IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs April 11, 2023

STATE OF TENNESSEE v. STACY MATTHEWS

Appeal from the Circuit Court for Maury County
No. 27163 Stella Hargrove, Judge

No. M2021-01342-CCA-R3-CD

A Maury County jury convicted Stacy Matthews, Defendant, of two counts of sale of 0.5 grams or more of methamphetamine within 1,000 feet of a school zone and one count of sale of 0.5 grams or more of methamphetamine. At sentencing, the trial court struck the school zone sentencing aggravator for two of the convictions and entered judgments on three counts of sale of 0.5 grams or more of methamphetamine. The trial court imposed three concurrent sentences of twelve years, as a Range I, standard offender, in the Tennessee Department of Correction. On appeal, Defendant argues: he was prejudiced by the language of Counts 1 and 3 of the indictment; that the trial court imposed an excessive sentence; and that the evidence was insufficient to sustain his convictions. Following our review of the entire record and the briefs of the parties, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed.

MATTHEW J. WILSON, J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and CAMILLE R. MCMULLEN, JJ., joined.

William C. Barnes, Jr., Columbia, Tennessee (on appeal), and E. Kendall White, IV, Franklin, Tennessee (at trial), for the appellant, Stacy Matthews.

Jonathan Skrmetti, Attorney General and Reporter; Brooke A. Huppenthal, Assistant Attorney General; Brent Cooper, District Attorney General; and Jonathan Davis, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual and Procedural Background

This case arises from three 2018 drug transactions between Defendant and a female

confidential informant ("CI")[1] who was working with the Maury County Sheriff's Department. A Maury County Grand Jury entered a true bill charging Defendant with three counts of sale of 0.5 grams or more of methamphetamine within 1,000 feet of a school zone, all Class A felonies. Prior to trial, Defendant filed a motion to dismiss the indictment, arguing that Tennessee Code Annotated section 39-17-432 had been amended September 1, 2020. The 2020 amendment reduced the drug-free school zone radius from 1,000 to 500 feet, and Defendant had been charged under the 2018 version of the statute. The trial court denied Defendant's motion, finding the change in the law between Defendant's indictment and trial involved sentencing issues and not a defect in the indictment. On the morning of trial, the trial court granted the State's unopposed motion to strike the school zone sentencing enhancement in Count 2, which related to the Defendant's sale of methamphetamine at a car wash. As a result, Count 2 was reduced to a Class B felony, and the case proceeded to trial on the amended indictment.

Trial — May 17, 2021

The two-day trial commenced, and the CI testified she had known Defendant for about ten years before the charged drug sales. She testified the first of these sales occurred on July 31, 2018. Before meeting with Defendant, the CI met with Investigator Jeff Wray with the Maury County Sheriff's Department, who searched the CI and ensured she was not carrying contraband, gave her money to purchase the drugs, and a device to make audio and video transmissions and record the transaction. After the CI contacted Defendant, he directed the CI to a trailer in Columbia where the CI intended to purchase four grams of methamphetamine from Defendant. Defendant did not have four grams, but sold her a lesser amount. Investigator Wray monitored the video of the transaction[2] as it occurred, then met the CI at a predetermined location where she gave the drugs she had purchased from Defendant to the investigator.

On August 16, 2018, the CI and Defendant met at a Columbia car wash for another purchase of methamphetamine. Before the sale, Investigator Wray searched the CI and provided her with money for purchasing the drugs and surveillance equipment to transmit and record the transaction. The investigator watched the video feed as Defendant sold methamphetamine to the CI. After the transaction, Investigator Wray met the CI, and she gave him the methamphetamine she had purchased from Defendant at the car wash.

On August 21, 2018, the third transaction occurred between Defendant and the CI, this time at the same trailer as the first sale. After Investigator Wray searched the CI and gave her money and a video and audio transmission device, Defendant directed the CI to go to the trailer, where she purchased methamphetamine from Defendant. The CI and

1 The confidential informant's name was disclosed at trial but will not be listed in this opinion.

2 Videos of all three transactions were played for the jury.

Investigator Wray then met at a predetermined location, where she gave the investigator the methamphetamine she had purchased from Defendant.

Investigator Wray testified he measured the distance between the trailer where the first and third transactions occurred and the nearby Highland Park Elementary School. The trailer was 853 feet from the school's property line and 998 feet from the school's front door.

Special Agent Lela Jackson of the Tennessee Bureau of Investigation (TBI) crime lab testified she tested the drugs from the three transactions. All three exhibits Defendant had sold the CI tested positive for methamphetamine in the amounts of 1.72 grams, 0.71 grams, and 0.74 grams, respectively. The State rested its case, and Defendant offered no proof.

The trial court charged the jury on three counts of sale of 0.5 grams or more of methamphetamine, with Counts 1 and 3 also alleging the offense occurred within 1,000 feet of an elementary school. The jury found Defendant guilty as charged on all three counts.

Sentencing — July 16, 2021

At Defendant's sentencing hearing, Defendant's attorney asked the trial court to apply Tennessee Code Annotated section 39-17-432, as amended September 1, 2020. The 2020 amendment reduced the drug-free school zone radius from 1,000 to 500 feet. After hearing the arguments of both parties, the trial court concluded,

> You know, this is always a complex issue, but I think the trend, and maybe it's not so much a trend, I think it has always been, during my tenure as a judge, certainly, that the defendant benefits from the lesser punishment under the Savings Statute. And, General, I believe that I am going to sentence under the B felony. I think that is inherently what our legislature intends. I know that you looked to the specific wording of the new law insofar as punishment, but I think the Savings Statute is certainly worthy of consideration just generally. And I don't think that we have to always fall in accordance with that new statute and whether or not it says it's retroactive or infers it is. I am going to sentence under the B felonies for each of the convicted offenses.

The trial court granted Defendant relief and struck the school zone sentencing enhancement as Counts 1 and 3, which resulted in all three counts being classified as Class B felony offenses. For each of the three convictions, the trial court applied enhancement factor (1), Defendant had a history of criminal convictions or criminal behavior in addition

to those necessary to establish the sentencing range, and (13), Defendant committed the felony while on probation. *See* Tenn. Code Ann. § 40-35-114(1), (13)(C). The trial court imposed a term of twelve years in the Department of Correction on each count, to be served concurrently, which was the maximum in the range for a person committing a Class B felony as a Range I, standard offender. Tenn. Code Ann. § 40-35-112(a)(2). The court also imposed a $2,000 fine per count.

At the hearing on his motion for new trial, Defendant challenged his convictions, arguing he was unfairly prejudiced by drug-free school zone evidence "[e]ven though he couldn't be charged with it." He also raised sentencing issues. After the trial court overruled his motion for new trial, this appeal follows.

II. Analysis

A. Improper Indictment and Jury Charge

Defendant argues he was unfairly prejudiced by the charges and jury instructions alleging drug distribution in a school zone. Specifically, he argues he was "unfairly prejudiced by the jury being provided inaccurate indictments and instructed improperly and the State being allowed to argue that the Defendant was guilty of a charge of which he could not be found guilty of[.]" We disagree.

Counts 1 and 3 of the indictment, as read to the jury at the start of trial, alleged Defendant:

> did unlawfully and knowingly sell a controlled substance, to-wit: Methamphetamine, Schedule II, in an amount of .5 grams or more, in violation of Tennessee Code Annotated Section 39-17-434, and the sale of Methamphetamine occurred on the grounds or facilities, or within one thousand feet of the real property that comprises a public or private elementary school, middle school, secondary school, or preschool, to-wit: Highland Park Elementary School, in violation of Tennessee Code Annotated Section 39-17-432, all of which is against the peace and dignity of the State of Tennessee.

In charging the jury, the trial court provided them with the following elements of this offense:

> (1) that the defendant sold Methamphetamine, a Schedule II controlled substance; and
>
> (2) that the defendant acted knowingly; and

(3) that this occurred within one thousand feet (1,000') of the real property that comprises an elementary school.

For Counts 1 and 3, the trial court charged the lesser included offenses of sale of 0.5 grams or more of methamphetamine (without the school zone enhancement), sale of less than 0.5 grams of methamphetamine in a school zone, sale of less than 0.5 grams of methamphetamine, and casual exchange.

"Challenges to the validity of an indictment present questions of law and, thus, are reviewed de novo." *State v. Smith*, 492 S.W.3d 224, 239 (Tenn. 2016) (citing *State v. Hill*, 954 S.W.2d 725, 727 (Tenn. 1997)). Both the United States and Tennessee constitutions require the accused to be provided with "the nature and cause of the accusation" being made against him. U.S. Const. amend. VI; Tenn. Const. art. I, § 9. An indictment must "enable a person of common understanding to know what is intended." Tenn. Code Ann. § 40-13-202. Our supreme court has held that "an indictment is valid if it provides sufficient information (1) to enable the accused to know the accusation to which answer is required, (2) to furnish the court adequate basis for the entry of a proper judgment, and (3) to protect the accused from double jeopardy." *Hill*, 954 S.W.2d at 727.

Similarly, the sufficiency of a trial court's jury instructions "is a question of law appellate courts review de novo with no presumption of correctness." *State v. Clark*, 452 S.W.3d 268, 295 (Tenn. 2014). "It is well-settled that a defendant has a constitutional right to a complete and correct charge of the law, so that each issue of fact raised by the evidence will be submitted to the jury on proper instructions." *State v. Dorantes*, 331 S.W.3d 370, 390 (Tenn. 2011). "As part of their instructions in criminal cases, trial courts must describe and define each element of the offense or offenses charged." *Clark*, 452 S.W.3d at 295. "An instruction should be considered prejudicially erroneous only if the jury charge, when read as a whole, fails to fairly submit the legal issues or misleads the jury as to the applicable law." *State v. Faulkner*, 154 S.W.3d 48, 58 (Tenn. 2005).

Here, Defendant was charged with three violations of Tennessee Code Annotated section 39-17-434. That statute provides, "It is an offense for a defendant to knowingly . . . [s]ell methamphetamine[.]" Tenn. Code Ann. § 39-17-434(a)(3). Sentencing for this offense is governed by section 39-17-417. Tenn. Code Ann. § 39-17-434(e)(1). The sentencing statute provides that if a drug offense involves methamphetamine in the amount of 0.5 grams or more, the offense is considered a Class B felony. Tenn. Code Ann. § 39-17-417(c)(1). Those portions of the current statutes relevant to this case are unchanged from the time of these offenses. At the time of Defendant's offenses, the Drug-Free School Zone Act, Tennessee Code Annotated section 40-17-432, provided that if the offense occurred "within one thousand feet (1,000') of the real property that comprises a public or

private elementary school," the offense would be "punished one (1) classification higher than is provided in § 39-17-417(b)-(i) for such violation." Tenn. Code Ann. § 39-17-432(b)(1) (2018) (amended 2020).

On appeal, Defendant does not provide a specific basis for his argument why Counts 1 and 3 of the indictment and the trial court's jury instructions on these counts prejudiced him, besides "suggesting danger to local school children." In his motion for new trial, former defense counsel raised two arguments as to this issue; the trial court denied relief on these issues, and on appeal this Court finds no basis for relief.

First, in the motion for new trial Defendant argued "the School Zone enhancement charge created an unfair inference that Mr. Matthews was exposing young or vulnerable children to illegal substances when that was far from the proof established." However, this Court has rejected challenges to the Drug Free School Zone Act based on assertions that the Act should provide enhanced punishment only for offenses occurring when children are present and should not enhance punishment for drug transactions by adults inside homes within school zones. *See State v. Jenkins*, 15 S.W.3d 914, 917-18 (Tenn. Crim. App. 1999). Thus, to any extent Defendant raises this argument on appeal, it is unavailing.

The second argument raised in Defendant's motion for new trial—and addressed by the State in this appeal—relates to the General Assembly's amending the Drug-Free School Zone Act in 2020 to reduce the school zone radius from 1,000 feet to 500 feet. 2020 Tenn. Public Acts ch. 803, § 5. The revised statute went into effect September 1, 2020. *Id.*, § 12. Specifically, at his motion for new trial, Defendant argued the 1,000-foot provision should not have been presented to the jury based on the Criminal Savings Statute, which states in relevant part that a criminal offense "shall be prosecuted under the act or statute in effect at the time of the commission of the offense[,]" but "in the event the subsequent act provides for a lesser penalty, any punishment shall be in accordance with the subsequent act." Tenn. Code Ann. § 39-11-112.

We previously rejected a similar challenge raised by an appellant who, like Defendant, committed a drug offense when the statute contained the 1,000-foot school zone provision but who was tried after the statute was amended to reduce the school zone radius to 500 feet. In *State v. James Clark McKenzie*, No. E2021-00445-CCA-R3-CD, 2022 WL 2256338 (Tenn. Crim. App. June 23, 2022), *perm. app. denied* (Tenn. Nov. 16, 2022), the appellant argued the Criminal Savings Statute entitled him to be sentenced under the 2020 amendments to the School Zone Act, which would have rendered his offense ineligible for the aggravator. 2022 WL 2256338, at *8. However we concluded the "unambiguous[] . . . language of the enabling provision of the Act" which limited application of the revised act to offenses occurring on or after September 1, 2020, did not support the appellant's argument. *Id.* at *10.

Here, Defendant was properly tried under the version of the statute as it existed at the time of the offenses—the version containing the former 1,000-foot school zone provision. The trial court properly presented the indictment to the jury, and instructed it on the correct law. The jury convicted him under the applicable law. Even if the Criminal Savings Statute did apply, Defendant received relief through the trial court's actions at sentencing. He was not prejudiced and is not entitled to relief on this issue.

B. Sentencing

Next, Defendant argues the trial court erred in imposing sentence, and challenges the length of his effective twelve-year sentence for his three convictions. The State argues the trial court acted within its discretion when it imposed Defendant's sentences. We agree with the State.

"[S]entences imposed by the trial court within the appropriate statutory range are to be reviewed under an abuse of discretion standard with a 'presumption of reasonableness.'" *State v. Bise*, 380 S.W.3d 682, 708 (Tenn. 2012). A reviewing court should uphold the sentence "so long as it is within the appropriate range and the record demonstrates that the sentence is otherwise in compliance with the purposes and principles listed by statute." *Id.* at 709-10.

Trial courts are "required under the 2005 amendments to 'place on the record, either orally or in writing, what enhancement or mitigating factors were considered, if any, as well as the reasons for the sentence, in order to ensure fair and consistent sentencing.'" *Id.* at 698-99 (quoting Tenn. Code Ann. § 40-35-210(e)). However, the statutory factors are advisory only. *See* Tenn. Code Ann. § 40-35-114; *see also Bise*, 380 S.W.3d at 701; *State v. Carter*, 254 S.W.3d 335, 343 (Tenn. 2008). Our supreme court has stated that "a trial court's weighing of various mitigating and enhancement factors [is] left to the trial court's sound discretion." *Carter*, 254 S.W.3d at 345. In other words, "the trial court is free to select any sentence within the applicable range so long as the length of the sentence is 'consistent with the purposes and principles of [the Sentencing Act].'" *Id.* at 343 (quoting Tenn. Code Ann. § 40-35-210(d)).

In determining the proper sentence, the trial court must consider: (1) the evidence, if any, received at the trial and the sentencing hearing; (2) the presentence 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 mitigating and enhancement factors set out in Tenn. Code Ann. §§ 40-35-113 and 114; (6) any statistical information provided by the administrative office of the courts as to sentencing practices for similar offenses in Tennessee; and (7) any statement

the defendant made in the defendant's own behalf about sentencing. *See* Tenn. Code Ann. § 40-35-210; *State v. Taylor*, 63 S.W.3d 400, 411 (Tenn. Crim. App. 2001). The trial court must also consider the potential or lack of potential for rehabilitation or treatment of the defendant in determining the sentence alternative or length of a term to be imposed. Tenn. Code Ann. § 40-35-103.

In the instant case, at Defendant's sentencing hearing, evidence was presented of his July 2018 convictions of simple possession of marijuana and driving on a suspended license. Defendant was granted probation at that time, but his probation was revoked after his arrest on the instant charges. Defendant also had a prior arrest for evading arrest and had committed five traffic offenses. All prior convictions were for misdemeanors. After the trial court stated that it had reviewed the evidence and the appropriate principles of sentencing, it gave Defendant's prior criminal history "moderate weight" and Defendant's commission of these offenses while on probation "great weight."

Defendant argued he was entitled to the application of two statutory mitigating factors: (1) his conduct neither caused nor threatened serious bodily injury, and (6) he lacked substantial judgment in committing the offenses. Tenn. Code Ann. §§ 40-35-113(1) and (6). As to the first mitigating factor (the offenses neither caused nor threatened harm), the trial court rejected it due to the dangers of methamphetamine. As to Defendant's argument he lacked substantial judgment, the trial court found that mitigating factor did not apply. Based on the presence of the two aggravating circumstances, the weight given those aggravators, and the lack of applicable mitigating circumstances, the trial court imposed a sentence of twelve years for each of Defendant's convictions. The State sought consecutive sentences, but the trial court ordered the sentences to be served concurrently.

The record reflects the trial court properly considered the principles of sentencing and sentenced Defendant within the appropriate range. As such, Defendant's sentence is presumed reasonable. We conclude the evidence supports the trial court's application of the two statutory aggravating factors, the weight the trial court gave these factors, and the trial court's rejection of the two proposed mitigating factors after due consideration. Consequently, the trial court did not abuse its discretion in imposing an effective twelve-year sentence in this case.

C. Sufficiency of Evidence

Finally, Defendant argues the evidence was insufficient to sustain his convictions for three counts of selling more than 0.5 grams of methamphetamine. We disagree.

The standard of review of a claim challenging the sufficiency of the evidence is "whether, after viewing the evidence in the light most favorable to the

prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (citing *Johnson v. Louisiana*, 406 U.S. 356, 362 (1972)); *see* Tenn. R. App. P. 13(e); *State v. Davis*, 354 S.W.3d 718, 729 (Tenn. 2011). This standard of review is identical whether the conviction is predicated on direct or circumstantial evidence, or a combination of both. *State v. Williams*, 558 S.W.3d 633, 638 (Tenn. 2018) (citing *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011)).

A guilty verdict removes the presumption of innocence and replaces it with one of guilt on appeal, therefore, the burden is shifted to the defendant to demonstrate why the evidence is insufficient to support the conviction. *Davis*, 354 S.W.3d at 729 (citing *State v. Sisk*, 343 S.W.3d 60, 65 (Tenn. 2011)). On appellate review, "we afford the prosecution the strongest legitimate view of the evidence as well as all reasonable and legitimate inferences which may be drawn therefrom." *Id*. at 729 (quoting *State v. Majors*, 318 S.W.3d 850, 857 (Tenn. 2010)); *State v. Cabbage,* 571 S.W.2d 832, 835 (Tenn. 1978). In a jury trial, questions involving the credibility of the witnesses and the weight and value to be given to evidence, as well as all factual disputes raised by such evidence, are resolved by the jury as the trier of fact. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997); *State v. Pruett*, 788 S.W.2d 405, 410 (Tenn. 1990). Therefore, we are precluded from re-weighing or reconsidering the evidence when evaluating the convicting proof. *State v. Stephens*, 521 S.W.3d 718, 724 (Tenn. 2017).

It is an offense to knowingly sell methamphetamine. Tenn. Code Ann. § 39-17-434(a)(3). A person acts knowingly "with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist." Tenn. Code Ann. § 39-11-302(b). "[A] sale consists of two components: a bargained-for offer and acceptance, and an actual or constructive transfer or delivery of the subject matter property." *State v. Holston*, 94 S.W.3d 507, 510 (Tenn. Crim. App. 2002) (citing *State v. Phil Wilkerson*, No. 03C01-9708-CR-00336, 1998 WL 379980, at *3 (Tenn. Crim. App. July 8, 1998)). "One who accepts payment in exchange for property is involved in a sale." *Holston*, 94 S.W.3d at 510 (citing *Phil Wilkerson*, 1998 WL 379980, at *3). When the amount of methamphetamine sold is 0.5 grams or more, the offense is a Class B felony. Tenn. Code Ann. §§ 39-17-434(e)(1), 39-17-417(c)(1).

Defendant makes only a general challenge to the sufficiency of the evidence underlying his three convictions. Here, viewing the evidence in the light most favorable to the State, Defendant and the CI entered into agreements on three separate occasions for Defendant to sell the CI methamphetamine. These transactions were recorded, with law enforcement observing and listening to each transaction. During each transaction, the CI gave Defendant money in return for methamphetamine. Videos from the three transactions were played for the jury at trial. Both the CI and the officer who monitored the live feed of

the transactions identified Defendant as the person who sold the CI methamphetamine. Testing at the TBI crime lab confirmed the substance Defendant sold to the CI in all three transactions was methamphetamine. The amounts sold during the three transactions were 1.72 grams, 0.71 grams, and 0.74 grams.

This evidence was sufficient for the jury to find beyond a reasonable doubt that Defendant knowingly sold the CI more than 0.5 grams of methamphetamine on three separate occasions, and the jury did so. Defendant is not entitled to relief on this issue.

III. Conclusion

Based on the foregoing analysis, we affirm the judgments of the trial court.

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MATTHEW J. WILSON, JUDGE