

IN THE COURT OF CRIMINAL APPEALS

AT NASHVILLE

AUGUST 1997 SESSION

FILED
September 18, 1997
Cecil W. Crowson
Appellate Court Clerk

STATE OF TENNESSEE,)
)
 Appellee,)
)
 VS.)
)
 PAUL MAX QUANDT, JR.)
)
 Appellant.)

C.C.A. NO. 01C0428
FRANKLIN COUNTY
Hon. John W. Rollins
Judge
(Resisting Arrest)
(Simple Assault)

FOR THE APPELLANT:

PAUL MAX QUANDT, JR.
Pro Se
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FOR THE APPELLEE:

JOHN KNOX WALKUP
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STEPHEN M. BLOUNT
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OPINION FILED: _____

AFFIRMED

JOE H. WALKER, III
Sp. JUDGE

OPINION

The defendant appeals, pro se, a jury verdict finding him guilty of resisting arrest and simple assault. The jury assessed a fine of \$500.00 for resisting arrest and \$50.00 for simple assault. The trial judge imposed a sentence of six months, suspended, for resisting arrest, and six months, suspended, for assault, consecutive to the sentence for resisting arrest. The trial judge required one hundred hours of unpaid community service.

The defendant filed a timely motion for a new trial, alleging that the court decreed consecutive sentences contrary to the statute and case law. The defendant, pro se, filed an additional motion for new trial some four and one-half months later, on April 25, 1996. An order was entered on April 26, 1996, overruling the motion for a new trial. There was no indication on the order otherwise, so this Court assumes the trial court allowed the amendment and considered all issues.

The defendant presents the following issues for consideration:

1. Whether the trial court had the jurisdiction and authority to hear this case, whether it was an erroneous trial, and whether the trial court followed proper procedure and due process;
2. Whether the court erred when no plea or arraignment was made on part of the charges;
3. Whether the court erred by not filing a written order on all motions before trial;
4. Whether the court erred when perjured testimony was used by the officers and the Assistant D.A. knew this perjured testimony was used to sway the minds of the jurors;
5. Whether the court erred when it pronounced consecutive sentences;
6. Whether the court erred in not ordering a new trial upon learning that a member of the jury panel was the husband of the Assistant D.A.'s former secretary;
7. Whether the court erred when it continued to allow the Assistant D.A. to prosecute the defendant after being notified that a federal lawsuit was pending against the Assistant D.A.;

8. Whether the court erred when it proceeded with the prosecution against the defendant when there was no reason for the officers to be on the private posted property without a valid warrant;

9. Whether the court erred when it kept a small handgun of the defendant;

10. Whether the court erred in failing to enforce a prior order entered by the court;

and

11. Whether the court erred by proceeding on an indictment not properly completed.

Procedural Background

The defendant was indicted by the Franklin County grand jury in July, 1994, for the offenses of evading arrest, resisting arrest, and vandalism. He was also indicted by the Franklin County grand jury in September, 1994, for the offenses of aggravated assault, unlawful possession of a weapon, and felony possession of a weapon. The cases were consolidated for trial.

The state elected not to proceed on the charge of evading arrest, but the remaining charges were presented at a jury trial in April, 1995, with the Honorable Buddy D. Perry presiding. The trial judge did not allow the misdemeanor weapons charge to go to the jury. The jury found the defendant not guilty of the offense of felony possession of a weapon, but was unable to reach a unanimous verdict on the charges of resisting arrest, vandalism, and the lesser included charge of simple assault.¹ The trial judge declared a mistrial on the three remaining misdemeanor charges, and the matter was reset for another court date with regard to those charges.

Those charges were set for jury trial to be held on August 21, 1995, before the same trial judge. The state alleges that the defendant did not appear for trial on that date.²

Due to the possible conflict that the original trial judge might have as a witness in the

¹The aggravated assault was apparently reduced to simple assault, but it is unclear whether this action was the result of the jury's acquittal or dismissal by the trial judge.

² The defendant was later indicted by the Franklin County grand jury for his failure to appear on the August trial date.

defendant's failure to appear charge, the Tennessee Supreme Court designated the Honorable John Rollins as special trial judge to hear the misdemeanor cases.

On October 18, 1995, the three misdemeanor charges were retried. The jury returned a not guilty verdict on the charge of vandalism, but returned guilty verdicts on the charges of resisting arrest and simple assault.

Factual Background

The Tennessee Department of Transportation was conducting preliminary surveying work in Franklin County for a state highway project. They alleged that the defendant, Paul Max Quandt, Jr., refused to allow employees and persons acting on the behalf of the State of Tennessee to perform the necessary survey work across certain lands in Franklin County.

The Department of Transportation filed a civil action against the defendant in the Circuit Court of Franklin County for a resolution of this dispute.

The defendant appeared in court, representing himself. The matter was heard by the Honorable Thomas W. Graham, Circuit Judge, who entered an order in February, 1994, finding that the defendant, proceeding pro se, was continually disrespectful, disruptive, and argumentative, which culminated in the defendant's open defiance of the court's order by walking out of the hearing. The court granted the request by the Department of Transportation for an injunction prohibiting the defendant from interfering with the necessary survey work. As a result of that hearing, the court found the defendant to be in contempt of court, and issued an order to the Sheriff to forthwith attach the body of the defendant and hold him in jail for a prescribed period.

Deputies with the sheriff's department went to defendant's farm in an effort to enforce the order and take the defendant into custody. They observed the defendant and the defendant's son near a building. It appeared to one of the officers that the defendant looked in the direction of the marked patrol car and ran toward a building. They spoke

with defendant's son, who would not indicate where the defendant had gone, and wanted to see "the paper work." One officer went in the direction where he observed the defendant go and saw the defendant hiding in the fence row underbrush. The officer told the defendant to come out, and told him that the sheriff's department had been ordered to pick him up. The defendant came out of the fence row, indicating that he had a gun and that he was not going to be arrested.

The officer became concerned for his own safety and attempted to place his hands on the defendant's arm or shoulder. The defendant pulled away, knocking the officer's glasses off. The glasses broke, and the officer and defendant began pushing. A second officer helped subdue the defendant.

The officers found on the defendant's person a loaded gun, which was introduced as an exhibit at the trial.

The defendant was taken to jail pursuant to the court-ordered body attachment.

The trial testimony was not transcribed. The record on appeal consists of a narrative statement of the evidence.

Jurisdiction, Double Jeopardy, and the Dirty Diaper

The defendant complains that he has been passed from court to court, and that the trial and re-trial have violated his constitutional rights to such an extent that Circuit Court had no jurisdiction to try his case. He complains that his situation is similar to a young baby with a dirty diaper. The baby is passed from one person to another as each discovers the problem, but sooner or later someone has to change the dirty diaper. The defendant claims he's been passed from one circuit judge in a civil case, to another in a criminal case, and to yet another in a re-trial, and that no new evidence was introduced and his trial was erroneous.

This court does not reweigh or re-evaluate the evidence after a jury has found a defendant guilty. We are required to afford the state the strongest legitimate view of the

proof contained in the record as well as all reasonable and legitimate inferences which may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832 (Tenn. 1978). A guilty verdict rendered by the jury and approved by the trial judge accredits the testimony of the witnesses for the state, and a presumption of guilt replaces the presumption of innocence. State v. Grace, 493 S.W.2d 474 (Tenn. 1973). The jury by its verdict changed the dirty diaper.

The defendant complains that after the jury was unable to reach a decision in his first trial, the court granted a new trial. The defendant complains that the court had no authority to grant a new trial, but could grant a re-trial. This court finds that the defendant was granted a re-trial. The defendant further complains that there is no authority for a re-trial, and that this is a violation of due process and double jeopardy. This court finds otherwise. In the event that a jury is not able to make a decision, and is a “hung jury,” a re-trial can be allowed since a deadlocked jury constitutes a manifest necessity justifying a mistrial. Richardson v. United States, 468 U.S. 317, 104 S.Ct. 3081, 82 L.Ed.2d 242 (1984); State v. Mounce, 859 S.W.2d 319 (Tenn. 1993).

Re-trial due to a mistrial resulting from a deadlocked jury does not constitute double jeopardy. State v. Witt, 572 S.W.2d 913 (Tenn. 1978).

The defendant complains that Circuit Court did not have jurisdiction over this proceeding. Tennessee Code Annotated 40-1-108 grants Circuit Court original jurisdiction of all criminal matters. The defendant was originally charged with a felony, aggravated assault, which would require that matter be filed in Circuit Court. Circuit Court also had jurisdiction of the three misdemeanor charges, one of which the defendant was found not guilty, and the two for which he was found guilty. The trial court did not lose jurisdiction at some point during these trials.

This issue is without merit.

Plea or Arraignment

The defendant complains that he was tried on this matter when he was not properly

arraigned. However, there is nothing in the record to indicate the defendant was not arraigned. This argument was not brought up in the trial court and has been waived. The purpose for an arraignment is to provide the defendant with notice of the charges against him. Wright v. State, 1994 Tenn.Crim.App.LEXIS 434 (1994). From a review of the record, it is obvious that the defendant had notice of the charges. This issue is without merit.

Written Orders on Motions

The defendant filed numerous motions with the trial court. The record contains many orders ruling on various motions. The defendant objects to no written order with regard to certain motions including a motion objecting to double jeopardy, a motion to dismiss for lack of jurisdiction, a motion objecting to Judge Rollins, and a motion to dismiss. The record reflects that the trial court ruled from the bench with regard to various motions and filed written orders with regard to various motions.

At the hearing on the motion for new trial, the trial court noted that the trial court ruled with regard to various motions, and the defendant would file new motions on the same subject. The defendant was actually still objecting to his original motion to dismiss in the first trial which was denied by the original trial court. The defendant has failed to show how he has been prejudiced in any way with regard to this issue, and the issue is without merit.

Former Testimony

The defendant complains that officers who testified at the trial perjured themselves by testifying differently at the re-trial than they did at the original trial. He complains that the Assistant District Attorney knew of this perjured testimony, and that the trial judge should have been aware of it if he reviewed the original transcript.

The record reflects that the defendant did cross examine the officers and attempted to impeach them by showing that their current testimony was different from former

testimony.

Credibility of witnesses is a matter entrusted to the jury as the triers of fact. State v. Sheffield, 676 S.W.2d 542 (Tenn. 1984). This issue is without merit.

Consecutive Sentences

The record reveals that the jury trial occurred October 18, 1995, and that a sentencing hearing was held on November 16, 1995. However, there is nothing for this court to review with regard to the proceedings at the sentencing hearing. The record merely reveals that after listening to the State's position regarding sentencing, and after listening to the defendant's position, the court sentenced the defendant to six months supervised probation on the resisting arrest charge, imposed the jury's fine of \$500.00 plus court costs, and ordered the defendant to perform one hundred hours of public service work. The court sentenced the defendant to six months supervised probation on the assault charge, to run consecutive to the resisting arrest probation, and imposed the jury's fine of \$50.00 plus court costs.

The presumption of a minimum sentence does not apply to misdemeanors. The sentence must be consistent with the purposes and principles of the Criminal Sentencing Reform Act. The trial court is provided wide discretion. State v. McKnight, 900 S.W.2d 36 (Tenn.Crim.App. 1994).

At the hearing on the motion for new trial, the trial court noted that it could have required a period of confinement based on the facts of the case, but the trial court only imposed a probated sentence and a total period of probation of twelve months was deemed appropriate by the court.

The defendant was found guilty of assault, a violation of T.C.A. 39-13-101, which is a Class A misdemeanor. The trial court granted the defendant probation, and under T.C.A. 40-35-303 the defendant can be placed on probation for a maximum time for the class of conviction offense. In this case, the defendant was placed on probation for the maximum time for a Class A misdemeanor.

Based on the record before this court, we are unable to review the factors considered by the trial court for consecutive sentencing with regard to the six months for resisting arrest, and the six months for assault. However, both terms of confinement were suspended, and the defendant placed on probation, for the same effective sentence as he could have received for the Class A misdemeanor of assault. Therefore, if any error was committed, the same is harmless.

This issue is without merit.

Juror Conflict

The defendant alleges that the court erred in not ordering a new trial because a member of the jury panel was the husband of the former secretary to the Assistant District Attorney.

The voir dire was not prepared and presented in the record. However, from the record it can be determined that the defendant was given an opportunity during voir dire to question prospective jurors. The defendant was provided by the clerk with the names of prospective jurors, and the list provided indicated that the subject juror's spouse worked as a legal secretary. Also contained in the record is the statement that the juror complained of is married to a former legal secretary who was employed by the Assistant District Attorney when he was in private practice some years before this trial.

The defendant has not shown any prejudice. The fact that a member of his jury panel was the spouse of the former legal secretary of the Assistant District Attorney at some time long before trial does not automatically render the verdict reversible.

The defendant is entitled to an impartial jury. Hyatt v. State, 430 S.W.2d 129 (Tenn. 1967). The jury must have an impartial frame of mind, be influenced by the legal and competent evidence produced during trial, and base its verdict upon evidence connecting the defendant with the commission of the crime charged. Durham v. State, 182 Tenn. 577, 188 S.W.2d 555 (1945).

The statement of evidence presented to this court reflects that the defendant made no showing that the subject juror did not follow his oath as given by the court. The trial court polled the jurors by asking if they all agreed with the verdict, and they raised their hands agreeing with the verdict. The trial court found the jury was fair and impartial. A trial court's findings of jury impartiality may be overturned only for manifest error. State v. Cazes, 875 S.W.2d 253 (Tenn.1994). The defendant has shown none.

_____ This issue is without merit.

Conflict of District Attorney

The defendant complains that the court erred when it continued to allow the Assistant District Attorney to prosecute the defendant after being notified that a federal lawsuit was pending against the Assistant District Attorney. This issue was not brought up in the motion for new trial and was waived.

In any event, from a review of the briefs, and the entire record, there appears the allegation that Mr. Blount, the Assistant District Attorney, had been sued in Federal Court on January 30, 1995. However, there is no other statement indicating why there exists a conflict. While there are many allegations in the brief of appellant that the Assistant District Attorney was prejudiced against the defendant, used perjured testimony, and generally acted unfairly, these allegations are not supported by the record before this court.

The defendant has failed to show prosecutorial vindictiveness. He has not shown that the prosecutor acted in order to punish him for standing on his legal rights; nor do the facts indicate a realistic likelihood of vindictiveness. State v. Brackett, 869 S.W.2d 936 (Tenn.Crim.App. 1993).

This issue is without merit.

Valid Warrant

The defendant complains that when he was arrested the officers were on his private property which was posted, and that the officers were without a valid fourth amendment

warrant.

This issue is brought up for the first time on appeal and is waived.

However, a review of the record reveals that on February 2, 1994, Circuit Judge Thomas W. Graham issued a body attachment for the defendant arising from contempt of court. The officers of the Franklin County Sheriff's Department entered upon the land in an effort to secure the person of the defendant pursuant to that court order.

This issue is without merit.

The Hand Gun

The defendant complains that the court erred by retaining a hand gun, which was found on the defendant when he was arrested. This issue was not presented at the motion for new trial and is waived.

However, a review of the record reveals that the officer found on the defendant's person a loaded hand gun. The weapon, clip and ammunition were introduced as an exhibit at the trial. The return of the exhibit is a matter to be addressed to the trial judge at the conclusion of this suit.

This issue is without merit.

Return of Money Per Order

The defendant complains that the court erred in failing to enforce a prior order entered by the court for the return of money. A review of the record shows an order was filed ruling on one of defendant's motions that required the return to the defendant of thirty five dollars (\$35.00) which was taken from him upon his arrest. The return was ordered August 8, 1994. This is a matter that should be addressed by the trial judge, if the funds have not been returned to the defendant.

Improper Indictment

The defendant filed a motion to dismiss the indictments as not being properly

completed. That motion was heard on April 20, 1995, and overruled.

The defendant complains that the indictments for resisting arrest and assault were not properly completed, as they were not signed by the prosecutor or the foreman of the Grand Jury. From an inspection of the indictments, the allegations of the defendant are not correct. The indictment from the July session, 1994, was drawn as a three count indictment, each count signed by the District Attorney General, and all three counts returned as a true bill, signed by the foreman of the Grand Jury, and filed by the clerk, signed by the clerk, listing the witnesses that appeared, and appears proper in form.

An examination of the indictment returned in the September session, 1994, again is signed by the District Attorney General, signed by the foreman of the Grand Jury, by the clerk, lists the witnesses who appeared, and appears proper in form.

This issue is without merit.

Therefore, the lower court is **affirmed**.

JOE H. WALKER, III
Sp. JUDGE

CONCUR:

JOE G. RILEY, JUDGE

CURWOOD WITT, JUDGE

