IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs December 17, 2008

STATE OF TENNESSEE v. WILLIAM PAUL WATSON

Direct Appeal from the Criminal Court for Knox County
No. 85877 Mary Beth Leibowitz, Judge

No. E2008-00306-CCA-R3-CD - Filed July 2, 2009

A Knox County Criminal Court jury convicted the appellant, William Paul Watson, of one count of sale and one count of delivery of less than .5 grams of cocaine within one thousand feet of a public park, Class B felonies. The trial court merged the convictions, and the appellant was sentenced to fifteen years as a multiple offender and fined ten thousand dollars. On appeal, the appellant challenges the sufficiency of the evidence. After reviewing the record, we affirm the appellant's conviction.

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

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and THOMAS T. WOODALL, J., joined.

Russell T. Greene, Knoxville, Tennessee, for the appellant, William Paul Watson.

Robert E. Cooper, Jr., Attorney General and Reporter; Sophia S. Lee, Assistant Attorney General; Randall E. Nichols, District Attorney General; and Kevin Allen, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

At trial, Officer Michael Price of the Knoxville Police Department testified that he was working undercover with Officer Anthony Barnes when the appellant sold him two rocks of crack cocaine on May 18, 2006, around 9:40 p.m. The officers were in an unmarked Toyota Camry in an area known for illegal drug activity when they saw the appellant. He was wearing a hooded sweatshirt and dark pants. The appellant yelled "yo boy" twice and waved. Officer Barnes recognized the appellant and told Officer Price that they should approach him. Officer Barnes, who was driving, wore a hood pulled over his head and a baseball cap over the hood. Officer Price rode in the front passenger seat. As they approached the appellant, Officer Price rolled down his window, and the appellant asked what he wanted. Officer Price replied that he would "like forty," the

common slang term for forty dollars worth of crack cocaine. The appellant asked the officers to let him get into the car so he could take them "to where it's at." When the officers refused, the appellant instructed them to pull into the parking lot of a nearby church. Officer Price testified that two minutes after they arrived in the church parking lot, the appellant approached the passenger side of the car. Officer Price gave the appellant forty dollars, and the appellant handed him two small rocks of crack cocaine.

Officer Barnes corroborated Officer Price's testimony. He explained that he adjusted the hood on his head to prevent the appellant from seeing his face during the transaction because he was certain that the appellant would not make the sale if the appellant recognized him. Officer Barnes testified that he photographed and field tested the two rocks received from the appellant and that the rocks tested positive for cocaine. He forwarded the rocks to the Tennessee Bureau of Investigation (TBI) for further testing. Officer Barnes measured the distance between a nearby public park and the place in the church parking lot where the appellant sold the cocaine. He determined that the distance was seven hundred two feet.

Special Agent Clayton Hall, a forensic scientist with the TBI, testified regarding the tests he performed on the two rocks. He confirmed that the rocks were crack cocaine and that they contained .1 gram of cocaine base.

II. Analysis

On appeal, the appellant contends that the evidence is insufficient to support his conviction. Specifically, he challenges the officers' identification of him as the person from whom they purchased the cocaine. He contends that the identification is unreliable because the sale occurred in a dark lot and the person who sold the cocaine wore a dark hooded sweatshirt. The appellant asserts that he knew Officer Barnes was with the Knoxville Police Department, and he would have recognized the officer. The State contends that the appeal should be dismissed because the appellant's motion for new trial and notice of appeal were not timely filed. The State also argues that the evidence is sufficient to support the appellant's conviction.

A. Timeliness of Motion for New Trial and Notice of Appeal

Initially, we will address the State's argument regarding the untimeliness of the appellant's motion for new trial and notice of appeal. The record reflects that the appellant was sentenced on December 12, 2007, and that the judgment of conviction was entered the same day. At the conclusion of the sentencing hearing, defense counsel requested a hearing date for a motion for new trial. The court set the date for February 1, 2008, and cautioned defense counsel to get his motion filed "right away."[1] The appellant's motion for new trial was not filed until the day of the hearing, February 1, 2008, fifty days after the appellant was sentenced. The trial court denied the motion on February 1, 2008, and the appellant filed a notice of appeal on February 11, 2008.

[1] On the judgment form, the court noted that the motion for new trial would be heard on February 1, 2008.

A motion for new trial must be made in writing or reduced to writing within thirty days of the "date the order of sentence is entered." Tenn. R. Crim. P. 33(b). This provision is mandatory, and the trial court has no authority to extend the time for filing. Tenn. R. Crim. P. 45(b); State v. Martin, 940 S.W.2d 567, 569 (Tenn. 1997). Because a trial court does not have jurisdiction to hear and determine the merits of an untimely motion for new trial, the trial court's "erroneous consideration [and] ruling on a motion for new trial not timely filed . . . does not validate the motion." Martin, 940 S.W.2d at 569 (citing State v. Dodson, 780 S.W.2d 778, 780 (Tenn. Crim. App. 1989)).

An untimely motion for new trial "not only results in the appellant losing the right to have a hearing on the motion, but it also deprives the appellant of the opportunity to argue on appeal any issues that were or should have been presented in the motion for new trial." Id. "If a motion for new trial is not timely filed, all issues are deemed waived except for sufficiency of evidence and sentencing." State v. Bough, 152 S.W.3d 453, 460 (Tenn. 2004) (citing Tenn. R. App. P. 3(e); Martin, 940 S.W.2d at 569). Moreover, a late-filed motion for new trial does not toll the time for filing a notice of appeal. Therefore, an untimely motion for new trial often will also result in an untimely notice of appeal. State v. Davis, 748 S.W.2d 206, 207 (Tenn. Crim. App. 1987).

The motion for new trial was filed beyond the thirty-day time limit mandated by Tennessee Rule of Criminal Procedure 33(b). As a result, the appellant's notice of appeal was also untimely. "[I]n all criminal cases the 'notice of appeal' document is not jurisdictional and the filing of such document may be waived in the interest of justice." Tenn. R. App. P. 4(a). In the interest of justice, we will waive the timely filing of the notice of appeal in this case in order to address the appellant's issue regarding the sufficiency of the evidence.

B. Sufficiency of the Evidence

When an appellant challenges the sufficiency of the convicting evidence, the standard for review by an appellate 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, 99 S. Ct. 2781, 2789 (1979); see also Tenn. R. App. P. 13(e). The State is entitled to the strongest legitimate view of the evidence and all reasonable or legitimate inferences which may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). Questions concerning the credibility of witnesses and the weight and value to be afforded the evidence, as well as all factual issues raised by the evidence, are resolved by the trier of fact. State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). This court will not reweigh or reevaluate the evidence, nor will this court substitute its inferences drawn from the circumstantial evidence for those inferences drawn by the jury. Id. Because a jury conviction removes the presumption of innocence with which a defendant is initially cloaked at trial and replaces it on appeal with one of guilt, a convicted defendant has the burden of demonstrating to this court that the evidence is insufficient. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

It is an offense for a person knowingly to deliver or knowingly to sell a controlled substance. Tenn. Code Ann. § 39-17-417(a)(2) and (3). Punishment for the offense is enhanced if the delivery or sale occurs within one thousand feet of a public park. Tenn. Code Ann. § 39-17-432(b)(1). In this case, Officer Barnes and Officer Price testified that they approached the appellant and that Officer Price told the appellant he wanted to purchase crack cocaine. Both officers identified the appellant as the person who delivered and sold the crack cocaine. Officer Barnes determined that the distance from the location of the sale to the public park was seven hundred two feet. Agent Hall confirmed that the white rocks the appellant sold the officers contained cocaine. The evidence is sufficient to support the appellant's conviction.

III. Conclusion

Upon review of the record, we affirm the judgment of the trial court.

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NORMA McGEE OGLE, JUDGE