

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON  
Assigned on Briefs February 1, 2023

FILED

05/09/2023

Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. MIRON D. JOHNSON**

**Appeal from the Circuit Court for Dyer County**  
**No. 20-CR-60 Tony A. Childress, Judge**

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**No. W2022-00234-CCA-R3-CD**

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The Defendant, Miron D. Johnson, was convicted by a Dyer County jury of evading arrest, a Class D felony; misdemeanor evading arrest; felony reckless endangerment; and driving on a revoked license, fourth offense. On appeal, the Defendant contends that the evidence was insufficient to sustain his convictions for felony evading arrest and felony reckless endangerment. Relative to his felony evading arrest conviction, the Defendant specifically argues that his conduct did not create a risk of death or injury to others. For his felony reckless endangerment conviction, the Defendant argues that his vehicle was not used as a deadly weapon and that the threat of death or serious bodily injury was not imminent. The Defendant further contends that the trial court erred by imposing fines without making findings regarding the Defendant's ability to pay. Following our review, we affirm the judgments of the trial court.

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

KYLE A. HIXSON, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and TIMOTHY L. EASTER, JJ., joined.

Brian D. Wilson (on appeal), Franklin, Tennessee, and Sean Day (at trial), Dyersburg, Tennessee, for the appellant, Miron D. Johnson.

Jonathan Skrmetti, Attorney General and Reporter; Brooke A. Huppenthal, Assistant Attorney General; Danny H. Goodman, Jr., District Attorney General; and Karen Burns, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**I. FACTUAL AND PROCEDURAL HISTORY**

This case arises from a March 16, 2020 officer-involved vehicle pursuit in Dyer County, Tennessee. From this incident, a Dyer County grand jury charged the Defendant with tampering with evidence; evading arrest, a Class D felony; misdemeanor evading arrest; felony reckless endangerment; simple possession of methamphetamine; and driving on a revoked license, fourth offense. Prior to trial, the trial court dismissed the tampering with evidence and possession of methamphetamine counts, and the Defendant proceeded to a bifurcated trial on December 2, 2021, on the remaining counts.

At trial, Dyer County Sheriff's Department ("DCSD") Deputy Keaton Gregory testified that on March 16, 2020, at approximately 5:00 p.m., he observed a red Chevy Colorado truck traveling down a public road. The vehicle appeared to be spray-painted. Noting that a spray-painted vehicle may indicate that a vehicle is stolen, Deputy Gregory ran the vehicle's registration plate number, which revealed that it belonged to a red 1998 Lincoln car. Deputy Gregory activated his emergency lights and initiated a traffic stop. After Deputy Gregory exited his police vehicle and approached the truck's tailgate, the driver, later identified as the Defendant, accelerated and sped away. Deputy Gregory stated that Deputy Calen Burton, who had arrived on the scene for back-up support, began pursuit of the Defendant with his emergency lights and sirens activated. Deputy Gregory ran back to his vehicle and began pursuit, also with his emergency lights and sirens activated. Deputy Gregory testified that both he and Deputy Burton were in marked DCSD vehicles.

Deputy Gregory testified that the speed limit was approximately thirty miles per hour on that road and that he reached the speed of sixty-five miles per hour while pursuing the Defendant. He stated that traffic was light when the pursuit began, but as it continued, "quite a bit of other people" were on the roadway. During the pursuit, the Defendant "just blew" through stop signs and weaved between vehicles while going "way over the speed limit." Deputy Gregory stated that the Defendant's driving was "absolutely" a danger to other drivers on the road and could have potentially caused an accident with the other motorists.

Deputy Gregory acknowledged that driving fast was not necessarily reckless behavior. He testified that he did not observe other drivers swerving out of the Defendant's path but that drivers pulled to the side of the road while the Defendant and the deputies drove around these vehicles. Deputy Gregory acknowledged that he mostly had a "straight shot" the entire way but stated that the other drivers could have potentially been hit if they did not move out of the Defendant's path.

Deputy Gregory stated that department policy required the termination of vehicle pursuits when lives were endangered. Deputy Gregory stated that he and Deputy Burton were close to terminating the pursuit when the Defendant crashed.

Deputy Gregory did not observe the Defendant crash but arrived seconds after it occurred. He stated that the Defendant had crashed at a residence and had “[aken] out a tree and a cable pole.” Deputy Gregory stated that the Defendant appeared to fall in and out of consciousness but that, at first, Deputy Gregory thought the Defendant was faking his injuries. The passenger in the Defendant’s vehicle was upright and talking but said that her head was injured. An ambulance arrived, and both the Defendant and the passenger were taken to the hospital. The hospital released the Defendant to police custody a few hours later.

Deputy Gregory checked the Defendant’s driving record after crash and learned that the Defendant’s driver license was revoked. The State entered Deputy Gregory’s body camera and the Defendant’s driving record as exhibits.

DCSD Deputy Calen Burton testified that on March 16, 2020, he responded as back-up support to a traffic stop initiated by Deputy Gregory. Deputy Burton observed a vehicle accelerate away from Deputy Gregory as Deputy Gregory was walking toward the vehicle. As the vehicle accelerated in Deputy Burton’s direction, he identified the Defendant as the driver.

Deputy Burton turned his vehicle around and began pursuit. He stated that his emergency lights and sirens were activated, that he was in uniform, and that he was in a marked patrol vehicle. He stated that the pursuit occurred in a residential area and that the speed limit was thirty miles per hour. He did not recall his exact speed during the pursuit but believed that it was “well over the speed limit.”

Deputy Burton stated that the Defendant was driving “erratically” by crossing the center line and failing to stop at two stops signs. He stated that the Defendant “never hit the brakes” at the first stop sign and that at least two vehicles were at the intersection when the Defendant sped through the second stop sign. Deputy Burton acknowledged that he and Deputy Gregory did not verbally communicate about terminating the pursuit but that they were about to terminate the pursuit because of department policy, the Defendant’s driving, and the high volume of traffic. He did not recall cars “slamming” their brakes, but in his opinion, this was a dangerous situation, a risk to his and Deputy Gregory’s safety, and could have caused other accidents.

Deputy Burton observed the Defendant crash his vehicle. He stated that the Defendant crossed the center line, went up an embankment causing the vehicle to become airborne, and struck a tree nearly six feet above the ground. Once the vehicle came to rest, the Defendant exited the vehicle and attempted to run, but his pants fell to his ankles and

he tripped and fell. Deputy Burton approached the Defendant and acknowledged that the Defendant told the passenger to “shut the f--- up.”

On this evidence, the jury convicted the Defendant of Class D felony evading arrest, misdemeanor evading arrest, felony reckless endangerment, and driving on a revoked license. The Defendant waived his right for a jury to determine fines. Following the bifurcated portion of the trial, the jury found that the Defendant’s present conviction for driving on a revoked license constituted his fourth offense.

A sentencing hearing was held on January 11, 2022, at which the presentence report and an investigation report were entered as exhibits. During the hearing, the court recited the maximum fines allowable for each of the Defendant’s convictions: \$5,000 for Class D felony evading arrest, \$2,500 for misdemeanor evading arrest, \$3,000 for felony reckless endangerment, and \$2,500 for driving on a revoked license, fourth offense. The trial court stated that it had considered the evidence presented, the information in both reports provided, the principles of sentencing, the nature and characteristics of the Defendant’s criminal conduct, statements made on the Defendant’s own behalf, as well as any mitigating or enhancement factors. The court found that the following enhancement factors applied: The Defendant had a previous history of criminal convictions or criminal behavior, in addition to those necessary to establish the appropriate range; the offense involved more than one victim (as to the felony evading arrest conviction only); the Defendant, before trial or sentencing, failed to comply with the conditions of a sentence involving release into the community; and the Defendant was on probation at the time of the instant offense. *See* Tenn. Code Ann. § 40-35-114(1), (3), (8), and (13)(C). The court did not find that any mitigating factors applied.

As for an alternative sentence, the trial court stated that it considered the presentence report, the Defendant’s physical and mental condition, the Defendant’s social history, the facts and circumstances surrounding the offenses, the nature of the circumstances, the criminal conduct involved, and the Defendant’s prior criminal history, which it noted as “extensive.” The trial court found the Defendant’s potential for rehabilitation was “very low,” and his chance of successfully completing an alternative sentence was “low to nil.” The court further noted that an alternative sentence would depreciate the seriousness of the offense, that measures less restrictive than confinement had frequently and recently been unsuccessful, that releasing the Defendant would subject society to his criminal conduct, and that incarceration for the Defendant’s present felony convictions was needed to deter others. The court stated it “weighed heavily” the fact that the Defendant had been given “chance, after chance, after chance” to correct his behavior and did not “accept those opportunities.”

The court found that the Defendant was a career offender and sentenced him to serve twelve years for his felony evading arrest conviction, six years for his reckless endangerment conviction, and eleven months and twenty-nine days for both his misdemeanor evading arrest and driving on a revoked license convictions. The trial court ordered these sentences to run concurrently for a total effective sentence of twelve years. The court additionally ordered a fine of \$250 for each count, totaling \$1,000. Defense counsel objected to the fines and asked the court to set the fines at \$0 stating, “I don’t think [the Defendant] has the ability to earn any money towards his fine.” The trial court acknowledged the objection and stated that it had “made the ruling.”

A motion for new trial hearing was held on February 8, 2022. The Defendant contested the fines imposed and argued that the trial court failed to make appropriate factual findings as to the Defendant’s ability to pay these fines and that the Defendant would not have the ability to pay the fines based on his twelve-year sentence. He further argued that the evidence was insufficient to support his convictions. As to the fines, the trial court stated that the Defendant’s ability to pay was considered in imposing the fines. The trial court stated that it had reviewed the “reports” introduced, which noted that the Defendant “at some point” had a job earning \$15 per hour and showed that the Defendant’s income was “over \$2000, \$3000, \$3999 per month” during the six months before his incarceration. The court stated that it was aware the Defendant did not currently have a job and that it set the fines at what the court considered a “reasonable amount.” The trial court further found the evidence was sufficient to support the Defendant’s convictions. The court denied the motion for new trial. This timely appeal followed.

## II. ANALYSIS

### A. Sufficiency of the Evidence

The United States Constitution prohibits the states from depriving “any person of life, liberty, or property, without due process of law[.]” U.S. Const. amend. XIV, § 1. A state shall not deprive a criminal defendant of his liberty “except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.” *In re Winship*, 397 U.S. 358, 364 (1970). In determining whether a state has met this burden following a finding of guilt, “the relevant question 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) (emphasis in original). Because a guilty verdict removes the presumption of innocence and replaces it with a presumption of guilt, the defendant has the burden on appeal of illustrating why the evidence is insufficient to support the jury’s

verdict. *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). If a convicted defendant makes this showing, the finding of guilt shall be set aside. Tenn. R. App. P. 13(e).

“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). Appellate courts do not “reweigh or reevaluate the evidence.” *Id.* (citing *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978)). “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). Therefore, on appellate review, “the State is entitled to the strongest legitimate view of the evidence and to all reasonable and legitimate inferences that may be drawn therefrom.” *Cabbage*, 571 S.W.2d at 835

### 1. Evading Arrest

The Defendant contends that the evidence presented at trial was insufficient to support his conviction for Class D felony evading arrest. Specifically, the Defendant argues that the State failed to establish the Defendant’s conduct created a risk of death or injury to others. The State responds that the Defendant’s conviction for Class D felony evading arrest was supported by the Defendant’s acts of driving erratically at high rates of speed in a residential area while other cars were on the road. We agree with the State.

As pertinent to this case, a person evades arrest who, “while operating a motor vehicle on any street, road, alley or highway in this state . . . intentionally flee[s] or attempt[s] to elude any law enforcement officer, after having received any signal from the officer to bring the vehicle to a stop.” Tenn. Code Ann. § 39-16-603(b)(1) (Repl. 2018). Evading arrest is elevated to a Class D felony when “the flight or attempt to elude creates a risk of death or injury to innocent bystanders, pursuing law enforcement officers, or other third parties[.]” *Id.* § 39-16-603(b)(3)(B) (Repl. 2018). A person acts intentionally “when it is the person’s conscious objective or desire to engage in the conduct or cause the result.” *Id.* § 39-11-302(a). Intent may be inferred from the character and nature of the act and from all the circumstances of the case in evidence. *State v. Inlow*, 52 S.W.3d 101, 105 (Tenn. Crim. App. 2000).

The evidence, viewed in the light most favorable to the State, sufficiently established that the Defendant evaded arrest. Deputy Gregory testified that, after initiating a traffic stop, the Defendant sped away in a vehicle on a public road. Both Deputy Gregory and Deputy Burton testified that the Defendant continued at high rates of speed despite both deputies’ pursuing the Defendant in marked vehicles with emergency lights and sirens activated. In our view, a jury could have reasonably concluded that the Defendant was

operating a motor vehicle on a road in the state, that the Defendant received a signal from officers to bring his vehicle to a stop, and that the Defendant fled with the conscious objective to elude the deputies.

Further, the evidence sufficiently established that the Defendant's flight from Deputy Gregory and Deputy Burton created a risk of death or injury to other drivers on the road and to the Defendant's passenger. Both Deputy Gregory and Deputy Burton testified that, during a busy time of day, the Defendant ran stop signs, weaved through traffic, crossed the center line into oncoming traffic, and crashed his car into someone's yard while traveling approximately thirty-five miles per hour over the speed limit. From Deputy Gregory's and Deputy Burton's testimonies, a jury could have reasonably concluded that the Defendant's erratic driving placed his passenger and other drivers on the road at risk of death or injury. *See, e.g., State v. Cross*, 362 S.W.3d 512, 524 (Tenn. 2021) (holding that the defendant's driving through stop signs, red lights, and passing vehicles in a "no passing" zone sufficiently supported a Class D felony evading arrest conviction).

## 2. Felony Reckless Endangerment

The Defendant contends that the evidence presented at trial was insufficient to support his conviction for felony reckless endangerment. Specifically, the Defendant argues that the State failed to establish that the threat of death or serious bodily injury was imminent or that the Defendant used his vehicle as a deadly weapon. The State responds that the evidence was sufficient to support the Defendant's conviction because the proof showed that the Defendant used his car as a deadly weapon by driving erratically, crossing the center line, failing to stop at stop signs, and crashing his vehicle into the yard of a residence. The State additionally argues that this conduct created an imminent risk of death or serious bodily injury because it occurred while a passenger was in the Defendant's car, deputies were in pursuit, and other drivers were on the road. We agree with the State.

A person commits reckless endangerment who "recklessly engages in conduct that places or may place another person in imminent danger of death or serious bodily injury." Tenn. Code Ann. § 39-13-103(a). A threat of death or serious bodily injury is "imminent" when a person is placed in a reasonable probability of danger as opposed to a mere possibility of danger. *State v. Payne*, 7 S.W.3d 25, 28 (Tenn. 1999). The State may satisfy its burden by demonstrating that a "person or class of persons" other than the defendant was in the zone of danger. *State v. Goodwin*, 143 S.W.3d 771, 778 (Tenn. 2004) (quoting *Payne*, 7 S.W.3d at 28). Reckless endangerment committed with a deadly weapon is a Class E felony. Tenn. Code Ann. § 39-13-103(b).

A “deadly weapon” includes “[a]nything that in the manner of its use or intended use is capable of causing death or serious bodily injury.” Tenn. Code Ann. § 39-11-106(a)(6)(B). A vehicle may be considered a “deadly weapon” for the purposes of the reckless endangerment statute. *See State v. Wilson*, 211 S.W.3d 714, 719 (Tenn. 2007) (citing *State v. Tate*, 912 S.W.2d 785, 787 (Tenn. Crim. App. 1995)).

A person “acts recklessly . . . when the person is aware of, but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur.” Tenn. Code Ann. § 39-11-106(33). Further, “[t]he risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the accused person’s standpoint.” *Id.*

The evidence presented at trial, viewed in the light most favorable to the State, established that the Defendant traveled at speeds of up to sixty-five miles per hour through a residential area with a passenger in his vehicle. During the pursuit, the Defendant drove erratically, weaved in and out of traffic, caused other vehicles to pull to the side of the road, and “blew through” stops signs while other vehicles were at these intersections. Further, just before the deputies were going to end their pursuit due to safety concerns for the other vehicles on the road, the Defendant crossed the center line, hit an embankment, and crashed his vehicle into a tree, six feet above the ground, in a residential yard. Based on the circumstances surrounding the vehicle pursuit, including the speed and manner that the Defendant fled from the deputies, a jury could have reasonably concluded the Defendant used his vehicle as a deadly weapon and placed his passenger and other drivers on the road in imminent danger of death or serious bodily injury. *See, e.g., Cross*, 362 S.W.3d at 252 (holding the defendant’s speeding past two vehicles on blind curves while being pursued by law enforcement was sufficient to support a felony reckless endangerment conviction). It is irrelevant to the offense that neither the passenger or other drivers sustained serious injuries. *See State v. Ramsey*, 903 S.W.2d 709, 712 (Tenn. Crim. App. 1995) (citing *State v. Baggett*, 836 S.W.2d 593, 595-96 (Tenn. Crim. App. 1992)). The Defendant is not entitled to relief on this issue.

## B. Fines

The Defendant contends that the trial court erred by failing to make findings at the sentencing hearing concerning the Defendant’s ability to pay the fines imposed by the trial court. The State responds that the trial court provided the necessary statutory findings to support the fines imposed. We agree with the State.



As an initial matter, the Defendant argues that the trial court's findings made at the motion for new trial regarding the Defendant's ability to pay should not be considered. We disagree. A trial court retains jurisdiction over a judgment until thirty days after its entry or upon the timely filing of a notice of appeal. Tenn. R. App. P. 4(a) and (c); *State v. Pendergrass*, 937 S.W.2d 834, 837 (Tenn. 1996). Therefore, a trial court retains authority to modify its judgments, including its sentencing decisions, until the judgment becomes final. *State v. Moore*, 814 S.W.2d 381, 382-83 (Tenn. Crim. App. 1991); *State v. Daniel Pagan*, No. E2012-02210-CCA-R3-CD, 2014 WL 950192, at \*7 (Tenn. Crim. App. Mar. 11, 2014) (holding no abuse of discretion occurred where trial court made additional findings at motion for new trial hearing supporting its sentencing decision).

When a statutory range of punishment permits a fine in excess of fifty dollars, the jury shall determine the amount of the fine. Tenn. Const. art. VI, § 14; Tenn. Code Ann. § 40-35-301. The defendant, however, “may waive the right to have a jury fix the fine and agree that the court fix it, in which case the court may lawfully fix the fine at any amount that the jury could have.” Tenn. Code Ann. § 40-35-301; *see State v. Sanders*, 735 S.W.2d 856, 858 (Tenn. Crim. App. 1987). Fines are reviewed as part of the sentence. *State v. Bryant*, 805 S.W.2d 762, 767 (Tenn. 1991). Therefore, this court reviews a trial court's imposition of a fine under an abuse of discretion standard, granting a presumption of reasonableness to within-range sentences that reflect a proper application of the purposes and principles of the Sentencing Act. *See State v. Bise*, 380 S.W.3d 682, 707 (Tenn. 2012); *State v. Johnny Jackson, Jr.*, No. W2021-00208-CCA-R3-CD, 2022 WL 370090, at \*5 (Tenn. Crim. App. Feb. 8, 2022). “A trial court abuses its discretion when it applies incorrect legal standards, reaches an illogical conclusion, bases its ruling on a clearly erroneous assessment of the proof, or applies reasoning that causes an injustice to the complaining party.” *State v. Phelps*, 329 S.W.3d 436, 443 (Tenn. 2010).

To facilitate meaningful appellate review, the trial court must state on the record the sentencing principles it considered and the reasons for the sentence imposed. Tenn. Code Ann. § 40-35-210(e)(1)(B); *Bise*, 380 S.W.3d at 705. Mere inadequacy in the articulation of the reasons, however, should not negate the presumption [of reasonableness].” *Bise*, 380 S.W.3d at 705. This court will uphold the trial court's sentencing decision “so long as it is within the appropriate range and the record demonstrates that the sentence is otherwise in compliance with the purposes and principles listed by statute.” *Id.* at 709-10.

“The trial court's imposition of a fine . . . is to be based upon the factors and principles of the 1989 Sentencing Act, such as, prior history, potential for rehabilitation, financial means, and mitigating and enhancing factors, that are relevant to an appropriate, total sentence.” *State v. Blevins*, 968 S.W.2d 888, 895 (Tenn. Crim. App. 1997) (citing *Bryant*, 805 S.W.2d at 766). While a defendant's ability to pay the fine is a factor to

consider, it is not a controlling factor. *State v. Butler*, 108 S.W.3d 845, 854 (Tenn. 2003). The defendant on appeal bears the burden of proving that the fines imposed are improper. *State v. Alvarado*, 961 S.W.2d 136, 153 (Tenn. Crim. App. 1996).

Here, the record reflects that the trial court considered the presentence report and investigation report stating that the Defendant “at some point” had a job earning \$15 per hour and that the Defendant’s income was “over \$2000, \$3000, \$3999 per month” during the six months before his incarceration. The trial court found that the fines imposed constituted a “reasonable amount.” Additionally, the trial court made thorough findings regarding the Defendant’s “extensive” criminal history and “very low” potential for rehabilitation. *Compare Butler*, 108 S.W.3d at 854 (concluding no abuse of discretion occurred by imposing a fine based on the defendant’s criminal history and severity of the offense); *State v. Eric D. Crenshaw*, No. W2015-01577-CCA-R3-CD, 2016 WL 1304805, at \*8 (Tenn. Crim. App. Apr. 4, 2016) (concluding that the trial court did not abuse its discretion by imposing a fine based on defendant’s criminal history and low potential for rehabilitation).

Moreover, the Defendant failed to present proof of his inability to pay the fine. At the motion for new trial, defense counsel merely argued that the Defendant would be unable to earn sufficient income during incarceration to contribute toward payment of the \$1,000 fine. Incarceration, standing alone, does not, immunize the Defendant from fines. The Defendant presented no further evidence in support of his claim. *See Alvarado*, 961 S.W.2d at 153; *e.g.*, *State v. Anthony Xen Maples*, No. E2013-00961-CCA-R3-CD, 2014 WL 1056671, at \*5 (Tenn. Crim. App. Mar. 18, 2014) (finding no abuse of discretion for fines imposed when no proof was presented regarding the defendant’s ability to pay). The trial court imposed a total fine of \$1,000, well below the \$13,000 permitted by statute and well within its discretion. *See* Tenn. Code Ann. § 40-35-111; *see also Bise*, 380 S.W.3d at 709-10. We conclude that the fines imposed by the trial court were a part of an appropriate total sentence and based on sufficient findings. The trial court, therefore, did not abuse its discretion, and the Defendant is not entitled to relief on this issue.

### III. CONCLUSION

In consideration of the foregoing and the record as a whole, we affirm the judgments of the trial court.

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KYLE A. HIXSON, JUDGE