IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

JANUARY 1996 SESSION

STATE OF TENNESSEE,	*	C.C.A. # 01C01-9409-CC-00319
Appellee,	*	RUTHERFORD COUNTY
VS.	*	Hon. James K. Clayton, Jr., Judge
CARL SHANE MATTOX,	*	(Especially Aggravated Robbery)
Appellant.	*	

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OPINION FILED _____

AFFIRMED

GARY R. WADE, JUDGE

OPINION

The defendant, Carl Shane Mattox, appeals from his conviction of especially aggravated robbery. The trial court imposed a Range I sentence of twenty-five years. The only issue presented for our review is whether the evidence was sufficient to support his conviction.

We affirm the judgment.

On June 22, 1993, Lavye Fann, the fifty-four-year-old female victim, was struck in the head with a baseball bat as she walked out of the post office in Smyrna. Her keys and car phone were taken. Because of injuries received in the assault, she has no recollection of the event.

At trial, the victim identified her car phone and photographs of her gray Volkswagen. She described her key chain and a small pocketknife that was attached. She also testified that she was unconscious for some time after the assault, was hospitalized for over two weeks, and incurred medical expenses of over $44,000.00. The victim was still under medical care from several doctors at the time of the trial.

Larry Diviney, a sixteen-year-old accomplice, testified for the state. Acknowledging that he had been promised that no charges would be brought against him if he testified truthfully, Diviney related that he had become acquainted with the defendant about two months before the

assault. On the night before the offense, Diviney and the defendant walked from a nearby trailer park over to the post office. The next evening, the defendant carried a baseball bat claiming that he intended to take somebody's car. Diviney testified that he thought the defendant was joking. Later, however, a woman carrying a cane stopped her vehicle at the post office. The defendant, describing the situation as "pretty," started toward her when a truck was parked nearby. According to Diviney, the defendant stopped but noted that it would have been easy to take her car.

Diviney, who by then realized that the defendant intended to steal a car, claimed that he was afraid to leave at that point. Both the car and the truck were driven away without incident when the victim arrived in her car and walked into the post office. When the victim came back outside, the defendant struck her in the back of the head with the baseball bat. Unable to find her car key, the defendant grabbed her car phone. Diviney and the defendant then ran to the residence of Katherine Cotner, the defendant's girlfriend. Along the way, the defendant had ripped a knife off of the key chain and thrown away the keys. A couple of days later, Diviney told his father what had happened. His father then took him to the police department to make a statement.

Diviney's stepbrother, Archie Van Winkle, testified that the defendant tried to sell him the car phone; he declined because he thought it might be stolen. Van Winkle also testified that the next day, he saw the defendant throw

away a bag containing the baseball bat and the phone. In separate conversations sometime later, Diviney and the defendant each admitted to Van Winkle their involvement in the robbery. When contacted by the police, Van Winkle conceded that he knew of the defendant's participation in the assault.

Investigators found a black baseball bat and a car phone in the Stewart Creek area. The phone, located in the creek near the bridge, was wrapped in a plastic bag. The defendant was hiding under a bed in the Cotner residence when found by the police.

Consuela Smith was the only witness for the defense. She testified that Van Winkle and Chris Sanders came to her house looking for a way to get rid of the bat. She claimed that Katherine Cotner brought the car phone by for the same purpose. Ms. Smith testified that she gave them a garbage bag but otherwise refused to help. She stated that Van Winkle and Sanders left out the back door when a police car was driven by her residence.

Katherine Cotner, who had married another man by the time of trial, testified in rebuttal that she had been charged in the offense as an accessory after the fact. She acknowledged that she had gone to the Smith residence but claimed that she was accompanied by Diviney and Van Winkle. Ms. Cotner testified that the bat, which belonged to her father, had been in her trailer. She asserted that she had found the phone under a mattress in her spare bedroom shortly

after Diviney told her what had happened; she thought that Van Winkle had carried the phone and the bat to Ms. Smith's house. Ms. Cotner contended that the defendant was present when Diviney had told her about the assault and robbery.

On appeal, the state is entitled to the strongest legitimate view of the evidence and all reasonable inferences which might be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). The credibility of the witnesses, the weight to be given their testimony, and the reconciliation of conflicts in the proof are matters entrusted to the jury as triers of fact. Byrge v. State, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978). When the sufficiency of the evidence is challenged, the relevant question is whether, after reviewing the evidence in the light most favorable to the state, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983), cert. denied, 465 U.S. 1073 (1984); Tenn. R. App. P. 13(e).

Especially aggravated robbery is robbery accomplished by the use of a deadly weapon and involving serious bodily injury to the victim. Tenn. Code Ann. § 39-13-403(a). Robbery is defined as "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). "Serious bodily injury" is defined as bodily injury which involves (a) a substantial risk of death, (b) protracted unconsciousness, (c) extreme physical pain, (d) a protracted

or obvious disfigurement, or (e) a protracted loss or substantial impairment of a function of a bodily member, organ, or mental faculty. Tenn. Code Ann. § 39-11-106(a)(33).

Here, the defendant argues that the evidence does not establish that anything was taken "from the person" of the victim because there is no evidence that the keys were in her possession. He asserts that the car phone was taken from inside the car. Actual possession, however, is not a requirement. A robbery may be actual or constructive. State v. Edwards, 868 S.W.2d 682, 700 (Tenn. Crim. App. 1993); see also State v. Scott Houston Nix, No. 03C01-9406-CR-00211 (Tenn. Crim. App., at Knoxville, November 21, 1995), perm. to app. filed (Tenn. 1996). "It is actual when the taking is immediately from the person; and constructive when in the possession or in the presence of the party robbed." Morgan v. State, 220 Tenn. 247, 251-52, 415 S.W.2d 879, 881 (1967) (quoted in State v. Edwards, 868 S.W.2d at 700).

There was testimony that the victim, while proceeding toward her vehicle, had been struck with a baseball bat. The defendant picked up her keys and took her car phone. Those facts establish constructive possession by the victim. See State v. Scott Houston Nix, supra. The physical harm to the victim qualified as "serious bodily injury." Thus, the record fully supports each element of the offense of especially aggravated robbery.

Accordingly, the judgment is affirmed.

Gary R. Wade, Judge

CONCUR:

Paul G. Summers, Judge

Joseph M. Tipton, Judge