

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
February 14, 2023 Session

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Clerk of the
Appellate Courts

STATE OF TENNESSEE v. STEVEN LAMONT ANDERSON

**Appeal from the Criminal Court for Sumner County
No. 2019-CR-345 Dee David Gay, Judge**

No. M2022-00262-CCA-R3-CD

A Sumner County jury convicted the defendant, Steven Lamont Anderson, of unlawful possession of a firearm after being convicted of a felony involving violence and unlawful possession of a handgun by a convicted felon, for which he received an agreed-upon sentence of twelve years in confinement. On appeal, the defendant contends the evidence presented at trial was insufficient to support his convictions. The defendant also argues the trial court erred in denying his motion to suppress and in sentencing the defendant as a Range II offender. After reviewing the record and considering the applicable law, we affirm the judgments of the trial court.

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

J. ROSS DYER, J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN and TOM GREENHOLTZ, JJ., joined.

Michael Pellegrin and John Pellegrin (at motion for new trial and on appeal), Gallatin, Tennessee, and Cole D. Rogers (at trial), Nashville, Tennessee, for the appellant, Steven Lamont Anderson.

Jonathan Skrmetti, Attorney General and Reporter; Richard D. Douglas, Senior Assistant Attorney General; Ray Whitley, District Attorney General; and C. Ronald Blanton, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Facts and Procedural History

This case relates to the January 9, 2019 search of the defendant's residence pursuant to a search warrant. The search uncovered firearms and ammunition, and the defendant, who had previously been convicted of two felonies, was arrested. The defendant subsequently filed a motion to suppress the evidence seized from his residence, and the trial court conducted a pre-trial hearing on July 28, 2021.

I. Motion to Suppress

In his motion to suppress, the defendant argued that, although the evidence was seized pursuant to a search warrant, the search warrant failed "to establish the necessary probable cause to make it a lawful search." Specifically, the defendant argued the search warrant relied on the testimony of a juvenile whose reliability should have been established prior to the search warrant's procurement. No evidence was presented at the hearing, and following argument, the trial court denied the defendant's motion to suppress the evidence seized from his residence, finding the juvenile witness's statement to the police was "about as reliable and trustworthy as it gets." The defendant then proceeded to trial.

II. Trial

The evidence produced at trial showed on January 6, 2019, Investigator Jody Starks with the Gallatin Police Department's Criminal Investigations Division received information concerning items the defendant may have in his home that were a violation of the law, including multiple firearms. Investigator Starks began an investigation into the defendant's background and discovered the defendant had two prior felony convictions. Investigator Starks then obtained a search warrant for 1092 Campbell Avenue, which he confirmed as the defendant's residence through the testimony of a witness as well as through driver's license and vehicle registration records. The search warrant was executed on January 9, 2019.

Once inside the residence, Investigator Starks was moving an ottoman in the living room to look under the couch and noticed that the ottoman seemed unusually heavy. When he inspected it, Investigator Starks discovered a Glock 22 handgun with two magazines, a 5.56 Stag Arms semi-automatic rifle with a laser scope, an SKS 7.62 assault rifle, and a 12-gauge shotgun with a pistol grip and extendable stock. He also recovered a child's Elmo suitcase that contained ammunition, extra magazines, and gloves. Behind a faux fireplace in the master bedroom, Investigator Starks discovered four magazines for the rifles he had recovered as well as another pair of gloves.

Following his arrest, the defendant spoke with Investigator Starks and confirmed that he lived at 1092 Campbell Avenue. When Investigator Starks mentioned that he found the weapons inside an ottoman, the defendant stated that "they should have been in his

closet in his bedroom and that he didn't know how they got hidden inside that piece of furniture.”

Additionally, two certified judgments of conviction were entered as exhibits without objection. The documents reflected the defendant's prior convictions for aggravated assault and statutory rape in Davidson County on July 10, 1997.

Following deliberations, the jury found the defendant guilty of unlawful possession of a firearm after being convicted of a felony involving violence and unlawful possession of a handgun by a convicted felon, and the defendant subsequently agreed to an effective sentence of twelve years in confinement as a Range II offender. The defendant filed a motion for new trial which the trial court denied.¹ This timely appeal filed.

Analysis

On appeal, the defendant argues the evidence presented at trial was insufficient to support his convictions. He also argues the trial court erred in denying his motion to suppress and in sentencing him as a Range II offender. The State contends the evidence is sufficient, the trial court properly denied the motion to suppress, and the defendant has waived his challenge to his classification as a Range II offender.

I. Motion to Suppress

The defendant challenges the trial court's denial of his motion to suppress the firearms and ammunition found in his residence during the execution of the search warrant. Specifically, the defendant argues the trial court improperly accepted the information contained in the search warrant as reliable without conducting surveillance or other verification that the defendant resided at the address. Additionally, because the crime listed in the search warrant was rape, the defendant argues the affidavit failed to “establish any nexus between the particular listed evidence to be searched for and seized.” If there is a nexus, the defendant argues the description of the weapons listed is too broad and general. The State contends that trial court correctly denied the motion to suppress and that the defendant has waived his remaining arguments for failing to raise them at the suppression hearing.

The challenged affidavit, which was prepared and signed by Investigator Starks on January 9, 2019, stated the following:

¹ The motion for new trial hearing transcript is not in the appellate record.

On January 8, 2019, the Gallatin Police Department received a DCS referral regarding a sexual assault (rape) whereupon the victim was a 16[-]year[-]old juvenile. The juvenile reported to a school counselor that she was raped by her “Uncle Steve” on Sunday, January 6, 2019, at his house. The house in question is located at 1092 Campbell Ave. in Gallatin, TN 37066. This is located in the county of Sumner. The juvenile has been identified as L.C.² Her “Uncle Steve” was identified as [the defendant] and he is the resident at 1092 Campbell Ave. in Gallatin, TN 37066. . . . Later during the investigation this affiant and the child’s grandfather, [] placed a controlled call to [the defendant]. [The defendant] did admit that L.C. was there at his home and his wife was not there. [The defendant] did admit he took her shopping that day. . . .

After the rape L.C. stated that [the defendant] showed her a large amount of money that he had in \$20 bills that he retrieved from a bedside table. He also showed her three guns that he had in his closet. She described these guns to me further and said that one of them was a black, small handgun. The other two guns were long guns and one of them was black and had a scope on it. She reported that he told her that one was a “pro-gun” and one was a “street” gun. She did not see where in the closet he retrieved the guns from but did describe in detail that the closet was a large, walk-in closet with “up to a thousand DVD’s stored on shelves or racks at the top of the closet. L.C. further described [the defendant’s] bed as large and having two posts up at the headboard and there was blue blankets/sheets or a blue comforter on the bed. She described that his wife had a jewelry bar or rack on her side of the bedroom whereupon she put her bracelets.

L.C.’s mother showed this affiant that the two parties had communicated via text messages without her knowledge. . . . He had texted L.C. beginning in October 2017 approximately 14 times. There were other dates on her cell phone indicating that messages had been sent or received but the text(s) were gone and could not be seen.

Further investigation revealed that [the defendant] has a criminal record to include the following:

1. 1996 Conviction Davidson County, TN: Statutory Rape Tenn. Code Ann. 39-13-506
2. 1996 Conviction Davidson County, TN: Aggravated Assault Tenn. Code Ann. 39-13-102

² It is the policy of this Court to refer to victims of sexual abuse by their initials.

Suppression issues on appeal are subject to a well-established standard of review. Appellate courts are bound by a trial court's findings of facts determined after a suppression hearing unless the evidence preponderates against them. *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996); *State v. Matthew T. McGee*, No. E2011-01756-CCA-R3-CD, 2012 WL 4017776, at *2 (Tenn. Crim. App. Sept. 13, 2012). "Questions 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." *Odom*, 928 S.W.2d at 23. Appellate courts should consider the entire record, affording the prevailing party "the strongest legitimate view of the evidence and all reasonable inferences drawn from that evidence." *McGee*, 2012 WL 4017776, at *2 (citing *State v. Hicks*, 55 S.W.3d 515, 521 (Tenn. 2001)); see also *State v. Sanders*, 452 S.W.3d 300, 306 (Tenn. 2014). However, applying the law to the factual findings of the trial court is a question of law, which is reviewed *de novo* on appeal. *State v. Yeorgan*, 958 S.W.2d 626, 629 (Tenn. 1997). "[I]n evaluating the correctness of a trial court's ruling on a pretrial motion to suppress, appellate courts may consider the proof adduced both at the suppression hearing and at trial." *State v. Henning*, 975 S.W.2d 290, 299 (Tenn. 1998).

Under both the Tennessee and United States Constitutions, no search warrant may be issued except upon probable cause, which has been defined as "a reasonable ground for suspicion, supported by circumstances indicative of an illegal act." *Id.* at 294. Tennessee requires a written and sworn affidavit, "containing allegations from which the magistrate can determine whether probable cause exists," as "an indispensable prerequisite to the issuance of a search warrant." *Id.* Under the totality-of-the-circumstances test, the issuing magistrate is required to "make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." *State v. Tuttle*, 515 S.W.3d 282, 303-04 (Tenn. 2017) (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)) (internal quotations omitted).

"[U]nder the totality-of-the-circumstances analysis, the informant's basis of knowledge and veracity or credibility remain highly relevant considerations. Rather than separate and independent considerations, they 'should [now] be understood simply as closely intertwined issues that may usefully illuminate the commonsense, practical question whether there is 'probable cause' to believe that contraband or evidence is located in a particular place.'" *Tuttle*, 515 S.W.3d at 308 (Tenn. 2017) (quoting *Gates*, 462 U.S. at 230 (1983)). Citizen informants have a presumption of reliability, so long as the affidavit identifies the source of information as a citizen informant. *Id.* at 301. Citizen informants are either "victims of the crime or have otherwise seen some portion of it." *State v. Melson*, 638 S.W.2d 342, 354 (Tenn. 1982) (internal citations and quotations omitted). Here, L.C.

was clearly a citizen informant when she provided her statement to Investigator Starks. She reported that the defendant sexually assaulted her in his home and threatened her using several firearms that were stored in his bedroom closet. Therefore, the information provided in the affidavit is presumed to be reliable, and the trial court did not err in denying the defendant's motion to suppress.

The defendant also argues that, because the crime listed in the search warrant is rape, the affidavit fails to establish a nexus between the evidence to be searched for and the firearms seized. He also argues the description of the firearms in the search warrant was too broad and general. The State contends the defendant has waived these arguments, and we agree. In the defendant's motion to suppress, he raised only the issue of L.C.'s unreliable testimony. It is well-settled that a defendant cannot change theories for relief from the trial court to the appellate court. *See State v. Dooley*, 29 S.W.3d 542, 549 (Tenn. Crim. App. 2000). Furthermore, at the motion to suppress hearing, the defendant explicitly stated that he would not contest the seizure of the weapons if the trial court found the search warrant to be valid. The defendant is not entitled to relief on this issue.

II. Sufficiency

The defendant asserts the evidence presented at trial was insufficient to support his convictions. Specifically, he argues law enforcement failed to conduct surveillance prior to executing the search warrant in order to confirm the residence in question was the defendant's. He also argues the State's evidence that he constructively possessed the firearms consisted only of "conclusory and imprecise testimony from Investigator Stark[s]." The State contends the evidence is sufficient to sustain the defendant's convictions.

When the sufficiency of the 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. *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 has stated the following 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, 405 S.W.2d 768, 771 (Tenn. 1966) (citing *Carroll v. State*, 370 S.W.2d 523 (Tenn. 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).

As charged in count one, “[a] person commits an offense who unlawfully possesses a firearm” and “[h]as been convicted of a felony crime of violence, an attempt to commit a felony crime of violence, or a felony involving use of a deadly weapon[.]” Tenn. Code Ann. § 39-17-1307(b)(1)(A). Aggravated assault is a “crime of violence.” *Id.* §39-17-1301(3). Unlawful possession of a firearm by a convicted felon of a crime of violence is a Class B felony. *Id.* § 39-17-1307(b)(2). As charged in count two, it is a Class E felony for a convicted felon to possess a handgun. Tenn. Code Ann. § 39-17-1307(c)(1).

Possession may be actual, constructive, or joint. *State v. Shaw*, 37 S.W.3d 900, 903 (Tenn. 2001); *Key v. State*, 563 S.W.2d 184, 188 (Tenn. 1978). *see also State v. Bigsby*, 40 S.W.3d 87, 90 (Tenn. Crim. App. 2000). A person constructively possesses an item when he or she has “the power and intention at a given time to exercise dominion and control over [the contraband] either directly or through others.” *Shaw*, 37 S.W.3d at 903 (quoting *State v. Patterson*, 966 S.W.2d 435, 445 (Tenn. Crim. App. 1997)). With respect to a firearm, “constructive or joint possession may occur only where the personally unarmed participant has the power and ability to exercise control over the firearm.” *Key*, 563 S.W.2d at 188.

Here, certified judgments of the defendant’s prior convictions were entered into evidence without objection, which included felony convictions of aggravated assault and statutory rape. With respect to proof that the defendant constructively possessed the firearms, the State presented testimony at trial that Investigator Starks used both driver’s license and vehicle registration databases to verify that the defendant resided at the address listed on the search warrant. Investigator Starks also spoke with a witness who confirmed it was the defendant’s residence. Once inside, Investigator Starks located two rifles, a handgun, and a shotgun hidden inside an ottoman in the living room as well as multiple

magazines and rounds of ammunition. After his arrest, the defendant spoke with Investigator Starks and conceded that he resided at the address on the search warrant. He also stated that the weapons “should have been in his closet in his bedroom” and not in the ottoman. Considering this testimony in the light most favorable to the State, there was ample evidence at trial to show the defendant constructively possessed the weapons and therefore support the jury’s verdicts. Accordingly, the defendant is not entitled to relief on this issue.

III. Sentencing

The defendant argues the trial court erred in sentencing him as a Range II offender. Specifically, the defendant asserts the trial court failed to “create any record justifying the sentencing imposed;” the State’s notice of intent to seek enhanced punishment was defective; the State failed to enter a certified copy of the federal conviction listed in the amended notice of intent to seek enhanced punishment; the federal conviction cannot be used to enhance the unlawful possession of a firearm by a convicted felon conviction; and the defendant was denied a sentencing hearing. The State contends the defendant has waived any challenge to his classification as a Range II offender. We agree.

When an accused challenges the length and manner of service of a sentence, this Court reviews the trial court’s sentencing determination under an abuse of discretion standard accompanied by a presumption of reasonableness. *State v. Bise*, 380 S.W.3d 682, 707 (Tenn. 2012). This Court will uphold the trial court’s sentencing decision “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. Moreover, under such circumstances, appellate courts may not disturb the sentence even if we had preferred a different result. *See State v. Carter*, 254 S.W.3d 335, 346 (Tenn. 2008). The party challenging the sentence imposed by the trial court has the burden of establishing that the sentence is erroneous. Tenn. Code Ann. § 40-35-401, Sentencing Comm’n Cmts.; *State v. Ashby*, 823 S.W.2d 166, 169 (Tenn. 1991).

At the defendant’s sentencing hearing, the trial court paused the proceedings to allow the State and the defendant time to discuss a possible agreed sentence. When the parties returned to court, they announced that the defendant had agreed to be sentenced as a Range II, multiple offender to twelve years for unlawful possession of a firearm after being convicted of a felony involving violence, a Class B felony, and two years for unlawful possession of a handgun by a convicted felon, a Class E felony, to run concurrently. After the State announced the sentencing agreement, the trial court asked if

the defendant “under[stood his sentence],” and the defendant responded, “Yes, Your Honor.”³

Although the defendant contends the trial court erred in sentencing him as a Range II offender, our supreme court has held that “a knowing and voluntary guilty plea waives any irregularity as to offender classification or release eligibility.” *Hicks v. State*, 945 S.W.2d 706, 709 (Tenn. 1997). Moreover, this Court previously held that a sentencing agreement made in lieu of a full sentencing hearing is tantamount to a plea agreement. *See State v. Melvin Waters*, No. M2002-01297-CCA-RM-CD, 2003 WL 141087, at *3 (Tenn. Crim. App. Jan. 16, 2003) (holding the defendant waived any irregularity as to offender classification when he entered into a sentencing agreement in lieu of a sentencing hearing), *perm. app. denied* (Tenn. May 12, 2003). The record shows the defendant knowingly and voluntarily entered into the sentencing agreement, and therefore, he is not entitled to relief on this issue.

Conclusion

For the aforementioned reasons, the judgments of the trial court are affirmed.

J. ROSS DYER, JUDGE

³ During the hearing, there were discussions about procuring the transcript of a pre-trial hearing to clarify the original plea offer the defendant received from the State. However, that transcript is not included in the appellate record.