IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

NOVEMBER SESSION, 1999

FILED

February 2, 2000

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,	*	
	*	**C.C.A. No. 03C01-9812-CC-00436**
Appellee,	*	
	*	**BLOUNT COUNTY**
vs.	*	
	*	**Hon. D. Kelly Thomas, Jr., Judge**
BYRON M. EDWARDS,	*	
	*	**(Aggravated Robbery)**
Appellant.	*	

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OPINION FILED: _____

AFFIRMED

David G. Hayes, Judge

OPINION

The appellant, Byron M. Edwards, was found guilty by a Blount County jury of one count of aggravated robbery, a class B felony.[1] Following a sentencing hearing, the trial court sentenced the appellant as a career offender to thirty years in the Department of Correction. The appellant now appeals this conviction and sentence contending:

> I. The trial court erred by denying the appellant's Motion for a Continuance;
>
> II. The evidence was insufficient to support a conviction of aggravated robbery;
>
> III. The trial court erred by failing to contemporaneously instruct the jury that a prior out of court statement was not substantive evidence and could only be considered for impeachment purposes;
>
> IV. The trial court should have granted a new trial on the basis of newly discovered evidence;
>
> V. The trial court erred by sentencing the appellant to a thirty year sentence as a career offender.

After review of the record, we affirm.

Background

At approximately 6:00 pm on the evening of May 21, 1996, Wade Nichols met his friends, Willie Lundy and Victor Hodge, at the Howe Street Park in Alcoa. While the three men were talking, two vehicles drove up to the men and stopped. One vehicle was driven by the appellant. The appellant was accompanied by Arthur "A.C." Copeland, the co-defendant. The appellant and "A.C." exited their vehicle. Willie Lundy approached the two men, the three men exchanged words, and then Lundy quickly rejoined Wade Nichols and Victor Hodge. The appellant walked toward the three men and ordered them to "lay it down." The appellant, thinking that Nichols had made a comment about him, questioned Nichols as to what he said. Nichols responded "I didn't say anything to you, I don't want any problems with you."

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[1] This case was consolidated at trial with two other charges arising from the same criminal episode, *i.e.*, reckless endangerment and driving under the influence. The jury returned guilty verdicts as to these additional charges. These convictions and their accompanying sentences are not challenged in this appeal.

Nichols then turned his back and reinitiated his conversation with Lundy. At this point, the appellant handed "A.C." his wallet and announced that "he was going to fade this nigger." The appellant then "struck [Nichols] from behind on the right side of [his] face." Nichols' glasses fell to the ground and [Nichols] turned to face him and that's when Arthur Copeland . . ." "tackled [him]." ""A.C." was punching [Nichols] on [one] side of [his] face and [the appellant] was kicking [him] on [the other side] of [his] face." When the beating subsided, "A.C." asked Nichols "where the money was and where the dope was." The appellant then "walked away," "picked up a dirt clod . . .and hit [Nichols] in the back of the head with it." After the victim was incapacitated, "A.C." then began rummaging through Nichols' clothes. "A.C." took from Nichols' person a pager, a pocketknife, and two hundred dollars. "A.C." opened the knife and "threatened to stick [Nichols] in [the] throat with it." The appellant did not remove any of the items from Nichols' possession nor did the appellant threaten the appellant with a weapon or verbally. While Nichols remained face down on the ground, the appellant and "A.C." fled the scene. As a result of this incident, Wade Nichols underwent three reconstructive surgeries on his cheek and eye socket.

Meanwhile, frightened that "[Wade Nichols] was going to get killed," Willie Lundy and Lamont Martin, another bystander, went to the police department to obtain assistance. Officer Robert Simerly, with the Alcoa Police Department, was informed by Willie Lundy that, "Big B and another guy were down in the park beating up Wade and robbing him."[2] Officer Simerly, accompanied by Officer Buddy Cooper, got in his patrol car and drove toward the park. As they approached the park, the officers observed the appellant driving his vehicle in the opposite direction. Officer Simerly activated his patrol car's emergency equipment and initiated pursuit of the appellant's vehicle. The appellant failed to stop his vehicle. Rather, the appellant "[w]ent down East Howe, disregarded the stop sign . . . turned left. . . [d]isregarded [another] stop sign." The pursuit reached over 65 mph. The appellant continued through intersections without stopping. Cars were skidding to avoid collisions. "[The appellant] actually hit the intersection so hard there were sparks coming out from under his car." People scattered to avoid being hit. He

[2]The proof at trial was undisputed that the appellant was known by the nickname "Big B."

disregarded additional stop signs. The passenger in the appellant's vehicle, later identified as "A.C.", jumped out of the vehicle at the first opportunity and began to run. Officer Cooper pursued "A.C" on foot. Another patrol car joined the pursuit. Eventually, the officers were able to stop the appellant's vehicle.

Upon apprehending the appellant, Officer Simerly observed that the appellant "was real glassy-eyed, his eyes were bloodshot, and just rambling on about himself, talking continuously." Simerly could also "smell beer on [the appellant's] breath. . ." and believed the appellant to be intoxicated. Upon searching the appellant's vehicle, Officer Simerly discovered a knife with a pearl handle under the passenger side seat and, in the glove box, a pager. Both items were later identified as those taken from the person of Wade Nichols. The appellant was "handcuffed. . . placed in [the] patrol unit. . .and read . . .his Miranda rights." When questioned about the incident at Howe Street Park, the appellant responded, "Damn right, I robbed them, I'm going to rob all those bitches, including Stacy."[3] Later, at the Blount County Jail, while booking both the appellant and "A.C." Copeland into the jail, deputies discovered "eighteen dollars in currency" on the person of "A.C." Copeland. The deputies recovered "eight hundred and seventy dollars in currency" from the person of the appellant.

Based on this evidence, the jury found the appellant guilty of aggravated robbery.

I. Motion for Continuance

In the appellant's first issue, he contends that the trial court erred by denying a motion for continuance pending resolution of co-defendant's "A.C." Copeland's trial arising from the same incident. Specifically, the appellant asserts that he should have been granted a continuance until co-defendant Copeland's case was resolved because Copeland had previously asserted his right against self-incrimination. The appellant insists that, if a continuance would have been granted, Copeland would have testified at the appellant's trial that he and not the appellant took the property from the victim's person.

[3]The record is unclear as to the identity of "Stacy."

This court is unable to review this issue. The appellant has failed to cite to any legal authority, make any legal argument, or make appropriate citations to the record in his brief. See Tenn. Ct. Crim. App. R. 10(b); Tenn. R. App. P. 27(a)(7). Additionally, a review of the record reveals that a continuance was requested by the appellant and granted on November 18, 1997, resulting in a five month continuance of the trial in this case. The record does not indicate any subsequent request for a continuance or that the appellant objected to the trial commencing on April 23, 1998. There is no indication in the appellant's argument that a second continuance was indeed requested. See Tenn. Ct. Crim. App. R. 10(b); Tenn. R. App. P. 27(a)(7). This court will not review an issue unsupported by citations to the record or legal argument. See Tenn. Ct. Crim. App. R. 10(b); Tenn. R. App. P. 27(a)(7). Moreover, we decline to address what plainly appears to be a hypothetical issue. Accordingly, we find this issue waived.

II. Sufficiency of the Evidence

In obtaining a conviction at trial, the State relied upon the theory of criminal responsibility for the conduct of another in proving the appellant's guilt for the offense of aggravated robbery. The trial court submitted to the jury the issue of the appellant's guilt as a principal offender and, alternatively, the appellant's guilt based upon the theory of criminal responsibility for the conduct of another. In his argument challenging, under either theory, the sufficiency of the convicting evidence, the appellant contends that no proof was elicited at trial to demonstrate that the appellant "direct[ed] or instruct[ed]" his co-defendant "to do anything" and "at no time did [the appellant] direct [his co-defendant] to take anything. . . ." Because the proof is undisputed that the appellant did not remove any property from the victim's person, he argues that the State failed to prove that he solicited, directed, aided, or attempted to aid another person in the commission of the offense. Notwithstanding this argument, he concedes that the facts of this case are more suited to facilitation of a felony under Tenn. Code Ann. § 39-11-403(a) (1991). In this regard, the appellant notes that facilitation was not a part of the jury charge.

On appeal, the evidence must be viewed in the light most favorable to support the verdict and the appellant no longer enjoys a presumption of innocence.

State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). Moreover, an appellate court only determines the legal sufficiency of the evidence and does not reweigh the evidence or determine witness credibility. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn.1978). The Jackson v. Virginia standard of review adopted in Tenn. R. App. P. 13(e) for reviewing the legal sufficiency of the evidence provides that the court inquire as to whether the overall evidence was sufficient for a rational trier of fact to find beyond a reasonable doubt that the defendant was guilty of the charged offense. Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781 (1979); State v. Cazes, 875 S.W.2d 253, 259 (Tenn. 1994), cert. denied, 513 U.S. 1086, 115 S.Ct. 743 (1995).

Under Tennessee law, aggravated robbery is "the intentional or knowing theft of property from the person of another by violence or putting the person in fear" and which results in "serious bodily injury" to the victim. Tenn. Code Ann. § 39-13-401(a)(1991); Tenn. Code Ann. § 39-13-402(a)(2) (1991). To establish criminal responsibility for the conduct of another, the State must prove that the defendant, "acting with the intent to promote or assist the commission of the offense, or to benefit in the proceeds or result of the offense, . . . solicit[ed], direct[ed], aid[ed] or attempt[ed] to aid another person to commit the offense." Tenn. Code Ann. § 39-11-402(2) (1991). Thus, in order to be convicted under this theory of criminal responsibility, there is no requirement that the appellant himself took the property from the victim.

The undisputed testimony at trial established that the appellant physically assaulted the victim, during which time, the co-defendant joined in the assault, rummaged through the victim's clothing, and removed property belonging to the victim. The appellant and his co-defendant fled the scene in the appellant's vehicle. Upon apprehension by law enforcement, the appellant was in both constructive and actual possession of the property taken from the person of the victim. In response to interrogation by law enforcement, the appellant stated "Damn right, I robbed them, I'm going to rob all those bitches, including Stacy." There is no dispute that the victim sustained "serious bodily injury" as a result of the incident. Accordingly, viewed in the light most favorable to the State, we conclude that the evidence is sufficient to support the conclusion that the appellant acted with the intent to

promote or assist the commission of the robbery or to benefit in the proceeds or results of the robbery. See Tenn. R. App. P. 13(e).

Our review of this issue, however, is not complete. As an ancillary issue, the appellant asserts that the trial court erred by failing to charge the lesser offense of facilitation of aggravated robbery. Again, he concedes that "[t]he elements of criminal responsibility for facilitation of a felony . . . or accessory after the fact . . . would be more suited to the facts of the case than criminal responsibility for conduct of another."

> A person is criminally responsible for the facilitation of a felony if, knowing that another intends to commit a specific felony, but without the intent required for criminal responsibility under § 39-11-402(2), the person knowingly furnishes substantial assistance in the commission of the felony.

Tenn. Code Ann. § 39-11-403(a).

Under Tennessee law, the trial court has the statutory duty to charge the jury as to the law of each offense "included" in an indictment. See State v. Brenda Anne Burns, No. W1996-0004-SC-R11-CD (Tenn. at Jackson, Nov. 8, 1999) (*for publication*) (citing Tenn. Code Ann. § 40-18-110). The focus then becomes what offenses are a lesser included offense of the offense charged in the indictment. Our supreme court has provided the following definition of a lesser included offense:

> An offense is a lesser-included offense:
> (a) all of its statutory elements are included within the statutory elements of the offense charged; or
>
> (b) it fails to meet the definition in part (a) only in the respect that it contains a statutory element or elements establishing
> (1) a different mental state indicating a lesser kind of culpability; and/or
> (2) a less serious harm or risk of harm to the same person, property or public interest; or
>
> (c) it consists of
> (1) **facilitation of the offense charged** or of an offense that otherwise meets the definition of lesser-included offense in part (a) or (b); or
> (2) an attempt to commit the offense charged or an offense that otherwise meets the definition of lesser-included offense in part (a) or (b); or
> (3) solicitation to commit the offense charged or an offense that otherwise meets the definition of lesser-included offense in part (a) or (b).

State v. Brenda Anne Burns, No. W1996-00004-SC-R11-CD at 22-23 (emphasis

added). Under this definition, facilitation of the charged offense is always a lesser included offense. Id.

The determination that criminal responsibility for the facilitation of aggravated robbery is a lesser included offense is not conclusive that the evidence justifies a jury instruction on such lesser offense.

> First, the trial court must determine whether any evidence exists that reasonable minds could accept as to the lesser-included offense. In making this determination, the trial court must view the evidence liberally in the light most favorable to the existence of the lesser-included offense without making any judgments on the credibility of such evidence. Second, the trial court must determine if the evidence, viewed in this light, is legally sufficient to support a conviction for the lesser-included offense.

State v. Brenda Anne Burns, No. W1996-00004-SC-R11-CD at 26-27. The appellant's position is that he "had [no] knowledge that Mr. Copeland intended to rob Mr. Nichols or that he aided, solicited or directed him in any regard to the robbery." Specifically, he argues that the proof fails to reveal any conversation between the appellant and his co-defendant during the offense indicating that the appellant was directing or instructing his co-defendant's actions. Moreover, taken in the light most favorable to the lesser offense, there is no proof that the appellant took any property from the person of Mr. Nichols during the altercation. Because, under this standard, this proof shows that the appellant only facilitated the robbery, the lesser offense should have been charged to the jury. The fact that we have previously concluded that there is sufficient evidence to support a conviction of the charged offense does not affect the trial court's duty to instruct on the lesser offense if the evidence also supports a finding of guilt on the lesser offense. See State v. Brenda Anne Burns, No. W1996-00004-SC-R11-CD at 32. Thus, we conclude that it was error to fail to charge the offense of facilitation.

Notwithstanding, the court's failure to charge the lesser offense of facilitation of aggravated robbery, our supreme court has held that a trial court's failure to instruct on a lesser included offense is subject to harmless error analysis. See State v. Williams, 977 S.W.2d 101, 105 (Tenn. 1998). In determining whether the court's failure to so instruct the jury constitutes harmless error, the reviewing court must apply the presumption that "by finding the defendant guilty of the highest offense to the exclusion of the immediately lesser offense, . . . the jury necessarily

rejected all other offenses." See Williams, 977 S.W.2d at 106. This presumption only saves the court's failure to charge on another warranted lesser offense where the "intervening lesser" instruction indicates a lack of likelihood that the jury would have adopted the uninstructed lesser offense. In other words, an instruction on an "intervening lesser" will only hold harmless the court's failure to instruct on another lesser when the "intervening lesser" encompasses the appellant's theory of the case.

In the present case, the trial court instructed the jury as to the offenses of aggravated robbery, robbery, aggravated assault, and assault. The court also instructed the jury as to the appellant's liability for these offenses under the theory of criminal responsibility. Again, the appellant's theory of the case is that the proof fails to establish that the appellant had the intent to promote, assist or benefit in the robbery of Wade Nichols. See generally State v. Carson, 950 S.W.2d 951, 954 (Tenn. 1997) (criminal responsibility requires that a defendant act with a culpable mental state, specifically, the intent to promote or assist the commission of the offenses). More specifically, the appellant's position is that he had no knowledge of or intent to assist or benefit from his co-defendant's robbery of Wade Nichols. Rather, he contends that his only liability for the offense against Wade Nichols was his physical assault upon the victim. Clearly, the appellant's theory of the case was presented to the jury in the instructions for aggravated assault and assault. The failure of the trial court to instruct on the offense of facilitation of aggravated robbery is harmless since the jury's resolution of disputed facts, *i.e.*, the appellant's liability for the "robbery" of Wade Nichols, compels the conclusion that the jury, by their verdict, necessarily rejected an alternative resolution of fact that would have supported the lesser offense which was not instructed. See Turner v. Commonwealth, 23 Va. App. 270, 476 S.E.2d 504, 508 (Va. App. 1996), cert. denied, – U.S. –, 118 S.Ct. 1852 (1998). Clearly, the jury had the opportunity to consider the appellant's theory of the case that he was ignorant of any robbery of the victim. The court's failure to provide the jury of its option to find the appellant guilty of facilitation of aggravated robbery did not impair the jury's truth-ascertainment function by forcing the jury to make an "all or nothing" choice between conviction as a principal offender of aggravated robbery or acquittal. Thus, any error in failing to instruct the jury as to the offense of facilitation of aggravated

robbery is harmless. See Tenn. R. Crim. P. 52(a). This issue is without merit.

III. Jury Instruction on Prior Inconsistent Statement

At trial, during the State's case-in-chief, the trial court permitted the State, on re-direct examination of witness Wade Nichols, to introduce a hand-written statement made by Nichols indicating that "they" had robbed him. The statement, in effect, was used to impeach Nichols' trial testimony that only "A.C." Copeland removed property from his person during the incident.

The appellant contends that the trial court erred by failing to contemporaneously instruct the jury that a prior inconsistent statement is not substantive evidence and can only be considered in determining the credibility of a witness. The record reflects and the appellant concedes that the trial court did render an appropriate instruction in its final charge to the jury. Moreover, no contemporaneous objection was made at trial requesting that the jury be contemporaneously instructed. Additionally, the appellant has failed to make any argument or cite to any legal authority in support of his contention that the failure to provide a contemporaneous instruction is error. See Tenn. Ct. Crim. App. R. 10(b); Tenn. R. App. P. 27(a)(7).

It is well established in Tennessee that a failure to object to the omission of a jury instruction waives that issue for appellate review. State v. Reece, 637 S.W.2d 858, 861 (Tenn.1982). In addition, Tenn. R. App. P. 36(a) provides, in part, that "[n]othing in this rule shall be construed as requiring relief be granted to a party responsible for an error or who failed to take whatever action was reasonable available to prevent or nullify the harmful effect of an error." Finally, there is no requirement that the trial court give a contemporaneous instruction. Because the trial court provided a proper instruction in its jury charge, we find no error in failing to provide a contemporaneous instruction. This issue is without merit.

IV. Newly Discovered Evidence

In his motion for new trial, the appellant argued that he should be granted a

new trial based upon newly discovered evidence. The "newly discovered evidence" consists of the testimony of witnesses who dispute or have contradictory testimony to Wade Nichols' claim that he was "robbed" of two hundred dollars. During the appellant's trial, the victim, Wade Nichols, testified that he was robbed of two hundred dollars. He explained that he was certain of the amount because he had "recently got paid" and he "was on [his] way to pay [his] utility bill and [his] gas bill."

In support of his claim of newly discovered evidence, the appellant presented the testimony of Royce Jackson, the custodian of payroll records of Mr. Nichols' employer. She testified that Wade Nichols' was paid $181.97 by a check dated May 21, 1996, and "probably" would have received the check on May 22, 1996. Ms. Jackson admitted that she did not have any personal knowledge of when Mr. Nichols actually received the check. Additionally, Barbara Jenkins, an employee of the City of Alcoa Utility Division, was called to testify that Wade Nichols paid his eighty dollar electric bill on May 22, the day after the incident at Howe Street Park. Karen Wilson, an ex-girlfriend of Wade Nichols, recalled that she lived with Wade Nichols in May 1996. She testified that shortly after the incident, Nichols admitted to her that only eighteen dollars was taken from his person. She explained that she came forth with this information after she read about the appellant's conviction in the newspaper and the alleged amount of two hundred dollars. She admitted being a close friend of the appellant's wife. Tiffany Rainer, a cousin of the victim, testified that she visited Nichols on the day following the incident. On this occasion, Rainer stated that Nichols told her that eighteen dollars was taken from his person. Rainer admitted that she was a cousin of the appellant's wife.

In seeking a new trial based on newly discovered evidence, a criminal defendant must establish (1) reasonable diligence in attempting to discover the evidence; (2) the materiality of the evidence; and (3) that the evidence would likely change the result of the trial. State v. Meade, 942 S.W.2d 561, 565 (Tenn. Crim. App. 1996) (citing State v. Nichols, 877 S.W.2d 722, 737 (Tenn. 1994)). If the defendant fails to show that he and/or his attorney exercised reasonable diligence in the procurement of a witness at the original trial, the trial court may properly deny a motion for new trial based on newly discovered evidence. See Hawkins v. State, 417 S.W.2d 774 (Tenn. 1967). Moreover, the trial court is afforded broad discretion

in deciding whether to grant or deny a motion for new trial based on newly discovered evidence and its decision will not be overturned on appeal absent a clear abuse of discretion. See State v. Walker, 910 S.W.2d 381, 395 (Tenn. 1995), cert. denied, 519 U.S. 826, 117 S.Ct. 88 (1996). In its order denying a new trial, the trial court specifically found that "[t]he allegation regarding newly discovered evidence is not well taken. The testimony in some instances could have been discovered prior to trial and further the Court finds that the effect on the outcome of the case would have been minimal."

In order to establish reasonable diligence, the appellant must show that neither he nor his counsel had knowledge of the alleged newly discovered evidence prior to trial. See Meade, 942 S.W.2d at 566. There is no doubt that the appellant and his counsel could have easily discovered through reasonable investigation the identity of the four witnesses prior to trial. Again, these witnesses included the payroll custodian of the victim's place of employment, an employee of the Utility Department, the victim's live-in girlfriend, and the victim's cousin. The latter two witnesses are friends of the appellant's wife.

Notwithstanding the availability of this testimony prior to trial, the amount of cash taken from Nichols' person is not dispositive of the appellant's guilt. Rather, the testimony presented as newly discovered evidence could only be considered in evaluating the victim's credibility. Moreover, other witnesses at trial confirmed the victim's account of the incident, thus, rendering any attack on the victim's credibility virtually futile. As we have previously determined, the proof was overwhelming that the appellant was criminally responsible for the criminal conduct of "A.C." It is not dispositive as to his guilt whether or not he or his co-defendant possessed the cash after the robbery. Thus, the evidence would not have changed the result of the trial.

It is the opinion of this court that there has been no abuse of discretion in this instance by the trial court. There is no proof that the "newly discovered evidence" was material, that the appellant or his attorney exercised reasonable diligence prior to trial to discover this evidence, or that the evidence was likely to have changed the result. For these reasons, this issue is without merit.

V. Classification as a Career Offender

In his final issue, the appellant contends that the trial court erred by classifying him as a career offender pursuant to Tenn. Code Ann. § 40-35-108(1) (1997). Specifically, he argues that the trial court incorrectly relied upon six prior federal convictions and two prior state convictions to reach this classification. Relying upon Tenn. Code Ann.§40-35-108(b)(4), which provides that "[c]onvictions for multiple felonies committed as part of a single course of conduct within twenty-four hours constitute one conviction for the purpose of determining prior convictions. . .," the appellant asserts that his six felony convictions, in essence, only constitute two prior convictions.

Tenn. Code Ann. § 40-35-108(a)(1) defines a "career offender" as a defendant who has received "[a]ny combination of six (6) or more Class A, B, or C prior felony convictions, and the defendant's conviction offense is a Class A, B or C felony." A prior conviction "means a conviction for an offense occurring prior to the commission of the offense for which the defendant is being sentenced." Tenn. Code Ann. § 40-35-108(b)(1). Additionally, "prior convictions" include "convictions under the laws of any other state, government , or country which, if committed in this state, would have constituted an offense recognizable by the laws of this state." Tenn. Code Ann. § 40-35-108(b)(5). Notwithstanding, "[c]onvictions for multiple felonies committed as a part of a single course of conduct within twenty-four hours constitute one conviction for the purpose of determining prior convictions." Tenn. Code Ann. § 40-35-108(b)(4).

The evidence provided at the sentencing hearing reveals that, in August 1992, the appellant pled guilty in the United States District Court for the Eastern District of Tennessee to five counts of unlawful distribution of cocaine and one count of unlawful distribution of crack cocaine in violation of 21 U.S.C. § 841(a)(1). The indictment reveals the following specific information:

Count	Date of the Offense	Offense
I	October 29, 1991	Distribution cocaine within 100 feet of public swimming pool
II	November 1, 1991	Distribution of cocaine within 1000 feet of public school

III	November 5, 1991	Distribution cocaine
IV	December 2, 1991	Distribution crack cocaine
V	December 18, 1991	Distribution cocaine
VI	January 14, 1992	Distribution cocaine within 100 feet of public swimming pool

From the information provided in the federal indictment, there is no doubt that the appellant's federal convictions occurred over twenty-four hours apart. Accordingly, each conviction may be treated as an individual conviction for purposes of determining the appellant's classification as a career offender. Tenn. Code Ann. § 40-35-108(b)(4). Moreover, the conduct leading to the federal convictions are recognized as criminal offenses under the laws of this state. Tenn. Code Ann. § 40-35-108(b)(5). See generally Tenn. Code Ann. § 39-17-417(c)(2).

As stated earlier, the appellant was convicted of aggravated robbery, a class B felony. Tenn. Code Ann. § 39-13-402(b). Accordingly, the evidence must show that the appellant has "six or more Class A, B, or C prior felony convictions" before he may be classified as a career offender. Tenn. Code Ann. § 40-35-108(a)(1). The proof reveals that the appellant has six prior federal felony convictions which are comparable to class C or higher felony offenses in this state. The trial court was correct in determining that the appellant satisfies the criteria for classification as a career criminal. As such, the defendant must receive the maximum sentence within the applicable Range III, or thirty years. Tenn. Code Ann. §§ 40-35-108(c); 40-35-112(c)(2) (1997). This issue is without merit.

Conclusion

Finding no reversible error committed by the trial court, we affirm the appellant's conviction and sentence imposed for aggravated robbery.

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DAVID G. HAYES, Judge

CONCUR:

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ALAN E. GLENN, Judge

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JOE H. WALKER, III, Judge