IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs December 20, 2022

**STATE OF TENNESSEE v. CARRIE JOANN HAMLIN**

**Appeal from the Circuit Court for McMinn County**
**No. 19-CR-54 Andrew Freiberg, Judge**

---

**No. E2022-00139-CCA-R3-CD**

---

The Defendant, Carrie Joann Hamlin, was convicted by a McMinn County Circuit Court jury of sale of a Schedule II controlled substance within 1000′ of a drug-free zone, a Class C felony, for which she is serving a nine-year sentence. *See* T.C.A. §§ 39-17-417(a)(3), (c)(2)(A) (2018) (subsequently amended) (sale of a controlled substance), 39-17-432 (2018) (subsequently amended) (Drug-Free Zone Act). On appeal, the Defendant contends that (1) the evidence is insufficient to support her conviction, (2) the trial court erred in declining to resentence her under the 2020 amendments to the Drug-Free Zone Act, and alternatively, (3) this court should remand her case to the trial court for resentencing under the 2022 amendments to the Drug-Free Zone Act. We affirm the judgment of the trial court.

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

ROBERT H. MONTGOMERY, JR., J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and TOM GREENHOLTZ, JJ., joined.

Chessia A. Cox (at motion for new trial and on appeal), Athens, Tennessee; and Wencke West (at trial and sentencing hearing), Cleveland, Tennessee, for the Appellant, Carrie Joann Hamlin.

Jonathan Skrmetti, Attorney General and Reporter; Garrett D. Ward, Assistant Attorney General; Stephen D. Crump, District Attorney General; Shari Tayloe, Assistant District Attorney General, for the appellee, State of Tennessee.

## OPINION

The Defendant's conviction relates to her sale of hydrocodone at her home to a confidential informant. The Defendant's home was within a drug-free zone.

At the trial, Etowah Police Detective Jim Shaw testified that Gary Bain had worked for the Etowah Police Department as a confidential informant. Detective Shaw said that Mr. Bain had been paid for his work, that Mr. Bain did not have pending criminal charges, and that Mr. Bain was not on any form of supervised release. Detective Shaw acknowledged that Mr. Bain had a prior felony conviction and that Mr. Bain had been released from probation at the time Mr. Bain worked as a confidential informant.

Detective Shaw testified that on May 16, 2018, he met with Mr. Bain about purchasing hydrocodone, which Mr. Bain had arranged the previous night. Detective Shaw said he searched Mr. Bain's car, conducted a pat-down search of Mr. Bain, placed a recording device in Mr. Bain's pocket, and gave Mr. Bain $50 to complete the drug transaction. Detective Shaw said he followed Mr. Bain at a distance and saw Mr. Bain go into a home. Detective Shaw said he parked, watched the home, and saw Mr. Bain leave about four minutes later. Detective Shaw said that he and Mr. Bain met afterward, that Detective Shaw received the drugs Mr. Bain had purchased, and that Detective Shaw paid Mr. Bain $100.

Detective Shaw identified an aerial map, which he agreed depicted the home he had seen Mr. Bain enter, and Etowah City School and the school's football field across the street. The map was received as an exhibit. Detective Shaw testified that he had measured the distance from the home to the school and the football field, that the football field was 74′ from the home's front porch, and that the school's fence was 173′ from the home. He said that school was in session on May 16, 2018, and that Mr. Bain had gone to the home "probably between 7:00 and 9:30 in the morning." Detective Shaw identified the drugs he received from Mr. Bain, which were received as an exhibit. Detective Shaw said that he had mistakenly written "four oxycodone" on a request for crime laboratory examination form but that he had correctly written "five hydrocodone" on the evidence bag in which he placed the drugs he received from Mr. Bain. Detective Shaw explained that he had completed the form before he "checked everything" and that he had received five, not four, pills from Mr. Bain. Detective Shaw said that before the controlled buy, he had thought Mr. Bain was going to be purchasing oxycodone. Detective Shaw agreed that he had written "five hydros" on the drop box log sheet.

Detective Shaw agreed that Mr. Bain had signed a contract to be a confidential informant and that the contract stated the money earned was taxable income. Detective Shaw said he told Mr. Bain that the money was taxable income.

Gary Bain testified that Detective Shaw asked him to work as a confidential informant for an investigation into drug dealing in a school zone. Mr. Bain said he had a 2012 assault conviction, for which he completed a probation sentence before he began working as a confidential informant. He later acknowledged that the conviction offense had been aggravated assault.

Mr. Bain testified that on a date he did not recall, he went to a home to purchase pills from a person he knew "through a friend of [his] niece's." He said that he called "Stephanie," who lived at the home, but that the Defendant answered the telephone. He said that he talked to the Defendant about purchasing pills and that the Defendant stated she could get him some hydrocodone.

Mr. Bain testified that the next morning, he met with Detective Shaw, who searched Mr. Bain and Mr. Bain's car and gave Mr. Bain a recording device and $50 for the drug purchase. Mr. Bain said he went to the Defendant's home around 8:00 or 9:00 a.m. The Defendant said he went to the home's door and waited until the Defendant opened it. He said he purchased five hydrocodone pills from the Defendant. Mr. Bain said he met with Detective Shaw afterward and gave him the drugs. Mr. Bain identified the voices of himself, the Defendant, and Detective Shaw on a recording, which was received as an exhibit and played for the jury. The recording is of low quality, and some of the conversation is indiscernible. Mr. Bain can be heard introducing himself and apologizing for coming to the home early in the day. Mr. Bain and the Defendant discussed his prior aggravated assault conviction. Mr. Bain can be heard making comments about "tak[ing] all of them," not having cell phone service "up on the mountain," and thinking "she's going to get rid of them" when the Defendant "didn't hear from" him. Mr. Bain can be heard thanking the Defendant at the end of their conversation.

Mr. Bain testified that during his conversation with the Defendant, he inquired if she could get more pills for him. He said she stated that she "would see what she could do." Mr. Bain identified the Defendant in the courtroom as the person from whom he purchased drugs.

Mr. Bain testified that he did not pay income tax on the money he earned for being a confidential informant. When asked about convictions for aggravated burglary and two counts of violating an order of protection, he said, "It was all one case," referring to his aggravated assault conviction. He stated that he did not have and had never had a "drug problem." When asked about the aggravated burglary conviction involving breaking into a home, threatening a woman with a pistol, and trying to steal her pills, he explained that the woman had locked him out of his home, that he poured her pills into the toilet, that she "pulled a gun on" him, and that he took the gun from her. He said he pleaded guilty in order to be released from jail and to be available to take care of his children. He said the theft charge related to the pills was dismissed.

Tennessee Bureau of Investigation (TBI) Special Agent Forensic Scientist Mollie Stanfill, an expert in forensic chemistry, testified that she analyzed the evidence submitted for testing in this case and determined it to be five hydrocodone pills, a Schedule II controlled substance. She noted that the request for crime laboratory examination form,

which the laboratory received with the evidence, incorrectly described the evidence as four oxycodone pills. She said she used part of one of the pills for her analysis and that the remaining pills were visually consistent with the pill she analyzed. She identified her report, which was received as an exhibit.

Agent Stanfill testified that a pill press could be used to make powders into pills. She agreed that the website drugs.com could be used to research the logo associated with a particular drug.

The Defendant elected not to offer proof. After receiving the evidence, the jury found the Defendant guilty of the charged offense of sale of hydrocodone in a drug-free zone.

At a sentencing hearing, the trial court found that the Defendant was convicted of a Class C felony but that the court was statutorily required to sentence her within the range for a Class B felony because the offense occurred in a drug-free zone. *See* T.C.A. §§ 39-17-417(a)(3), (c)(2)(A) (2018) (subsequently amended), 39-17-432 (2018) (subsequently amended). The court sentenced the Defendant to serve nine years. The court found that it was required by law to impose the sentence consecutively to the Defendant's three-year sentence in another case because she had been released on bail at the time she committed the present offense and was ultimately convicted of both offenses. *See id.* § 40-20-111(b) (2018); Tenn. R. Crim. P. 32(c)(3)(C). This appeal followed.

## I

## Sufficiency of the Evidence

The Defendant contends that the evidence is insufficient to support her conviction. She argues that the State failed to prove beyond a reasonable doubt her identity as the person who sold drugs to Mr. Bain, whom she claims was not a credible witness. The State counters that the evidence is sufficient. We agree with the State.

In determining the sufficiency of the evidence, the standard of review 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 State v. Vasques*, 221 S.W.3d 514, 521 (Tenn. 2007). The State is "afforded the strongest legitimate view of the evidence and all reasonable inferences" from that evidence. *Vasques*, 221 S.W.3d at 521. The appellate courts do not "reweigh or reevaluate the evidence," and questions regarding "the credibility of witnesses [and] the weight and value to be given the evidence . . . are resolved by the trier of fact." *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997); *see State v. Sheffield*, 676 S.W.2d 542, 547 (Tenn. 1984).

"A crime may be established by direct evidence, circumstantial evidence, or a combination of the two." *State v. Hall*, 976 S.W.2d 121, 140 (Tenn. 1998); *see State v. Sutton*, 166 S.W.3d 686, 691 (Tenn. 2005). "The standard of review 'is the same whether the conviction is based upon direct or circumstantial evidence.'" *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011) (quoting *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009)).

"Identity of the perpetrator is an essential element of any crime." *State v. Rice*, 184 S.W.3d 646, 662 (Tenn. 2006). Circumstantial evidence alone may be sufficient to establish the perpetrator's identity. *State v. Reid*, 91 S.W.3d 247, 277 (Tenn. 2002). The identity of the perpetrator is a question of fact for the jury to determine. *State v. Thomas*, 158 S.W.3d 361, 388 (Tenn. 2005), *abrogated on other grounds by State v. Miller*, 638 S.W.3d 136, 150 (Tenn. 2021). "The jury decides the weight to be given to circumstantial evidence, and '[t]he inferences to be drawn from such evidence, and the extent to which the circumstances are consistent with guilt[.]'" *Rice*, 184 S.W.3d at 662 (quoting *Marable v. State*, 313 S.W.2d 451, 457 (Tenn. 1958)).

At the time of the offense, the relevant statute provided, "It is an offense for a defendant to knowingly . . . [s]ell a controlled substance." T.C.A. § 39-17-417(a) (2018) (subsequently amended). Hydrocodone is a Schedule II controlled substance. *Id.* § 39-17-408(b)(1)(F) (Supp. 2017) (subsequently amended). Further, at the time of the offense,

> A violation of § 39-17-417, or a conspiracy to violate the section, that occurs on the grounds or facilities of any school or within one thousand feet (1000′) of the real property that comprises a public or private elementary school, middle school, [or] secondary school . . . shall be punished one (1) classification higher than is provided in § 39-17-417(b)-(i) for such violation.

*Id.* § 39-17-432(b)(1).

Viewed in the light most favorable to the State, the evidence reflects that Mr. Bain and the Defendant talked by telephone on the evening before the offense, arranging for Mr. Bain to go to the Defendant's home the next day to purchase drugs. Detective Shaw met with Mr. Bain, who was working as a confidential informant, searched Mr. Bain and his car, and provided Mr. Bain with a recording device and $50 to complete the transaction. Detective Shaw followed Mr. Bain and saw him go to the Defendant's home. Mr. Bain testified that he gave the Defendant $50 and received five pills, which he later gave to Detective Shaw. Mr. Bain identified the voices on the recording as his, the Defendant's, and Detective Shaw's voices. He identified the Defendant in the courtroom as the person from whom he bought the drugs. Detective Shaw testified that the Defendant's home was within 1000′ of Etowah City School. Agent Stanfill testified that she analyzed one-half of

one of the five pills she received as evidence and determined that it was hydrocodone, a Schedule II controlled substance. Based upon the visual consistency of the pills, she concluded that all five pills were hydrocodone.

The jury credited Mr. Bain's testimony that he purchased drugs from the Defendant and, specifically, as to his identification of her as the perpetrator. We may not invade the province of the jury as the trier of fact. *See Bland*, 958 S.W.2d at 659 (Tenn. 1997).

The evidence is sufficient to support the Defendant's conviction. She is not entitled to relief on this basis.

## II

## Sentencing

In related issues, the Defendant contends that she should be entitled to resentencing under the 2020 amendments to the Drug-Free Zone Act or, in the alternative, that her case should be remanded to the trial court for resentencing under the 2022 amendments to the Drug-Free Zone Act. The State counters that the 2020 amendments do not apply to the Defendant. The State further asserts that 2022 amendments to the Act are not applicable on appeal, although the Defendant may be able to seek relief in the trial court pursuant to the 2022 amendments after the conclusion of her appeal. We agree with the State.

The Defendant's offense occurred on May 16, 2018. The sentencing hearing was held on June 6, 2020, and the judgment was filed on June 11, 2020. An amended judgment was filed on October 14, 2020, adding the correction that the Defendant's mandatory minimum sentence length was eight years due to the offense's having occurred in a drug-free zone. At the time of the offense and sentencing, the Drug-Free Zone Act required that, upon her conviction, the Defendant in the present case must be punished with a sentence one classification higher than the offense was otherwise classified and must serve a mandatory minimum sentence of at least the minimum in the Defendant's range. *See* T.C.A. § 39-17-432 (2018) (subsequently amended). Amendments to the Drug-Free Zone Act became effective on September 1, 2020, and made the sentencing enhancements and mandatory minimum service requirements of Code section 39-17-432 permissive, rather than mandatory. *See id.* § 39-17-432 (Supp. 2020) (subsequently amended). The amendments also changed the area of a drug-free zone from within 1000′ to within 500′of a school or other statutorily designated area. *See id.* The Act was again amended, effective April 29, 2022, to permit offenders sentenced for an offense committed before September 1, 2020, to move the trial court for resentencing pursuant to the 2020 amendments to the Act making the sentence enhancements permissive, rather than mandatory. *See id*. § 39-17-432(h)(1) (Supp. 2022). The 2022 amendments specified facts and circumstances the

court may consider in determining whether to resentence the offender. *Id.* However, a sentence reduction is not required. *Id.* at (h)(4).

The Defendant has made various attempts to avail herself of the amendments to Code section 39-17-432. In her amended motion for a new trial, which was filed by successor counsel, she alleged that she had received the ineffective assistance of counsel from her trial counsel because counsel had failed to request a continuance of the sentencing hearing until after July 1, 2020, the date the Defendant alleged the 2020 amendments became effective. We note that the 2020 amendments became effective on September 1, 2020. In any event, in denying the motion for a new trial, the trial court found that trial counsel had not performed deficiently in failing to request a continuance because the 2020 amendments did not apply to the Defendant's case. The court also found that the Defendant could not establish prejudice because the court would not have granted a continuance in the absence of a basis for doing so.

In this court, the Defendant filed a Motion to Consider Post-Judgment Facts pursuant to Tennessee Rule of Appellate Procedure 14. The Defendant requested that this court consider the 2022 amendments to the Drug-Free Zone Act "in considering whether to grant the [Defendant's] request to remand the case back to the trial court" in order for the Defendant to request resentencing. The author of this opinion declined to rule on the Defendant's motion and reserved the ruling for the panel assigned to the case. In her brief, the Defendant has claimed that the trial court erred in denying the motion for a new trial because "the denial of a new trial and/or sentencing hearing . . . was contrary to the interests of justice in that the denial of a new trial and/or sentencing hearing deprived [the Defendant of] the ability to file a motion requesting to be resentenced" under the 2020 amendments to Code section 39-17-432. Alternatively, the Defendant asks this court to "consider new evidence . . . [and] remand this matter back to the trial court in accordance with [the 2022] changes in [Code section] 39-17-432 that would directly impact the [Defendant's] sentence."

The Compiler's Notes to Code section 40-35-432 plainly state that the 2020 amendments apply "to offenses committed on or after September 1, 2020." *See* T.C.A. § 40-35-432 (Supp. 2022) (Compiler's Notes). The relevant public act also specifies the Legislature's intent that the amendments apply prospectively. *See* 2020 Tenn. Pub. Acts Ch 803, § 12 ("This act shall take effect September 1, 2020, the public welfare requiring it, and applies to offenses committed on or after that date."). The Defendant's offense was committed before September 1, 2020. She was not entitled to be sentenced under the 2020 amendments. *See State v. Linville*, 647 S.W.3d 344, 346 n.2 (Tenn. 2022); *State v. James Clark McKenzie*, No. E2021-00445-CCA-R3-CD, 2022 WL 2256338, at *10 (Tenn. Crim. App. June 23, 2022), *perm. app. denied* (Tenn. Nov. 16, 2022).

The Defendant has not argued, notwithstanding the legislative language to the contrary regarding prospective application of the 2020 amendments, that the Criminal Savings Statute should apply. *See* T.C.A. § 39-11-112 (2018) (providing that if a criminal statute is amended to provide for a lesser penalty, a defendant must be afforded the benefit of the subsequent statute at the time of sentencing). Our supreme court has said that generally, a defendant must be sentenced under the statute which was in effect on the date of the offense. *State v. Keese*, 691 S.W.3d 75, 82 (Tenn. 2019). Further, the Criminal Savings Statute only applies if a defendant is sentenced after the effective date of the subsequent statute. *Keese*, 691 S.W.3d at 83-84. Panels of this court have rejected the contention that the Criminal Savings Statute requires a defendant who committed a drug-free zone offense before September 1, 2020, to be sentenced under the 2020 Amendments. *See James Clark McKenzie*, 2022 WL 2256338, at *10; *State v. Justin Antonio McDowell*, No. E2020-01641-CCA-R3-CD, 2022 WL 1115577, at *20 (Tenn. Crim. App. Apr. 14, 2022), *perm. app. denied* (Tenn. Oct. 4, 2022); *see also State v. Cauthern*, 967 S.W.2d 726, 735 (Tenn. 1998) (concluding that a specific statutory enabling provision which clearly stated the statute was to be applied on or after a specified date was controlling, as a matter of statutory construction).

To the extent that the Defendant argues the trial court should have granted her motion for a new trial to permit resentencing under the 2020 amendments, she has failed to show that the court erred in denying the motion. She is not entitled to relief on this basis.

We turn to the Defendant's argument in the alternative that this court should remand her case to the trial court for resentencing pursuant to the 2022 amendments to the Act and her related Motion to Consider Post-Judgment Facts. As we have stated, the 2022 amendments did not become effective until the Defendant's appeal was pending in this court. The 2022 amendments provide, in pertinent part:

> Notwithstanding subsection (d) or (e) or any other law to the contrary, the court that imposed a sentence for an offense committed under this section that occurred prior to September 1, 2020, may, upon motion of the defendant or the district attorney general or the court's own motion, resentence the defendant pursuant to subsections (a)-(g).

T.C.A. § 39-17-432(h)(1) (Supp. 2022).

The 2022 amendments plainly state that a motion for resentencing is to be directed to "the court that imposed a sentence." *Id.* at (h)(1). The amendments provide for such motion to be initiated by the defendant, the District Attorney General, or the court that imposed the sentence. *Id.* Nothing in the amendments contemplates such motion to be initiated at the behest of this court. *See id.* The jurisdiction of this court is "appellate only." *Id.* § 16-5-108(a)(1) (2021); *see State v. Comer*, 278 S.W.3d 758, 761 (Tenn. Crim. App.

2008). We conclude that we are without statutory authority to compel the trial court, the court which originally sentenced the Defendant, to consider whether resentencing is appropriate pursuant to the 2022 amendments. To the extent that the Defendant seeks resentencing, the power to file such a motion resides with her once this appeal is no longer pending. She is not entitled to relief from this court on this basis.

Finally, we address the Defendant's pending Motion to Consider Post-Judgment Facts. Tennessee Rule of Appellate Procedure 14 provides, in pertinent part:

> While neither controlling nor fully measuring the court's discretion, consideration generally will extend only to those facts, capable of ready demonstration, affecting the positions of the parties or the subject matter of the action such as mootness, bankruptcy, divorce, death, other judgments or proceedings, relief from the judgment requested or granted in the trial court, and other similar matters.

In the context of the present case, the 2022 statutory amendment is law of which this court is aware. As such, it is not in the nature of a post-judgment fact. The motion is denied.

In consideration of the foregoing and the record as a whole, the judgment of the trial court is affirmed.

_____
ROBERT H. MONTGOMERY, JR., JUDGE