IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

JANUARY SESSION, 1996

STATE OF TENNESSEE,	]	**C.C.A. #02C01-9503-CC-00065**
	]	
Appellee,	]	
	]	
	]	**MADISON CRIMINAL**
VS.	]	
	]	**HON. FRANKLIN MURCHISON**
WILLIAM HERBERT STITTS,	]	**JUDGE**
	]	
Appellant.	]	**(Aggravated Robbery)**
		AFFIRMED

FOR THE APPELLANT:

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OPINION FILED _____

AFFIRMED

LYNN W. BROWN, SPECIAL JUDGE

OPINION

The appellant, William Herbert Stitts, was convicted upon trial by jury of aggravated robbery. The trial court imposed a sentence of eleven years. In this appeal of right the appellant raises two issues: 1) whether the proof at trial was sufficient to support a verdict of guilty, and 2) whether the sentence imposed was proper. We affirm the judgment of the trial court.

I. Sufficiency of the evidence

The evidence at trial may be summarized as follows. On December 24, 1992, Sadonna Hart was working alone as cashier at the Q-Mart store in Jackson, Tennessee. She testified that at about 2:00 a.m. a man entered the store, pulled a tire tool from the back of his coat, and told Ms. Hart to give him the money. She replied that she would do so. The man told her to hurry up and held the tire tool as if he were going to hit her. Badly scared, Ms. Hart opened the cash register, from which the man took the money. The man then left the store.

Ms. Hart picked up the telephone to call 911, but before she could do so a police car pulled up. Ms. Hart motioned for the

police officer to follow the man who had just left the store. As the police car traveled toward the end of the building, Ms. Hart saw a red car leave quickly, almost hitting the police car.

The lighting in the store was bright, and the man got quite close to Ms. Hart. She identified the appellant in a photographic line up on the same day as the offense. At trial Ms. Hart testified most positively that the appellant was the man who robbed her. The events of that evening were recorded by two video cameras in the store, and the video tape was shown to the jury.

Officer Mike Landreth of the Jackson Police Department testified that while on patrol that early morning, he pulled into the parking lot of the Q-Mart while doing a routine check of businesses. The officer saw a male leaving the front door of the Q-Mart. From the way the man looked, Officer Landreth thought there was something wrong. The officer observed the clerk waiving and pointing, then saw the man get into a small red car and leave the parking lot at a high rate of speed. Officer Landreth pursued the red vehicle, traveling in excess of one hundred miles per hour. While in pursuit, the officer learned by radio that a robbery had occurred at the Q-Mart. The driver of the red car evaded Officer Landreth and four other patrol cars which had joined pursuit by turning off the road and traveling through a private yard. After a lapse of no more than five minutes the officers found the vehicle, which was by then unoccupied. The officers did find cash of various denominations strewn throughout

the red car.

Finally, the state called the appellant's mother as a witness. She testified that the red car in question belonged to her, and that the appellant was the last person who was allowed to use the car before she went to the police station where her car was impounded. She had lent the car to the appellant at about 6:00 p.m. the evening before the robbery.

The defense proof consisted only of the appellant's testimony. He testified that he did not participate in any robbery of the Q-Mart; that in fact he was at the Regency Inn with a female friend named Diane Maxwell when the robbery took place. Ms. Maxwell could not be located and did not testify. However, the appellant did admit to having his mother's red car the night of the robbery. He explained that he parked the vehicle outside the motel room at 7:30 p.m. on the evening before the robbery, and that was the last time he saw the car. The petitioner admitted to having been convicted in the State of Georgia of both felony possession of cocaine and felony theft by deception of $5,950.00. Although the appellant testified to the jury that he had explained to an investigator that he was at the Regency Inn at the time of the robbery, the investigator testified in rebuttal that the appellant made no such statement.

When the sufficiency of the evidence is challenged, the standard of review by an appellate court is whether, after

considering the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); State v. Duncan, 698 S.W.2d 63, 67 (Tenn. 1985); Tenn. R. App. P. 13(e).

A jury conviction removes the presumption of innocence with which a defendant is initially cloaked and replaces it with one of guilt, so that on appeal a convicted defendant has the burden of demonstrating that the evidence is insufficient. State v. Tuggle, 639 S.W.2d 913 (Tenn. 1982). It is not the function of this court to reweigh evidence adduced at a criminal trial. A guilty verdict, approved by the trial judge, accredits the testimony of the state's witnesses and resolves all conflicts in testimony in favor of the theory of the state. State v. Hatchett, 560 S.W.2d 627, 630 (Tenn. 1978). On appeal the state is entitled to the strongest legitimate view of the evidence and all reasonable and legitimate inferences which may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978).

After reviewing all of the evidence in the light most favorable to the state, we find that the jury as rational finders of fact could easily have found the essential elements of aggravated robbery to have been proven beyond a reasonable doubt. The evidence was also sufficient for the jury to find that the appellant was in fact the person who committed this offense.

II. Sentencing.

When an accused challenges the length, range or the manner of service of the sentence imposed by the trial court, we are required to conduct a de novo review of the record with a presumption that the determinations made by the trial court are correct. T.C.A. §40-35-401(d).

In conducting a de novo review of a sentence, the court must consider the following:

(1) the evidence, if any, received at the trial and the sentencing hearing;

(2) the presentence report;

(3) the principles of sentencing and arguments of counsel as to sentencing alternatives;

(4) The nature and circumstances of the criminal conduct involved;

(5) Any statutory mitigating or enhancing factors;

(6) Any statement made by the defendant on his own behalf; and

(7) The defendant's potential or lack of potential for rehabilitation or treatment. T.C.A. §§40-35-102, -103, -210. State v. Thomas, 755 S.W.2d 838 (Tenn. Crim. App. 1988); State v. Foster, 755 S.W.2d 846 (Tenn. Crim. App. 1988).

The trial court found that the defendant was a Range I, standard offender as defined in T.C.A. §40-35-106. This finding is not contested. The resulting range of punishment for

aggravated robbery, a Class B felony is eight to twelve years. T.C.A. §40-35-112. The trial court found that the following enhancement factors were applicable:

(1) the appellant has a previous history of criminal convictions or criminal behavior in addition to those necessary to establish the appropriate range;

(2) the appellant has a previous history of unwillingness to comply with the conditions of a sentence involving release in the community; and

(3) The felony was committed while on release into the community under the direct or indirect supervision of the department of correction or local governmental authority.

We have considered the evidence in the record and find that each of these enhancement factors has been established. The trial court apparently found no statutory mitigating circumstances to exist, although this was not explicitly stated as it should have been. We have examined the record and find no mitigating factors to lessen the defendant's sentence.

If the trial court finds enhancement factors, it must start at the minimum sentence in the range and enhance the sentence based upon any applicable enhancement factors, then reduce the sentence based upon any appropriate mitigating factors. Tenn. Code Ann. §40-35-210(e). Furthermore, the trial court has the discretion regarding the weight to be given each factor as long as the record supports its findings and the trial court complies with

the principles of the sentencing act. State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991).

The trial court gave particular weight to the appellant's prior convictions for two felonies and two misdemeanors. We have found nothing in the record to overcome the presumption of correctness with which we must accord the trial court's determination.

The judgment of the trial court is affirmed.

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Lynn W. Brown, Special Judge

CONCUR:

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David G. Hayes, Judge

_____
Jerry L. Smith, Judge