believe that the [co-d]efendant, Harold Johnson, Jr., was guilty of the charges contained in the indictment in this matter, and that he was a passenger in the vehicle that was stopped. Further, the [c]ourt finds that the law enforcement authorities . . . had reasonable suspicion based upon specific and articulate facts to briefly detain the [D]efendant . . . for the purpose of identification and determination of his involvement in the homicides. The [c]ourt finds that the use of handcuffs being placed on this [D]efendant and placement inside a Sheriff's Department [p]atrol [c]ar was not unreasonable given the nature of the crimes allegedly committed for the safety of the officers. The [c]ourt further finds that this [D]efendant freely and voluntarily gave consent for the officers to search his vehicle while being lawfully detained. Upon a finding by officers of certain articles of clothing which appeared to have blood stains in the trunk and rear seat[3] of this [D]efendant's vehicle approximately twenty minutes after the stop was made, the

[3] The evidence does not support the finding that anything was found in the rear seat of the Defendant's vehicle.

[c]ourt finds that probable cause then existed to arrest [the Defendant] for the charges contained in the State's indictment.

Both the Fourth Amendment to the United States Constitution and article I, section 7 of the Constitution of Tennessee prohibit unreasonable searches and seizures and direct that search warrants be issued upon probable cause. Our supreme court has noted that "a warrantless search or seizure is presumed unreasonable, and evidence discovered as a result thereof is subject to suppression unless the State demonstrates that the search or seizure was conducted pursuant to one of the narrowly defined exceptions to the warrant requirement." Yeargan, 958 S.W.2d at 629.

First in our analysis, we note that this Court has previously determined that the facts of this case created probable cause for Deputy Logan to stop the vehicle to arrest Johnson, a passenger in the Defendant's vehicle. See State v. Harold Johnson, Jr., No. M2008-01070-CCA-R3-CD, 2009 WL 3321262, at *9-10 (Tenn. Crim. App., Nashville, Oct. 15, 2009). Where police officers possess probable cause to arrest a passenger in a vehicle, they may stop the vehicle in order to effect an arrest of the passenger. See Delaware v. Prouse, 440 U.S. 648, 663 (1979) (holding that it is not unreasonable for officers to stop an automobile and detain the driver in order to check his driver's license and registration of the automobile where either the vehicle or an occupant is otherwise subject to seizure for violation of law). The issue presented in this case involves the remainder of the encounter: that is, whether Officer Logan's actions toward the Defendant (handcuffing him and placing him a patrol car) reasonably related in scope to the circumstances that initially justified the stop. Given the lack of Tennessee jurisprudence relevant to this issue, we have found guidance in the decisions of other jurisdictions that have addressed the issue.

The Defendant is correct that he was seized within the meaning of the Fourth Amendment when his car was stopped. See e.g., United States v. Hensley, 469 U.S. 221, 226 (1985). In Hensley, the Supreme Court noted that, "[a]lthough stopping a car and detaining its occupants constitute a seizure within the meaning of the Fourth Amendment, the governmental interest in investigating an officer's reasonable suspicion, based on specific and articulable facts, may outweigh the Fourth Amendment interest of the driver and passengers in remaining secure from the intrusion." Id. at 227. The Supreme Court went on to authorize stops for reasonable suspicion of involvement in past crimes under certain circumstances. See also State v. Sutton, 49 S.W.3d 800, 810 (Mo. Ct. App. 2001). Certainly this principle is applicable to this case, where the stop was not justified based upon reasonable suspicion, but upon probable cause to arrest. Id.

Only unreasonable seizures violate the Fourth Amendment. United States v. Brignoni-Ponce, 422 U.S. 873, 878 (1975). "As with other categories of police action subject to Fourth Amendment constraints, the reasonableness of such seizures depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers." People v. Taylor, 41 P.3d 681, 687 (Colo. 2002) (quoting Brignoni-Ponce, 422 U.S. at 878, and citing Maryland v. Wilson, 519 U.S. 408 (1997); Pennsylvania v. Mimms, 434 U.S. 106 (1997); United States v. Martinez-Fuerte, 428 U.S. 543 (1976); Camara v. Mun. Court, 387 U.S. 523 (1967)).

Discussing how to reach an appropriate balance between the public interest and personal security in Prouse, the Supreme Court explained:

> Implemented in this manner, the reasonableness standard usually requires, at a minimum, that the facts upon which an intrusion is based be capable of measurement against "an objective standard," whether this be probable cause or a less stringent test. In those situations in which the balance of interests precludes insistence upon some quantum of individualized suspicion, other safeguards are generally relied upon to assure that the individual's reasonable expectation of privacy is not subject to the discretion of the official in the field.

440 U.S. at 654-55 (internal quotations and citations omitted).

It is hard to fathom a more compelling public interest than securing the arrest of people wanted for violent crimes. Taylor, 41 P.3d at 688. Probable cause to arrest Johnson "constituted an objectively measurable reason for stopping Defendant's vehicle, and thus adequately circumscribed the 'standardless and unconstrained discretion . . . of the official in the field' with which Prouse was so concerned." Id. (citing Prouse, 440 U.S. at 661). In accordance with these principles, we conclude that, because the stop of the vehicle was supported by probable to cause to arrest Johnson, the Defendant's Fourth Amendment rights were not violated, and he was not improperly seized by the car stop. See also id. (citations omitted).

A detention can lose its lawful character, however, if it extends beyond the time reasonably necessary to effect its initial purpose. A police officer's actions after conducting an investigatory stop must reasonably relate to the circumstances which justified the stop in the first place. See Terry v. Ohio, 392 U.S. 1, 20 (1968). The detention "must be temporary and last no longer than is necessary to effectuate the purpose of the stop." Florida v. Royer, 460 U.S. 491, 500 (1983). Moreover, the officer should employ the least intrusive means reasonably available to investigate his or her suspicions in a short period of time. Id. In determining the reasonableness of the detention, the proper inquiry is whether during the detention, the officer diligently pursued a means of investigation that was likely to confirm or dispel his or her suspicions quickly. United States v. Sharpe, 470 U.S. 675, 686 (1985). "If the time, manner or scope of the investigation exceeds the proper parameters," a constitutionally permissible stop may be transformed into impermissible stop. State v. Troxell, 78 S.W.3d 866, 871 (Tenn. 2002).

When arrest-like measures are employed, they must "be reasonable in light of the circumstances that prompted the stop or that developed during its course." People v. Nitz, 863 N.E.2d 817, 823-24 (Ill. App. Ct. 2007) (quoting 4 Wayne R. LaFave, Search & Seizure § 9.2(d), at 304 (4th ed. 2004)). "The standard is most frequently stated to be a function of the officers' reasonable fears for their own safety. This fear is reasonable if it is based on 'particular facts' from which reasonable inferences of danger may be drawn." State v. Belieu, 773 P.2d 46, 52 (Wash. 1989). Similarly, we note that merely because the suspect being apprehended may not be in

possession of a firearm does not mean the police officer is out of danger. People v. Waddell, 546 N.E.2d 1068, 1076 (Ill. App. Ct. 1989).

Agent Krofssik had probable cause to order a "felony stop" of the vehicle driven by the Defendant in order to effectuate an arrest of Johnson. Deputy Logan believed Johnson to be armed and dangerous, and the procedures employed were for the officers' safety. There is nothing unreasonable about police officers being apprehensive concerning the risks inherent in apprehending a murder suspect believed to be armed; Johnson was the prime suspect in a double homicide. Handcuffing the Defendant and placing him in a patrol car did not transform the stop of the Defendant into an arrest because the force employed was proportionate to the risk reasonably foreseen by the officers at the time of the stop. Cf. Waddell, 546 N.E.2d at 1075 (citing Howard v. State, 664 P.2d 603 (Alaska Ct. App. 1983)). Given their legitimate safety concerns, we cannot say the officers acted unreasonably in failing to pursue a less intrusive means of accomplishing the stop. While there is no bright-line standard for determining the degree of invasive force which may convert an investigative stop into an arrest, we caution that the investigative method must be the least intrusive means reasonably available and the force used should bear some reasonably proportionate relationship to the threat apprehended. See Belieu, 773 P.2d at 52.

Here, the officers did not know the extent of the Defendant's involvement in the criminal activity. In our view, they were entitled to investigate. The discussions between the officers and the Defendant were reasonably related to the investigation into the murders. The bodies had been discovered in a "brush pile" on Johnson's property; it was apparent that they had been moved and that the perpetrator(s) were attempting to conceal the crimes. Agent Krofssik advised the Defendant that they were investigating the disappearance of Johnson's daughter. It was not unreasonable for Detective Logan to determine whose vehicle they were riding in and ask to search that vehicle. The consent to search form was signed twenty minutes after the stop began. The detention did not extend beyond the time reasonably necessary to effect its initial purpose.

Furthermore, in response to the initial questioning by Deputy Logan, the Defendant voluntarily consented to a search of the car. The Defendant had also been given Miranda warnings. He does not challenge the voluntariness of this consent, only that his consent followed an illegal arrest. The record supports a conclusion that his consent was voluntary. Thus, the Defendant's encounter with police had turned into a consensual one, outside of the ambit of the Fourth Amendment's procedural protections. See State v. Sullivan, 49 S.W.3d 800, 812 (Mo. Ct. App. 2001) (citation omitted). Once officers discovered the bloody clothes in the trunk of the Defendant's vehicle, probable cause existed to arrest the Defendant. As such, we conclude that the trial court did not err in denying the Defendant's motion to suppress.

II. Sufficiency of the Evidence

Next, the Defendant challenges the sufficiency of the evidence supporting his convictions for premeditated and felony murder.[4] He argues that there was no evidence that he formed any premeditation to kill the victims and that there was no evidence that he formed any intent to rob the victims or that he participated in the robbery.

The Defendant also notes that he was acquitted of the robbery of Sandra, the underlying felony, and therefore, his conviction for the felony murder of Sandra cannot stand. The long-standing precedent in Tennessee is that each count of an indictment is regarded as a separate offense. See Wiggins v. State, 498 S.W.2d 92 (Tenn. 1973). Moreover, "[c]ourts have always resisted inquiring into a jury's thought processes." United States v. Powell, 469 U.S. 57, 67 (1984). This resistance is perhaps best illustrated in the cases involving a defendant's challenge to the consistency of a jury's verdicts in a multi-count indictment. Following Wiggins, this Court has consistently declined to disturb one conviction on the basis that the jury's acquittal on another offense is inconsistent, even when the elements and evidence of the two offenses intertwine or are the same. See State v. Derek T. Payne, No. W2001-00532-CCA-R3-CD, 2002 WL 31624813 (Tenn. Crim. App., Jackson, Nov. 20, 2002) (conviction of second degree murder as a lesser included offense of felony murder upheld even when convicted of underlying felony).

In State v. Tony Scott Walker, No. 02C01-9704-CC-00147, 1997 WL 746433 (Tenn. Crim. App., Jackson, Dec. 3, 1997), for example, the defendant was convicted of first degree felony murder, but was acquitted of the underlying felony of especially aggravated robbery. Despite the inconsistencies presented by the two verdicts, this Court upheld the defendant's conviction for felony murder under the principles set forth in Wiggins and Powell. Walker, 1997 WL 746433, at *5. In so doing, this Court observed that "any attempt to separate a verdict that may be the product of an error that worked against one of the parties would be based on pure speculation or would involve inappropriate inquiry into the jury's deliberation." Id. at *4 (citing Powell, 469 U.S. at 66). Thus, this Court's only inquiry when presented with inconsistent verdicts is the sufficiency of the evidence of the convicted offense. Id. at *5; see Wiggins, 498 S.W.2d at 93. Therefore, we will now turn our attention to the sufficiency of the evidence.

Tennessee Rule of Appellate Procedure 13(e) prescribes that "[f]indings 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." A convicted criminal defendant who challenges the sufficiency of the evidence on appeal bears the burden of demonstrating why the evidence is insufficient to support the verdict, because a verdict of guilt destroys the presumption of innocence and imposes a presumption of guilt. See State v. Evans, 108 S.W.3d 231, 237 (Tenn. 2003); State v. Carruthers, 35 S.W.3d 516, 557-58 (Tenn. 2000); State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). This Court must reject a convicted criminal defendant's challenge to the sufficiency of the evidence if, after considering the evidence in a light most favorable to the

[4] The Defendant does not challenge on appeal the evidence supporting his convictions for especially aggravated robbery and abuse of a corpse.

prosecution, we determine that any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); State v. Hall, 8 S.W.3d 593, 599 (Tenn. 1999).

On appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable and legitimate inferences which may be drawn therefrom. See Carruthers, 35 S.W.3d at 558; Hall, 8 S.W.3d at 599. A guilty verdict by the trier of fact accredits the testimony of the State's witnesses and resolves all conflicts in the evidence in favor of the prosecution's theory. See State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). Questions about the credibility of 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, and this Court will not re-weigh or re-evaluate the evidence. See Evans, 108 S.W.3d at 236; Bland, 958 S.W.2d at 659. Nor will this Court substitute its own inferences drawn from circumstantial evidence for those drawn by the trier of fact. See Evans, 108 S.W.3d at 236-37; Carruthers, 35 S.W.3d at 557.

First degree premeditated murder is defined as the "premeditated and intentional killing of another." Tenn. Code Ann. § 39-13-202(a)(1). A premeditated killing is one "done after the exercise of reflection and judgment." Tenn. Code Ann. § 39-13-202(d). To be premeditated, the intent to kill must have been formed before the act itself, and the accused must be sufficiently free from excitement and passion. Tenn. Code Ann. § 39-13-202(d). An intentional act requires that the person have the desire to engage in the conduct. Tenn. Code Ann. § 39-11-106(a)(18). Whether premeditation is present is a question of fact for the jury, and it may be determined from the circumstances surrounding the offense. Bland, 958 S.W.2d at 660; State v. Anderson, 835 S.W.2d 600, 605 (Tenn. Crim. App. 1992). Our supreme court has noted the following non-exclusive factors that demonstrate the existence of premeditation: the use of a deadly weapon upon an unarmed victim, the particular cruelty of the killing, declarations by the defendant of an intent to kill, evidence of procurement of a weapon, preparations before the killing for concealment of the crime, and calmness immediately after the killing. Bland, 958 S.W.2d at 660.

First degree felony murder is "[a] killing of another committed in the perpetration of or attempt to perpetrate any . . . robbery[.]" Tenn. Code Ann. § 39-13-202(a)(2). The mental state required for conviction of felony murder is the intent to commit the underlying felony offense; in this case, robbery. See Tenn. Code Ann. § 39-13-202(b). Robbery is "the intentional or knowing theft of property from the person of another by violence or putting the person in fear." Tenn. Code Ann. § 39-13-401(a).

Tennessee statutes provide that a person is "criminally responsible for an offense committed by the conduct of another if: [A]cting with intent to promote or assist the commission of the offense, or to the benefit in the proceeds or results of the offense, the person solicits, directs, aids, or attempts to aid another person to commit the offense." Tenn. Code Ann. § 39-11-402(2). This statute codifies the longstanding common law theories of "accessories before the fact and aiders and abettors." Tenn. Code Ann. § 39-11-402, Sentencing Commission Comments. However, criminal responsibility is not itself a separate crime; rather, it is "solely a theory by which the State may prove

the defendant's guilt of the alleged offense . . . based upon the conduct of another person." State v. Lemacks, 996 S.W.2d 166, 170 (Tenn. 1999).

Under a theory of criminal responsibility, a defendant's presence and companionship with the perpetrator of a felony before and after the commission of the offense are circumstances from which that defendant's participation in the crime may be inferred. State v. Ball, 973 S.W.2d 288, 293 (Tenn. Crim. App. 1998). No particular act need be shown, and the defendant need not have played a physical role in the crime in order to be held criminally responsible for the crime. State v. Caldwell, 80 S.W.3d 31, 38 (Tenn. Crim. App. 2002). Rather, to be held criminally responsible for the acts of another, the defendant need only "associate himself with the venture, act with knowledge that the offense is to be committed, and share in the criminal intent of the principal in the first degree." State v. Maxey, 898 S.W.2d 756, 757 (Tenn. Crim. App. 1994).

The Defendant submits that the evidence points only to his co-defendant Johnson as the perpetrator of these crimes and that the State failed to prove his involvement in these offenses. We disagree and conclude that there was sufficient evidence within the record to support the Defendant's convictions as a principal, as well as under a theory of criminal responsibility.

The evidence, in the light most favorable to the State, proved that the Defendant and Johnson had been working together in the week leading up to the murders. On the morning of April 1, the Defendant lured the victims to Johnson's residence, telephoning Sandra and asking her to come with the SUV. In the two months prior to this time, the Defendant had not been employed, and Johnson told the Defendant that the victims carried large amounts of money on their persons. Prior to their arrival at Johnson's residence, the two men discussed killing the victims for the SUV; Johnson stating that he was in debt and did not have the money to buy the vehicle. When Johnson retrieved his shotgun from inside, they made plans for "what he could do." Following the murders, the Defendant was given one hundred dollars, which he spent on "smokes, gas, and other items." Johnson paid for lunch at Ruby Tuesday's with the victims' money. The Defendant and Johnson fabricated a story to tell the authorities if questioned about the victims' whereabouts: that they had gone to McDonald's to met the victims, and Johnson purchased the SUV for forty-two hundred dollars.

The victims died of multiple shotgun wounds, and suffered additional blunt injuries after their deaths. Tractor tire tracks were visible leading back and forth from the victims' car to the brush pile. Additionally, another burn pile was found on the property, which appeared to contain clothing. A twenty-gauge shotgun was found inside Johnson's home, and it was determined that the spent shotgun shells recovered from the driveway matched the ones found inside Johnson's residence. Also, shells found inside the house matched the ones found in the driveway. Officers found the keys to the Dodge, the license plate, and Sandra's cell phone between the mattress and box-spring of Johnson's bed. L.J.'s wallet and two spent shotgun shells were discovered in a wood-burning stove.

Ms. Dobbs testified that the Defendant did not act unusually following the murders. After the crime, the Defendant never informed authorities of the murders. Although the Defendant

claimed that Johnson forced him into helping conceal the shootings and threatened Ms. Stone and Ms. Dobbs if he did not, the jury, as was their prerogative, obviously did not accredit the Defendant's testimony.

Testing revealed gunshot residue and glass fragments on the Defendant's clothing. The victims' blood was found on the Defendant's blue jeans and boots. Moreover, the Defendant made statements in the back of Deputy Logan's patrol car and gave two statements to Agent Huntley indicating his involvement in the murders.

These facts are sufficient to sustain the Defendant's convictions for first degree premeditated murder and felony murder beyond a reasonable doubt. He is not entitled to relief on this issue.

Conclusion

In consideration of the foregoing, we conclude that denial of the Defendant's motion to suppress was not error and that the evidence was sufficient to support the Defendant's convictions beyond a reasonable doubt. The judgments of the Overton County Circuit Court are affirmed.

_____

DAVID H. WELLES, JUDGE