IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

NOVEMBER SESSION, 1999

FILED

December 9, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,	*	
	*	**C.C.A. No. 03C01-9904-CR-00133**
Appellee,	*	
	*	**ROANE COUNTY**
vs.	*	
	*	**Hon. E. Eugene Eblen, Judge**
RALPH MOORE, JR.,	*	
	*	**(Disorderly Conduct)**
Appellant.	*	

For the Appellant:

Joe H. Walker
District Public Defender
P. O. Box 334
Harriman, TN 37748

Alfred L. Hathcock, Jr.
Susan Corea Fuller
Asst. District Public Defenders
P. O. Box 334
Harriman, TN 37748

For the Appellee:

Paul G. Summers
Attorney General and Reporter

Russell S. Baldwin
Assistant Attorney General
Criminal Justice Division
425 Fifth Avenue North
2d Floor, Cordell Hull Building
Nashville, TN 37243-0493

J. Scott McCluen
District Attorney General

William Russell,
Frank A. Harvey
Asst. District Attomeys General
P. O. Box 703
Kingston, TN 37763

OPINION FILED: _____

AFFIRMED

David G. Hayes, Judge

OPINION

The appellant, Ralph Moore, Jr., appeals the verdict of the Roane County Criminal Court finding him guilty of disorderly conduct, a Class C misdemeanor.[1] The trial court sentenced the appellant to thirty days unsupervised probation and imposed a twenty-five dollar fine. On appeal, the appellant challenges the sufficiency of the convicting evidence.

After review, we affirm the judgment of the trial court.

BACKGROUND

Around 5:30 a.m. on April 7, 1996, several officers of the Harriman Police Department responded to a "shots fired" call at 521 Sheldon Drive, the residence of the appellant. Just moments after the officers' arrival, the appellant, his wife, and Crystal Pressley drove in behind them. The officers explained the reason for their presence and the appellant informed the officers that no one was at home. The appellant further advised the officers that his house was locked and they were waiting for their daughter to arrive with the key. Finding nothing out of the ordinary, the officers departed the scene.

Approximately one hour later, the officers received a second report of "shots fired" at the Moore residence. Four officers arrived on this occasion, each in a separate vehicle. Two officers went to the door of the residence, and the appellant's son answered their knock. While two officers were talking with the appellant's son, the appellant, his wife, and Ms. Pressley again drove in behind the officers in the driveway. Mrs. Moore left the vehicle and approached the porch to speak with the officers.

At this point, the officers on the porch were distracted by a "ruckus" and "loud voices" between the appellant and Officers Terry Fink and Darren McBroom. The

[1]The appellant was originally indicted for disorderly conduct, resisting arrest, and two counts of simple assault. Prior to trial, the State dismissed the charges for resisting arrest and one count of assault. At trial, the jury acquitted the appellant of the remaining assault charge.

appellant became "very agitated" and began "talking in a high tone of voice." Officer McBroom testified that after explaining his return to the appellant, the appellant again stated that he was waiting for his daughter to return home. When McBroom suggested that they wait until she arrived, the appellant "became very belligerent [and] started yelling get off my F'ing property. If you don't have a warrant to be here, get off my F'ing property." He testified that the yelling was so loud that anyone in the area could have heard the appellant. The officers repeatedly requested that the appellant calm down and warned him that if he did not he would have to arrest him for disorderly conduct. In response, the appellant said, "I don't have to calm down. Get off my GD property or I'll sue you."

As Officer McBroom approached the appellant to arrest him, the appellant got into his vehicle and closed the door. Officers McBroom and Fink went to the vehicle, opened the door, told the appellant to exit the vehicle, and that he was under arrest. The appellant grabbed the steering wheel tightly. Officer McBroom reached into the vehicle to grab the appellant and the appellant began kicking wildly. Officer Fink then intervened and sprayed the appellant with a chemical agent. The officers removed the appellant from the vehicle. After removing him from the vehicle, the appellant began swinging his arms at the officers hitting both officers in the face. Officer McBroom testified that he only received some "discomfort" from the blow. Then, the appellant fell to the ground and the officers handcuffed the appellant. Although the officers on the porch could only understand portions of the yelling of the appellant, the officers saw the appellant get into his vehicle and observed his arrest.

The defense presented no proof. Following closing arguments and the trial court's instructions, the jury returned a verdict of guilty for disorderly conduct and acquitted the appellant on the assault charge.

SUFFICIENCY OF THE EVIDENCE

The sole challenge on appeal is the sufficiency of the convicting evidence. Tennessee Rule of Appellate Procedure 13(e) provides that findings of guilt "shall be set aside if the evidence is insufficient to support the finding by the trier of fact of

guilt beyond a reasonable doubt." See also Jackson v. Virginia, 443 U.S. 307, 317, 99 S.Ct. 2781, 2789 (1979). The jury conviction removes the presumption of innocence from the defendant and replaces it with one of guilt; thus, 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). Moreover, 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. Harris, 839 S.W.2d 54, 75 (Tenn. 1992), cert. denied, 507 U.S. 954, 113 S.Ct. 1368 (1993). This court may not reweigh or reevaluate the evidence. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). These principles are applicable to findings of guilt predicated upon direct evidence, circumstantial evidence, or a combination of both direct and circumstantial evidence. State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990).

The appellant argues that the evidence is insufficient to support the jury's finding that the noise was unreasonable and that this noise prevented the officers from conducting lawful activities. As charged in the indictment, the State was required to prove under Tenn. Code Ann. § 39-17-305(b) (1991) the following elements (1) that the defendant "ma[de] unreasonable noise which (2) prevent[ed] others from carrying on lawful activities." The evidence presented at trial demonstrated that the appellant was "very agitated," "talking in a high tone of voice," and "became very belligerent [and] started yelling get off my F'ing property." Moreover, the appellant does not contest the fact that he was yelling and cursing at the officers. The officers repeatedly attempted to calm down the appellant and warned him of his potential arrest. In response, the appellant continued, "I don't have to calm down. Get off my GD property or I'll sue you." When the officer approached the appellant to arrest him, the appellant got into his vehicle and closed the door. The appellant was kicking wildly causing the officers to use the chemical spray which still did not totally subdue the appellant as evidenced by his swinging at the officers.

Moreover, the proof established that the officers were prevented from conducting a thorough investigation regarding the second call to the residence for "shots fired." Thus, we conclude, that upon review of the evidence in the light most

favorable to the State, the proof adduced at trial was sufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt.

The judgment of the trial court is affirmed.

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DAVID G. HAYES, Judge

CONCUR:

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ALAN E. GLENN, Judge

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JOE H. WALKER, III, Special Judge