

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs February 5, 2014

STATE OF TENNESSEE v. MICHAEL WILDER

**Appeal from the Circuit Court for Madison County
No. 10-136 Roy B. Morgan, Jr.**

No. W2013-01148-CCA-R3-CD - Filed May 23, 2014

The defendant, Michael Wilder, was convicted by a Madison County Circuit Court jury of robbery, a Class C felony, and sentenced by the trial court as a Range III, persistent offender to fourteen years in the Department of Correction. He raises three issues on appeal: (1) whether the trial court erred in denying his motion to suppress his statement to police; (2) whether the evidence is sufficient to sustain his conviction; and (3) whether the trial court imposed an excessive sentence by misapplying enhancement and mitigating factors and erroneously classifying him as a persistent offender. Following our review, we affirm the judgment of the trial court.

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

ALAN E. GLENN, J., delivered the opinion of the Court, in which JOHN EVERETT WILLIAMS and CAMILLE R. MCMULLEN, JJ., joined.

George Morton Googe, District Public Defender; and Jeremy B. Epperson, Assistant Public Defender, for the appellant, Michael Wilder.

Robert E. Cooper, Jr., Attorney General and Reporter; Benjamin A. Ball, Senior Counsel; James G. Woodall, District Attorney General; and Jody S. Pickens, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS

According to the State's proof at trial, on December 16, 2009, the defendant and Keshun Douglas, while in a stolen vehicle in Jackson, followed seventy-eight-year-old Jonita Teague to her home after watching her leave a bank. As the victim was searching through

her trunk in her carport, the defendant approached, asked a question, and then grabbed her purse, which contained approximately \$1700 in cash. A Memphis police officer spotted the men as they were driving back to Memphis on Interstate 40, stopped them after they exited the interstate, and captured the defendant, who fled from the vehicle on foot. The victim's purse, credit cards, and identification were inside the vehicle and the defendant had over \$1700 in cash on his person. Later that same day, the defendant gave a statement to police admitting his involvement in the robbery. A Madison County Grand Jury subsequently returned a four-count indictment charging the defendant and Douglas with theft under \$500, burglary of a vehicle, and robbery based on a November 10, 2009 Jackson incident involving two other women, a seventy-four-year-old and her ninety-five-year-old friend, and with robbery based on the December 16 incident involving Teague. On February 13, 2013, the State nolle prosecuted the counts based on the November 10, 2009 incident, and the defendant proceeded to trial alone on the single count of robbery involving the victim, Jonita Teague.

Suppression Hearing

Prior to trial, the defendant filed a motion to suppress his statement to police on the basis that he was not provided with Miranda warnings before being questioned. At the suppression hearing, Lieutenant Frank Winston of the Memphis Police Department, who was a sergeant in the robbery bureau at the time of the defendant's arrest, testified that in December 2009, he was investigating the defendant and Keshun Douglas in connection with some local robberies. On December 16, 2009, he learned that the men had been taken into custody and were suspected in a robbery that had just occurred in Jackson. At approximately 6:30 that evening, he and Sergeant Van Buren entered the interview room in which the defendant had been placed and first offered him food and water before advising him of his Miranda rights, both verbally and in writing. He said the defendant agreed to talk to the investigators but refused to make a formal written statement. The defendant also told the investigators that he had "been through this before" and therefore knew "what [was] going on."

Lieutenant Winston read aloud from the portion of his supplement in which he summarized the information the defendant provided about the Teague robbery:

[The defendant] advised that he and Douglas went to Jackson, Tennessee to get a vehicle but they could not find one. Douglas told him that he needed money to pay his attorney because he had court on December 17th, 2009 and he needed money. [The defendant] advised that he saw a woman go into the First Tennessee Bank, waited on her to come out. They followed her to her home and Douglas got out of the car, approached the woman, took her

purse. Douglas gave him the purse when he got back into the car. [The defendant] advised that he went through the purse and observed the white envelope from the bank that contained \$1500 in cash and \$65 in cash in the victim's purse. [The defendant] stated that he put the bank envelope with the \$1500 in his pocket and gave Douglas \$15 and \$50 he put in the glove compartment of the 2006 Honda Accord. [The defendant] stated they were traveling back to Memphis when the police got behind them on Highway 40 as they crossed from the Fayette County line . . . into Shelby County. [The defendant] stated that Douglas was driving the vehicle, and they both fled from police on foot. They were later taken into custody. [The defendant] stated that the 2006 Honda Accord that they were occupying was stolen.

On cross-examination, Lieutenant Winston testified that although the defendant signed "the form stating that he wanted to talk" to the investigators, he did not execute a written waiver of his rights. He said that at the conclusion of their interview, he attempted once more to convince the defendant to let them put his statement in writing for him to review and sign, but the defendant refused. He recalled that the defendant offered the following explanation for his refusal to have his statement reduced to writing: "I've been through this once before and a prior investigator told me this and this didn't happen, so that's why I'm not going to give a statement, a written statement." Lieutenant Winston acknowledged that Douglas gave a written statement to the investigators.

The defendant testified that the investigators did not read him his rights until the conclusion of their interview. He said they placed him in an interview room, handcuffed him to his seat, and left him alone for ten or fifteen minutes before an investigator came in and questioned him about the robbery of a "Ms. Criptide." He said that the investigator left when he refused to talk to him. Later, Lieutenant Winston came into the room, offered him food and water, which he refused, and began to ask him about crimes that occurred in Shelby County before switching to questions about the instant offense. The defendant testified that he refused to speak to Lieutenant Winston and that he then left the room, only to return in five or ten minutes to tell him that Douglas was "saving hi[m]self" and "putting everything off on [the defendant.]" The defendant said he told Lieutenant Winston that he did not have anything to do with Douglas. Lieutenant Winston left the room again and then returned with a yellow steno pad and began to inform him of the facts that had been provided by Douglas.

The defendant testified that he refused to give any statement, telling Lieutenant Winston that he had been through a similar situation where he was alleged to have said something that he did not say. He denied making any of the statements that Lieutenant Winston attributed to him, other than that Douglas needed money to pay for his attorney, that Douglas was driving the vehicle on their return to Jackson, that both he and Douglas fled on

foot after being stopped by police, and that the vehicle they were in had been stolen.

On cross-examination, the defendant testified that he was at a friend's house in Jackson at the time of the robbery, never watched Mrs. Teague leave the bank, and was never anywhere near her house. He acknowledged that he had eight or nine previous convictions for robbery and theft and said that he had his GED and a few months of college and knew his Miranda rights at the time he was questioned by Lieutenant Winston.

At the conclusion of the hearing, the trial court overruled the motion to suppress, accrediting the testimony of Lieutenant Winston over that of the defendant and finding that the defendant made a knowing and voluntary statement after being informed of his rights and waiving his right to remain silent or have an attorney present for questioning.

Trial

The victim, Jonita Teague, testified that on December 16, 2009, she went to her bank to cash a \$1500 check to use to buy Christmas gifts for her family. She said she had an additional \$200 in cash in her billfold at that time. After leaving the bank, she drove home, pulled into her carport, got out of her car, and began looking in her trunk. It was approximately noon. As she was concentrated on her trunk, she heard a car drive up and turned around to see a short, African-American man getting out of the passenger side of a gold-colored car. He mumbled something, and she took a step toward him saying, "Excuse me?" He took a step toward her, quickly grabbed her purse from her arm, and ran back to his vehicle, which took off down the street. There were two African-American men in the vehicle – the short one who grabbed her purse and the driver. She was unable to identify either of those men. She later retrieved her purse and its contents, with the exception of her cash, from the Jackson Police Department.

Memphis Police Officer Kenneth Lowe testified that he was patrolling on Interstate 40 in Shelby County at approximately 1:15 p.m. on December 16, 2009, when he spotted a gold, 2006 Honda Accord and followed it for two to three minutes until it exited the interstate on Whitten Road. At that point, he initiated a traffic stop of the vehicle. The vehicle stopped and both the passenger, identified as the defendant, and the driver, identified as Keshun Douglas, "bailed out of the car and ran." Officer Lowe testified that he chased and caught the defendant and later transported him to the robbery division of the Memphis Police Department.

Sergeant Christopher Vaden of the Memphis Police Department testified that he responded to the scene of the traffic stop, where he found the victim's purse, including her credit cards and various identification cards, in the vehicle and \$1766 in cash on the

defendant's person.

Lieutenant Frank Winston essentially reiterated his testimony from the suppression hearing about his interview with the defendant, the defendant's refusal to submit a formal written statement, and the statements that the defendant made about the crime, which he recorded in his supplement. On cross-examination, he testified that his interview with the defendant was not recorded and that it was not the policy of the Memphis Police Department to video or audio record interviews.

Sergeant Ricky Davison of the Memphis Police Department, who was a crime scene investigator at the time of the defendant's arrest, identified photographs he took of the 2006 Honda Accord and its contents on December 16, 2009, including ones that showed the victim's purse on the right front floorboard and \$50 in cash in the glove compartment.

Investigator Terry Buckley of the Jackson Police Department testified that he retrieved the victim's purse and its contents from the Memphis Police Department and returned them to the victim. On cross-examination, he acknowledged that the victim was unable to identify anyone from the photographic lineup she was shown by another Jackson police investigator.

Keshun Douglas, testifying on the defendant's behalf, said that he and a friend, Raphael Reddick, were the ones who spotted the victim at the bank and followed her to her home. He testified that no one else was with them at the time and that he had Reddick drive while he got out of the vehicle, approached the victim, asked her a question, and then robbed her of her purse. Afterwards, he dropped Reddick off and picked up the defendant near Lane College and began driving the two of them back to Memphis, where they were stopped by the police. He stated that he implicated the defendant in his statement because he was on probation and parole at the time and thought he would "get off" if he accused the defendant of the crime.

On cross-examination, he testified that Reddick was his boyfriend at the time of the robbery. He also explained that the defendant, who had been his on-again, off-again lover, had "put [him] out" and that naming him as a perpetrator in the crime was his way of "getting back at him." He acknowledged multiple convictions for robbery, burglary, and theft. On redirect examination, he testified that he had pled guilty to the offense and had, since his first court appearance, attempted to set the record straight that the defendant had nothing to do with the crime.

The defendant elected not to testify and rested his case without presenting any additional proof. Following deliberations, the jury convicted him of robbery. At the conclusion of the sentencing hearing, the trial court found that the defendant had the requisite

number of prior convictions to be classified as a Range III, persistent offender. The court applied four enhancement factors: the defendant has a previous history of criminal convictions or criminal behavior in addition to those necessary to establish the appropriate range; a victim was particularly vulnerable because of age or physical or mental disability; the defendant, before trial or sentencing, failed to comply with the conditions of a sentence involving release into the community; and at the time of the offense the defendant was on parole. See Tenn. Code Ann. § 40-35-114(1), (4), (8), (13)(B) (2010). The trial court applied as a mitigating factor that the defendant's criminal conduct neither caused nor threatened serious bodily injury but declined to apply the defendant's proposed mitigating factor that he assisted authorities in uncovering offenses committed by other persons or in detecting or apprehending other persons. See id. § 40-35-113(1), (9). Based on its consideration of the enhancement, mitigating, and other factors, the court found that a fourteen-year sentence was appropriate. Accordingly, the trial court sentenced the defendant as a Range III, persistent offender to fourteen years in the Department of Correction.

ANALYSIS

I. Denial of Motion to Suppress Statement

The defendant first contends that the trial court erred by denying his motion to suppress his statement to police. Essentially, he argues that the trial court erred by accrediting Lieutenant Winston's testimony that he informed the defendant of his Miranda rights prior to questioning him about the offense. However, when this court reviews a trial court's ruling on a motion to suppress evidence, "[q]uestions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996). Moreover, the party prevailing at the suppression hearing is afforded the "strongest legitimate view of the evidence and all reasonable and legitimate inferences that may be drawn from that evidence." State v. Keith, 978 S.W.2d 861, 864 (Tenn. 1998). The findings of a trial court in a suppression hearing are upheld unless the evidence preponderates against those findings. See id. The application of the law to the facts found by the trial court is a question of law and is reviewed *de novo*. State v. Walton, 41 S.W.3d 75, 81 (Tenn. 2001); State v. Crutcher, 989 S.W.2d 295, 299 (Tenn. 1999); State v. Yeorgan, 958 S.W.2d 626, 629 (Tenn. 1997).

The Fifth Amendment to the United States Constitution provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. The corresponding provision of the Tennessee Constitution states "[t]hat in all criminal prosecutions, the accused . . . shall not be compelled to give evidence against himself." Tenn. Const. art. I, § 9. Thus, to be admissible at trial, a confession made while

under custodial interrogation must be shown to have been freely and voluntarily given, after the defendant's knowing waiver of his constitutional right to remain silent and to have an attorney present during questioning. See Miranda v. Arizona, 384 U.S. 436, 444 (1966).

Under the Fifth Amendment, a confession is involuntary when it is the result of coercive action on the part of the State. Colorado v. Connelly, 479 U.S. 157, 163-64 (1986). Our supreme court has concluded that "the test of voluntariness for confessions under Article 1, § 9 is broader and more protective of individual rights than the test of voluntariness under the Fifth Amendment." State v. Crump, 834 S.W.2d 265, 268 (Tenn. 1992). In order for a confession to be considered voluntary in Tennessee, it must not be the result of "any sort of threats or violence, . . . any direct or implied promises, however slight, nor by the exertion of any improper influence." State v. Smith, 42 S.W.3d 101, 109 (Tenn. Crim. App. 2000) (quoting Bram v. United States, 168 U.S. 532, 542-43 (1897)). Courts look to the totality of the circumstances to determine whether a confession is voluntary. State v. Smith, 933 S.W.2d 450, 455 (Tenn. 1996).

In denying the defendant's motion to suppress his statement, the trial court specifically accredited the testimony of Lieutenant Winston over that of the defendant, finding that the investigators informed the defendant of his rights and received his consent to questioning before, rather than after, the defendant made the statement and that the version provided by Lieutenant Winston contained the information relayed by the defendant. The court further found, based on the defendant's suppression hearing testimony, that the defendant was very familiar with the process due to his criminal history and was fully aware of his rights at the time he made his statement. The trial court, therefore, concluded that the statement was "freely, voluntarily, knowingly, intelligently and personally made without coercion or intimidation of any sort." The record supports these determinations. Accordingly, we conclude that the trial court properly denied the defendant's motion to suppress his statement to police.

II. Sufficiency of the Evidence

The defendant next contends that the evidence is insufficient to sustain his conviction. Specifically, he challenges his identity as one of the perpetrators, citing the inability of the victim to identify him as well as the testimony of Douglas that the defendant was not with him at the time he robbed the victim. In considering this issue, we apply the rule that where sufficiency of the convicting evidence is challenged, the relevant question of the reviewing court 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); see also Tenn. R. App. P. 13(e) ("Findings of guilt in criminal actions whether by the trial court or jury shall be set

aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt.”); State v. Evans, 838 S.W.2d 185, 190-92 (Tenn. 1992); State v. Anderson, 835 S.W.2d 600, 604 (Tenn. Crim. App. 1992).

All questions involving the credibility of witnesses, the weight and value to be given the evidence, and all factual issues are resolved by the trier of fact. See State v. Pappas, 754 S.W.2d 620, 623 (Tenn. Crim. App. 1987). “A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State.” State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973). Our supreme court stated the rationale for this rule:

This well-settled rule rests on a sound foundation. The trial judge and the jury see the witnesses face to face, hear their testimony and observe their demeanor on the stand. Thus the trial judge and jury are the primary instrumentality of justice to determine the weight and credibility to be given to the testimony of witnesses. In the trial forum alone is there human atmosphere and the totality of the evidence cannot be reproduced with a written record in this Court.

Bolin v. State, 219 Tenn. 4, 11, 405 S.W.2d 768, 771 (1966) (citing Carroll v. State, 212 Tenn. 464, 370 S.W.2d 523 (1963)).

“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, 914 (Tenn. 1982).

Viewed in the light most favorable to the State, the evidence was more than sufficient to establish the defendant’s identity as one of the robbers. “Identification of a defendant as the person who committed the offense for which he or she is on trial is a question of fact for the jury’s determination upon consideration of all competent proof.” State v. Thomas, 158 S.W.3d 361, 388 (Tenn. 2005) (citing State v. Strickland, 885 S.W.2d 85, 87 (Tenn. Crim. App. 1993)). Approximately an hour and fifteen minutes after the Jackson robbery, in which the victim had her purse and \$1700 in cash stolen by the passenger of a gold-colored vehicle, a police officer spotted the defendant and Douglas in a gold-colored Honda Accord on Interstate 40 entering Shelby County. When the officer initiated a traffic stop of the vehicle, the defendant fled on foot from the front passenger seat. The victim’s purse was found on the front passenger floorboard, over \$1700 in cash was found on the defendant’s person, and \$50 in cash was found in the glove compartment of the vehicle. These details were consistent with the defendant’s statement to police admitting that he and Douglas had taken

the victim's purse, from which he kept for himself the \$1500 in cash he found in a bank envelope while giving Douglas \$15 and placing an additional \$50 in the glove compartment. We conclude, therefore, that the evidence is sufficient to sustain the defendant's conviction for robbery.

III. Sentencing

Lastly, the defendant contends that the trial court erred by misapplying enhancement and mitigating factors and in its classification of him as a Range III, persistent offender. Under the 2005 amendments to the sentencing act, a trial court is to consider the following when determining a defendant's sentence and the appropriate combination of sentencing alternatives:

- (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 §§ 40-35-113 and 40-35-114;
- (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 wishes to make in the defendant's own behalf about sentencing.

Tenn. Code Ann. § 40-35-210(b) (2010).

The defendant first argues that the court erred by applying as an enhancement factor that the victim was particularly vulnerable due to her age and by not applying in mitigation his proposed mitigating factor that he assisted the authorities in uncovering other offenses allegedly committed by himself and Douglas in "various jurisdictions." The State responds by arguing, among other things: that the particularly vulnerable enhancement factor was applicable under the facts; that the three other applicable enhancement factors found by the trial court, which the defendant does not dispute, support the court's enhancement of the defendant's sentence regardless of the application of the particularly vulnerable enhancement

factor; and that the trial court properly refused to apply the defendant's proposed mitigating factor, as there is nothing in the record to indicate that the defendant assisted the authorities in uncovering any additional offenses or in detecting or apprehending any other offender.

We agree with the State. The trial court is granted broad discretion to impose a sentence anywhere within the applicable range, regardless of the presence or absence of enhancement or mitigating factors, and "sentences should be upheld so long as the statutory purposes and principles, along with any enhancement and mitigating factors, have been properly addressed." State v. Bise, 380 S.W.3d 682, 706 (Tenn. 2012). Accordingly, we review a trial court's sentencing determinations under an abuse of discretion standard, "granting a presumption of reasonableness to within-range sentencing decisions that reflect a proper application of the purposes and principles of our Sentencing Act." Id. at 707.

The record reflects that the trial court imposed the fourteen-year sentence after proper consideration of the purposes and principles of our sentencing act and consideration of proposed enhancement and mitigating factors. See id. at 706. We conclude, therefore, that the trial court did not abuse its discretion in sentencing the defendant to fourteen years as a Range III offender for his robbery conviction.

The defendant also contends that the trial court erroneously sentenced him as a Range III, persistent offender. To qualify as a persistent offender, the defendant had to have "[a]ny combination of five (5) or more prior felony convictions within the conviction class or higher or within the next two (2) lower felony classes." Tenn. Code Ann. § 40-35-107(a)(1). "Prior conviction means a conviction for an offense occurring prior to the commission of the offense for which the defendant is being sentenced." Id. § 40-35-107(b)(1). The defendant was convicted of a Class C felony. Thus, he needed a total of five prior felony convictions in Class C, D, or E to qualify as a Range III offender.

Prior to trial, the State filed a notice of request for enhanced punishment in which it listed nine prior convictions on which it intended to rely for its request to seek enhanced punishment "and/or utilize . . . for impeachment purposes." These were three 2011 convictions for robbery, a Class C felony; a 2011 conviction for theft over \$1000, a Class D felony; three 2008 convictions for robbery; a 2008 conviction for attempted aggravated robbery, a Class C felony; and a 2008 conviction for aggravated assault, a Class C felony. The State introduced three exhibits at the sentencing hearing: the defendant's presentence report, which reflected the above convictions; certified copies of the 2008 convictions for robbery and attempted aggravated robbery; and certified copies of the four 2011 convictions.

The defendant, speaking to the court on his own behalf, raised the issue of the introduction of the 2011 convictions at the sentencing hearing, arguing that they should not

have been used to classify him as a Range III offender because they occurred after the date of the offense for which he was being currently sentenced. According to the defendant, he therefore had only four prior qualifying felony convictions and should be sentenced as a Range II offender. The trial court disagreed, noting that it was considering the four 2011 convictions solely for the purpose of establishing enhancement factor one, and said that it agreed with the State that the defendant was a Range III offender based on his number of prior qualifying convictions.

On appeal, the defendant argues that “[t]he only proof presented to the trial court consisted of the presentence report and certified copies of the Defendant’s prior convictions” and that “the trial court improperly considered the latter four convictions when it calculated that he should be sentenced as a Persistent Offender.” We respectfully disagree. The trial court clearly stated at the sentencing hearing that it was not considering the 2011 convictions in its determination that the defendant was a Range III offender. As for the defendant’s implied argument that the trial court could consider only the four 2008 convictions for which the State introduced certified copies of the judgment forms, we have previously rejected a similar argument by a different defendant. See State v. James Alton Campbell a/k/a Jamie Campbell, No. M2006-01817-CCA-R3-CD, 2007 WL 3275491, at *6 (Tenn. Crim. App. Nov. 7, 2007), perm. app. denied (Tenn. Apr. 14, 2008) (concluding that certified copies of prior judgments are not required to support defendant’s offender classification and that the court may take judicial notice of information in a presentence report). We conclude, therefore, that the defendant is not entitled to relief on the basis of this issue.

CONCLUSION

Based on the foregoing authorities and reasoning, we affirm the judgment of the trial court.

ALAN E. GLENN, JUDGE