

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs July 22, 2026

FILED

08/05/2026

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. LARRY RAY MCBEE

Appeal from the Criminal Court for Knox County
No. 123941 Steven W. Sword, Judge

No. E2025-00754-CCA-R3-CD

The Defendant, Larry Ray McBee, appeals his Knox County Criminal Court jury conviction of felony murder, arguing that the trial court erred by denying his motion to suppress and that the evidence was insufficient to support his conviction. The State asserts that the appeal should be dismissed as untimely, or, in the alternative, that the conviction should be affirmed. Because the interest of justice does not support waiving the untimely filing of the notice of appeal in this case, the appeal is dismissed.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

STACY L. STREET, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and ROBERT H. MONTGOMERY, JR., JJ., joined.

Clinton E. Frazier, Knoxville, Tennessee, for the appellant, Larry Ray McBee.

Jonathan Skrmetti, Attorney General and Reporter; Ronald L. Coleman, Assistant Attorney General; Joshua R. Gilbert, *pro hac vice*;¹ Charme P. Allen, District Attorney General; and Rachel Hill and Jeannine Guzolek, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

This appeal arises from the December 22, 2022 shooting death of the victim, twenty-three-year-old Tristan Smith, at the Rural King where he worked. The proof at trial showed that the Defendant fled the store after taking ammunition and that he shot the victim during the ensuing pursuit.

¹ Mr. Gilbert, a member of the California bar, was authorized to practice in Tennessee pursuant to Tennessee Supreme Court Rule 7, section 10.07, pending his admission to the Tennessee Bar.

Factual and Procedural Background

The Knox County Grand Jury charged the Defendant with one count of felony murder in the perpetration of theft, *see* T.C.A. § 39-13-202(a)(2); especially aggravated robbery, *see id.* § 39-13-403(a); and unlawful carrying of a firearm with the intent to go armed, *see id.* § 39-17-1307(a)(1). The State dismissed Count 2 prior to trial, and the trial court granted the Defendant's motion to dismiss Count 3. The case proceeded to trial on the single count of felony murder.

The trial evidence established that the Defendant entered the Rural King on Norris Freeway on December 22, 2022, and that, while there, he interacted with Larry Solomon. Mr. Solomon recalled that the Defendant, who was wearing a gray sweatshirt, showed him a "raspberry" Ruger pistol and asked if Rural King carried clips for the weapon. Another customer, Chris Chandler, saw the Defendant, who was wearing a gray sweatshirt and a toboggan with a puffy ball on top, putting "stuff" into a blue backpack. Mr. Chandler reported his observation to the victim, who followed the Defendant through a side door. Mr. Chandler heard two gunshots and saw the Defendant running around the corner.

Rural King assistant manager Alisa Criswell recalled that the victim called over his store radio to report a shoplifter. As she made her way to the sporting goods section where the victim worked, she heard the alarm that indicated the emergency exit door had been opened. When she went outside through the emergency exit, she saw the victim lying on the ground and observed an individual running away. She saw a green toboggan with a "pom-pom poof" on top lying on the pavement. Ms. Criswell telephoned 911.

Surveillance video footage captured the Defendant inside the Rural King wearing a gray sweatshirt, a green toboggan with a puffy ball on top, blue shoes, a red mask, and a blue backpack. The footage showed the Defendant browsing the aisles and speaking to Mr. Chandler, who was dressed as Santa Claus, before leaving through the emergency exit door followed closely by the victim.

The Defendant's aunt, Angela Hixon, recognized the Defendant from a still image captured from the surveillance footage and published by law enforcement. During a video call with Ms. Hixon on the day of the shooting, the Defendant admitted that he shoplifted ammunition from the Rural King and that he shot the victim when the victim gave chase. The Defendant also displayed his jacket, which had a bloodstain on it, to Ms. Hixon and told her that he got the victim's blood on him when the victim grabbed him. A video recording that Ms. Hixon made of the call, which she provided to the Knox County Sheriff's Office (KCSO), was entered as an exhibit during her testimony and played for the jury.

After the shooting, the Defendant visited the home of Deana Sims, who lived next door to his grandmother, and showed her the still image taken from the published surveillance footage and asked if she thought the person in the image looked like him. Ms. Sims confirmed that it did and noted that the person in the image was wearing the same clothes that the Defendant had been wearing when he left Ms. Sims' house just before the shooting. The Defendant then admitted to Ms. Sims that he shot the victim while trying to get away from the Rural King.

KCSO investigators viewed the Defendant's social media accounts, which showed him wearing the same clothing as the perpetrator in the surveillance footage. Using cell phone location data obtained via a search warrant, authorities located the Defendant hiding inside a closet in Ms. Sims' house. Officers collected the Defendant's cell phone, clothing, shoes, backpack, and red face mask. The Defendant's gray sweatshirt had stains on it that forensic testing revealed to be the victim's blood. Ammunition discovered in the Defendant's car matched that taken from the Rural King.

A digital forensic examination of the Defendant's cell phone, conducted pursuant to a search warrant, uncovered a still image of the Rural King shooter taken from the published surveillance footage, screenshots of media coverage of the shooting, and videos of the Defendant displaying a pink pistol and a backpack containing ammunition. Forensic firearms and toolmark analysis matched the .380 cartridge recovered from the scene to the Defendant's pink firearm. Forensic microanalysis established the presence of gunshot residue on the Defendant's hands at the time of his arrest.

The autopsy of the victim established that he died of a single gunshot wound to the chest that traveled through his chest, perforating a primary vein and the right lung, leading to his death by exsanguination, the most extreme form of hemorrhage. The presence of gunpowder particles on the victim's skin and clothing established that he was shot from not less than twelve and not more than thirty-six inches away.

After the shooting, the Defendant created Facebook posts accusing Ms. Hixon of being a "snitch." The Defendant also called Ms. Hixon from jail, asking her to alter her testimony to exonerate him. Recordings of the jail phone calls were played for the jury.

Based upon this evidence, the jury convicted the Defendant as charged, and the trial court imposed a sentence of life imprisonment. *See* T.C.A. § 39-13-202(c)(1) (providing for a sentence a death, life imprisonment without the possibility of parole, or life imprisonment upon conviction of first degree murder); *id.* § 39-13-208(c) (2021) (providing for automatic sentence of life imprisonment when "notice is not filed" seeking sentence of death or life without the possibility of parole). The Defendant filed a timely but unsuccessful motion for new trial followed by an untimely notice of appeal.

Analysis

On appeal, the Defendant argues that the trial court erred by denying his motion to suppress evidence obtained during the digital forensic examination of his cell phone on grounds that the search warrant did not satisfy the particularity requirement. He also argues that the evidence was insufficient to support his conviction. The State argues that the appeal is untimely and that, in the alternative, the Defendant is not entitled to relief.

As the State correctly observes, the Defendant's notice of appeal, filed thirty-four days after the trial court denied the motion for new trial, is untimely. The trial court denied his motion for new trial on April 16, 2025, and the Defendant filed his notice of appeal on May 20, 2025.² See Tenn. R. App. P. 4 (stating that the notice of appeal must "be filed with the clerk of the appellate court within 30 days after the date of entry of the judgment appealed from"). Although this court may waive the timely filing of the notice of appeal "in the interest of justice," see Tenn. R. App. P. 4(a), routinely granting such a waiver would render Rule 4 "a legal fiction," see *State v. Rockwell*, 280 S.W.3d 212, 214 (Tenn. Crim. App. 2007) (citing *Hill v. State*, No. 01C01-9506-CC-00175, 1996 WL 63950, at *1 (Tenn. Crim. App. Feb. 13, 1996)). Instead, we examine "the nature of the issues presented for review, the reasons for and the length of the delay in seeking relief, and any other relevant factors presented in the particular case" to determine whether waiver is justified. *Rockwell*, 280 S.W.3d at 214 (citing *State v. Broyld*, No. M2005-00299-CCA-R3-CO, 2005 WL 3543415, at *1 (Tenn. Crim. App. Dec. 27, 2005)); see also Tenn. R. App. P. 4(a) ("The appropriate appellate court shall be the court that determines whether such a waiver is in the interest of justice."). The appellant bears the burden of establishing that the interest of justice warrants waiver. *State v. Thomas*, No. W2022-00109-CCA-R3-CD, 2023 WL 328337, at *3 (Tenn. Crim. App. Jan. 20, 2023) (citing *State v. Jones*, No. M2011-00878-CCA-R3-CD, 2011 WL 5573579, at *1 (Tenn. Crim. App. Nov. 15, 2011)).

Here, the Defendant did not move this court to waive the timely filing of the notice of appeal. See *Rockwell*, 280 S.W.3d at 214 (stating that "the more proper and efficient practice for a party seeking a waiver of the timeliness of the notice of appeal is to file a motion with this court requesting the waiver"). The Defendant also failed to respond to the State's argument that the appeal is untimely. "The absence of any request by the Defendant for a waiver, particularly after he was placed on notice of the issue, weighs against waiving the untimely notice of appeal." *State v. Smith*, No. E2023-01416-CCA-R3-CD, 2024 WL 4554632, at *7 (Tenn. Crim. App. Oct. 22, 2024), *no perm. app. filed*; see also *State v. Manning*, No. E2022-01715-CCA-R3-CD, 2023 WL 7439203, at *6 (Tenn. Crim. App. Nov. 9, 2023) (declining to waive timely filing when the defendant "did not acknowledge" timeliness issue until oral argument); *State v. Rogers*, No. W2015-

² The certificate of service indicates that the document was signed on May 16, 2025.

00988-CCA-R3-CD, 2016 WL 1045352, at *2 (Tenn. Crim. App. Mar. 15, 2016) (declining to waive timely filing when the defendant did not ask for waiver and “remained silent even after the State raised this issue in its brief”); *Tucker v. State*, No. W2015-00241-CCA-R3-PC, 2015 WL 5918975, at *2 (Tenn. Crim. App. Oct. 9, 2015) (declining to waive timely filing when the Defendant “failed to even acknowledge that his notice of appeal was untimely”).

In addition to the Defendant’s failure to acknowledge the untimeliness of his appeal, the nature of the issues presented does not weigh in favor of waiving the timely filing of the notice of appeal in this case. Our review of the record pursuant to *Rockwell* reveals that the State presented overwhelming evidence that the Defendant stole ammunition from the Rural King and that he shot the victim at close range as he fled the scene, including surveillance video, multiple admissions of guilt, and forensic evidence directly linking the Defendant to the victim’s death. See T.C.A. § 39-13-202(a)(2) (defining felony murder as the “killing of another committed in the perpetration of or attempt to perpetrate any . . . theft”). Indeed, the Defendant admits that he shot the victim but argues that the State failed to establish that the shooting occurred during the perpetration of a theft. However, the record demonstrates that the Defendant shot the victim as he fled the scene immediately after the theft. See *State v. Pierce*, 23 S.W.3d 289, 295 (Tenn. 2000) (stating that sufficient evidence exists that murder occurred “in the perpetration of theft” when “the killing is closely connected to the initial *taking* of the property in time, place, causation, and continuity of action”). Further, in light of the overwhelming evidence of the Defendant’s guilt, the trial court’s denial of the Defendant’s motion to suppress, even if erroneous, can be classified as harmless beyond a reasonable doubt. See *State v. Climer*, 400 S.W.3d 537, 567 (Tenn. 2013); see also, e.g., *State v. Pruitt*, No. M2013-02393-CCA-R3-CD, 2015 WL 5032016, at *12 (Tenn. Crim. App. Aug. 26, 2015) (error harmless when the evidence was “overwhelmingly sufficient to support the Defendant’s convictions irrespective of the bullets seized from the Defendant’s home pursuant to the search warrant”). Accordingly, the nature of the issues presented does not justify this court’s waiving the untimely notice of appeal.

Conclusion

Therefore, we hold that the interest of justice does not warrant waiving the untimely filing of the notice of appeal and dismiss the appeal.

s/ *Stacy L. Street*

STACY L. STREET, JUDGE