

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs June 21, 2023

FILED

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Clerk of the
Appellate Courts

STATE OF TENNESSEE v. TRACEY LYNN CARTER

Appeal from the Circuit Court for Lincoln County
No. 2021-CR-81 Forest A. Durard, Jr., Judge

No. M2022-00769-CCA-R3-CD

The Appellant, Tracey Lynn Carter, was convicted by a Lincoln County jury of attempted aggravated assault, resisting arrest, disorderly conduct, and public intoxication. He received an effective sentence of eight years' imprisonment. On appeal, the Appellant alleges that: (1) the evidence is insufficient to support his conviction for attempted aggravated assault; (2) the trial court erred in failing to instruct the jury on voluntary intoxication; and (3) the trial court erred in denying a sentence of split confinement. After review, we affirm the trial court's judgments.

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

CAMILLE R. MCMULLEN, P.J., delivered the opinion of the court, in which KYLE A. HIXSON and MATTHEW J. WILSON, JJ., joined.

Donna Hargrove, District Public Defender, and Kendall Stivers Jones, Assistant District Public Defender, for the Appellant, Tracey Lynn Carter.

Jonathan Skrmetti, Attorney General and Reporter; Lacy E. Wilber, Assistant Attorney General; Robert J. Carter, District Attorney General; and Amber Sandoval, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

Around 10:15 p.m. on February 10, 2020, officers received a report of a woman screaming for help on Swanson Boulevard. Officers arrived and began questioning the Appellant and Alton Coats, who both appeared intoxicated and had minor injuries. While being questioned by a black officer, the Appellant repeatedly used a racial slur. The Appellant then pulled a knife out of his pocket and, based on the State's theory, threatened

to cut the officer. After a struggle, the Appellant was arrested and charged with aggravated assault, resisting arrest, disorderly conduct, and public intoxication.

Trial. The Appellant's two-day trial began on February 16, 2022. Four officers testified on behalf of the State. Two witnesses, including the Appellant, testified on behalf of the defense. Below is a summary of the proof as relevant to the issues raised in this appeal.

Officer Danny Bryant testified that he responded to a report of a woman screaming for help on Swanson Boulevard around 10:15 p.m. When he arrived, he saw the Appellant and Alton Coats walking outside, both shirtless. He noticed that Coats had an open injury to his forehead and left cheek, and the Appellant had some blood on his face. Upon approaching them, Officer Bryant smelled alcohol coming from both the Appellant and Coats. When Officer Bryant inquired about the injuries and blood, they responded that they had "hugged aggressively." Deputy Keidrick Williams arrived shortly after to assist, and the officers separated Coats and the Appellant to speak with them individually. Later, Officers Mitchell, Allen, and Luna arrived. While Officer Bryant was speaking to Coats, he heard the Appellant call Deputy Williams, the only black officer at the scene, "a [n****r] multiple times." The Appellant then threatened to cut Deputy Williams. Officer Bryant turned and saw the Appellant, standing less than three feet from Deputy Williams, holding a knife in his hand. The knife was an assisted open blade, so it opened very fast. In response, Deputy Williams picked up the Appellant. The knife fell, and Officer Bryant kicked it under his car.

On cross-examination, Officer Bryant acknowledged that, in his report, he did not mention that the Appellant used a racial slur when he threatened to cut Deputy Williams. When he heard the Appellant threaten Deputy Williams, he was around twenty feet away. Officer Bryant also stated that both the Appellant and Coats were drunk. He described them as "hyped up, both being loud" and agreed that they were bantering back and forth throughout the incident. He acknowledged that the Appellant remained stationary after displaying the knife. While they were trying to arrest the Appellant, the Appellant repeatedly said that he was joking with Deputy Williams. Officer Bryant did not hear the Appellant use the racial slur toward Coats, but he did hear the Appellant use it toward other non-black officers.

Deputy Williams testified that he also responded to the call on Swanson Boulevard. When he arrived, he saw Officer Bryant speaking with the Appellant and Coats. The Appellant was intoxicated and acting erratically. Deputy Williams grabbed the Appellant and walked him over to his patrol car. As they were walking, the Appellant continued to act erratically, saying racial slurs and "calling [Deputy Williams] MF'er and everything else[.]" Deputy Williams could smell alcohol on the Appellant and did not know if the

Appellant had used any other substances. After they got to Deputy Williams' patrol car, the Appellant, standing around a foot away from Deputy Williams, pulled out a knife and said "I'm going to 'fucking' stab you." As soon as Deputy Williams saw the knife, he grabbed the Appellant's wrist and put the Appellant on the front of his patrol car. The Appellant dropped the knife. Officer Bryant then rushed over to help. Deputy Williams stated he was "in fear big time. So[,] it was a fight-or-flight situation where [he] wanted to go home." Though he was wearing a bulletproof vest, it did not provide any protection against knives.

The knife was then entered into evidence. Deputy Williams described it as a spring-loaded knife, with a four or five inch blade that opened at the press of a button. He later acknowledged, however, that the knife was a pocketknife, and that the Appellant dropped it quickly. The Appellant had bloodshot eyes, dilated pupils, and smelled of alcohol. After Deputy Williams disarmed the Appellant, the Appellant stated multiple times that he was kidding. But while he attempted to arrest the Appellant and transport him to the jail, the Appellant continued to use the racial slur. Deputy Williams testified that Appellant was saying, "[You're a motherfucking [n****r], your family is going to die; you know, your whole family is a bunch of 'N words', and you're a bitch.' You name it, that's what I was that night." On cross-examination, Deputy Williams agreed that intoxicated people can be "unpredictable" and their "attention can wander[.]" He stated that when he arrived, both the Appellant and Coats were yelling, but they did not seem agitated with each other. He agreed that the yelling was the reason they separated the Appellant and Coats. Deputy Williams agreed that the Appellant continued to yell after they separated him from Coats, but denied that he was yelling in the direction of Coats and Officer Bryant. He described the Appellant as trying to pull his arm away to prevent being handcuffed. The incident was not captured by Deputy Williams' dash camera because his blue lights had not been activated.

Officer Chris Mitchell then testified that he arrived on the scene after Officer Bryant and Deputy Williams. Upon his arrival, he saw Deputy Williams talking to the Appellant and heard the Appellant calling Deputy Williams a n****r. He then saw the Appellant, while standing within an arm's length from Deputy Williams, pull a knife out of his right front pocket. Deputy Williams got the knife out of the Appellant's hands and advised the Appellant he was under arrest. Despite Deputy Williams' request, the Appellant would not put his hands behind his back and kept "jerking away[.]" During this exchange, Officer Mitchell smelled a "strong odor of alcohol" on the Appellant.

On cross-examination, the Appellant's counsel further inquired into the specifics of the Appellant's display of the knife. Officer Mitchell clarified that when the Appellant pulled out the knife, the Appellant did not move towards Deputy Williams. He never saw the Appellant swing the knife at him or Deputy Williams, nor did he see the Appellant try

to stab anyone. When asked if he heard what the Appellant said when he pulled the knife out, Officer Mitchell said that “[h]e told Deputy Williams that he was going to cut his F’ing N head off.” Deputy Williams grabbed the Appellant’s wrist, and Officer Mitchell helped Deputy Williams push the Appellant against Deputy Williams’ patrol car. The Appellant dropped the knife. While the officers were pushing the Appellant against the patrol car, the Appellant tried to “jerk away[,]” but did not swing at them or try to kick them. After placing the Appellant in the patrol car, the Appellant stated that he was joking. Officer Mitchell agreed that the Appellant appeared to be very intoxicated.

Sergeant Doug Allen testified that he became involved with this case after the Appellant was transported to the Lincoln County Jail. Sergeant Allen arrived at the jail and saw the Appellant in the back of Deputy Williams’ patrol car. The Appellant was yelling and cursing. He seemed specifically upset with Deputy Williams. He said “[a]ll [n****rs] should die.” Officers removed the Appellant from the car. On the way to the booking area, Deputy Williams was behind the Appellant. The Appellant “kept trying to turn around and yell and curse and [say] racial slurs and that kind of thing.” On cross-examination, Sergeant Allen stated that he smelled alcohol on the Appellant. The Appellant appeared intoxicated. Sergeant Allen acknowledged that intoxicated people can be “angry” and “belligerent at times.”

After the State closed its proof, the Appellant’s counsel moved for a judgment of acquittal based on the evidence that the Appellant was highly intoxicated. The trial court denied the motion.

The defense presented two witnesses. Lona Gunter testified that she was at Coats’ residence with the Appellant and Coats on the day of the offense. She agreed that the Appellant and Coats had “some words” earlier in the day, but were “just hanging out” when the police came up. She stated that the Appellant and Coats had been drinking “a fair amount” and were talking “a little louder than normal voice.” When the police arrived, Gunter went across the road because she did not want to be involved. She later clarified on cross-examination that the reason she did not want to be involved was because she believed there was a warrant out for her arrest. She saw the Appellant pull the knife out of his pocket, but “he did not pull it out on anyone.” She denied seeing the Appellant try to threaten anyone with the knife, stating, “It was not in a threatening manner.” She believed the knife involved was the Appellant’s, and to her knowledge, the knife was not open when the Appellant pulled it out of his pocket. She agreed that the Appellant was “joking around quite a bit” and stated that “[h]e gets in trouble for his mouth sometimes[.]” When asked if she heard the Appellant say anything threatening, she responded that “[she] wouldn’t find it threatening at all, no[.]” On cross-examination, Gunter agreed she had previously been convicted of criminal impersonation, criminal simulation, and was currently serving time on a probation violation for felony theft.

The Appellant testified that on the day of the offense, he and Coats had been together about eight or ten hours. They had been drinking “a half pint of Jim Beam, four or five of the Michelob Ultras, and some tequila.” The Appellant stated he and Coats were intoxicated. They had been friends for twenty-five years and had a “childish” relationship. On the day of the offense, Coats and Gunter “were having an issue” and “[Coats] was trying to make her leave his house.” While the two were arguing, the Appellant thought that Coats was going to hit Gunter. He tried to separate them, and Coats put him in a headlock. The Appellant grabbed Coats by his face, causing the scratch that the police later saw. The Appellant then pushed Coats on the couch, which was how Coats got the knot on his head. The Appellant agreed that he and Coats then reconciled.

When questioned about his use of the racial slur, the Appellant stated that he and Coats refer to each other as “brothers, partners, [n***as][.]” When asked if he uses that term in a “racially offensive manner[.]” the Appellant responded, “Sir, I’ve got – I’m not [racist]. I got [b]lack family, [b]lack friends. I mean, I’m surprised they’re not here today.”

The Appellant then described how he ended up outside of the house. After the argument, Coats made Gunter leave, but he kept her phone. When Gunter tried to retrieve her phone, Coats threw it. Coats chased Gunter outside. The Appellant went outside to check on them and picked up Gunter’s phone on the way out. Coats was looking for Gunter, who was hiding across the street under a storage trailer. Gunter was screaming, which was why someone called the police. As the Appellant and Coats were walking back to the house, Officer Bryant drove up. At this point, he and Coats were “back to normal” and joking around with each other. They told Officer Bryant that the marks were from hugging each other too hard. Deputy Williams arrived shortly after and asked the Appellant to come to his patrol car. The Appellant denied that he was still joking around with Coats at this point and claimed that Coats was lying to Officer Bryant, telling him that it was the Appellant and the Appellant’s girlfriend fighting in the street instead of Coats and Gunter. The Appellant then agreed that when the officers separated him from Coats, he and Coats were “joking around” and he was “calling back to [Coats][.]”

The Appellant described the moment he pulled out his knife as “the biggest, foolish decision [he] ever made[.]” When he pulled out the knife, he said, “You[’re] lucky I didn’t cut you too[.]” but he was talking to Coats, not Deputy Williams. He forgot Deputy Williams was even standing there and “wouldn’t have done a stunt like that” if he knew Deputy Williams was that close. Coats told him to drop the knife and put it up. The Appellant tried to close the knife and put it back in his pocket, but Deputy Williams grabbed his right arm and threw him onto the hood of the patrol car. The Appellant said that because his arm was still behind his back, which was “pretty painful[.]” he tried to move his arms together, but he was not trying to get away. He was on federal probation

and “didn’t need [any] trouble with [Deputy Williams].” He confirmed to the jury that he had a prior conviction for conspiracy to manufacture methamphetamine in 2011.

The Appellant testified that when Deputy Williams was trying to arrest him, “[t]hat’s when the N word came out.” He stated “[e]very day, man, we call each other [n***a] every day. I was raised around here in the projects[.]” He later insisted on cross-examination that despite the officers’ testimony, he did not say “n****r” until after his arrest, when he was angry with Deputy Williams. Before that, he was saying “n***a.” After he was handcuffed, he told Officer Bryant that he was only joking with Coats and not trying to hurt him or get to him. He testified that he was not intending to threaten Deputy Williams and that he had been arrested many times before but never resisted.

On cross-examination, the Appellant stated that he had been drinking for approximately ten hours, but that he “didn’t drink all day” and “wasn’t like guzzling.” He agreed that he lied to the officers about the injuries being from a hug because he did not want to go to jail. When asked whether he intentionally pulled out the knife, he responded, “Yes, sir, I did.” He stated that he was not threatening Coats or Deputy Williams, he just “told [] Coats he’s lucky I didn’t cut him too” because the knife was in his pocket when Coats put him in a headlock earlier. He acknowledged that Deputy Williams was close to him when he pulled the knife out. On redirect examination, the Appellant said he did not intend to harm anyone and joking around with Coats with the knife was “just stupidity . . . due to alcohol.”

The Appellant’s counsel renewed his motion for judgment of acquittal, which the trial court denied. The trial court then reviewed the jury instructions. The Appellant’s counsel inquired about whether reckless endangerment was a lesser included offense of aggravated assault, and the trial court concluded that it was not. The Appellant’s counsel made no objection to the proposed jury instructions. The trial court heard closing arguments and instructed the jury.

During deliberations, the jury asked the trial court, “If we [cannot] come to a unanimous decision on count one including all lesser charges, what next?” The trial judge, in compliance with Tennessee Rule of Criminal Procedure 31(d)(2), addressed the foreperson and directed the jury to deliberate further. The jury then convicted the Appellant of attempted aggravated assault, resisting arrest, disorderly conduct, and public intoxication.

Sentencing. At the April 19, 2022 sentencing hearing, the trial court sentenced the Appellant to an effective sentence of eight years. The State presented the presentence report, which showed that the Appellant had two prior felony convictions and approximately twenty prior misdemeanor convictions. Eight witnesses testified. Kayla

Young, who prepared the presentence report, testified about its contents. Deputy Williams testified that the Appellant singled him out because of his race and was a “dangerous individual.” Five of the Appellant’s family and friends testified to the Appellant’s good character and his struggle with addiction. The Appellant testified about his alcohol addiction. He indicated a desire for rehabilitation and emphasized that he had been in a rehabilitation program only once before at the age of sixteen.

The trial court, noting that the Appellant had one prior state felony conviction and one prior federal felony conviction, determined that he was a Range II, multiple offender. See Tenn. Code Ann. § 40-35-106. The court applied enhancement factors (1), (8), (13), (17), and (19) to the Appellant’s convictions. The court applied enhancement factor (1) because the Appellant had additional criminal convictions beyond that necessary to establish his range. The court then applied enhancement factor (8) because the Appellant had “multiple violations of community release in previous cases.” Next, the court applied enhancement factor (13) because the Appellant was on some sort of release from his federal felony conviction when this offense was committed. The court applied enhancement factor (17) because the Appellant intentionally selected Deputy Williams “because of some obviously racially related issues[,]” as evidenced by the “insults slung” at Deputy Williams. Lastly, the court applied enhancement factor (19) because Deputy Williams was a law enforcement officer performing his official duty.

The court then considered mitigating factors (11) and (13), but did not place significant weight on either. Regarding mitigating factor (11), the court stated that it was “hesitant to give much if any weight to that because it typically applies to unplanned or unavoidable crimes” and the Appellant “made a conscious decision to pull a knife out of his pocket[.]” In considering mitigating factor (13), the court stated that it “[understood] counsel’s argument” about the Appellant’s support of his family and acknowledged that the Appellant made “some admissions to some of the conduct.” The court ultimately afforded this factor minimal weight, stating:

The problem that sometimes I see [] is a person [] being rewarded for things that they should do anyway such as supporting one’s family, you should do that regardless, because that’s the thing to do. And so[,] while I may consider it, I am probably not going to give it a terrible amount of weight.

After applying these enhancement and mitigating factors, the court sentenced the Appellant to the maximum sentences within the sentencing ranges—eight years for attempted aggravated assault, six months for resisting arrest, thirty days for disorderly conduct, and thirty days for public intoxication. Though the court found that the Appellant had an extensive criminal history that would permit consecutive sentencing, the court exercised its discretion to order that the sentences run concurrently. See id. § 40-35-115(b)(2).

Lastly, the court considered and rejected alternative sentencing. In assessing the Appellant's potential for rehabilitation, the court highlighted that the Appellant violated his federal probation twice and previously violated misdemeanor state probations. The court stated that it was "not saying a person can't change, but we have . . . repeated episodes [of] failing the terms of [his] community release." These failures suggested a risk that the Appellant would commit another crime during a period of probation, or would not abide by the terms of probation. In considering the interest in protecting society from the Appellant's future conduct, the court noted the Appellant's prior convictions of facilitation of aggravated robbery and assault. The court stated that it was "going to give some consideration that [the convictions] occurred many years ago and perhaps [the Appellant is] not that person. But [] the situation that we have before us today[,] . . . we have a knife drawn on an officer." The court then noted that measures less restrictive than confinement have historically and recently been applied unsuccessfully, given the prior probation violations. The court concluded that a sentence of probation would unduly depreciate the seriousness of the offense, but stated that in this case, this factor alone would not prevent an alternative sentence. When considering whether confinement was particularly suited to provide an effective deterrent to others, the court indicated that it was "convinced that people don't worry about the consequences."

The trial court sentenced the Appellant to an effective eight years' incarceration. The Appellant filed a timely motion for new trial, alleging that: (1) the evidence was insufficient to sustain convictions for attempted aggravated assault and resisting arrest; and (2) the sentence imposed was excessive. A hearing was held on May 17, 2022, and the trial court denied the motion. This timely appeal followed.

ANALYSIS

I. Sufficiency of the Evidence. The Appellant argues that the evidence is insufficient to sustain his conviction for attempted aggravated assault with a deadly weapon. Specifically, he argues that the evidence failed to establish that he acted intentionally or knowingly. The State responds, and we agree, that the evidence was sufficient to support the Appellant's conviction.

When evaluating the sufficiency of the evidence, this court must determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." State v. Parker, 350 S.W.3d 883, 903 (Tenn. 2011) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)). The State is entitled to the strongest legitimate view of the evidence and all reasonable inferences that may be drawn from that evidence. State v. Davis, 354 S.W.3d 718, 729 (Tenn. 2011) (citing State v. Majors, 318 S.W.3d 850, 857 (Tenn. 2010)). "A guilty verdict by the jury, approved by the trial court, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the

prosecution’s theory.” State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997) (citing State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973)). Because a guilty verdict removes the presumption of innocence and imposes a presumption of guilt, the Appellant bears the burden of showing why the evidence is insufficient to support the jury’s verdict. Parker, 350 S.W.3d at 903 (citing State v. Rice, 184 S.W.3d 646, 661 (Tenn. 2006); State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982)).

The Appellant was charged with aggravated assault. As charged in this case, the State was required to prove that he “intentionally or knowingly [caused] another to reasonably fear imminent bodily injury” and the act “involved the use or display of a deadly weapon.” Tenn. Code Ann. §§ 39-13-101(a)(2), -102(a)(1)(A)(iii). Tennessee Code Annotated section 39-11-302(a)-(b) defines the relevant mental states as follows:

- (a) “Intentional” refers to a person who acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person’s conscious objective or desire to engage in the conduct or cause the result.
- (b) “Knowing” refers to a person who acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result.

The jury, however, acquitted the Appellant of aggravated assault and instead convicted him of the lesser included offense of attempted aggravated assault. A person commits attempted aggravated assault when he or she, “acting with the kind of culpability otherwise required for the offense”:

- (1) Intentionally engages in action or causes a result that would constitute an offense, if the circumstances surrounding the conduct were as the person believes them to be;
- (2) Acts with intent to cause a result that is an element of the offense, and believes the conduct will cause the result without further conduct on the person’s part; or
- (3) Acts with intent to complete a course of action or cause a result that would constitute the offense, under the circumstances surrounding the conduct as the person believes them to be, and the conduct constitutes a substantial step toward the commission of the offense.

Id. § 39-12-101(a)(1)-(3).

The evidence presented at trial, viewed in the light most favorable to the State, shows that the Appellant threatened Deputy Williams with a knife. Three officers, including Deputy Williams, observed the Appellant, while standing no more than an arm's length away from Deputy Williams, pull out a knife and threaten to stab Deputy Williams. The Appellant admitted that he intentionally pulled out the knife. The State presented proof that both before and after pulling the knife out of his pocket, the Appellant repeatedly directed racial slurs at Deputy Williams. Deputy Williams testified that he was "in fear big time." Based on this evidence, a rational trier of fact could have found that the Appellant acted intentionally. Therefore, the evidence is sufficient to sustain the Appellant's attempted aggravated assault conviction and the Appellant is not entitled to relief.

II. Jury Instructions. The Appellant next argues that the trial court erred in failing to instruct the jury on voluntary intoxication. The Appellant concedes that he did not request a voluntary intoxication instruction at trial or raise the issue in his motion for new trial. He nevertheless suggests that this court should review the issue de novo. Alternatively, he argues that he is entitled to relief under the plain error doctrine because the trial court violated his constitutional right to a correct and complete charge of the law. The State responds, and we agree, that plain error review is appropriate and does not afford the Appellant relief.

Questions regarding the propriety of jury instructions are reviewed de novo, but only if the issue is properly preserved. State v. Perrier, 536 S.W.3d 388, 403 (Tenn. 2017); Tenn. R. App. P. 3(e). "Issues concerning incomplete [jury] instructions are deemed waived in the absence of an objection or special request." State v. Page, 184 S.W.3d 223, 229-30 (Tenn. 2006) (citing State v. Cravens, 764 S.W.2d 754, 757 (Tenn. 1989)). In this case, the Appellant failed to raise the alleged error at trial or in his motion for new trial. Yet, he argues that the appropriate standard of review is de novo because a voluntary intoxication instruction is required if the intoxication compromised his capacity to form the culpable mental state. See State v. Hatcher, 310 S.W.3d 788, 817 n.16 (Tenn. 2010). This requirement, however, does not alter the standard of appellate review. See id. at 814-16 (reviewing the trial court's failure to instruct the jury on voluntary intoxication for plain error because the defendant failed to request the instruction). Accordingly, we are limited to reviewing the alleged error under the plain error doctrine. See Tenn. R. App. P. 36(b).

The plain error doctrine provides that "[w]hen necessary to do substantial justice, an appellate court may consider an error that has affected the substantial rights of a party at any time, even though the error was not raised in the motion for a new trial or assigned

as error on appeal.” Id. An error is “plain” if the Appellant establishes each of the following factors:

- (a) the record must clearly establish what occurred in the trial court; (b) a clear and unequivocal rule of law must have been breached; (c) a substantial right of the accused must have been adversely affected; (d) the accused did not waive the issue for tactical reasons; and (e) consideration of the error is “necessary to do substantial justice.”

State v. Smith, 24 S.W.3d 274, 282-83 (Tenn. 2000) (citing State v. Adkisson, 899 S.W.2d 626, 641-42 (Tenn. Crim. App. 1994)). The error ““must be of such a great magnitude that it probably changed the outcome of the trial.”” Adkisson, 899 S.W.2d at 642 (quoting United States v. Kerley, 838 F.2d 932, 937 (7th Cir. 1988)). “[C]omplete consideration of all the factors is not necessary when it is clear from the record that at least one of the factors cannot be established.” Smith, 24 S.W.3d at 283.

The Appellant failed to establish that a clear and unequivocal rule of law has been breached. Trial courts have a duty to give ““a complete charge of the law applicable to the facts of a case.”” State v. James, 315 S.W.3d 440, 446 (Tenn. 2010) (quoting State v. Harbison, 704 S.W.2d 314, 319 (Tenn. 1986)). Voluntary intoxication “is admissible in evidence, if it is relevant to negate a culpable mental state.” Tenn. Code Ann. § 39-11-503(a). Proof of intoxication alone, however, does not entitle a defendant to a voluntary intoxication jury instruction. Hatcher, 310 S.W.3d at 815. A voluntary intoxication instruction is required only if there is “evidence that the intoxication deprived the accused of the mental capacity to form [the culpable mental state].” Id. There is no such evidence in this case.

Though there is significant proof that the Appellant was intoxicated at the time of the offense, there is no proof that his intoxication deprived him of the mental capacity to form the culpable mental state for attempted aggravated assault. Every witness testified that the Appellant was intoxicated. The Appellant himself testified that he and Coats had been drinking all day and had “a half pint of Jim Beam, four or five of the Michelob Ultras, and some tequila.” But the Appellant never claimed, nor does the evidence suggest, that he was too intoxicated to act intentionally. The Appellant admitted during his testimony that he intentionally pulled out the knife, and described it as the “biggest, foolish decision [he] ever made[.]” He contended only that he did not intend to place Deputy Williams in fear because he was jokingly threatening Coats, not Deputy Williams. None of this evidence demonstrates that his intoxication prevented him from forming the culpable mental state. See Hatcher, 310 S.W.3d at 815-16; State v. Smith, No. M2001-01740-CCA-R3-CD, 2003 WL 22116629, at *18 (Tenn. Crim. App. Sept. 11, 2003) (holding that trial court’s failure to instruct on voluntary intoxication was not plain error because “no expert

testified as to how [a blood alcohol content of point one nine percent] may have impaired the Defendant's ability to act knowingly"). Therefore, the trial court's failure to instruct the jury on voluntary intoxication was not plain error, and the Appellant is not entitled to relief.

III. Sentencing. Lastly, the Appellant argues that the trial court abused its discretion in denying the Appellant a sentence of split confinement. Specifically, the Appellant contends that the trial court failed to consider the Appellant's potential for rehabilitation because it wrongfully equated prior probation violations to failed efforts at rehabilitation. The Appellant suggests that split confinement was appropriate because the Appellant had only been to a rehabilitation facility once before, at the age of sixteen. The State responds, and we agree, that the trial court considered and weighed all the appropriate factors in assessing whether to grant the Appellant a sentence of split confinement.

Appellate courts review a trial court's grant or denial of an alternative sentence under an abuse of discretion standard, with "a presumption of reasonableness [] to within-range sentences that reflect a decision based upon the purposes and principles of sentencing[.]" State v. Caudle, 388 S.W.3d 273, 278-79 (Tenn. 2012). "[A] trial court's decision to grant or deny probation will not be invalidated unless the trial court wholly departed from the relevant statutory considerations in reaching its determination." State v. Sihapanya, 516 S.W.3d 473, 476 (Tenn. 2014).

Though a trial court must automatically consider probation as a sentencing alternative for eligible defendants, a defendant "is not automatically entitled to probation as a matter of law." Tenn. Code Ann. § 40-35-303(b), Sent'g Comm'n Cmt. A defendant bears the burden of establishing suitability for probation. State v. Carter, 254 S.W.3d 335, 347 (Tenn. 2008) (citing Tenn. Code Ann. § 40-35-303(b)). A defendant must show that "probation will subserve the ends of justice and the best interest of both the public and the defendant." Id. Tennessee Code Annotated section 40-35-102(6)(A) provides that a defendant who does not require confinement under subsection (5) and "who is an especially mitigated 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." In sentencing a defendant, the trial court must consider:

- (1) The evidence, if any, received at the trial and the sentencing hearing;
- (2) The presentence report;
- (3) The principles of sentencing and arguments as to sentencing alternatives;
- (4) The nature and characteristics of the criminal conduct involved;

(5) Evidence and information offered by the parties on the mitigating and enhancement factors set out in §§ 40-35-113 and 40-35-114;

(6) Any statistical information provided by the administrative office of the courts as to sentencing practices for similar offenses in Tennessee;

(7) Any statement the defendant wishes to make on the defendant's own behalf about sentencing; and

(8) The result of the validated risk and needs assessment conducted by the department and contained in the presentence report.

Id. § 40-35-210(b) (2022).

When determining whether to impose alternative sentencing, the trial court must 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[.]

Id. § 40-35-103(1)(A)-(C).

The trial court did not abuse its discretion in denying the Appellant an alternative sentence because it carefully considered the evidence, the enhancement and mitigating factors, and the purposes and principles of sentencing. The trial court applied five enhancement factors, and discussed, but afforded minimal weight to, two mitigating factors. The trial court considered the presentence report, which indicated that the Appellant had previously been convicted of two felonies and approximately twenty misdemeanors. Though the Appellant was convicted of a Class D felony in this case, he was not considered a favorable candidate for alternative sentencing because he was a multiple offender. See id. § 40-35-102(6)(A).

Though the Appellant was not a favorable candidate for alternative sentencing, the trial court weighed each of the statutory considerations under Tennessee Code Annotated section 40-35-103(1). The trial court found that measures less restrictive than confinement have historically and recently been applied unsuccessfully to the Appellant. See id. § 40-35-103(1)(C). The Appellant was on federal probation when he committed the instant offense. The Appellant violated his federal probation twice, and previously violated misdemeanor probations. In considering the need to protect society, the trial court noted that the Appellant's prior conviction of facilitation of aggravated robbery and assault indicated some violent behavior. See id. § 40-35-103(1)(A). Though the trial court gave some consideration to the fact that significant time had passed since those offenses, it highlighted the dangerousness of the instant offense. The trial court then found that confinement was necessary to avoid depreciating the seriousness of the offense, but that this factor alone would not prevent an alternative sentence in this case. See id. § 40-35-103(1)(B).

The trial court's denial of alternative sentencing based on these factors is consistent with the purposes and principles of sentencing. Though the Appellant argues that the trial court failed to consider the Appellant's potential for rehabilitation, the trial court specifically noted its doubts about the Appellant's potential for rehabilitation given his history of violating the terms of his release. The trial court was not limited, as the Appellant suggests, to considering only the Appellant's past efforts at addressing his alcohol addiction. Therefore, the trial court did not abuse its discretion and the Appellant is not entitled to relief.

CONCLUSION

Based on the above reasoning and analysis, we affirm the judgments of the trial court.

CAMILLE R. MCMULLEN, PRESIDING JUDGE