IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

NOVEMBER 1999 SESSION

STATE OF TENNESSEE,	*	No. 01C01-9905-CC-00180 M1999-00036-CCA-R3-CD
Appellee,	*	HICKMAN COUNTY
v.	*	Hon. Donald P. Harris, Judge
DANNY RAY TRULL,	*	(Aggravated Robbery, Aggravated Burglary, Evading Arrest)
Appellant.	*	

For the Appellant

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OPINION FILED:

AFFIRMED

NORMA MCGEE OGLE, JUDGE

OPINION

The appellant, Danny Ray Trull, appeals his convictions in the Circuit Court of Hickman County of aggravated robbery, aggravated burglary, and evading arrest. Pursuant to these convictions, the trial court imposed consecutive sentences of twelve years incarceration in the Tennessee Department of Correction for the aggravated robbery conviction, six years incarceration for the aggravated burglary conviction, and six months incarceration for the conviction of evading arrest. On appeal, the appellant challenges the sufficiency of the evidence underlying his convictions. Additionally, the appellant challenges both the length and consecutive service of his sentences. Following a thorough review of the record and the parties' briefs, we affirm the judgment of the trial court.

I.

On May 4, 1998, a Hickman County Grand Jury indicted the appellant on one count of aggravated robbery by use of a deadly weapon, one count of aggravated burglary, and one count of misdemeanor evading arrest. The appellant's case proceeded to trial on September 17, 1998. At the appellant's trial, the State adduced evidence that, on March 19, 1998, at approximately 8:00 a.m., Camille Brasher and her thirteen month old daughter were inside their Lyles, Tennessee home when the appellant and an accomplice broke into the home. The intruders were wearing dark clothing and gloves and had covered their faces with flesh-colored pantyhose. Additionally, the appellant was carrying a sawed-off shotgun. The appellant and his companion seized a cordless telephone from Ms. Brasher's hand, several guns from a bedroom closet, and a camera lying on the dining room table but were unable to locate any other items of significant value. During the robbery, the appellant held both Ms. Brasher and her daughter at gunpoint, threatened to kill Ms. Brasher, and also threatened to kidnap her

daughter. The appellant asserted that he could sell Ms. Brasher's daughter for as much as fifty thousand dollars. Due to the appellant's threat to her daughter, Ms. Brasher examined the appellant's face closely and was able to discern his features despite the pantyhose covering his face. At the appellant's trial, Ms. Brasher testified,

> Whenever he was in my bedroom and he kept telling me he was going to take my daughter, I kept staring at his face, and he had a receding hairline and a large - - it looked like a large forehead, his eyes set back into his head, and he had a small chin and his teeth were real messed up, and he had gray patches on either side of his head behind his ears, and his hair was black and long, it hung out of the pantyhose, and he was a small-built male.

Ultimately, the appellant and his accomplice fled Ms. Brasher's house in a white Thunderbird, leaving both Ms. Brasher and her daughter physically unharmed.

Soon after the robbery and a short distance from Ms. Brasher's home, Officer Christopher "Chad" Smith, a Tennessee Highway Patrolman, observed a white Thunderbird driving approximately seventy miles per hour in a forty mile per hour speed zone. The officer activated his blue lights and pursued the Thunderbird, whereupon the vehicle appeared to increase its speed. The officer pursued the vehicle until the driver of the Thunderbird lost control of his vehicle and drove into a ditch. Following the accident, the officer cautiously approached the vehicle and observed one person running from the passenger side of the vehicle. When the officer arrived at the vehicle, he confirmed that any occupants had already fled.

The police searched the white Thunderbird and recovered the cordless telephone, the guns, and the camera that had been stolen from Ms. Brasher. Additionally, the police searched the area surrounding the accident for the appellant and his accomplice. However, the police only located the appellant on the following

morning, walking alongside the road a short distance from the scene of the accident. The appellant's clothes were wet and he had wrapped himself in a large sheet of plastic. Testimony at the appellant's trial established that it had rained during the previous night and during the early morning hours.

Following the appellant's conviction of the charged offenses, the trial court conducted a sentencing hearing on November 5, 1998. At the sentencing hearing, the State relied upon the pre-sentence report, the victim impact statement, and the evidence adduced at trial. The pre-sentence report indicates and it is undisputed that the appellant's record of criminal convictions extends from 1977 until 1996 and includes the felony offense of attempt to commit a burglary and nineteen misdemeanor offenses including convictions of driving under the influence, driving with a revoked license, evading arrest, failure to report an accident, reckless driving, making a false report, and assault and battery. Moreover, the appellant admitted during the preparation of the pre-sentence report that he has used marijuana in the past, and the pre-sentence report reflects the appellant's previous violation of probationary sentences. Finally, in her victim impact statement, Ms. Brasher asserted that, since the appellant's commission of the instant offenses, she is unable to be alone, because she feels unsafe. Additionally, she expressed concern that, before leaving her house, the appellant told her that he would return for her daughter.

II.

The appellant first challenges the sufficiency of the evidence underlying his convictions. The appellant's sole argument in this regard is that the

State failed to establish the identity of any perpetrator of the offenses.[1] We disagree. When the sufficiency of the evidence is challenged on appeal, our standard of review is whether any "reasonable trier of fact" could have found the appellant guilty of the charged offenses beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789 (1979); Tenn. R. App. P. 13(e). In other words, the State is entitled to the strongest legitimate view of the evidence and all reasonable inferences which may be drawn therefrom. State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983). Questions concerning the credibility of witnesses and the weight and value to be given the evidence, as well as all factual issues raised by the evidence, are resolved by the trier of fact and not the appellate courts. State v. Pruett, 788 S.W.2d 559, 561 (Tenn. 1990). These rules are applicable to findings of guilt predicated upon direct evidence, circumstantial evidence, or a combination of both. State v. Nesbit, 978 S.W.2d 872, 898 (Tenn. 1998), cert. denied, __ U.S. __, 119 S.Ct. 1359 (1999); State v. Epps, 989 S.W.2d 742, 745 (Tenn.Crim.App. 1998).

The record in this case reflects that, following the appellant's arrest, Ms. Brasher positively identified the appellant from a photographic array as the principal participant in the burglary and robbery. She again positively identified the appellant at a preliminary hearing and at the appellant's trial. Moreover, Ms. Brasher testified at trial that, following the burglary and robbery, she observed the appellant and his accomplice drive away from her home in a white Thunderbird. Shortly thereafter, the white Thunderbird and its occupants fled apprehension by Officer Smith. The following morning, the appellant was located in the vicinity of the car chase and the ensuing accident. In sum, the jury was entitled, under proper

[1]We note in passing that the trial court properly instructed the jury in accordance with State v. Dyle, 899 S.W.2d 607, 612 (Tenn. 1995).

instructions by the trial court, to accredit Ms. Brasher's identification testimony in arriving at its verdicts of guilt. Accordingly, both direct and circumstantial evidence introduced at the appellant's trial overwhelmingly established the appellant's identity as a perpetrator of the charged offenses.

III.

The appellant also challenges the length and consecutive service of his sentences. However, with respect to the length of his sentences, the appellant has offered this court no more than a conclusory statement that the trial court's determinations are erroneous. Because the appellant has failed to articulate reasons to support this conclusory statement, this issue is deemed to have been waived. See Tenn. R. App. P. 27(a)(4) and (7); Ct. of Crim. App. Rule 10(b). With respect to the consecutive service of his sentences, appellate review of the manner of service of a sentence is de novo. Tenn. Code. Ann. § 40-35-401(d) (1997). However, the burden is upon the appellant to demonstrate the impropriety of the trial court's sentencing determination. Tenn. Code. Ann. § 40-35-401, Sentencing Commission Comments. Moreover, if the record reveals that the trial court adequately considered sentencing principles and all relevant facts and circumstances, this court will accord the trial court's determinations a presumption of correctness. Id. at (d); State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991).

In this case, the trial court imposed consecutive sentencing pursuant to Tenn. Code Ann. § 40-35-115(b)(2) and (b)(4) (1997). Additionally, the trial court found, pursuant to State v. Wilkerson, 905 S.W.2d 933, 939 (Tenn. 1995), that an extended period of incarceration is necessary to protect the public from further

criminal activity by the appellant[2] and that the aggregate length of the appellant's sentences reasonably relates to the severity of his offenses. See also State v. Lane, 3 S.W.3d 456, 461 (Tenn. 1999). The appellant asserts on appeal that his record of criminal activity is not extensive within the meaning of Tenn. Code Ann. § 40-35-115(b)(2), because his record consists primarily of misdemeanor convictions. We disagree. See, e.g., State v. Crites, No. 01C01-9711-CR-00512, 1999 WL 61053, at *6 (Tenn. Crim. App. at Nashville, February 9, 1999)(an extensive history of criminal activity under Tenn. Code Ann. § 40-35-115(b)(2) may consist solely of misdemeanor convictions); State v. Miller, No. 01C01-9703-CC-00087, 1998 WL 601241, at *16 (Tenn. Crim. App. at Nashville, September 11, 1998). See also Gray v. State, 538 S.W.2d 391, 393 (Tenn. 1976)("[t]he object is to use consecutive sentencing, where appropriate, to protect society from those who are unwilling to lead a productive life and resort to criminal activity in furtherance of their anti-societal lifestyle"). Moreover, because we conclude that Tenn. Code Ann. § 40-35-115(b)(2) supports the imposition of consecutive sentencing, we need not address the trial court's finding that the appellant is a dangerous offender.

IV.

For the foregoing reasons, we affirm the judgment of the trial court.

Norma McGee Ogle, Judge

[2]In his brief, the appellant incorrectly notes that the trial court failed to make this finding, but does not otherwise challenge the trial court's conclusion that he is a dangerous offender.

CONCUR:

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Gary R. Wade, Presiding Judge

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John H. Peay, Judge