

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs December 6, 2022

FILED

01/30/2023

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. ANTWAIN D. COLEMAN

Appeal from the Circuit Court for Madison County
No. 21-82 Roy B. Morgan, Jr., Judge

No. W2022-00034-CCA-R3-CD

A Madison County jury convicted the Defendant, Antwain D. Coleman, of aggravated assault, domestic assault, and theft. The trial court imposed an effective seven-year sentence in the Tennessee Department of Correction. On appeal, the Defendant asserts that the evidence is insufficient to support his theft conviction and that the trial court abused its discretion when it denied an alternative sentence. After review, we affirm the trial court's judgments.

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

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which JOHN W. CAMPBELL, SR., and KYLE A. HIXSON, JJ., joined.

Jessica F. Butler (on appeal), Assistant Public Defender – Appellate Division, Franklin, Tennessee, and Parker O. Dixon (at trial), Assistant Public Defender, Jackson, Tennessee, for the appellant, Antwain Deshun Coleman.

Jonathan Skrmetti, Attorney General and Reporter; Benjamin A. Ball, Assistant Attorney General; Jody S. Pickens, District Attorney General; and Joshua B. Dougan, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Facts

This case arises from a domestic dispute that occurred at the shared residence of the victim and the Defendant, which was located in Jackson, Tennessee. For his role in this incident, a Madison County grand jury indicted the Defendant for aggravated assault, domestic assault, and theft of property. At trial, the parties presented the following evidence: The victim and the Defendant grew up together and began a romantic relationship in the spring of 2020. He moved in with her and her son and had been living

with them for about two months when these events occurred. On the night of July 3, 2020, the victim returned home from work at McDonald's restaurant at around 9:00 p.m. She was angry with the Defendant because he failed to pick her up at work as planned. The victim's brother drove her home instead.

At around midnight, the Defendant arrived home and appeared to be "already angry." He pulled a gun, a black or brown "[s]hort gun" and laid it on the bed. The victim recognized the gun as one she had seen the Defendant with before, and owned by the Defendant's brother. The victim, still angry over the Defendant's failure to pick her up from work, told the Defendant to "get his stuff and go," which began an altercation between the two. The Defendant began calling the victim names, pushed her against the wall, and put his hand around her neck. When the victim threatened to call the police, the Defendant retorted, "police a** b**ch." He then grabbed the victim's personal identification, various cards, and cash that she had laid by the television on the dresser and ran, leaving the gun on the bed behind.

The victim called the police and, when they arrived, they took the gun from the bed. Later that night, between 3:00 and 4:00 a.m., the Defendant returned. The victim was placing the Defendant's belongings on the front porch when the Defendant approached, and a second altercation ensued. The Defendant walked up the steps onto the porch and pulled the victim down the steps by her hair into the yard. The victim slipped on the wet grass and fell flat on her back in the yard. The Defendant climbed on top of the victim, with one leg positioned on each side of her body. He then began choking the victim using both of his hands while calling her names. At some point, the victim lost consciousness. When she awoke, the Defendant was gone.

The victim could not breathe during the second altercation and believed she "was fixing to die." When she regained consciousness, the victim called the police for the second time that night. Medical personnel evaluated the victim at the scene, but she declined to go to the hospital. The victim experienced pain on the side of her neck for several days following the incident but did not seek any medical attention.

In addition to his own belongings, the Defendant took "a couple of [the victim's] cards", the victim's identification, and approximately \$580 in cash. The money was later returned to the victim. During both incidents, the victim attempted unsuccessfully to defend herself by pushing or hitting the Defendant. During the second incident, the victim had a paring knife, but she did not use it. She could not specifically recall but guessed that she might have dropped the knife when the Defendant grabbed her by the hair.

City of Jackson Police Department Officer Nathan Howard responded to the victim's first call for assistance. He met her outside the residence and described her as

“disheveled” and “in an emotional state.” Officer Howard entered the residence and observed a television that had been knocked off the dresser and a revolver lying on the bed.

Based upon this evidence, the jury convicted the Defendant as charged.

B. Sentencing

The trial court held a subsequent sentencing hearing. The State filed a notice of enhancement based upon three prior felony convictions: facilitation of aggravated robbery, theft of property over \$1,000, and aggravated robbery. The parties agreed that the Defendant should be classified as a Range II offender. As such, the sentencing range for the aggravated assault conviction, a class C felony, was six to ten years. The other two convictions were class A misdemeanors with a maximum sentence of eleven months and twenty-nine days.

The only proof offered at the hearing was the Department of Correction presentence report. The State argued that the facts of the case supported the trial court imposing a sentence beyond the minimum and a sentence involving incarceration. The State contended that four enhancement factors were applicable: (1) the Defendant’s criminal history; (2) the Defendant’s failure to comply with conditions of a sentence involving release because he was on parole at the time of the instant offense; (3) possession or employment of a weapon during the commission of the offense; and (4) risk to human life was high due to strangulation. T.C.A. §40-35-114 (1), (8), (9), and (10) (2019). Upon further inspection of the court file, the State conceded that the sentencing report indicated that the Defendant’s prior sentence expired on March 17, 2019, and thus was not at issue for purposes of enhancement or consecutive sentencing.

The presentence report indicates that the Defendant had multiple convictions beginning from age eighteen to this current offense, which occurred when he was thirty-six. In addition to the convictions at issue, the Defendant had convictions for aggravated robbery, traffic-related offenses, driving without a license, criminal impersonation, theft of property \$1,000 to 10,000, simple possession, and joyriding. The report also indicated that the Defendant’s probation had been revoked three times according to the Tennessee Department of Correction.

The Defendant asked for leniency and notified the trial court of “DRC approval” should the trial court grant alternative sentencing.

The trial court stated that it had considered the evidence presented at trial, the presentence report, sentencing principles and the arguments of counsel. The trial court found enhancement factor (1), a previous history of criminal convictions, applicable,

noting that the prior convictions submitted were “undisputed as to the Defendant.” The trial court found no other factors applicable. No mitigating factors were filed, and none were argued. The trial court found no mitigating factors applicable. The trial court imposed concurrent sentences of seven years for the aggravated assault conviction, eleven months and twenty-nine days for the domestic assault conviction, and eleven months and twenty-nine days for the theft conviction for a total effective sentence of seven years. The trial court considered alternative sentencing and found that the Defendant’s prior criminal history showed a “continued” pattern of conduct. The trial court also noted that the Defendant had opportunities in the past to “stay out of trouble” and failed to do so. The trial court found that the Defendant was “likely” to commit other crimes” and that less restrictive measures would take away from the seriousness of the Defendant’s conduct against the victim. Finding that incarceration would serve as an effective deterrent, the trial court ordered the Defendant to serve the seven-year sentence in the Tennessee Department of Correction. It is from these judgments that the Defendant now appeals.

II. Analysis

On appeal, the Defendant asserts that the evidence is insufficient to support his conviction for theft of property because the State failed to prove a lack of consent and the Defendant’s intent to deprive the victim of the property. The Defendant also argues that the trial court abused its discretion by denying alternative sentencing. The State asks us to affirm the trial court’s judgments.

A. Sufficiency of the Evidence

The Defendant raises the sufficiency argument only as to his theft conviction. He contends that the State failed to prove that he lacked consent to take the victim’s money because he and the victim lived together; therefore, he constructively possessed all of her belongings and thereby had her consent. He also argues that the State failed to show that he acted with the intent to deprive the victim of her belongings when he took them and left the house. The State responds that both direct and circumstantial evidence support the jury’s finding that the Defendant obtained control over the victim’s property, without consent, and maintained the intent to deprive her of that property. We agree with the State.

When an accused challenges the sufficiency of the evidence, this Court’s standard of review is whether, after considering the evidence in the light most favorable to the State, “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* Tenn. R. App. P. 13(e); *State v. Goodwin*, 143 S.W.3d 771, 775 (Tenn. 2004) (citing *State v. Reid*, 91 S.W.3d 247, 276 (Tenn. 2002)). This standard applies to findings of guilt based upon direct evidence, circumstantial evidence, or a combination of both direct and circumstantial

evidence. *State v. Pendergrass*, 13 S.W.3d 389, 392-93 (Tenn. Crim. App. 1999) (citing *State v. Dykes*, 803 S.W.2d 250, 253 (Tenn. Crim. App. 1990)). In the absence of direct evidence, a criminal offense may be established exclusively by circumstantial evidence. *Duchac v. State*, 505 S.W.2d 237, 241 (Tenn. 1973). “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 and inconsistent with innocence, are questions primarily for the jury.’” *State v. Rice*, 184 S.W.3d 646, 662 (Tenn. 2006) (quoting *Marable v. State*, 313 S.W.2d 451, 457 (Tenn. 1958)). “The standard of review [for sufficiency of the evidence] ‘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)).

In determining the sufficiency of the evidence, this Court should not re-weigh or reevaluate the evidence. *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Nor may this Court substitute its inferences for those drawn by the trier of fact from the evidence. *State v. Buggs*, 995 S.W.2d 102, 105 (Tenn. 1999) (citing *Liakas v. State*, 286 S.W.2d 856, 859 (Tenn. 1956)). “Questions concerning the credibility of witnesses, the weight and value to be given 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). “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). The Tennessee Supreme Court stated the 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, 527 (Tenn. 1963)). This Court must afford the State of Tennessee the ““strongest legitimate view of the evidence”” contained in the record, as well as ““all reasonable and legitimate inferences”” that may be drawn from the evidence. *Goodwin*, 143 S.W.3d at 775 (quoting *State v. Smith*, 24 S.W.3d 274, 279 (Tenn. 2000)). Because a verdict of guilt against a defendant removes the presumption of innocence and raises a presumption of guilt, the convicted criminal defendant bears the burden of showing that the evidence was legally insufficient to sustain a guilty verdict. *State v. Carruthers*, 35 S.W.3d 516, 557-58 (Tenn. 2000) (citations omitted).

“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(a). “Effective consent” is defined as “assent in fact, whether express or apparent, including assent by one legally authorized to act for another.” T.C.A. § 39-11-106(a)(9).

The evidence, viewed in the light most favorable to the State, shows that the Defendant returned to his shared place of residence with the victim late on the night of July 3, 2020. The Defendant placed a gun on the bed and then engaged in an altercation with the victim that resulted in him pushing her against the wall and placing his hands around her neck. He released her when she threatened to call the police. The victim ordered the Defendant to take his belongings and leave. The Defendant grabbed the victim’s identification, “cards”, and cash from the dresser before fleeing the scene. This evidence supports the jury’s finding that the Defendant knowingly took the victim’s belongings, exercising control over her property, without her consent.

The Defendant asks us to expand the application of constructive possession. He claims that he “constructively possessed” the victim’s personal belongings because they shared a residence. The Defendant provides no case law or authority in support of such a broad application of constructive possession. We respectfully decline to expand the application of constructive possession as suggested by the Defendant. The circumstances of the interaction between the victim and the Defendant support the jury’s conclusion that the Defendant took the victim’s items without her consent.

The Defendant also argues that the State failed to prove that he intended to deprive the victim of her property. We disagree. In the course of a fight where the Defendant became physical, in response to the victim telling the Defendant to take his belongings and leave her home, the Defendant took the victim’s personal effects and cash, with no explanation, and fled, knocking the television off the dresser. Even though the Defendant later returned that night, there was no indication that he planned to return the victim’s personal property.

Accordingly, we conclude that the evidence was sufficient to support the jury’s finding that the Defendant took the victim’s cash and personal items, without her consent, with the intent to deprive her of those items. The Defendant is not entitled to relief as to this issue.

B. Sentencing

The Defendant contends that the trial court erred when it denied him an alternative sentence. The State counters that the trial court acted within its discretion when it denied alternative sentencing. We agree with the State.

The standard of review for questions related to probation or any other alternative sentence is “an abuse of discretion standard of review, granting a presumption of reasonableness to within-range sentencing decisions that reflect a proper application of the purposes and principles of our Sentencing Act.” *State v. Caudle*, 388 S.W.3d 273, 278–79 (Tenn. 2012) (citing *State v. Bise*, 380 S.W.3d 682, 707 (Tenn. 2012)). With regard to alternative sentencing, Tennessee Code Annotated section 40-35-102(5) (2019) provides as follows:

In recognition that state prison capacities and the funds to build and maintain them are limited, convicted felons committing the most severe offenses, possessing criminal histories evincing a clear disregard for the laws and morals of society, and evincing failure of past efforts at rehabilitation shall be given first priority regarding sentencing involving incarceration.

A defendant who does not fall within this class of offenders, “and who is an especially mitigated offender or standard offender convicted of a Class C, D or E felony, should be considered as a favorable candidate for alternative sentencing options in the absence of evidence to the contrary.” T.C.A. § 40-35-102(6). Generally, defendants classified as Range II or Range III offenders are not to be considered as favorable candidates for alternative sentencing. T.C.A. § 40-35-102(6). Additionally, we note that a trial court is “not bound” by the advisory sentencing guidelines; rather, it “shall consider” them. T.C.A. § 40-35-102(6) (emphasis added).

A defendant shall be eligible for probation, subject to certain exceptions, if the sentence imposed on the defendant is ten years or less. T.C.A. § 40-35-303(a) (2019). A defendant is not, however, automatically entitled to probation as a matter of law. The burden is upon the defendant to show that he or she is a suitable candidate for probation. T.C.A. § 40-35-303(b) (2019); *State v. Goode*, 956 S.W.2d 521, 527 (Tenn. Crim. App. 1997); *State v. Boggs*, 932 S.W.2d 467, 477 (Tenn. Crim. App. 1996). In order to meet this burden, the defendant “must demonstrate that probation will ‘subserve the ends of justice and the best interest of both the public and the defendant.’” *State v. Bingham*, 910 S.W.2d 448, 456 (Tenn. Crim. App. 1995) (quoting *State v. Dykes*, 803 S.W.2d 250, 259 (Tenn. Crim. App. 1990)).

There is no bright line rule for determining when a defendant should be granted probation. *Bingham*, 910 S.W.2d at 456. Every sentencing decision necessarily requires a case-by-case analysis considering “the nature of the offense and the totality of the circumstances . . . including a defendant’s background.” *State v. Ashby*, 823 S.W.2d 166,

168 (Tenn. 1991) (quoting *State v. Moss*, 727 S.W.2d 229, 235 (Tenn. 1986)). In determining if incarceration is appropriate in a given case, a trial court should consider whether:

(A) Confinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct;

(B) Confinement is necessary to avoid depreciating the seriousness of the offense or confinement is particularly suited to provide an effective deterrence to others likely to commit similar offenses; or

(C) Measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant.

T.C.A. § 40-35-103(1) (2019). The trial court must also consider the potential or lack of potential for rehabilitation or treatment of the defendant in determining the sentence alternative or length of a term to be imposed. T.C.A. § 40-35-103.

The Defendant, a Range II offender, is not presumed a favorable candidate for alternative sentencing, and he has not carried his burden of demonstrating that he is a proper candidate for alternative sentencing. The evidence in the record shows a pattern of criminal conduct and the Defendant's failures at past attempts to comply with less restrictive measures than incarceration. The Defendant twice attempted to strangle the victim in the same night. The second time caused the victim to lose consciousness before he fled. The trial court found that incarceration would protect the public from future conduct, that less restrictive measures had been unsuccessful in the past, an alternative sentence would detract from the seriousness of the Defendant's assaults against the victim, and that incarceration would serve as an effective deterrent.

Accordingly, the trial court followed the purposes and principles of the Sentencing Act when it ordered a sentence within the appropriate sentencing range, and the trial court acted within its discretion when it denied alternative sentencing. The Defendant is not entitled to relief as to this issue.

III. Conclusion

In accordance with the foregoing reasoning and authorities, the judgments of the trial court are affirmed.

