IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs June 6, 2023

STATE OF TENNESSEE v. TONDRE DURPRESS RAGLAND

Appeal from the Circuit Court for Haywood County
No. 7813 Clayburn Peeples, Judge

No. W2022-01303-CCA-R3-CD

A Haywood County jury convicted the defendant, Tondre Durpress Ragland, of attempted second-degree murder, possession of a firearm during the commission of a dangerous felony, and aggravated assault, for which he received an effective sentence of twenty years in confinement. On appeal, the defendant contends the evidence presented at trial was insufficient to support his conviction for aggravated assault. The defendant also argues the trial court erred in imposing partial consecutive sentences. Following our review, we affirm the defendant's convictions. However, we reverse the imposition of consecutive sentences and remand to the trial court for a new sentencing hearing for consideration of the consecutive sentencing factors outlined in *State v. Wilkerson*, 905 S.W.2d 933 (Tenn. 1995).

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed in Part; Reversed in Part; and Remanded

J. ROSS DYER, J., delivered the opinion of the court, in which JOHN W. CAMPBELL, SR. and TOM GREENHOLTZ, JJ., joined.

M. Todd Ridley, Assistant Public Defender, Tennessee Public Defenders Conference, Franklin, Tennessee (on appeal); W. Taylor Hughes, Alamo, Tennessee (at trial), for the appellant, Tondre Durpress Ragland.

Jonathan Skrmetti, Attorney General and Reporter; Lacy E. Wilber, Senior Assistant Attorney General; Frederick Hardy Agee, District Attorney General; and Jason Scott, Scott Kirk, and Jerald Campbell, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Facts and Procedural History

On December 21, 2014, the Madison County Sheriff's Department ("MCSD") went to Carolyn Bonds' house and told her to return the defendant's car, which the defendant had allowed her to borrow for several weeks. After her conversation with the MCSD and upon speaking with the defendant, Ms. Bonds agreed to drive the car from Jackson to the defendant's home in Haywood County that afternoon.

Prior to leaving for the defendant's house, Ms. Bonds was approached by Michael White, who went to high school with Ms. Bonds and the defendant. Mr. White asked Ms. Bonds if she could drop him off at his aunt's house in Brownsville, and Ms. Bonds agreed. As she was driving to the defendant's house, Ms. Bonds and the defendant spoke on the phone, and the defendant overheard Mr. White in the background. The defendant asked Ms. Bonds who was in the car with her, and she told him it was Mr. White. The defendant immediately hung up the phone; however, he called back a short time later to let Ms. Bonds know that she had passed his house, that she needed to turn around, and that he was walking down the street towards her. When the defendant approached the vehicle, he opened the driver's side door and began "pounding [Ms. Bonds] in [her] head and hitting [her] on the top of the head and in [her] face." In an attempt to get away from the defendant's attack, Mr. White tried to reach over and step on the gas pedal but was unable to; however, Ms. Bonds was still able to control the vehicle and "just drove on off." As she drove away, Ms. Bonds could hear "POW-POW" as the defendant fired a gun towards the car. When Mr. White asked Ms. Bonds to "[j]ust stop. Let me see what's going on," Ms. Bonds refused stating, "No, I'm not fixing to stop. . . . He's shooting. That's shots. . . . No, let's go." Mr. White then jumped out of the car, and Ms. Bonds continued driving. Once she got to the end of the road, she called Mr. White to make sure he was okay.

According to Mr. White, when the defendant was beating Ms. Bonds in the head and Mr. White tried to put his foot on the gas pedal in an attempt to get away, the defendant pulled a gun out and said, "You've got the nerve to have this n****r off in my car." The defendant pointed the gun at the back of Mr. White's head, and Mr. White jumped out of the car. Ms. Bonds then drove away as the defendant shot at her "two or three" times. As Mr. White attempted to flee, the defendant shot him in the chin and both arms. The defendant continued firing until he ran out of bullets but never said anything to Mr. White during the encounter.

After being shot, Mr. White fell into a ditch; however, when he heard a woman screaming, he began running towards the woman's voice. The woman and her husband helped him into their car, and they drove until they spotted and were able to stop a State Trooper who called an ambulance. Mr. White was then taken by helicopter to Regional

One Hospital in Memphis. The State entered Mr. White's medical records into evidence, portions of which were read to the jury.

Hattie Bell and her husband were leaving the Saint James Church of God in Christ church near the defendant's house when she saw the defendant chasing and shooting at Mr. White. Mr. White, who was running towards Ms. Bell, tried to get into her car, but the defendant said, "Don't open the door." Mr. White stumbled into a ditch, and Mrs. Bell got out of her car and told the defendant, who she had known for twenty years, "Don't shoot him again." The defendant did not respond but walked away towards the church. Mrs. Bell then helped Mr. White into the back of her car and drove until she flagged down a State Trooper on the main road. She then waited with Mr. White at a nearby Exxon for an hour until an ambulance arrived from Jackson.

Lieutenant Jamie Moore with the Haywood County Sheriff's Office was working as an investigator in December 2014. Lieutenant Moore was off-duty at the time of the incident but received a call advising her to assist with the investigation. She initially reported to the Exxon on Anderson Extended and met with a State Trooper, two deputies, and Mr. and Mrs. Bell. The next afternoon she was advised that Mr. White had been released from the hospital, so she met with him at his residence. While Lieutenant Moore was speaking with Mr. White, Ms. Bonds arrived at his house and also gave a statement. This concluded the State's case-in-chief.

The defendant called Gloria Leavy, his down-the-street neighbor, as his first witness. Ms. Leavy testified that on December 21, 2014, she looked out of her window and noticed the defendant and Mr. White in her driveway, leaning against her car. Although Ms. Leavy was familiar with the defendant, she had never seen Mr. White before that day. According to Ms. Leavy, the two men were "passing words," but their conversation did not appear to be heated or intense. However, she did notice that the defendant had a gun and that Mr. White was holding something in his hand, but she could not make out what it was. When Ms. Leavy came out of her house and approached them, the two men walked away. A few minutes later, Ms. Leavy heard gunshots and saw a blue vehicle pull up.

The defendant testified on his own behalf, stating that he contacted the MCSD and asked for their assistance in getting his vehicle back from Ms. Bonds. Initially, Ms. Bonds informed the defendant that a wrecker service would bring the vehicle to him. However, she later called the defendant and stated that she was driving down his street. While the defendant, who was sitting outside his cousin's house, was talking to Ms. Bonds on the phone, he saw Ms. Bonds pass and told her that she needed to turn around. As the defendant approached the vehicle, he noticed Mr. White was "laid out in the passenger side of the car." When the defendant reached into the car to get the keys, Mr. White "stepped

on the gas." Because the defendant's arm was in the car at the time, he grabbed Ms. Bonds' hair, but she drove away.

The defendant followed them on foot, and when he reached his father's house, which was several houses down, Mr. White was standing in front of the defendant's father's 18-wheeler. Mr. White, who "was supposed to have been a Gangster Disciple," began "throwing up gang signs" and told the defendant that he was going to die. As the defendant continued walking towards Ms. Leavy's yard, Mr. White called his friends on the phone and gave them the location of the defendant's house. The defendant and Mr. White began arguing but walked away when Ms. Leavy came outside. While they were walking away, the defendant called the police and told them "a gang banger [was] threatening [his] life." Although the police said they were sending an officer to investigate, no one ever arrived. When the defendant hung up the phone, Mr. White "got in a rage" and stuck his hand in his pocket. He told the defendant, "MF, I've been in the penitentiary, I'll kill you and go back." The defendant feared for his life and shot Mr. White three or four times. Afterward, the defendant ran after Mr. White in an attempt to help him due to the amount of Mr. White's blood loss. The defendant testified that he did not take his gun out until Mr. White put his hand in his pocket, and he denied ever shooting at the car while Ms. Bonds was driving. On cross-examination, the defendant denied trying to kill Mr. White and stated that he helped Mrs. Bell place Mr. White in her car.

Following deliberations, the jury found the defendant guilty of attempted second-degree murder and possession of a firearm during the commission of a dangerous felony with regards to his actions against Michael White, and aggravated assault with regards to his actions against Carolyn Bonds. Following a sentencing hearing, the trial court imposed an effective sentence of twenty years in confinement. The defendant filed a motion for new trial, which the trial court denied. This timely appeal followed.

Analysis

On appeal, the defendant argues the evidence presented at trial was insufficient to support his conviction for aggravated assault.[1] The defendant also argues the trial court erred in imposing partial consecutive sentences. The State contends the evidence is sufficient, and the trial court properly weighed the bases for partial consecutive sentences.

[1] The defendant does not challenge his convictions for attempted second-degree murder and possession of a firearm during the commission of a dangerous felony.

I. Sufficiency

The defendant contends the evidence is insufficient to support his conviction for aggravated assault. Specifically, the defendant argues the State failed to establish that Ms. Bonds feared imminent bodily injury because of the defendant's use or display of a firearm. The State responds the evidence is sufficient. We agree with the State.

A jury conviction removes the presumption of the defendant's innocence and replaces it with one of guilt, so that the defendant carries the burden of demonstrating to this Court why the evidence will not support the jury's findings. *See State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). The defendant must establish that no reasonable trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979); Tenn. R. App. P. 13(e).

Accordingly, on appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable inferences which may be drawn therefrom. *See State v. Williams*, 657 S.W.2d 405, 410 (Tenn. 1983). In other words, questions concerning the credibility of witnesses and 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, and not the appellate courts. *See State v. Pruett*, 788 S.W.2d 559, 561 (Tenn. 1990).

The guilt of a defendant, including any fact required to be proven, may be predicated upon direct evidence, circumstantial evidence, or a combination of both direct and circumstantial evidence. *See State v. Pendergrass*, 13 S.W.3d 389, 392-93 (Tenn. Crim. App. 1999). Even though convictions may be established by different forms of evidence, the standard of review for the sufficiency of that evidence is the same whether the conviction is based upon direct or circumstantial evidence. *See State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011). "The standard by which the trial court determines a motion for judgment of acquittal at the end of all the proof is, in essence, the same standard which applies on appeal in determining the sufficiency of the evidence after a conviction." *State v. Thompson*, 88 S.W.3d 611, 614-15 (Tenn. Crim. App. 2000). Moreover, "once the trial court approves the verdict as the thirteenth juror and imposes judgment," our appellate review is limited to determining the sufficiency of the evidence. *State v. Burlison*, 868 S.W.2d 713, 719 (Tenn. Crim. App. 1993); *see* Tenn. R. Crim. P. 33(d).

As charged in this case, aggravated assault occurs when a person intentionally or knowingly causes another to reasonably fear imminent bodily injury by using or displaying a deadly weapon. Tenn. Code Ann. §§ 39-13-101(a)(2), -102(a)(1)(A)(iii). The defendant contends the evidence presented was insufficient to establish that Ms. Bonds "reasonably fear[ed] imminent bodily injury" because she did not testify that she was in fear during the shooting.

Although Ms. Bonds did not directly testify that she was in fear during the shooting, the jury was entitled to infer from the proof presented, including the victim's testimony, the victim's fear of imminent bodily injury. *See State v. Antoneo Williams*, No. E2014-01076-CCA-R3-CD, 2015 WL 5023136, at *7 (Tenn. Crim. App. Aug. 25, 2015), *perm. app. denied* (Tenn. Jan. 15, 2016) (holding the jury was entitled to infer fearfulness when the victims ran away from the shooter); *State v. Alvin Brewer and Patrick Boyland*, No. W2012-02282-CCA-R3-CD, 2014 WL 1669807, at *23 (Tenn. Crim. App. Apr. 24, 2014), *perm. app. denied* (Tenn. Sept. 18, 2014) (holding the evidence was sufficient even though the victim did not testify he was fearful); *State v. Barry Smith, Julian Kneeland, and Barron Smith*, No. W2011-02122-CCA-R3-CD, 2013 WL 6388588, at *14 (Tenn. Crim. App. Dec. 5, 2013), *no perm. app. filed* (holding the evidence was sufficient to find the victims were fearful of imminent bodily injury when they showed a worry about self-preservation); *State v. Gregory Whitfield*, No. 02CO1-9706-CR-00226, 1998 WL 227776, at *2 (Tenn. Crim. App. May 8, 1998), *perm. app. denied* (Tenn. Dec. 7, 1998) ("The element of 'fear' is satisfied if the circumstances of the incident, within reason and common experience, are of such a nature as to cause a person to reasonably fear imminent bodily injury.").

When viewing the evidence in a light most favorable to the State, the proof shows that the defendant began hitting Ms. Bonds in the head when she attempted to return his car. After Mr. White unsuccessfully tried to step on the gas pedal in an attempt to flee from the defendant, Ms. Bonds, despite being attacked by the defendant, was able to drive away. As she did, Ms. Bonds could hear "POW-POW" as the defendant, who was standing behind the car, fired his gun toward the car. Mr. White wanted to get out of the vehicle and determine what was going on, but Ms. Bonds refused to stop the car stating, "No, I'm not fixing to stop. . . . He's shooting. That's shots. . . . No, let's go." After Mr. White jumped out of the car, Ms. Bonds drove to safety before checking on Mr. White. Under those circumstances and based on Ms. Bonds' statements, the jury could have inferred Ms. Bonds was in fear of imminent bodily harm. *See State v. Jackson*, No. M2019-01128-CCA-R3-CD, 2020 WL 2488763, at *9 (Tenn. Crim. App. May 14, 2020) (reversing conviction on an insufficiency of evidence basis, concluding that "Ms. Jackson did not testify that she feared imminent bodily injury [after the defendant made a threat in a phone call], and we are unable to infer that fear from her actions following Defendant's threat. Ms. Jackson testified that she was sitting in her car speaking to Defendant on the phone when Defendant threatened [to] kill her by putting a bomb in her car if she did not drop the charges against him. Ms. Jackson did not call the police after this threat and, several hours later, drove herself and her daughter to a store in her car."). This is not a case in which the facts are clearly inconsistent with the victim reasonably fearing imminent bodily injury. *Id.* at *9. The defendant is not entitled to relief on this issue.

II. Partial Consecutive Sentences

The defendant argues the trial court erred in imposing partial consecutive sentences.[2] Specifically, the defendant contends the trial court failed to make adequate findings to support its conclusion that the defendant is a dangerous offender. The State contends the trial court properly weighed the bases for partial consecutive sentences.

In *State v. Pollard*, 432 S.W.3d 851 (Tenn. 2013), the Tennessee Supreme Court expanded its holding in *Bise* to also apply to decisions by trial courts regarding consecutive sentencing. *Id.* at 859. This Court must give "deference to the trial court's exercise of its discretionary authority to impose consecutive sentences if it has provided reasons on the record establishing at least one of the seven grounds listed in Tennessee Code Annotated section 40-35-115(b)." *Id.* at 861. "Any one of [the] grounds [listed in section 40-35-115(b)] is a sufficient basis for the imposition of consecutive sentences." *Id*. at 862 (citing *State v. Dickson*, 413 S.W.3d 735 (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 sentences on the basis that the defendant is a dangerous offender, the trial court articulated its reasons as follows:

> But you say that the fourth factor does apply – that the defendant is 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. On the one hand, you've got the fact that his record doesn't indicate that he's that kind of person. On the other hand, what happened that night indicates that he certainly did not hesitate about committing the crimes that

[2] The defendant's sentence for possession of a firearm during the commission of a dangerous felony was statutorily required to be served consecutively to his sentence for attempted second-degree murder. Therefore, he is only challenging the trial court's order that he serve the sentence for aggravated assault consecutively to his remaining sentences.

> he committed. The circumstances under which he did that were certainly aggravated.
>
> I think – I think confinement for an extended period of time can easily be said to be necessary to protect society. And even with consecutive sentencing, the total sentence which would be twenty years is not inconsistent with – with the crimes committed. And I think they do reasonably relate to the offenses, and so I think it's appropriate to run that third sentence consecutively to the other two.

In determining whether to require the defendant to serve his sentences consecutively, the trial court first determined the defendant had no hesitation about committing a crime in which the risk to human life was high. *See* Tenn. Code Ann. § 40-35-115(b)(4). As a result, the trial court determined the defendant was a dangerous offender.

The trial court then proceeded to consider the *Wilkerson* factors. Although the trial court stated on the record that an extended sentence was necessary to protect the public from further criminal conduct by the defendant and that the length of the defendant's sentence reasonably related to his offenses, it failed to state the specific facts it found to satisfy its conclusion. *See State v. Calloway*, No. M2004-01118-CCA-R3-CD, 2005 WL 1307800, at *13 (Tenn. Crim. App. June 2, 2005) (Woodall, J.) ("We agree with Defendant's contention that the trial court failed to make the specific factual findings required by Wilkerson as a prerequisite to finding that Defendant is a dangerous offender for whom consecutive sentencing is appropriate. The mere recitation of the Wilkerson factors is not a substitute for the requirement of making specific findings."); *State v. Scott M. Craig*, No. E2001-01528-CCA-R3-CD, 2002 WL 1972892, at *9 (Tenn. Crim. App. Aug. 27, 2002), *no perm. app. filed* ("A mere statement that confinement is necessary to protect society and that the severity of the sentence is reasonably related to the convicted offenses, without more, is insufficient to justify consecutive sentences [under *Wilkerson*]."); *Wilkerson*, 905 S.W.3d at 938 (holding the trial court must make "*specific findings* regarding the severity of the offenses and the necessity to protect society before ordering consecutive sentencing under Tenn. Code Ann. § 40-35-115(b)(4)") (emphasis added). Because the trial court failed to make the required findings regarding factor (4), this factor does not support consecutive sentencing. *Pollard*, 432 S.W.3d at 869 ("[W]hen trial courts fail to include the two additional findings before classifying a defendant as a dangerous offender, they have failed to adequately provide reasons on the record to support the imposition of consecutive sentences."). Accordingly, this Court cannot defer to the trial court's exercise of discretion nor presume that the imposition of consecutive sentences was reasonable. *See State v. Carpenter*, No. W2019-01362-CCA-R3-CD, 2020 WL

7040983, at *8 (Tenn. Crim. App. Nov. 30, 2020); *State v. Robinson*, No. W2019-00216-CCA-R3-CD, 2019 WL 6876778, at *7 (Tenn. Crim. App. Dec. 16, 2019).

In *Pollard*, our supreme court explained that, when facing this situation, this Court has two options: "(1) conduct a de novo review to determine whether there is an adequate basis for imposing consecutive sentences; or (2) remand for the trial court to consider the requisite factors in determining whether to impose consecutive sentences." *Pollard*, 432 S.W.3d at 864 (citing *Bise*, 380 S.W.3d at 705 & n.41). Because the consideration required under *Wilkerson* involves a fact-intensive inquiry, the better course is to remand the case to the trial court to determine the propriety of consecutive sentencing. *Id.* Accordingly, we vacate the imposition of partial consecutive sentencing and remand to the trial court for a new sentencing hearing. The new sentencing hearing is limited to consideration of the *Wilkerson* factors to determine the propriety of consecutive sentencing in this case.

Conclusion

Based on the foregoing authorities and reasoning, we affirm the defendant's convictions. However, we vacate the imposition of consecutive sentencing and remand to the trial court for further proceedings consistent with this opinion.

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J. ROSS DYER, JUDGE