

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

MAY SESSION 1996

FILED

July 2, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)	HAWKINS COUNTY
)	
Plaintiff/Appellee)	NO. 03C01-9512-CC-00395
)	(No. 6813 Below)
v.)	
)	HON. JAMES E. BECKNER
MILES RODNEY HULLETTE,)	
)	(Possession of Marijuana with
Defendant/Appellant)	intent to sell/deliver)

FOR THE APPELLANT:

Thomas K. McAlexander
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FOR THE APPELLEE:

Charles W. Burson
Attorney General & Reporter

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Hawkins County Courthouse
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Rogersville, TN 37857

AFFIRMED.

OPINION FILED: _____

JOHN K. BYERS, SENIOR JUDGE

OPINION

_____The defendant reserved the right to appeal on the question of the legality of the search of his vehicle, which the trial court found to be valid.

_____We affirm the judgment.

Officer Martin Taylor of the Surgoinsville Police Department observed the defendant's vehicle sitting in an intersection at Stony Point Road and Hwy. 11W. The vehicle made what Officer Taylor described as an odd turn. This prompted him to follow the vehicle. Taylor testified he observed the vehicle cross over the center line three times on Hwy. 11W. The vehicle turned onto a narrow road and the officer continued to follow. Taylor called in the license number of the vehicle and, after some delay, was informed the license was not listed or registered. Taylor turned on his blue light to stop the vehicle. The vehicle speeded up and drove some 1/4 of a mile and pulled into a driveway. The defendant emerged from the car and Taylor determined he was intoxicated. The defendant, after a brief resistance, was handcuffed. Before the defendant was put in the police vehicle the officer did a pat-down of him. A bag of marijuana and Valium was found on the defendant's person. In addition, a large amount of money was found in his pocket. Taylor did not remove the cash at that time because he wanted to have a back-up officer to witness the removal and counting of the cash.

The vehicle driven by the defendant was a Camaro with a T-top. The T-top was open. When Officer Taylor returned to the vehicle he looked down through the open T-top and observed drug paraphernalia and bags of marijuana beside the console. He observed in the back seat a duffle bag which was open and in which he could see bags of marijuana. The vehicle was seized and towed to the Police Department where an inventory search was done. There was no incriminating evidence found in the trunk of the vehicle or any other part of the car.

We see little reason to become tangled in an analysis of whether the stop of the defendant was proper. Based upon the observation of the officer, which would give reason to believe the vehicle was being driven by a person who was intoxicated, we find the stop was reasonable and proper.

Defendant raises the issue of whether there was a valid inventory search of the vehicle which led to the seizure of contraband. We see no need to delve into the inventory search aspect of the case either. From our reading of the record, all of the evidence upon which the conviction rests was seized in plain view and not discovered in an inventory search. This was the testimony of Officer Taylor and no one disputed this evidence.

When objects are seized in plain view, the viewer has a right to be where they are when they view the objects and the nature of the objects is incriminating, the seizure thereof is lawful. See *State v. Layne*, 623 S.W.2d 629 (Tenn. Crim. App. 1981); *State v. Johnson*, 705 S.W.2d 681 (Tenn. Crim. App. 1985) and *State v. Horner*, 605 S.W.2d 835 (Tenn. Crim. App. 1980).

We affirm the judgment of the trial court.

John K. Byers, Senior Judge

CONCUR:

John H. Peay, Judge

Jerry L. Smith, Judge

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)	
)	AFFIRMED.

JUDGMENT

_____ Came the appellant, Miles Rodney Hulette, by counsel, and the state, by the Attorney General, and this cause was heard on the record on appeal from the Criminal Court of Hawkins County; and upon consideration thereof, this court is of the opinion that there is no reversible error in the judgment of the trial court.

It is, therefore, ordered and adjudged that the judgment of the trial court is affirmed and the case is remanded to the Criminal Court of Knox County for the execution of judgment and the collection of costs accrued below.

In the event the appellant indicates an intention to file an application for permission to appeal to the Tennessee Supreme Court, he shall remain on his present bond in the amount of \$5,000.00 pending filing and disposition of said application. In default of such bond, he shall be remanded to the custody of the Sheriff of Hawkins County.

Costs of the appeal are taxed to the appellant, Miles Rodney Hulette, for which let execution issue.

John K. Byers, Senior Judge

John H. Peay, Judge

Jerry L. Smith, Judge