IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

APRIL 1996 SESSION

STATE OF TENNESSEE,	)	NO. 03C01-9508-CC-00245
	)	
Appellee	)	SULLIVAN COUNTY
	)	
V.	)	HON. R. JERRY BECK
	)	JUDGE
BRENT ALLEN BLYE,	)	
	)	(Possession of Cocaine with Intent to
	)	Sell; Evading Arrest)
Appellant	)	

FOR THE APPELLANT:

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OPINION FILED: _____

Affirmed

William M. Barker, Judge

OPINION

The appellant, Brent Allen Blye, appeals as of right from the judgment of the Criminal Court of Sullivan County. The appellant was found guilty by a jury of possession of over 0.5 grams of cocaine with the intent to sell, and evading arrest. The jury affixed fines of $50,000 for the conviction of possession of cocaine and $2,500 for the evading arrest conviction. The trial court ordered the appellant to serve concurrent sentences of ten (10) years for the drug conviction and eleven (11) months and twenty-nine (29) days for the evading arrest conviction.[1]

On appeal, the appellant presents two issues for our review:

1. Whether the trial court erred by denying the defendant's motion to suppress evidence.

2. Whether the trial court erred by enhancing the defendant's sentence.

After a careful review of the record on appeal, briefs of the parties, and applicable law, we determine that the trial court did not err in denying the appellant's motion to suppress evidence or in the imposition of the sentences.

FACTUAL BACKGROUND

While on routine patrol on July 8, 1994, Officer Dion Spriggs of the Kingsport Police Department spotted a black Chevrolet Cavalier being driven on the street with its stereo blaring loudly. Officer Spriggs estimated that the car was approximately 75 to 100 feet away from him when he first heard the music. He followed the car a short distance, activated his blue lights, and ultimately stopped the car. Officer Spriggs testified that the purpose of the stop was not to issue a citation to the driver, but to inform him that he was violating a city noise ordinance which prohibits one from making unnecessary noise that can be heard over 25 feet away. Immediately upon stopping the car, the officer began to radio his position to the dispatch officer.

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[1] These sentences were ordered to be served consecutive to a sentence from which the appellant had previously been on parole.

However, before the officer could transmit his location and the purpose of the stop to dispatch, the appellant, who was a passenger in the car, stepped out of the car. The officer immediately ordered the appellant to get back into his car. The appellant refused the officer's command, stating that he did not have to stay. The appellant then fled on foot into a nearby housing project. At about the same time, two other officers of the Kingsport Police Department appeared on the scene. When Officer David Samples saw Officer Spriggs chasing the appellant, he joined in the chase. During the pursuit, Officer Spriggs saw the appellant drop a clear plastic bag containing what was ultimately determined to be cocaine. After the appellant was apprehended, arrested, and placed in a patrol car, the officers went back to where the appellant had dropped the bag of cocaine and recovered it.[2]

In addition to recovering 11.6 grams of cocaine, the officers seized $558.70 and a package of cigarette rolling papers during a search of the appellant which was made incident to his arrest.

MOTION TO SUPPRESS

The appellant filed a motion to suppress in the trial court asserting that the seized items should be suppressed as the fruits of an unlawful stop of the vehicle in which the defendant was riding as a passenger. The appellant contended that when Officer Spriggs stopped the car, he did not have a reasonable suspicion, supported by specific and articulable facts, that an offense had been or was about to be committed

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[2] The driver of the car, Brandon Noble Cody, was also arrested and the two were tried together. Although found guilty of evading arrest and possession of drug paraphernalia, Mr. Cody's case forms no part of this appeal.

as required by Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L. Ed. 2d 889 (1968).[3] The trial court overruled the appellant's suppression motion.

The findings of the trial court on a motion to suppress are conclusive on appeal unless the evidence preponderates against the judgment. State v. Tate, 615 S.W.2d 161, 162 (Tenn. Crim. App. 1981). The trial court found that there was a loud noise blaring from the car prior to Officer Spriggs stopping the car. The court further stated;

> "there is evidently, a city ordinance in Kingsport as [Appellant's counsel] alluded to in writing in his pleading, and cited. Mr. Hickman asked . . . questions from it, and the officer described it, and [the assistant district attorney] asked questions about it; but nobody ever introduced it. So, I just know there is a city ordinance, and everybody seems to agree that it applies to noise."

Having found that there is a noise ordinance in Kingsport, the trial court further found that the loud stereo playing from the car gave Officer Spriggs a reasonable basis to stop the car both under the city ordinance as well as under the disorderly conduct statute found at Tennessee Code Annotated section 39-17-305.[4]

In State v. Stephen C. Cloyd, Washington County (Tenn. Crim. App., at Knoxville, March 21, 1985) (No number in original) perm. to appeal denied (Tenn. 1985), this court upheld the stop of a vehicle where the basis of the stop was a violation of the State's muffler law found at Tennessee Code Annotated section 55-9-202(a). Subsequent to the stop, the officer had reason to believe the driver was

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[3] The State argues that the appellant does not have standing to challenge the validity of the stop of the vehicle. Because we determine that the stop was lawful we decline to reach the issue of whether the appellant had standing to challenge the stop of the vehicle. See State v. David M. Gooch & Kenneth Morgan, No. 88-118-111 (Tenn. Crim. App., at Nashville, January 31, 1989).

[4] The disorderly conduct statute provides, in pertinent part, that it is an offense to "make unreasonable noise which prevents others from carrying on lawful activities." Tenn. Code Ann. § 39-17-305(b) (1991 Repl.). The court found that while the state could not prove beyond a reasonable doubt that the statute had been violated, the loud stereo gave Officer Spriggs a reasonable suspicion that an offense was taking place.

intoxicated and ultimately arrested him for driving under the influence. Likewise, in the case at bar, the apparent noise ordinance violation gave Officer Spriggs a reasonable basis upon which to stop the vehicle in which the appellant was riding.

The appellant does not argue that Officer Spriggs had no lawful right to chase him as he fled the scene of the traffic stop. Nor does he contest that the recovery by the officer of the cocaine which the appellant abandoned while fleeing was proper. Again, the appellant argues that the initial stop of the vehicle was without authority and that the money, cigarette rolling papers and cocaine seized subsequent to the vehicle stop were all the "fruit[s] of the poisonous tree." See, e.g., Wong Sun v. United States, 371 U.S. 471, 485, 83 S.Ct. 407, 417, 9 L.Ed.2d 441 (1963). See also Hughes v. State, 588 S.W. 2d 296, 307-08 (Tenn. 1979). We hold that the stop of the vehicle was lawful. Therefore, the subsequent seizure of the cocaine, money, and rolling papers did not violate the appellant's right to be free from unreasonable searches and seizures. The trial court's denial of the appellant's motion to suppress is affirmed.

SENTENCING

The appellant also contends that the trial court erred when it imposed a ten (10) year sentence for the cocaine conviction. As a Standard Range I offender convicted of a class B Felony, the offense carried with it a range of punishment between eight and twelve years.

When there is a challenge to the length, range, or manner of service of a sentence, it is the duty of this court to conduct a de novo review with the presumption that the determinations made by the trial court are correct. Tenn Code Ann. § 40-35-401 (d) (1990 Repl.). This presumption is "conditioned upon the affirmative showing in

the record that the trial court considered the sentencing principles and all relevant facts and circumstances." State v. Ashby, 823 S.W. 2d 166, 169 (Tenn. 1991).

In sentencing a person convicted of a criminal offense the trial court is to take into consideration (1) the evidence, if any, received at the trial and at the sentencing hearing; (2) the pre-sentence report; (3) the principles of sentencing and arguments as to sentencing alternatives; (4) the nature and characteristics of the criminal conduct involved; (5) evidence and information offered by the parties on the enhancement and mitigating factors in sections 40-35-113 and 40-35-114; and (6) any statement the defendant wishes to make in his own behalf about sentencing. Tenn. Code Ann. §40-35-210(b) (1995 Supp.).

The trial court found that the appellant had a previous history of criminal convictions [5] and, noting that he was on parole at the time of his arrest, found that the appellant had a previous unwillingness to comply with the conditions of a sentence involving release into the community [6]. The court considered the fact that the appellant's crimes neither caused nor threatened serious bodily injury [7] and that the appellant's parole would be revoked [8] as mitigating factors. However, the trial court found that the appellant's prior criminal history outweighed the mitigating factors and therefore enhanced the sentence to ten (10) years. The appellant's argument is, essentially, that the trial court did not properly weigh the applicable enhancement and mitigating factors in this case. Because we find the trial court properly considered the

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[5] Tenn. Code Ann. § 40-35-114 (1) (1995 Supp.).

[6] Tenn. Code Ann. § 40-35-114 (8) (1995 Supp.). We note that this factor is technically inapplicable because it requires a previous unwillingness to comply with conditions of a sentence involving release into the community. State v. Hayes, 899 S.W.2d 175, 185-86 (Tenn. Crim. App. 1995). Enhancement factor (13) would apply, however, because the appellant was on parole when he committed these crimes. Tenn. Code Ann. § 40-35-114 (13)(B).

[7] Tenn. Code Ann. § 40-35-113 (1) (1990 Repl.).

[8] Tenn. Code Ann. § 40-35-113 (13) (1990 Repl.).

purposes and principles of the Sentencing Reform Act of 1989 our review is de novo with the presumption of correctness. Accordingly, we conclude that the trial court properly sentenced the appellant in this case and we decline to disturb the trial court's judgment.

The judgment of the trial court is affirmed in all respects.

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WILLIAM M. BARKER, JUDGE

CONCUR:

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GARY R. WADE, JUDGE

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DAVID H. WELLES, JUDGE