IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
August 8, 2006 Session

STATE OF TENNESSEE v. RONALD S. STRICK

Appeal from the Criminal Court for Davidson County
No. 2002-D-2005 Seth Norman, Judge

No. M2005-01990-CCA-R3-CD - Filed February 12, 2007

The defendant, Ronald S. Strick, is aggrieved of his convictions of theft of property under $500, false imprisonment, and extortion in connection with a "brawl" at a nightclub where he was supervising his security company's employees. On appeal, he challenges the sufficiency of the convicting evidence, the introduction of the victim's property that was the subject of the theft conviction and an officer's testimony about that property, and the dual verdicts for theft and extortion; he also argues that prosecutorial misconduct in failing to honor an agreement never presented to the court requires dismissal of the charges. We affirm.

Tenn. R. App. P. 3; Judgments of the Criminal Court are Affirmed.

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which NORMA MCGEE OGLE and J.C. MCLIN, JJ., joined.

Jefre S. Goldtrap, Nashville, Tennessee, for the Appellant, Ronald S. Strick.

Robert E. Cooper, Jr., Attorney General & Reporter; Elizabeth B. Marney, Senior Counsel Criminal Justice Division; Victor S. Johnson, III, District Attorney General; and Scott McMurtry, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

On the evening of February 10, 2002, John W. McPherson[1] visited a Nashville nightclub known as Johnny Jackson's Soul Satisfaction. Mr. McPherson frequented the establishment on a monthly basis, and on February 10, he arrived alone at 11:00 p.m. and socialized with people he knew until 1:30 a.m. when he left to go home. At trial, Mr. McPherson testified that while walking toward his car, he noticed a "scuffle outside," involving "three or four customers and maybe six security guards." Because he became concerned that the scuffle was escalating into a

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[1] The indictment and the trial transcripts differ in the spelling of the victim's last name. We rely on the indictment's identification of the victim as John W. McPherson.

violent confrontation, Mr. McPherson reached inside his pocket, pulled out his digital camera, and took two photographs. As Mr. McPherson was leaving the scene, Michael Smithson[2] stopped him and inquired if he had been taking photographs. Mr. McPherson denied taking photographs because, by that time, he "had an idea that [Smithson] was going to take [his] camera." Smithson grabbed Mr. McPherson's left arm and ordered him to wait.

Mr. McPherson testified that the defendant approached him and also inquired if he had been taking pictures. Mr. McPherson again denied he had done so, at which point the men turned Mr. McPherson around and handcuffed him. The men demanded Mr. McPherson's camera, and when Mr. McPherson did not cooperate, "they started talking between themselves[,] and they said hey, wasn't this one of the guys [who] was in the fight." Mr. McPherson testified that he was terrified by the men, previously unknown to him, who were wearing tee shirts with the logo "Antel" on the back.[3] Mr. McPherson recalled that the defendant remarked to Smithson that Mr. McPherson was one of the men involved in the fight, and the defendant suggested, "Let's give him to Metro." To placate his captors, Mr. McPherson offered to turn over to them the flash ram memory disk from his digital camera. The men took the disk, and Mr. McPherson ultimately recovered it from one of the assistant district attorneys assigned to the case at that time. Mr. McPherson was able to identify the disk because, although the photographs of the scuffle had been deleted, the remaining photographs he had taken were intact.

At trial, Mr. McPherson estimated that the replacement value of the disk, as of 2002, was $630 and would be "much less" in 2005.

On cross-examination, Mr. McPherson testified that he remained in handcuffs for approximately 10 minutes, after which the defendant removed the handcuffs. Mr. McPherson admitted that during the encounter, Davidson County Metro police officers were standing approximately 20 yards from his position. Mr. McPherson, however, never summoned the officers for help, and he did not "swear out" a warrant for the arrest of Smithson and the defendant until March 11, after he was unable to get the defendant to return the camera disk. Mr. McPherson denied that he was inebriated or had been drinking the evening of February 10.

The State's second and final witness was Carlton Drumwright, former Davidson County Assistant Attorney General. He was originally assigned to the defendant's case. He testified that he had a conversation with a representative of one of the assailants, after which a digital camera disk was "left in the district attorney's office" and came into his possession. Mr. Drumwright later spoke with the defendant and examined the contents of the disk; he did not find any images of the scuffle, although he recalled one image "that was reportedly from the night in question."

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[2] Smithson and the defendant were jointly tried. The jury found Smithson not guilty of the charged offenses.

[3] A defense witness, James Hicks, who testified for co-defendant Smithson identified the security company working at Johnny Jackson's as Antel Security, and Hicks said that the defendant owned the company.

Co-defendant Smithson and the defendant testified in their own defense and offered the testimony of James Hicks, Samuel Sawyers, and Mark Yarbrough. Mr. Hicks was checking patron identifications the evening of February 10. He testified that he personally observed Mr. McPherson drinking and "carrying around Heineken bottles." Mr. Hicks said he went outside the club and witnessed the altercation. He spotted co-defendant Smithson across the street, and Mr. Hicks testified that he never saw any involvement between Smithson and McPherson. Smithson and Hicks were roommates in the Army and had remained close friends.

Samuel Sawyers was working February 10 as a security guard at Johnny Jackson's. He witnessed an altercation that started on the main dance floor and later moved outside the club. Mr. Sawyers was standing outside when he spotted Mr. McPherson walking toward the club's doors. Mr. Sawyers stopped Mr. McPherson and advised him that he could not enter the club. Mr. Sawyers testified that Mr McPherson "stuck his hands in his pockets, real quick." Mr. Sawyers, wanting to ensure that no weapon was involved, asked Mr. McPherson to remove his hands from his pockets. Mr. Sawyers testified that when Mr. McPherson refused to comply, Mr. Sawyers "put him in handcuffs." Mr. Sawyers described Mr. McPherson as argumentative and disorderly and said Mr. McPherson had obviously been drinking. When Mr. McPherson became calm and cooperative, the handcuffs were removed.

Mr. Sawyers testified that co-defendant Smithson had no involvement in that encounter with Mr. McPherson. Mr. Sawyers also recalled that Mr. McPherson had a camera in his possession when he approached the club's doors. Mr. Sawyers advised that cameras were not allowed in the club, at which point Mr. McPherson offered to surrender the memory card to enter the club. Mr. Sawyers denied threatening Mr. McPherson, but he did tell Mr. McPherson that "[he] would turn him over if he wouldn't calm down and talk to [Mr. Sawyers] civilly."

According to Mr. Sawyers, the defendant approached after Mr. McPherson was handcuffed, and Mr. Sawyers informed the defendant of Mr. McPherson's behavior. Mr. Sawyers searched Mr. McPherson and found no weapons, and Mr. McPherson again sought entry to the club. Mr. Sawyers testified that the defendant then told Mr. McPherson "that the only way that he could go into the club was to leave the camera out." The men quibbled, and Mr. McPherson finally removed the memory disk from the camera and gave it to the defendant. Mr. Sawyers uncuffed Mr. McPherson who was then allowed to enter the club.

On cross-examination, the State established that when Mr. Sawyers testified at the preliminary hearing in June 2002, he never mentioned that he was the person who handcuffed Mr. McPherson, never related that he searched Mr. McPherson for weapons, and never testified that Mr. McPherson went back inside the club.

Mark Yarbrough, the former club manager, was working February 10. He testified that an altercation started inside the club, and an individual had to be escorted outside. That altercation sparked a larger altercation in the club's hallway "that spilled out in the street and involved several individuals parents [who] happened to be in the club that same night." His only

recollection of seeing Mr. McPherson was after the fight was stopped and people left the scene. He testified that the club owner and Mr. McPherson approached him, and the owner said that Mr. McPherson "was involved in a separate altercation outside" and wanted to speak about the matter. Mr. Yarbrough did not witness any such altercation involving Mr. McPherson, but he testified that co-defendant Smithson could not have been involved because he was in close proximity to Smithson the entire time.

Regarding Mr. McPherson's sobriety that evening, Mr. Yarbrough testified that he escorted Mr. McPherson to the club's office to discuss the problem. He described Mr. McPherson as "visibly, obviously intoxicated" and difficult to understand. Even after 30 minutes of discussion, Mr. Yarbrough "still wasn't real clear on it," but he detected that Mr. McPherson's largest complaint was that his property, a digital camera card, was taken. Mr. McPherson "had no idea who touched him, who took his property" and was unable to provide a description of the individual.

On cross-examination, Mr. Yarbrough said that he "attempted to" investigate Mr. McPherson's complaint and spoke with the defendant that same evening. The defendant did not "specifically say" whether he had Mr. McPherson's disk; rather, the defendant told Mr. Yarbrough "that he would ask around and try to f[ind] out exactly what[was] going on also." Mr. Yarbrough agreed that the defendant's response was "evasive." Approximately one or two days after the incident, the defendant advised Mr. Yarbrough that he had Mr. McPherson's disk. Mr. Yarbrough suggested to the defendant that "everybody would be happier if Mr. McPherson ended up with the disk." The defendant did not respond to the suggestion other than saying, "Not yet."

Co-defendant Smithson testified that he was involved in attempting to contain the fight that started inside the club that evening and in detaining various patrons outside the premises. He and Mr. Yarbrough "called Metro to take care of the people . . . detained." Smithson denied knowing Mr. McPherson or even encountering Mr. McPherson that evening.

The defendant testified that his company was providing security at Johnny Jackson's and four other establishments on February 10. He saw a fight erupt at Johnny Jackson's. Two of his security employees grabbed the man who instigated the fight and escorted him toward the door. The defendant testified that approximately 10 other patrons began walking toward the door, at which point he "called over the radio" to his employees, "Make sure you watch behind you." Another patron then began yelling that he was "secret service," and that patron "jumped in the middle of the whole crowd, ten bouncers and ten or eleven guys." The defendant said that he intervened to assist, and the row "spilled over to the outside."

Someone notified "Metro Police," and when the officers arrived, the patrons who had not been handcuffed "ran off." The defendant testified that he approached one of the police sergeants, explained what had happened, and began filling out paperwork. Samuel Sawyers, who was standing outside the club doors, summoned the defendant, and when the defendant approached, Sawyers reported that Mr. McPherson was "drunk[, and] combative[, and] was trying to go back in

the club with [a] camera." The defendant testified that Mr. McPherson was "[d]runk" and "[v]ery aggressive," and he repeatedly insisted that he "knew Kenny," the club's owner.

The defendant testified that Mr. McPherson was in handcuffs. However, the defendant also testified that Mr. McPherson pulled a camera out of his pocket, opened it, and voluntarily handed a disk to the defendant. The defendant said that he then removed the handcuffs and allowed Mr. McPherson to enter the club. The defendant denied threatening Mr. McPherson or mentioning "Metro Police." The defendant briefly saw Mr. McPherson again inside the club. The defendant testified that the club's owner was talking with Mr. McPherson who was "stumbling around."

The defendant said that his next contact with Mr. McPherson was "three or four days" later, when Mr. McPherson telephoned him wanting $600 for the camera "film." The defendant investigated the cost of the film and testified that Wal-Mart had the film priced for $29.99. Mr. McPherson repeatedly called the defendant for the next month and threatened to have the defendant arrested unless he paid $600. The defendant testified that he offered to return the digital film or reimburse the cost of a new film disk.

From the testimony and exhibits, the jury found the defendant guilty of theft of property under the value of $500 (as a lesser included offense of robbery), false imprisonment, and extortion. The trial court imposed an effective sentence of two years, suspended service of the sentence, and placed the defendant on probation. The defendant timely filed a motion for new trial, which the typed minute entry in the record reflects was denied on July 15, 2005. Thereafter, a "form" notice of appeal was filed on August 17, 2005. That notice recited that the filing date of the judgment being appealed was August 15, 2005.

I. TIMELINESS OF NOTICE OF APPEAL

Initially, we are confronted with the question whether the defendant filed a timely notice of appeal in this case. In its brief, the State mentions that the defendant filed a "tardy notice of appeal," but it does not object to consideration of the defendant's appeal. The defendant, for his part, makes no representation about the timeliness of the notice of appeal or the relevant filing dates.

An appeal as of right is initiated by filing a notice of appeal within 30 days of the entry of the judgment being appealed. Tenn. R. App. P. 3(e), 4(a). However, if a timely motion (1) for judgment of acquittal, (2) for new trial, (3) for arrest of judgment, or (4) for a suspended sentence is filed, the 30 days run from the entry of the order determining such motion or motions. *Id*. 4(c). No other motion, including one for rehearing or for reduction of sentence, is allowed to suspend the running of the appeal time from the entry of the judgment. *See State v. Lock*, 839 S.W.2d 436, 440 (Tenn. Crim. App. 1992); *State v. Bilbrey*, 816 S.W.2d 71, 74-75 (Tenn. Crim. App. 1991).

The record in this case reflects that the defendant's new trial motion was timely filed. Therefore, pursuant to the procedural rules, the time for filing a notice of appeal began to run from

the entry of the order determining the motion for new trial. The record in this case does not contain a written order entered by the trial court overruling the new trial motion or a transcript of the hearing on the motion. A typed minute entry in the record, however, reflects that the motion was heard and denied on July 15, 2005. The notice of appeal in the record bears the file stamped date of August 17, 2005, and it curiously recites that the filing date of the judgment being appealed was August 15, 2005.

It is well-settled law that a trial court speaks through its minutes. *See, e.g., In re Adoption of Gillis*, 543 S.W.2d 846, 847 (Tenn. 1976); *Hines v. Thompson*, 25 Tenn. App. 86, 148 S.W.2d 376, 379 (Tenn. Ct. App. 1940). Therefore, to be timely, the defendant's notice of appeal had to be filed on or before August 15, 2005.[4] Nevertheless, Appellate Rule 4(a) provides that the notice of appeal in criminal cases "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 opt to exercise our discretion and waive the timely filing of the notice of appeal to consider the defendant's appeal on its merits.

II. SUFFICIENCY OF THE EVIDENCE AND MOTION FOR JUDGMENT OF ACQUITTAL

The defendant was convicted of the lesser included offense of theft in count one. A person commits theft of property if, with intent to deprive the owner of property, the person knowingly obtains or exercises control over the property without the owner's effective consent. T.C.A. § 39-14-103 (2003). The defendant was convicted of false imprisonment in count two. False imprisonment is defined as the unlawful and "knowing[] remov[al] or confine[ment of] another so as to interfere substantially with the other's liberty." *Id.* § 39-13-302. The defendant was convicted in count three of extortion. For purposes of the present case, a person commits extortion who "uses coercion upon another person with the intent to . . . obtain property, services, [or] any advantage or immunity." *Id.* § 39-14-112(a). "Coercion" means a threat, however communicated, to "[c]ommit any offense"; "[w]rongfully accuse any person of any offense"; "[e]xpose any person to hatred, contempt or ridicule"; "[h]arm the credit or business repute of any person"; or "[t]ake or withhold action as a public servant or cause a public servant to take or withhold action." *Id.* § 39-11-106(a)(3).

The standard for an appellate court when reviewing a challenge to the sufficiency of the evidence is "whether, considering the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Reid*, 91 S.W.3d 247, 276 (Tenn. 2002); *see also* Tenn. R. App. P. 13(e); *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2791-92 (1979); *State v. Hall*, 8 S.W.3d 593, 599 (Tenn. 1999). Because a verdict of guilt removes the presumption of innocence and imposes a presumption of guilt, the burden shifts to the defendant upon conviction to show why the evidence is insufficient to support the verdict. *See State v. Evans*, 108 S.W.3d 231, 237 (Tenn. 2003); *State*

[4] August 14, 2005, fell on Sunday, thereby tolling the filing deadline until Monday, August 15, 2005.

v. Carruthers, 35 S.W.3d 516, 557-58 (Tenn. 2000); *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). On appeal, the State is entitled to the strongest legitimate view of the evidence and to all reasonable and legitimate inferences that may be drawn therefrom. *State v. Smith*, 24 S.W.3d 274, 279 (Tenn. 2000); *see also Carruthers*, 35 S.W.3d at 558; *Hall*, 8 S.W.3d at 599. The standard by which the trial court is to determine a motion for judgment of acquittal is, in essence, the same standard applicable on appeal when this court is called upon to determine the sufficiency of the evidence after a conviction. *State v. Price*, 46 S.W.3d 785, 818 (Tenn. Crim. App. 2000); *State v. Ball*, 973 S.W.2d 288, 292 (Tenn. Crim. App. 1998); *State v. Anderson*, 880 S.W.2d 720, 726 (Tenn. Crim. App. 1994).

A verdict of guilt by the trier of fact resolves all conflicts in the evidence in favor of the prosecution's theory. *See State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). "Questions about the credibility of witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact, and this Court does not re-weigh or re-evaluate the evidence." *Evans*, 108 S.W.3d at 236 (citing *Bland*, 958 S.W.2d at 659). Nor may this court substitute its own inferences drawn from circumstantial evidence for those drawn by the trier of fact. *Id*. at 236-37. The supreme court articulated the rationale for this rule as follows:

> 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)).

The defendant in this case does not differentiate among his convictions in arguing evidence insufficiency and error in failing to grant a motion for judgment of acquittal. Indeed, as the State correctly observes, the defendant offers no reasons whatsoever why the evidence was legally insufficient. We are not charged with the responsibility of constructing or advocating the defendant's appellate arguments. Mindful that the core inquiry is whether any rational fact finder could have found the essential elements of the offenses beyond a reasonable doubt, we are convinced that the evidence abundantly supports the defendant's convictions.

The jury heard and was entitled to credit Mr. McPherson's testimony that he unwillingly relinquished custody of his flash memory disk to avoid arrest. Moreover, even if the evidence could be construed that Mr. McPherson voluntarily gave up the disk at the outset, he clearly did not consent to the defendant's continued possession of his property. Similarly, the jury was entitled to credit Mr. McPherson's testimony that he was unlawfully handcuffed after denying taking photographs of the fight and after refusing to relinquish possession of his camera. Last, Mr.

McPherson's testimony that he was threatened to be turned over to Metro Police for being involved in the fight is sufficient to establish coercion and extortion.

Accordingly, we affirm the defendant's convictions.

III. JURY VERDICTS REGARDING COUNTS ONE AND THREE

Relying on a remark in the State's closing argument that extortion was "kind of an alternative to the robbery," the defendant argues that the jury was improperly allowed to return verdicts on counts one and three. The defendant theorizes that the jury's guilty verdict of theft on count one provided no "logical basis" for the jury to consider the extortion charge in count three.

The record fails to disclose that the defendant objected to the State's argument. In addition, the defendant fails to cite any legal authority to support his argument, and we are aware of no such authority. This issue, accordingly, has been waived. *See* Tenn. R. App. P. 36(a); *State v. Sims*, 45 S.W.3d 1, 16 (Tenn. 2001); *Carruthers*, 35 S.W.3d at 580.

IV. ADMISSIBILITY OF STOLEN CAMERA MEMORY DISK

The defendant argues that the trial court erred in admitting Mr. McPherson's stolen camera memory disk into evidence. The defendant cites no portions of the transcript or technical record, and the basis for his argument is unclear. At one point, he maintains that Mr. Drumwright's and the victim's testimony about the disk was unduly prejudicial pursuant to Evidence Rule 403. Tenn. R. Evid. 403. At another point, the defendant insists that the State failed to provide notice of the existence of the disk in response to the defendant's discovery requests. *See* Tenn. R. Crim. P. 16.

The record discloses that during Mr. McPherson's testimony, the State provided him an item that he identified as the "piece of flash ram memory" that he turned over to the defendant. Mr. McPherson testified that the item was returned to him by Mr. Drumwright. The defense objected that the item "had not been provided," and the State apologized for not previously showing the item to the defense. The defense also objected that the State had failed to establish a chain of custody. The trial court overruled the defendant's objections and admitted the item.

The transcript reflects that in response to the defendant's discovery objection, the State provided the disk to the defense to review during Mr. McPherson's testimony. The defense never renewed its discovery objection or articulated any prejudice from the late disclosure. The defense thoroughly cross-examined Mr. McPherson and established that nothing on the exterior of the disk indicated ownership or any connection with the events of February 10. At one point, the trial court noted that Mr. McPherson had testified that "he identified the disk by looking at the pictures that were contained in the disk." The defense responded, "And none of those are available for us, it's just your testimony about them, right?" Mr. McPherson agreed with the defense inquiry, indicating that as of the time of trial, the disk contained no pictures that could be reviewed.

In our opinion, the State's production and introduction of the disk at trial was not essential to establishing the charges beyond a reasonable doubt. Furthermore, the defendant never disputed that he was in possession of Mr. McPherson's disk. Also, with Mr. McPherson's and Mr. Drumwright's testimony, the State adequately demonstrated a chain of custody for the item introduced at trial. From the record before us and it appearing that the defendant "failed to take whatever steps were reasonably available to cure an [alleged] error," Tenn. R. App. P. 36(a), Advisory Commission Cmts., we discern no error, no prejudice, and no basis to afford the defendant a new trial on this issue.

V. MR. DRUMWRIGHT'S TESTIMONY

From the defendant's perfunctory argument, devoid of any citation to the record, we discern that he complains that the State failed to provide notice that Mr. Drumwright would testify as an expert witness regarding the contents of the memory disk and that Mr. Drumwright's testimony concerning the State's possession of the disk was cumulative, prejudicial, and wasteful of judicial resources.

The defense objection to chain of custody of the disk fairly prompted the State to elicit Mr. Drumwright's testimony about the State's receipt and possession of the disk and its subsequent return to Mr. McPherson. In addition, we fail to find any reference in the record before us that Mr. Drumwright was offered as an expert witness at trial. This issue does not avail the defendant.

VI. PROSECUTORIAL MISCONDUCT

The final issue we review is the defendant's argument that the State refused to abide by an agreement for dismissal of any charges upon the return of the memory disk. The defendant acknowledges that the "agreement" was not part of any formal plea agreement. Once again, the defendant has provided no citations to relevant portions of the record.

Our review of the record discloses that the trial court conducted a pretrial hearing during which the defendant's former counsel testified about negotiations to settle the matter involving Mr. McPherson and the defendant. As former counsel explained, the "gist" of the negotiations required the return of the memory disk, and former counsel testified that he delivered the disk to the district attorney general's office with instructions that it be given to Mr. Drumwright. The State failed, however, to dismiss the charges against the defendant.

Mr. Drumwright testified for the State that he told former defense counsel that there was "a good possibility" of dismissing the charges provided the disk was returned to the victim "undamaged." Mr Drumwright explained that the disk he received from former defense counsel was "undamaged"; however, "all of the images of the night in question had been erased" except one image, and other images unrelated to that evening had been erased. Also, Mr. Drumwright testified that Mr. McPherson did not support dismissal of the charges, and upon further investigation, Mr.

Drumwright determined that prosecuting the charges was appropriate, regardless that the property had been returned.

The trial court ruled that the defendant had failed to honor the agreement because the disk was "not return[ed] in the same condition it was when it was removed," and the court denied the defense motion.

In reviewing allegations of prosecutorial misconduct, this court looks to see "whether such conduct could have affected the verdict to the prejudice of the defendant." *State v. Smith*, 803 S.W.2d 709, 710 (Tenn. Crim. App. 1990). That analysis involves consideration of five factors: (1) the conduct complained of viewed in context and in light of the facts and circumstances of the case; (2) the curative measures undertaken by the trial court and the prosecution; (3) the intent of the prosecutor in making an improper statement; (4) the cumulative effect of the improper conduct and any other errors in the record; and (5) the relative strength or weakness of the case. *State v. Buck*, 670 S.W.2d 600, 609 (Tenn. 1984); *Judge v. State*, 539 S.W.2d 340, 344 (Tenn. Crim. App. 1976). Whether the trial court erred in allowing the complained-of conduct is reviewed for abuse of discretion. *State v. Sutton*, 562 S.W.2d 820, 823 (Tenn. 1972).

Although the defendant argues that prosecutorial misconduct occurred, he fails to discuss any of the factors relevant to a prosecutorial misconduct claim. We are at a loss to conclude that Mr. Drumwright engaged in such misconduct. First, Mr. Drumwright did not have the unilateral authority simply to dismiss one or more of the charges because, once beyond the charging stage, the prosecution falls within the ambit of the court's jurisdiction. *See* Tenn. R. Crim. P. 48(a) ("With the court's permission, the state may terminate a prosecution by filing a dismissal of an indictment, presentment, information, or complaint."); *see State v. Melissa Ann Layman*, __ S.W.3d __, No. E2004-02866-SC-R11-CD, slip op. at 6-7 (Tenn., Knoxville, Jan. 29, 2007) (stating that a trial court's Rule 48(a) denial of leave for a voluntary dismissal must be grounded upon "manifest public interest"). Second, Mr. Drumwright retained complete discretion whether to negotiate a resolution of the prosecution, which then would require court approval. *See State v. Head*, 971 S.W.2d 49, 51 (Tenn. Crim. App. 1997). There is simply no authority for the proposition that such an agreement can be enforced prior to acceptance by the court. Third, we agree with the trial court that the defendant's failure to return the disk in the same condition as when it was confiscated breached any arguable agreement with Mr. Drumwright. Last, there is no evidence that Mr. Drumwright engaged in any trickery with the intent of having the defendant incriminate himself by surrendering the memory disk.

Consequently, we fail to see any misconduct requiring that the charges in this case be dismissed.

VII. CONCLUSION

For the foregoing reasons, the trial court's judgments are affirmed.

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JAMES CURWOOD WITT, JR., JUDGE