

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs October 3, 2023

FILED

10/18/2023

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. JUAN DE PAZ MONDRAGON

**Appeal from the Criminal Court for Shelby County
No. 2100164, C2100482 James Jones, Jr., Judge**

No. W2023-00068-CCA-R3-CD

The defendant, Juan De Paz Mondragon, was convicted by a Shelby County Criminal Court jury of two counts of second-degree murder, attempted second-degree murder, and employing a firearm during the commission of a dangerous felony, and the trial court imposed an effective sentence of thirty-eight years' incarceration. On appeal, the defendant argues that the evidence is insufficient to support his convictions for second-degree murder and attempted second-degree murder, and the trial court abused its discretion in imposing consecutive sentences. After review, we affirm the judgments of the trial court. Furthermore, we remand to the trial court entry of corrected judgment forms in counts one and two reflecting the merger of the defendant's convictions for second-degree murder into a single conviction.

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

J. ROSS DYER, J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN, P.J., and ROBERT H. MONTGOMERY, JR., J., joined.

Charles W. Gilchrist, Jr., Memphis, Tennessee, for the appellant, Juan De Paz Mondragon.

Jonathan Skrmetti, Attorney General and Reporter; Katherine C. Redding, Senior Assistant Attorney General; Steve Mulroy, District Attorney General; and Brad Reasonover and Caleb Sanders, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Facts and Procedural History

The defendant was charged in a five-count indictment with the first-degree premeditated murder of Tyler Wolfe, the first-degree felony murder of Tyler Wolfe during

the perpetration of a robbery, the attempted first-degree murder of Joshua Love, especially aggravated robbery, and employing a firearm during the commission of a dangerous felony, arising out of an encounter that can best be described as a gun-exchange.

Sandy Wolfe, victim Tyler Wolfe's mother, testified that the last time she saw her son alive was on November 1, 2020, around 1:30 and 2:00 in the afternoon when he left her home with his friend, Joshua Love. She learned of his death around 7:00 that night.

Officer James Clements with the Memphis Police Department ("MPD") responded to a report of a gunshot victim on Eveningview Road. When he arrived in the area, Officer Clements found the victims in a truck parked on the side of the road. The passenger had visible gunshot wounds to the head and was deceased. The driver, who was later determined to be Mr. Love, had also sustained gunshot wounds, including one in his neck and one on his side, and "was bleeding pretty profusely." Officer Clements provided basic first aid in an attempt to stop the bleeding.

Officer Clements was wearing a body camera that recorded his activities at the scene and his interaction with the victims. The video footage was played for the jury and showed Mr. Love telling Officer Clements that he was shot all over and had wounds on his neck and stomach. The footage showed Officer Clements placing a bandage on Mr. Love's neck and then reaching under Mr. Love's shirt to look for another gunshot wound on his side. The footage showed Mr. Wolfe slumped over in the passenger seat with visible gunshot wounds to the head. The footage also recorded Mr. Love telling Officer Clements that he and the passenger were shot by a white man wearing a black "hoodie" that he met through a friend, Chelsea Rochevot.¹

Joshua Love testified that he and Mr. Wolfe were "really good friend[s]" and had known each other since middle school. On the day of the shooting, Mr. Love was helping Mr. Wolfe move from his mother's home to another residence. They started working around 8:00 a.m. and, admittedly, used marijuana and methamphetamine before they started. Around 1:00 p.m., after a lunch break, Mr. Love saw that Ms. Rochevot had posted a gun for sale on her Snapchat account. The gun was a .45-caliber Smith & Wesson handgun. Mr. Love contacted Ms. Rochevot to arrange a trade for Mr. Wolfe's .380-caliber Smith & Wesson handgun. They agreed to meet on Eveningview Drive to effectuate the trade.

Mr. Love drove himself and Mr. Wolfe to the Eveningview Drive location in his gray pickup truck around 2:00 or 3:00 p.m. When they arrived, they saw a man, identified as the defendant, standing on the side of the street. The defendant was wearing a black

¹ Mr. Love later testified that Ms. Rochevot had since been killed in an automobile accident.

sweatshirt with the words “Love me or Leave me” in green writing. Mr. Love looked for Ms. Rochevot but did not see her. He continued driving because he “was a little sketched out,” but after calling Ms. Rochevot he eventually turned back around and met with the defendant.

The defendant approached the truck and passed the .45-caliber gun from Ms. Rochevot’s Snapchat account to Mr. Wolfe, who then handed the gun to Mr. Love. Mr. Love tried to make small talk with the defendant, but the defendant never responded, “was kind of nodding out,” and “looked like he was on drugs.” They passed the .45-caliber gun back to the defendant, and the defendant “just started shooting.” Mr. Love recalled seeing Mr. Wolfe’s .380-caliber handgun before the defendant approached the truck but did not see it after. Mr. Love said the defendant asked, “Where’s the gun,” and he responded, “You’ve got it.” The defendant walked away and told Mr. Love to “pull off,” which Mr. Love interpreted to mean he should drive away. However, the shooting rendered Mr. Love incapable of driving, but he was able to move his arms enough to make an emergency call from his phone.

Mr. Love was treated for his injuries at several medical facilities over a two-month period. He sustained a crushed collar bone, fractured scapula, two punctured lungs, six cracked ribs, three bullet wounds to the neck, and one bullet wound to his shoulder. Mr. Love required the use of a wheelchair and had an “out bladder” because he could no longer feel below his chest. He still attended physical therapy and essentially “had to learn pretty much how to live again.”

Sometime after Mr. Love was released from the hospital, police presented him with a “six-pack” photographic array from which he identified the defendant as the shooter. Mr. Love identified the defendant as the shooter in court as well. Mr. Love said he was 100% sure of his identification, explaining “I’ll never be able to forget his face . . . I have nightmares about it.”

Mr. Love’s call to 911 was played for the jury. In the call, Mr. Love told the operator, “I’ve been shot six times. . . . He is dead.” Mr. Love said he was paralyzed, struggling to breath, and believed he was going to die. He gave the operator his location and said the shooter walked away in an unknown direction. Mr. Love described the shooter as a white male wearing a black “hoodie.” He did not know the shooter’s name.

Surveillance footage from a nearby home that captured the events was played for the jury. The footage showed a man in a black hooded sweatshirt, later identified as the defendant, walk to the intersection near the Eveningview Drive location. Soon after, a gray truck drove by but did not stop. The defendant waited at the intersection for several minutes until the victim’s truck returned and parked. The defendant walked to the

passenger side window, stood next to it, and leaned into the cab for about fifteen seconds. The defendant then casually walked away from the truck, holding an object in his right hand appeared to be consistent with a gun. Two police vehicles arrived at the scene about fifteen minutes later. Surveillance footage from another angle recorded the defendant walking in the direction of 2277 Eveningview Drive holding a black object that appeared to be a handgun. The footage also showed the defendant walk back in the direction from which he had come about ten minutes later and eventually run away toward Bobolink Cove.

Jason Baker testified that he lived in a house on the corner of Knollfield Drive and Eveningview Drive. He was out of town the day of the incident, but his home was equipped with a six-camera video surveillance system. The surveillance footage was time and date stamped in Eastern Time. He provided the surveillance footage to the police. Mr. Baker identified the defendant in court as the person shown on the surveillance footage and explained that he had seen the defendant in the neighborhood many times over the years. Mr. Baker stated that he could tell from the footage that the defendant ran away in the direction of Bobolink Cove, which was a cove in the neighborhood approximately one block from the intersection where the shooting occurred. Mr. Baker said that he also identified the defendant out of a “six-pack” photographic array shown to him by police the day after the shooting. On cross-examination, Mr. Baker stated that he selected who he “believed” to be the person in the surveillance footage, explaining he was “90% [sure] or higher.”

Josh Brigman testified that he was a distant relative of Chelsea Rochevot and was with her when she made a 911 call on the day of the shooting. Mr. Brigman said that Ms. Rochevot was at his house in the midtown area of Memphis when she made the call. The 911 call was played for the jury, and Mr. Brigman identified Ms. Rochevot’s voice on the call. In the call, Ms. Rochevot identified herself to the operator and told the operator that her friend had called her saying he had been shot. Ms. Rochevot said she was not with her friend and did not know where he was. However, she provided her friend’s phone number and that number was later confirmed to be the same number from which Mr. Love called. Mr. Brigman identified his voice in the background of the 911 call at one point saying the address “2312 Bobolink Cove.” Mr. Brigman stated that he provided the address “where I knew [the defendant] to live and that is who I knew [Ms. Rochevot] had been talking to.”

Mr. Brigman did not know Mr. Love or Mr. Wolfe, but he had known the defendant for several years. At the time of the incident, Mr. Brigman had his own clothing line called “Love me or leave me” and had sold one of his sweatshirts to the defendant a couple of weeks before the shooting. When shown still photographs taken from the surveillance footage, Mr. Brigman recognized the sweatshirt as the one he sold to the defendant and identified the defendant as the man wearing the sweatshirt.

Marvelia De Paz, the defendant's mother, testified through an interpreter that the defendant lived in her home at 2312 Bobolink Cove in November 2020. Police spoke with Ms. De Paz after the shooting and presented her with a still photograph taken from the surveillance footage, and Ms. De Paz wrote on the document, "Marvelia De Paz, this is my son, Juan De Paz." However, at trial, Ms. De Paz said that she was not 100% sure if the individual in the photograph was the defendant, explaining the officers made her feel "scared" and conversed only in English even though she speaks little English. Ms. De Paz claimed she did not remember if her other son, Jose, was present and translated for her when the officers talked to her that day.

Brian McNamee, who was working as an investigator in the district attorney's office in January 2021, was present when the police interviewed Ms. De Paz and asked her to identify a photograph of the defendant. Investigator McNamee recalled that Ms. De Paz's son and the defendant's brother, Jose, translated for Ms. De Paz.

Two MPD crime scene officers, Lee Walker and Charles Cathey, testified as to their involvement in processing the scene and Mr. Love's truck. Among the items recovered by the officers were shell casings, a bullet projectile, and a live .380-caliber bullet. No weapons were located at the scene or in the vehicle.

Dr. Katrina Van Pelt performed the autopsy of Mr. Wolfe. The doctor observed two gunshot wounds to Mr. Wolfe's head. One bullet entered the right side of the back of Mr. Wolfe's head and exited the left side of his forehead. The doctor observed no stippling on the entrance wound to indicate the bullet was fired at close range, but she explained that Mr. Wolfe's hair could have prevented stippling. This gunshot would have likely killed Mr. Wolfe instantly. The second bullet entered Mr. Wolfe's right cheek and exited the left side of his neck in a downward trajectory. The entrance wound showed stippling, indicating the gun was between six and eighteen inches away from the victim when fired. This gunshot might have been fatal, but death would not have been instantaneous. Dr. Van Pelt concluded that the cause of death was gunshot wounds to the head and manner of death was homicide. The doctor noted that Mr. Wolfe had methamphetamine and THC, and their respective metabolites, in his system at the time of autopsy.

Ruben Ramirez with the Shelby County Sheriff's Office was responsible for monitoring inmates' phone calls. Mr. Ramirez retrieved recordings of the defendant's phone calls and certain calls were played for the jury, translated by a Spanish language interpreter. In one call, the defendant said, "My gun was there, if my dad hi[d] it, I don't know, I don't know, I was not there[.]" In another call, the defendant said, "They don't have anything, they don't have any evidence. . . . This is when they bring people, when they show something. . . . The only one that they have is, you know, El-Guero." The interpreter clarified that "El-Guero" in Spanish means "the white guy." The call continued,

“This is the only guy that had said something, they don’t have a gun, they don’t have bullets. . . . They don’t have fingerprints. . . . No, they don’t have anything, they only have the word from El-Guero.” The defendant continued, “And since the girl, she is not going to show up and the other guy, the one that is injured . . . [t]hey are not going to show up because they would incriminate themselves, because they were going to rob me.”

Following the conclusion of the proof, the jury returned guilty verdicts to the lesser-included offense of second-degree murder in counts one and two, the lesser-included offense of attempted second-degree murder in count three, not guilty of especially aggravated robbery in count four, and guilty as charged of employing a firearm during the commission of a dangerous felony in count five.

The trial court conducted a sentencing hearing at which the mother of the deceased victim testified concerning the impact of his death. The surviving victim, Mr. Love, testified to the permanent physical limitations he suffered as a result of the shooting. In making its sentencing determination, the trial court reviewed the defendant’s presentence report, the notice of enhancement factors filed by the State, the victim impact statements, counsels’ arguments, and record as a whole. The trial court also addressed the statutory enhancement and mitigating factors, as well as the considerations necessary for consecutive sentencing. The trial court imposed twenty-year sentences in counts one and two, served concurrently, and a twelve-year sentence in count three, served consecutively to the twenty-year sentence. The court also imposed a six-year sentence in count five, served consecutively, for a total effective sentence of thirty-eight years in the Department of Correction.

After the denial of the defendant’s motion for new trial, this timely appealed followed.

Analysis

On appeal, the defendant argues that the evidence is insufficient to sustain his convictions for second-degree murder and attempted second-degree murder, and the trial court abused its discretion in imposing consecutive sentences. The State responds that the evidence is sufficient and that the trial court properly sentenced the defendant. We agree with the State.

I. Sufficiency

When the sufficiency of the evidence is challenged, the relevant question of the reviewing court is “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime

beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *see also* Tenn. R. App. P. 13(e) (“Findings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt.”); *State v. Evans*, 838 S.W.2d 185, 190-92 (Tenn. 1992); *State v. Anderson*, 835 S.W.2d 600, 604 (Tenn. Crim. App. 1992). All questions involving the credibility of witnesses, the weight and value to be given the evidence, and all factual issues are resolved by the trier of fact. *See State v. Pappas*, 754 S.W.2d 620, 623 (Tenn. Crim. App. 1987). “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). Our Supreme Court has 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*, 212 Tenn. 464, 370 S.W.2d 523 (1963)). “A jury conviction removes the presumption of innocence with which a defendant is initially cloaked and replaces it with one of guilt, so that on appeal a convicted defendant has the burden of demonstrating that the evidence is insufficient.” *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982).

Guilt may be found beyond a reasonable doubt where there is direct evidence, circumstantial evidence, or a combination of the two. *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990) (citing *State v. Brown*, 551 S.W.2d 329, 331 (Tenn. 1977); *Farmer v. State*, 343 S.W.2d 895, 897 (Tenn. 1961)). 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)). The jury as the trier of fact must evaluate the credibility of the witnesses, determine the weight given to witnesses’ testimony, and reconcile all conflicts in the evidence. *State v. Campbell*, 245 S.W.3d 331, 335 (Tenn. 2008) (citing *Byrge v. State*, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978)). Moreover, the jury determines the weight to be given to circumstantial evidence and the inferences to be drawn from this evidence, and the extent to which the circumstances are consistent with guilt and inconsistent with innocence are questions primarily for the jury. *Dorantes*, 331 S.W.3d at 379 (citing *State v. Rice*, 184 S.W.3d 646, 662 (Tenn. 2006)).

This Court, when considering the sufficiency of the evidence, shall not reweigh the evidence or substitute its inferences for those drawn by the trier of fact. *Id.*

Second-degree murder is the “knowing killing of another” and is a result-of-conduct offense. Tenn. Code Ann. § 39-13-210(a)(1); *State v. Page*, 81 S.W.3d 781, 787 (Tenn. Crim. App. 2002). A person acts knowingly “when the person is aware that the conduct is reasonably certain to cause the result.” Tenn. Code Ann. § 39-11-302(b). “[T]he ‘nature of the conduct’ that causes death is inconsequential.” *Page*, 81 S.W.3d at 787 (quoting *State v. Ducker*, 27 S.W.3d 889, 896 (Tenn. 2000)). Thus, a knowing intent is shown if the defendant acts with an awareness that his conduct is reasonably certain to cause the victim’s death. *See id.* at 790-93. Whether a defendant acted “knowingly” is a question of fact for the jury. *State v. Inlow*, 52 S.W.3d 101, 104-105 (Tenn. Crim. App. 2000). In assessing the defendant’s intent, the jury may rely on “the character of the assault, the nature of the act and [on] all the circumstances of the case in evidence.” *Id.* at 105 (citing *State v. Holland*, 860 S.W.2d 53, 59 (Tenn. Crim. App. 1993)). “In order to convict a defendant of attempted second[-]degree murder, the [S]tate is required to prove that the defendant acted with the intent to cause the knowing killing of another, believing his conduct would cause the result without further conduct on his part.” *Inlow*, 52 S.W.3d at 104; Tenn. Code Ann. §§ 39-12-101(a)(2) and 39-13-210(a).

The defendant asserts the evidence did not “support a verdict for a knowing killing of another. Rather, it appears that [the] [d]efendant’s actions were reckless in nature and would only support a guilty verdict for reckless homicide.” Similarly, with regard to the attempt conviction, the defendant asserts the proof shows only that he “recklessly fired shots at Josh Love,” meaning the jury should have, at most, convicted him of a reckless act.

However, viewed in the light most favorable to the State, the evidence was sufficient for the jury to find the defendant acted “knowingly.” The evidence shows the defendant walked up to the victims’ truck, leaned in the cab, and seemingly unprovoked fired at least six shots toward the victims. The defendant shot the victims at close range in vital areas such as the head, face, and neck. Video surveillance shows that after shooting the victims, the defendant casually walked down the street and then ran toward his house. Given this proof, a rational trier of fact could have found beyond a reasonable doubt that the defendant was aware that firing two close-range shots at Mr. Wolfe’s head and face was reasonably certain to kill him. Likewise, a rational trier of fact could have found beyond a reasonable doubt that the defendant intended to cause the knowingly killing of Mr. Love and believed that shooting him at least four times in the neck and shoulder would accomplish the result. *Inlow*, 52 S.W.3d at 105. Although the defendant argues that his actions were merely reckless, whether the defendant acted knowingly was a question of fact for the jury. *Id.* at 104-105. The defendant is not entitled to relief.

II. Consecutive Sentencing

After reciting the applicable law regarding consecutive sentencing, the defendant's argument consists of two sentences: "Defendant has no prior convictions. Defendant submits that the trial court abused its discretion in ordering his sentences to run consecutive." From the defendant's legal citations, we surmise the defendant contests the trial court's imposition of consecutive sentencing based on its finding that he was a dangerous offender.

This Court reviews consecutive sentences imposed by the trial court under an abuse of discretion standard with a presumption of reasonableness. *State v. Pollard*, 432 S.W.3d 851, 859-60 (Tenn. 2013). A trial court "may order sentences to run consecutively" if it finds the defendant is "a dangerous offender whose behavior indicates little or no regard for human life, and no hesitation about committing a crime in which the risk to human life is high[.]" Tenn. Code. Ann. § 40-35-115(b)(4); see *State v. Wilkerson*, 905 S.W.2d 933, 936 (Tenn. 1995). Before a trial court may impose consecutive sentences on the basis that a defendant is a dangerous offender, the trial court must find "that an extended sentence is necessary to protect the public against further criminal conduct by the defendant and that the consecutive sentences . . . reasonably relate to the severity of the offenses committed." *Wilkerson*, 905 S.W.2d at 939. Our supreme court has stated that the trial court must make specific findings about "particular facts" which show the *Wilkerson* factors apply to the defendant. *State v. Lane*, 3 S.W.3d 456, 461 (Tenn. 1999).

In imposing consecutive sentencing, the trial court determined that the defendant was a dangerous offender whose behavior indicates little or no regard for human life and no hesitation about committing a crime when the risk to human life is high. See Tenn. Code Ann. § 40-35-115(b)(4). As required by *Wilkerson*, the court found that an extended sentence was necessary to protect the public from further criminal conduct by the defendant and that consecutive sentencing is reasonably related to the severity of the offense. The court noted that there was "no regard at all for the taking of human life in this particular matter" and that a review of the surveillance video showed nothing "that would explain or somehow justify the actions or show that the actions were not the intended actions of [the defendant]." The court took into account that the defendant did not have a criminal record involving violent offenses but determined that the defendant's conduct and the facts of the case showed the defendant was a dangerous offender. The court also found that consecutive sentencing was reasonably related to the severity of the offenses given the defendant took Mr. Wolfe's life and permanently injured Mr. Love. The trial court made the required findings, and its determination is supported by the record and entitled to a presumption of reasonableness. The defendant is not entitled to relief.

Finally, though not raised by either party, we detect some errors in the entry of the judgment forms in this case. It is well settled in Tennessee that, under certain circumstances, two convictions or dual guilty verdicts must merge into a single conviction to avoid double jeopardy implications. For example, merger is required when a jury returns guilty verdicts on two counts that represent alternative theories of the same offense. *See, e.g., State v. Cribbs*, 967 S.W.2d 773, 788 (Tenn. 1998) (discussing merger of guilty verdicts on counts of both first-degree premeditated murder and first-degree felony murder); *State v. Cooper*, 336 S.W.3d 522, 523-34 (Tenn. 2011) (modifying the judgments of conviction to merge separate guilty verdicts for DUI and DUI per se). In the instant matter, the defendant was convicted, based on alternative theories, of two counts of second-degree murder for the same victim. However, this is not reflected in the judgment forms. Therefore, we must remand the case to the trial court for entry of corrected judgment forms indicating the merger. *See State v. Berry*, 503 S.W.3d 360, 364 (Tenn. 2015) (“The judgment document for the lesser (or merged) conviction should reflect the jury verdict on the lesser count and the sentence imposed by the trial court. Additionally, the judgment document should indicate in the ‘Special Conditions’ box that the conviction merges with the greater conviction. To avoid confusion, the merger also should be noted in the ‘Special Conditions’ box on the uniform judgment document for the greater or surviving conviction.”).

Conclusion

Based on the foregoing authorities and reasoning, we affirm the judgments of the trial court. Additionally, we remand the matter to the trial court for entry of corrected judgment forms in counts one and two.

J. ROSS DYER, JUDGE