IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs March 31, 2021

STATE OF TENNESSEE v. ABRAHAM JULIEN AUGUSTIN

Appeal from the Criminal Court for Bradley County
Nos. 19-CR-193A, 19-CR-194, 19-CR-195 Andrew Mark Freiberg, Judge

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No. E2020-00965-CCA-R3-CD

The Defendant pleaded guilty to three counts of attempted second degree murder, a Class B felony; three counts of reckless endangerment committed with a deadly weapon, a Class E felony; attempted aggravated robbery, a Class C felony; criminal conspiracy to commit robbery, a Class D felony; escape, a Class E felony; theft of property valued at $2500 or more but less than $10,000, a Class D felony; and theft of property valued at $1000 or less, a Class A misdemeanor. *See* T.C.A. §§ 30-13-210 (second degree murder) (2018), 39-12-101 (2018) (criminal attempt), 39-13-402 (2018) (aggravated robbery), 39-12-103 (criminal conspiracy), 39-13-103(a), (b)(2) (reckless endangerment committed with a deadly weapon), 39-16-605 (2018) (escape), 39-14-103 (2018) (theft of property), 39-14-105 (2018) (subsequently amended) (grading of theft). The trial court imposed an effective twenty-five-year sentence. On appeal, the Defendant contends that the trial court erred in sentencing. We affirm the judgments of the trial court.

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

ROBERT H. MONTGOMERY, JR., J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS, P.J., and ROBERT L. HOLLOWAY, JR., J., joined.

Meredith Mochel, Chattanooga, Tennessee, for the Appellant, Abraham Julien Augustin.

Herbert H. Slatery III, Attorney General and Reporter; David H. Findley, Senior Assistant Attorney General; Stephen D. Crump, District Attorney General; Coty Wamp, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

The Defendant was age sixteen at the time of his crimes and age seventeen at the time of his guilty pleas. He was prosecuted as an adult. His crimes relate to two criminal episodes, the first of which involved a robbery and shootings of three individuals on

October 10, 2018, and the second of which involved an escape from custody on November 2, 2018.

At the guilty plea hearing, the State offered the following recitation of the facts underlying the Defendant's guilty pleas related to the October 10, 2018 crimes:

> On October 10th, 2018, Bradley County 911 received reports of three individuals with gunshot wounds . . . . Officer Sean Bulow and Officer Nick Payne arrived at the scene and located the resident of that address, Kionna Slone. Ms. Slone directed officers to the three victims, who were Trevon[1] Hickey, Conner Laws, and Hailey Davis. Mr. Hickey was lying on his back with a gunshot wound to his chest. Hailey Davis was located on a chair in the middle of the living room. Conner Laws was lying on his back on the couch. All three victims were transported to Erlanger Medical Center for their injuries.
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> At the crime scene, crime scene tech Shane Clark and crime scene tech Cory Fox located six .9mm casings outside the apartment; a bullet with a defect on the kitchen floor; a bullet with [a] defect inside the couch; and multiple bullet holes in the front door.
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> Ms. Slone was transported to the Cleveland Police Department where she provided investigators with a verbal and written statement. Ms. Slone stated that an acquaintance she went to high school with named Julien had made arrangements with Trevon Hickey to come to the apartment to buy marijuana. Upon Julien's arrival, Mr. Hickey opened the front door and was sprayed with pepper spray. She advised that Julien was screaming, "Give me all the weed, give me all the weed." At that point, Mr. Hickey tried to push the door closed. The suspects then fired multiple shots through the door. Mr. Hickey, Mr. Laws, and Ms. Davis were struck by these bullets. Ms. Slone was positive the subject who fired the gun was Julien. While Ms. Slone could not remember the subject's last name, she provided police with a social media picture of the subject. The picture matched [the Defendant].
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> Investigators located [the Defendant] . . . . Consent to search the residence was granted from [the Defendant]'s mother, Ms. Bellamy. Inside the residence, a Taurus .9mm handgun was located in [the Defendant]'s upstairs bedroom underneath the mattress, along with seven bullets. An empty magazine was located on top of the mattress. A check of the firearm

[1] The record reflects that Trevon Hickey was sometimes referred to as Trey.

through NCIC shows that it was reported stolen in Cleveland in July of 2018 from a vehicle . . . .

[The Defendant] was transported to the police department. He and his mother Ms. Bellamy were read their *Miranda* rights and signed a consent to waive them. During the interview, he stated that he did go to the residence to buy marijuana and was robbed of $135.00. [The Defendant] confessed to firing the shots inside the residence, but stated that he disarmed a gun from Mr. Hickey after being threatened with it.

Detective Cody Hinson and Detective Matt Landolt interviewed Steven Wilburn at the police department. He was inside the apartment when the incident occurred. He stated that he had went to Trevon's apartment with Mr. Davis and Ms. Laws. He stated that they had just started smoking marijuana when someone knocked on the door. He advised that Trey stated he knew who it was. Upon opening the door, someone on the outside sprayed the room with pepper spray and yelled, "Where's the money?" Trey tried to shut the door at which point the suspect fired the gun. He reported the suspect having a mask and hat on.

Detective Parks went to Erlanger where he recovered a bullet and a fragment of a bullet from the back of the ambulance which transported Trey Hickey. Inside the hospital, Detective Parks collected three bags of clothing, clothing from the security. These clothing items belonged to the three victims. . . .

Mr. Hickey stated that someone knocked on the door. When he opened the door, he tried to close it and was shot. Mr. Hickey could not advise who the suspect was at the time he was at Erlanger.

Detective Parks also interviewed Ms. Davis. Ms. Davis stated that she and Conner went to Trey's house with their new roommate Steven Wilburn to gather some of Steven's belongings and smoke marijuana. She stated that they had been at Trevon's house for an hour or two when they heard a knock on the door. She heard Trey say, "I know who this is." He opened the door, at which point she saw two people. One person had a gun and the other was spraying pepper spray. Trey shut the door, at which point the person with the gun fired numerous shots through the door. Ms. Davis did not recognize either of the suspects.

On October 17th, 2018, Detective Landolt interviewed Trey Hickey. Mr. Hickey stated that on the 10th of October, he opened the front door after

hearing someone knock. Upon opening it, he was sprayed with a liquid by a person on the other side. He stated that another person had a gun and demanded that he give up everything. Trey pushed against the door as hard as he could, at which point several shots were fired. Mr. Hickey stated that [the Defendant] was scheduled to come over to the residence to buy marijuana.

Consent to search [the Defendant]'s cell phone was granted by his mother. Detective Hinson located a group of messages on SnapChat between [the Defendant] and the following user names: Supreme.kayb, who the State would prove is Kevin Bowens; Kando (Kandintayshaun1), who the State would prove is [K.D.], a juvenile;[2] and S.D., who the State would prove is [S.D.], another juvenile. The heading of the message was titled, "Who getting licced? [sic]" Inside the message, [the Defendant] asked the other subjects for a ride. [The Defendant] provided his address so that he could be picked up. [The Defendant] made the statement, "Trey said 135 for Zips today." Zips is common slang meaning an ounce of marijuana. [S.D.] asked, "Who all going?" [The Defendant] replied, "Us N [K.D.] but ian hit do line yet. [sic]" Later in the conversation, [S.D.], Kevin Bowens and [the Defendant] engaged in a voice call. It's not known what was said.

During [the Defendant]'s interview, he mentioned having a conversation prior to the shooting with Kevin Bowens, [S.D.], and [K.F.]. He subsequently denied any of these parties being involved in the shooting or going to Trevon's apartment. A Google search of the key words, "Supreme.kayb" showed a SoundCloud music account belonging to Kevin Bowens.

. . . Detective Landolt spoke to [K.F.] and his mother, Amber Jackoway, at the police department. Ms. Jackoway and [K.F.] signed a waiver and agreed to talk to them. [K.F.] stated that he was at an address on Green Drive with Kevin Bowens when he was picked up by [S.D.] and [the Defendant] in a gold SUV. While [en] route to Westside Drive, Mr. Bowens, [S.D.], and [the Defendant] had a conversation about robbing . . . Trevon of his weed and money. He stated that [the Defendant] had a gun in his pants and talked about displaying it during the robbery but not shooting it. Upon arrival, [K.F.] and Mr. Bowens went to the side of the apartment while [the Defendant] went to the front door. During the robbery, he observed the parties inside try to close the door on [the Defendant], at which point [the

[2] To the extent that the record identifies individuals other than the Defendant as juveniles, we will refer to them by initials.

Defendant] fired numerous rounds into the apartment. [K.F.] stated that [the Defendant] never made it into the apartment past the front door. All subjects fled the scene in the gold SUV. [K.F.] stated that [the Defendant] made the statement that he saw Conner laughing, which made him mad and led to him shooting the victims.

On October 18th, Detective Landolt received a copy of the letter written by [the Defendant] to the juvenile court judge. In the letter, [the Defendant] admits to shooting three people. Additionally, he made similar, unsubstantiated claims that he made in his interview that Mr. Hickey had a gun and took his money.

Detective Landolt then spoke to [S.D.] at the police department. [S.D.] stated that there was a conversation between the suspects on Green Drive about robbing Trevon. During the conversation, using Mace was discussed, as well as robbing Trevon of his money. The discussion included how they were going to split the money. [S.D.] stated that he drove [the Defendant], Bowens, and [K.F.] to the Westside Drive apartment. He stated that [K.F.] knocked on the door. Once it opened, [K.F.] sprayed Mace while [the Defendant] fired the shots inside the apartment. He stated that Kevin Bowens was at the bottom of the steps.

After the shooting, all of the subjects entered his vehicle and they left. Detective Wattenbarger went to 131 East Street and took pictures of the vehicle that was used during the incident. It was a GMC gold Envoy registered to [S.D.]'s father.

[K.F.] was interviewed for a second time at the police department. During the interview, he became very emotional and admitted to spraying Mace at the front door of Trey's apartment during the robbery. He stated that he knocked on the door. Once the door was opened, he sprayed the Mace. Trey tried to close the door, at which point [the Defendant] fired the shots. He stated that Bowens was directly beside him. All parties then ran back to [S.D.]'s car. [S.D.] drove to [the Defendant]'s house to drop them off, then to the apartment on Green Drive, then [K.F.'s] apartment . . . . [K.F.] admitted that he and Kevin Bowens were wearing bandannas during the robbery. This fact corroborates the statements from the victims and witnesses who could not see the faces of the suspects due to them being covered. He stated that [the Defendant] wore a ski mask. [K.F.] admitted to throwing the bandannas in the dumpster at his apartment complex. He stated that there was a conversation between all four suspects at the apartment . . .

about the robbery. The conversation about their plan continued on their ride to the victim's apartment on Westside Drive.

[J.G.] was interviewed on November 9th at the police department. She and her mother signed a waiver and agreed to speak. She stated that on October the 10th, she was at Izak's apartment on Green Drive with Lisa Harvey, Izak, and Kevin Bowens. She stated that she overheard Mr. Bowens having a phone conversation with someone about hitting a lick. She stated that Mr. Bowens left the residence shortly thereafter. She stated that later in the night she received a call from [the Defendant]. During the call, [the Defendant] told her that he did something bad and that he was scared. She stated that he would not elaborate any further about what happened.

Izak Sensibaugh was interviewed on November 16th. Mr. Sensibaugh stated that [the Defendant], [K.F.], Mr. Bowens, [J.G.], and Ms. Harvey were at his father's apartment with him on October 10th. He stated he witnessed a conversation between [the Defendant], Mr. Bowens, and [K.F.] about hitting a lick. He stated that the phrase "hitting a lick" means to rob someone. He stated that he did not know who they were going to rob. He stated that [S.D.] picked [the Defendant] and Mr. Bowens and [K.F.] up in his vehicle from the apartment on Green Drive. He estimated a time frame of this to be around 7:00 or 8:00 p.m. After the shooting, Mr. Bowens, [K.F.], and [S.D.] returned to the apartment on Green Drive.

Evidence gathered at the scene supported the account provided by the victims and witnesses that the shots were fired at the front door. Also, all accounts support the fact that [the Defendant], [S.D.], Kevin Bowens and [K.F.] went to the apartment with the intent to commit a robbery of Trevon Hickey.

The victims and witnesses observed at least two suspects at the door covered by masks. The accounts of [S.D.] and [K.F.] show that [K.F.] . . . knocked on the door, sprayed the Mace, and ended with [the Defendant] firing the shots into the apartment with Bowens at the bottom of the steps.

There's not been any evidence to support [the Defendant]'s original statement that he was robbed by Trevon Hickey or anyone at the apartment. [S.D.] has testified three times now for the State of Tennessee, at the transfer hearing, in a preliminary hearing, and also in front of Your Honor at a bond hearing. He has testified to these facts three times now.

Relative to these facts, the Defendant entered guilty pleas to three counts of attempted second degree murder, three counts of reckless endangerment committed with a deadly weapon, attempted aggravated robbery, conspiracy to commit robbery, and theft of property valued at less than $1000.

The State provided the following recitation of facts relative to events occurring on November 2, 2018:

> . . . If this case were to have gone to trial, the State would prove on November 2nd, 2018, Detective Cody Fox and Detective Daniel Leamon made contact with the Bradley County deputies who advised that [M.S.] and [the Defendant] escaped from the Bradley County Juvenile Center on this date. [M.S.] and [the Defendant] then fled the area and arrived at 1801 Dalton Pike, appearing to be dropped off by a maroon car. They then entered a 2005 silver Acura and drove away in the vehicle, proceeding southbound on Dalton Pike. Video from Dalton Pike matched the description of [M.S.] and [the Defendant]. The driver of the vehicle, Darina Mederos, stated that he left the keys to the vehicle in the cupholder and went inside the store for about 10 to 15 seconds after paying for $10.00 in gas. Mr. Mederos then saw the vehicle pulling out of the parking lot. The vehicle was entered into NCIC as stolen by Officer Massengale. The vehicle owner valued the vehicle at $3500.00. It is important to note that the convenience store on Dalton Pike is extremely close in proximity to the Juvenile Justice Center.
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> On November 3rd, the next day, 2018, Sergeant Kevin White and Detective Jerry Rogers with the Bradley County Sheriff's Office received information that the missing vehicle, the stolen vehicle may be at Hamilton Place Mall in Chattanooga. The stolen vehicle had been located there in the mall parking lot. They then worked with Hamilton Place Mall security and Chattanooga Police Department officers in obtaining video footage from the mall. They also obtained video from Super Fly Jump Park. On November 5th, 2018, Detective Daniel Leamon with the police department received a confidential tip that [N.O. and C.O.] knew the whereabouts of [the Defendant] and [M.S.] and they had communicated with them by phone and were planning to meet them. Detective Leamon and Detective Fox responded to the residence at [an address]. Once they arrived there, they made contact with [N.O. and C.O.]'s father, Rane Oberlin, by phone. . . . [T]he detectives briefly explained the situation to Mr. Oberlin and he advised that they could get the phones and he would be on his way to the residence to meet them. [N.O. and C.O.] stepped out of the residence and the residence was cleared to check for [the Defendant] and [M.S] but they were not there. [N.O. and C.O.] were kept outside until Mr. Oberlin arrived. At that point,

> they received written consent to look at [N.O. and C.O.]'s phones. Once they viewed the phones, they observed where they had communicated with [the Defendant] and [M.S.] on SnapChat. Detectives located a picture that was sent from [the Defendant] and [M.S.] that they were standing in front of a mirror and holding a gun. It appeared that they were in a hotel room somewhere. Detectives then sent an exigent circumstance request to SnapChat for the username "NBA Tennessee." They received an IP address that the username was using. They were able to determine that it belong to Peace Communications/Equinox Communication. Detective called them and they provided the location of the IP address which was Red Roof Inn located at 7014 Shallowford Road.
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> Detectives spoke with an employee who provided them with the service address for the IP address. Detective Leamon and Detective Fox contacted Hamilton County Fugitive Division where they went to Red Roof Inn. [The Defendant] and [M.S.] were not located there at that time.
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> On November 6th, 2018, which was four days after the escape, they were located, both [the Defendant] and [M.S.] were located in Whitfield County, Georgia. They were in possession of a stolen vehicle that had been taken from Chattanooga, Tennessee. They were removed from NCIC and taken back to the Juvenile Justice Center.

For these facts, the Defendant pleaded guilty to theft of property valued at $2500 or more but less than $10,000 and to escape.

At the sentencing hearing, the presentence report was received as an exhibit. It reflected that the Defendant had a ninth-grade education and that his education ended when he was expelled for bringing a gun to school. He reported that he had attempted suicide three times while in jail, that he began using marijuana at age eleven and used it daily until his arrest and confinement, that he began using narcotics at age fourteen, that he began using alcohol at age fifteen but only drank at parties, and that he began using cocaine at age sixteen. He reported that he had lived with his father until age five or six because his mother was involved in substance abuse but that he began living with his mother when his father went to prison. He reported that his mother had abused him physically, that he "stayed in trouble all the time" because he preferred to live with his father, and that his mother eventually sought addiction treatment when he was around age eleven. The Defendant reported no employment history.

Conner Laws, the victim in one of the Defendant's attempted second degree murder convictions, testified that he had not known the Defendant before the shooting. Mr. Laws said he was struck by a bullet to the right chest which ripped his aortic arch and required

replacement, as well as repair of an aneurysm. He also lost part of a lung and had permanent loss of lung capacity. His shoulder blade was damaged, as well. He was given a 25% chance of surviving upon admission to the hospital. He developed pericarditis as a surgical complication and was readmitted to the hospital. He said that he needed three to four months of physical rehabilitation but that he was still working to complete all of it due to the scheduling limitations of his full-time job. He said he took medication daily and would be treated by a cardiologist for this rest of his life. He said he would need future surgery.

Regarding his reduced lung capacity, Mr. Laws testified that he could perform about one-tenth of the physical activities he could previously. He said he had been on a state championship wrestling team in high school but now lost his breath going up a flight of stairs. He said he had "eating problems," social anxiety, and "mental problems." He said he worked in a call center and would be unable to work in a higher-paying warehouse or manufacturing job due to his physical limitations from the shooting.

Hailey Davis, the victim in one of the Defendant's attempted second degree murder convictions, testified that she had not known the Defendant before the shooting. She said she suffered a gunshot wound through her hips and pelvis, which penetrated her vagina. She said that she had been hospitalized for about four days and that she had been told the injuries were likely to have affected her fertility. She said she had internal scar tissue and nerve damage which caused numbness and burning and affected her ability to be on her feet for long periods of time in her employment as a restaurant server. She said she had developed social anxiety. Ms. Davis said that she and Mr. Laws were in a relationship and that she had observed his social anxiety, which she said was more severe than her own.

Laura Baxter, Mr. Laws' mother, testified that Mr. Laws had become withdrawn and was smaller and frail due to the physical impact of his injuries from the shooting. She said Mr. Laws stated that when he came off life support, he had thought he was going to die alone. She said he had severe PTSD, had trouble with relationships without conflict, and was unable to be in crowds.

Bradley County Juvenile Court Youth Services Officer Nancy Stanfield testified that the Defendant entered the juvenile justice system in October 2010 and that she first came into contact with him in late 2017 as his probation officer. She said that the Defendant had been referred to counseling in October 2010, that he stopped attending in May 2011 "due to insurance purposes," and that he resumed in August 2011 once the insurance issue was resolved. She said the Defendant's mother was referred to a parenting class in November 2011 but that the records did not reflect whether the Defendant's mother completed the class. Ms. Stanfield said the Defendant's family was referred to a Department of Children's Services (DCS) counseling program in February 2012 and that counseling programs for the Defendant were canceled January 2013 because the

department received information that the Defendant was going to California with his grandmother. Ms. Stanfield said the Defendant re-entered the Bradley County juvenile system in December 2016, at which time he was referred to counseling and an early intervention drug treatment program. She said the Defendant completed the treatment program in February 2017. She said that although outpatient therapy was recommended in April 2017 as aftercare for the treatment program, the Defendant stated he did not want to do the therapy. Ms. Stanfield said that charges were filed against the Defendant in May 2017, that he was in custody intermittently, and that he was placed on probation in September 2017 for possession of an electronic cigarette, resisting arrest, and misdemeanor theft.

Ms. Stanfield testified regarding the probation for which she supervised the Defendant in 2017 and 2018 that she saw him at school and that he performed well for about two months, until he received new charges in November 2017 related to theft of $2500 or more but less than $10,000 and "runaway." On questioning by the court, the district attorney clarified that the Defendant was not found guilty of the theft charge and that "runaway" was a status, not a charge. Ms. Stanfield said that about two months later, the Defendant was suspended for bringing a weapon to school. She agreed that the Defendant was still on probation at the time this incident occurred. She said that he was ordered to go to Law Enforcement Academic and Fitness Academy but that he was given 200 hours of community service in lieu of attending due to family travel plans. She had no record reflecting that the Defendant completed his community service. She said the Defendant violated his probation in April 2018 by failing to contact another probation officer. She said the Defendant's mother reported that the Defendant had gone to Mexico and was advised that if he returned, she should enroll him at an alternative school or home school. She said the city school system denied him admission to the alternative school and that the Defendant's mother stated in August 2018 that she was going to home school the Defendant. Ms. Stanfield said the Defendant's mother reported to the juvenile court in October 2018 that the Defendant was going to Mexico. Ms. Stanfield said that because Bradley County lacked jurisdiction if the Defendant went to Mexico, the Defendant's file was closed. She agreed that the Defendant would have continued on probation had his mother not stated that he was moving to Mexico.

Ms. Stanfield acknowledged that she had no information regarding the Defendant's homelife from 2010 to 2017. She agreed that juveniles who were being abused sometimes lied and said they were not being abused. She said that abused juveniles who covered up the abuse might withdraw from friends and activities and keep others from coming into their home and, alternatively, might do everything they could to get away from home.

Ms. Stanfield testified that the Defendant had been referred to Centerstone for counseling during the time she supervised him, that Centerstone usually did biweekly

appointments, and that the Defendant attended two counseling sessions at Centerstone in 2017.

Regarding the Defendant's escape from juvenile custody involved in the present case, Ms. Stanfield testified that the Defendant and his accomplice scaled an eighteen- to twenty-foot barbed-wire fence and left in a car.

Cleveland Police Detective Matthew Landolt testified that he investigated the Defendant's case. He identified a photograph exhibit, which he said he discovered on a social media page belonging to one of the Defendant's friends. Detective Landolt said he recognized the Defendant in the photograph. Detective Landolt said he found the photograph on the social media website "after the main investigation happened" and after the Defendant had been transferred from juvenile court to criminal court. Detective Landolt said the caption on the photograph on the website "is basically asking to free him, because he was . . . in jail at the time." The photograph was received as an exhibit and depicted a young black man lying on a bed with his shirt lifted to expose the butt of a handgun tucked into the front of his pants and contained the text "FR33 MY SÔN."

Detective Landolt testified that crimes involving firearms were prevalent and a problem in Cleveland and Bradley County. He noted that some crimes involving firearms were never solved. He noted "quite a bit of gun violence" in September and October 2019 and in April and May 2020. He agreed that in the past six months, he had investigated more crimes involving firearms than he had when he began in law enforcement approximately eleven years earlier and that he had seen an increase in youth violence, including youth violence involving firearms.

Bradley County Sheriff's Lieutenant Justin Miller testified that the Defendant had behavioral write-ups related to his confinement in the jail. Lieutenant Miller said juveniles were housed in a "special place" in one of the pods. He identified the documents associated with the Defendant's write-ups, which were received as an exhibit. He agreed that the Defendant vandalized the jail, possessed homemade alcohol on multiple occasions, possessed a "shank" or homemade knife, refused to comply with staff directives on multiple occasions, tampered with his cell door, and did not remain inside his cell. Lieutenant Miller agreed that the Defendant was locked inside his cell for twenty-three hours per day and that on some days, it was possible the Defendant did not get his one hour outside his cell because the "staff didn't have time to deal with him." Lieutenant Miller agreed that the Defendant had been alone for most of his confinement, until a second juvenile came into custody. Lieutenant Miller agreed that an inmate's recent escape affected how the Defendant was handled at the jail and that the Defendant had recently escaped from a juvenile facility when he was brought to the jail. Lieutenant Miller said he was unaware of any harassment or threats to the Defendant by jail personnel.

Bradley County Sheriff's Sergeant Zech Pike testified that he was a software administrator for the jail's Securus Technologies external communication system. Referring to an exhibit, he agreed that the Defendant made two telephone calls from the jail on March 19, 2020. Other evidence shows that the Defendant's guilty plea hearing was on the same date. Sergeant Pike identified an electronic storage device containing a recording of the Defendant's March 19 calls. The device was received as an exhibit, and the calls were played for the trial court. Sergeant Pike said that in a call placed to the Defendant's mother's telephone number, the Defendant and a person with a male voice discussed a person who could obtain assault rifles "for 175 all day" and "little 40's for 80 all day." Sergeant Pike said, that in his opinion, the Defendant was the speaker who claimed knowledge of the person from whom guns could be bought. Sergeant Pike said that, in his opinion, crimes involving firearms were prevalent in Bradley County. He noted cases involving theft of firearms from cars and the occurrence of three homicides within the last month in Bradley County and said, "[F]irearms are winding up in hands of younger and younger kids every day[.]" Sergeant Pike acknowledged that inmates sometimes used each other's telephone accounts. He said the prices mentioned for the purchase of firearms were below the market rate for retail purchases of those weapons.

A February 28, 2020 article from *The Tennessean* newspaper was received as an exhibit. The trial court noted information in the article stating that the number of "youth gun deaths" in Tennessee had more than doubled from 2006 to 2018. Sergeant Pike testified that the article's statement that youth gun violence had increased in Tennessee was consistent with his experience in Bradley County.

Detective Landolt was recalled and testified that he recognized the Defendant's voice as the person claiming knowledge of a weapons seller on the jail telephone call previously played for the trial court.

Janet Bellamy, the Defendant's mother, testified for the defense that the Defendant was born when she was age sixteen. She said the Defendant's father moved to attend college when the Defendant was six weeks old. She said the Defendant's behavioral issues began around age six. He agreed that she abused alcohol and drugs when the Defendant was younger and that she hit him as a form of discipline. She acknowledged that she punched him in the chest when she was mad at him and punched his face trying to prevent him from leaving the house. She did not recall slapping him. She said that she had spanked the Defendant out of anger, not as a form of discipline, when he did something that was "wrong" and that the spanking "was excessive." She agreed she had spanked him with a belt. She agreed that, in retrospect, she physically abused her son by administering excessive corporal punishment. She estimated that she used corporal punishment at least three times a week when he was younger and that she yelled at him frequently, causing him to fear her. She agreed that DCS became involved but did not recall that it was related to her abusing him and said it involved questions from a program in which the Defendant was

enrolled. She agreed she told DCS that she did not hit the Defendant. She agreed the Defendant lied to DCS in order to protect her. She agreed she sent the Defendant to visit his father despite her knowledge that his father "ran drugs and used weapons to shoot people." She agreed that she encouraged the Defendant to have a loving relationship with his father, who was serving a forty-five-year federal sentence. She acknowledged telling the juvenile court that the Defendant had moved to Mexico and explained the Defendant had been visiting Mexico and that they had discussed his attending school there because no local schools would accept him. She agreed the Defendant did not enroll in a Mexican school and said she did not home school him when he returned home because she could not afford the curriculum. She said the free program through the State was full, with a waiting list. She agreed she told the juvenile court that the Defendant was moving to Mexico six days before the shootings in the present case.

Ms. Bellamy testified that she loved her son but that she could have done more to help him. She agreed that he had learned violence and being tough from an early age. She said that since the Defendant's crimes, he had matured mentally and grown spiritually. She said he used to be combative but had developed self-awareness. She said the Defendant had seen violence between herself and others, including the Defendant's father.

The Defendant stated the following in an allocution: He apologized to his victims and said he prayed daily for forgiveness and thought daily about his actions. He said that he wanted to be a better person and to be of service to the community by helping less fortunate children before they ended up in a situation like his. He said he was not a bad person but had done bad things that he knew were wrong. He said that he grew up around violence, that his father had been in prison since the Defendant was age six, and that his mother had abused and neglected him. He said he saw his father sell drugs and use violence in the drug trade and that he thought "this was the way to be a man." He said older men around him had influenced his poor behavior. He said that although being in jail had been difficult, he might be dead if he were still on the streets. He said he had used drugs and associated with the wrong people before he was confined and that he had "found God" and was no longer using drugs. He said he knew he had to be punished but stated he did not want to carry guns or hurt others.

After receiving the evidence and considering the parties' sentencing memoranda, the trial court filed a detailed, written sentencing order. The court found that the Defendant had a history of delinquent juvenile conduct, noting prior adjudications for resisting arrest, theft of $1000 or less, and possession of a weapon on school property. The court noted, as well, the Defendant's history of successes and failures on juvenile probation. Based on the existence of enhancement factors, the court found that the Defendant did not qualify as an especially mitigated offender and that he was a Range I offender. *See id.* §§ 40-35-104 (2019), 40-35-109 (2019).

Relative to enhancement factors, the trial court found that the weapon possession adjudication would have been a felony conviction if the Defendant had committed it as an adult. *See* T.C.A. § 40-35-114(16) (2019) ("The defendant was adjudicated to have committed a delinquent act or acts as a juvenile that would constitute a felony of committed by an adult[.]"). The court found that this factor applied to all of the Defendant's convictions. The court found as an enhancement factor relative to the attempted second degree murder convictions in which Mr. Laws and Ms. Davis were the victims that the personal injuries inflicted upon these victims were particularly great. *See id.* § 40-35-114(6) ("The personal injuries inflicted upon, or the amount of damage to property sustained by or taken from, the victim was particularly great[.]"). The court also found that the Defendant was a leader in the commission of the offenses involving the October 10, 2018 shootings and related events. *See id.* at (2) ("The defendant was a leader in the commission of an offense involving two (2) or more criminal actors[.]"). Relative to the vehicle theft offense related to the Defendant's escape after his arrest for the October 10 offenses, the court found that the Defendant committed the offense while on escape status. *See id.* at (13)(H) ("At the time the felony was committed, one (1) of the following classifications was applicable to the defendant: . . . On escape status[.]").

The trial court declined to apply enhancement factors urged by the State related to the Defendant's commission of the offenses while on probation, his use of a firearm in the October 10, 2018 offenses, and the commission of offenses when the risk to human life was high. *See id.* at (9), (10), (13)(C). The court found that it had considered the violent nature of the offenses in relation to partial consecutive sentencing and that application of the additional enhancement factors proffered by the State would be unjust.

Regarding mitigating factors, the trial court found that the Defendant's conduct did not cause or threaten serious bodily injury in the charges related to his escape and vehicle theft but afforded this factor little weight. *See id.* § 40-35-113(1) (2019) ("The defendant's criminal conduct neither caused nor threatened serious bodily injury[.]"). The court found that the Defendant was entitled to mitigating weight because (1) he was a young man convicted of his first felony convictions, (2) he lacked formal education, (3) he had substance abuse issues that may have exacerbated his criminal behavior, and (4) he had a difficult upbringing with a lack of stability at home. *See id*. at (13) ("Any other purpose consistent with the purposes of this chapter."). The court found that the Defendant's mother's testimony regarding possible child abuse of the Defendant was of limited value because she had lied previously to DCS personnel and had been "less than truthful" with the juvenile court regarding the Defendant's purported move to Mexico.

The trial court afforded great weight to the Defendant's prior juvenile adjudication, which would have been a felony conviction if committed as an adult, and the particularly great injuries inflicted upon Mr. Laws and Ms. Davis. The court imposed maximum, twelve-year sentences for the two attempted second degree murder convictions related to

Mr. Laws and Ms. Davis. The court imposed minimum sentences for each of the remaining convictions, based upon its finding that the evidence did not justify enhancement for these convictions. Thus, the court imposed an eight-year sentence for attempted second degree murder conviction related to victim Trevon Hickey; a one-year sentence for each of the three reckless endangerment with a deadly weapon convictions; an eleven-month, twenty-nine-day sentence for theft of $1000 or less; a three-year sentence for attempted aggravated robbery; a two-year sentence for conspiracy to commit robbery; a one-year sentence for escape; and a two-year sentence for theft of $2500 or more but less than $10,000.

In imposing partially consecutive sentences, the trial court noted the requirements for consecutive sentencing relative to the Defendant's escape conviction. *See* Tenn. R. Crim. P. 32(c)(3) (requiring consecutive sentencing relative "to a sentence for escape or for a felony committed while on escape"). The court found, as well, that the Defendant was "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[.]" *See* T.C.A. § 40-35-115(b)(4) (2019). In further support of the application of this factor, the court found that an extended sentence was necessary to protect the public from the Defendant's continued criminal conduct and that consecutive sentences reasonably related to the severity of the offenses. *See State v. Wilkerson*, 905 S.W.2d 933, 939 (Tenn. 1995). The court again noted the severity of the attempted second degree murder offenses in which Mr. Laws and Ms. Davis were victims. The court observed that the Defendant was a leader in the conspiracy to rob Mr. Hickey, that the Defendant procured a weapon and took it to Ms. Slone's apartment, that the Defendant fired several rounds and struck three people when he met resistance to his robbery plan, and that Mr. Laws and Ms. Davis had significant injuries. The court noted the Defendant's having taken a gun to school in the past, his "fixation with firearms," his jailhouse discussion about procuring guns, and his possession of a "shank" in his jail cell. The court noted, as well, the increasing youth gun violence in Tennessee and significant number of recent gun-related crimes in Bradley County. The court imposed an effective twenty-five-year sentence, with the sentences for attempted second degree murder convictions for Mr. Law and Ms. Davis aligned consecutively to each other, and the sentence for escape aligned consecutively to these attempted second degree murder sentences. The court aligned the remaining sentences concurrently to the attempted second degree murder sentences and to each other.

Finally, the trial court concluded that the Defendant should serve his sentences in the Department of Correction in order to avoid depreciating the seriousness of the offenses. In this regard, the court found that the offenses, particularly the three counts of attempted second degree murder, were "especially violent, horrifying, shocking, reprehensible, offensive, or otherwise of an excessive or exaggerated degree" and that the nature of the offenses outweighed all other factors which might favor an alternative sentence. *See State v. Trotter*, 201 S.W.3d 651, 654 (Tenn. 2006); *State v. Grissom*, 956 S.W.2d 514, 520 (Tenn. Crim. App. 1997). In reaching this conclusion, the court noted the Defendant's

nonchalance about procuring weapons in a jail telephone call on the same day as the guilty pleas and the excessive nature of the physical injuries to the attempted homicide victims. The court also noted the Defendant's continued lawless behavior after his apprehension for the October 10, 2018 offenses, which included an escape from juvenile detention, theft of a car, and possession of a "shank" in his jail cell.

On appeal, the Defendant contends that the trial court erred in imposing a twenty-five-year sentence and in denying alternative sentencing. The State counters that the court did not abuse its discretion. We agree with the State.

This court reviews challenges to the length of a sentence within the appropriate sentence range "under an abuse of discretion standard with a 'presumption of reasonableness.'" *State v. Bise*, 380 S.W.3d 682, 708 (Tenn. 2012). A trial court must consider any evidence received at the trial and sentencing hearing, the presentence report, the principles of sentencing, counsel's arguments as to sentencing alternatives, the nature and characteristics of the criminal conduct, any mitigating or statutory enhancement factors, statistical information provided by the Administrative Office of the Courts as to sentencing practices for similar offenses in Tennessee, any statement that the defendant made on his own behalf, and the potential for rehabilitation or treatment. *State v. Ashby*, 823 S.W.2d 166, 168 (Tenn. 1991) (citing T.C.A. §§ 40-35-103, -210; *State v. Moss*, 727 S.W.2d 229, 236 (Tenn. 1986); *State v. Taylor*, 744 S.W.2d 919 (Tenn. Crim. App. 1987)); *see* T.C.A. § 40-35-102 (2019).

Likewise, a trial court's application of enhancement and mitigating factors are reviewed for an abuse of discretion with "a presumption of reasonableness to within-range sentencing decisions that reflect a proper application of the purposes and principles of our Sentencing Act." *Bise*, 380 S.W.3d at 706-07. "[A] trial court's misapplication of an enhancement or mitigating factor does not invalidate the sentence imposed unless the trial court wholly departed from the 1989 Act, as amended in 2005." *Id*. at 706. "So long as there are other reasons consistent with the purposes and principles of sentencing, as provided by statute, a sentence imposed . . . within the appropriate range" will be upheld on appeal. *Id.*

The abuse of discretion with a presumption of reasonableness standard also applies to the imposition of consecutive sentences. *State v. Pollard*, 432 S.W.3d 851, 859 (Tenn. 2013). A trial court has broad discretion in determining whether to impose consecutive service. *Id*. A trial court may impose consecutive sentencing if it finds by a preponderance of the evidence that one criterion is satisfied in Tennessee Code Annotated section 40-35-115(b)(1)-(7) (2019). In determining whether to impose consecutive sentences, though, a trial court must ensure the sentence is "no greater than that deserved for the offense committed" and is "the least severe measure necessary to achieve the purposes for which

the sentence is imposed." T.C.A. § 40-35-103(2), (4) (2019); *see State v. Desirey*, 909 S.W.2d 20, 33 (Tenn. Crim. App. 1995).

The record reflects that the trial court engaged in an exceptionally thorough written review of the evidence and the relevant statutory factors and considerations. Nevertheless, the Defendant argues that the court erred in applying an enhancement factor based upon the Defendant's having been a leader in the commission of the offense involving multiple actors. *See* T.C.A. § 40-35-114(2). He argues that the State failed to present evidence showing his leadership in the offenses. He overlooks, however, the State's recitation of facts at the guilty plea hearing, which the Defendant acknowledged as a component of his guilty pleas. The State's recitation reflects that the Defendant communicated with others via SnapChat about the robbery, including asking for a ride and providing an address where he could be picked up. Mr. Hickey told the police that the Defendant had arranged to come to his apartment to purchase marijuana. In a statement to police, K.F. said that the Defendant discussed the robbery, had a gun in his pants, and talked about displaying but not shooting the gun during the robbery. Ms. Slone advised the police that the Defendant demanded "weed" when Mr. Hickey opened the apartment door and that the Defendant repeatedly fired a gun when Mr. Hickey tried to close the door. By all accounts, the Defendant positioned himself at the apartment's door with a gun, and the other perpetrators providing support in lesser roles in the robbery. Based upon the court's findings, we conclude that the court did not abuse its discretion in applying this enhancement factor to the sentences for the offenses occurring on October 10, 2018.

The Defendant also posits that the trial court erred in failing to grant mitigating weight to the Defendant's upbringing and his mother's failure to participate in juvenile rehabilitation programs. Although the record reflects that the court declined to credit the Defendant's mother's testimony in part, specifically in regard to her account of having physically abused the Defendant, the court found that the "Defendant had a tough upbringing" and that the Defendant's mother acknowledged her shortcomings as a parent. The court afforded mitigating weight to this evidence, along with other facts regarding the Defendant's childhood. Thus, the record reflects that the court afforded mitigating weight to the Defendant's difficult upbringing, including his mother's shortcomings. The court did not abuse its discretion relative to this mitigating factor.

Next, the Defendant argues that the trial court erred in imposing partially consecutive sentences on the basis of a single juvenile adjudication which would be a felony if the Defendant had committed it as an adult. The Defendant is silent as to the court's finding that he was a dangerous offender whose behavior indicates little or no regard for human life and who had no hesitation in committing crimes in which the risk to human life is high. *See id.* § 40-35-115(b)(4). The Defendant, likewise, is silent regarding the court's findings that an extended sentence was necessary to protect the public from the Defendant's continued criminal conduct and that consecutive sentences reasonably related

to the severity of the offenses. *See Wilkerson*, 905 S.W.2d at 939. The court recounted the evidence in detail to support its findings. The record reflects, as well, that the court considered the overall length of the effective sentence as the least severe necessary in order to achieve the purposes of the Sentencing Act. Contrary to the Defendant's argument, the court did not impose consecutive sentences merely upon the basis that the Defendant had a prior serious juvenile adjudication. Rather, the record shows that the court considered the appropriate factors and made factual findings to support its determination. The Defendant has not shown that the court abused its discretion in imposing partially consecutive sentences resulting in an effective twenty-five-year sentence.

Finally, the Defendant argues that the trial court erred in denying him an alternative sentence and instead imposing incarceration. The Defendant claims that the court discounted the lack of family participation in the Defendant's prior involvement in the juvenile justice system and failed to consider the options for rehabilitation which the adult probation system would offer the Defendant which did not exist in the juvenile system.

Because the Defendant was sentenced to twelve years for the attempted second degree murder convictions, he was not eligible for probation for those sentences. *See* T.C.A. § 40-35-303(a) (2019) ("A defendant shall be eligible for probation under this chapter if the sentence actually imposed upon the defendant is ten (10) years or less[.]"). Relative to the sentences for the remaining convictions, the court's order reflects that it recognized the Defendant's difficult upbringing and limited positive parental support but determined, ultimately, that the offenses, particularly the attempted second degree murder counts, were "especially violent, horrifying, shocking, reprehensible, offensive, or otherwise of an excessive or exaggerated degree" and that the nature of the offenses outweighed all other factors which might favor alternative sentencing. *See Trotter*, 201 S.W.3d at 654. The court noted the Defendant's continued criminal activity, even after he was apprehended for the October 10, 2018 offenses.

The Defendant does not argue that the trial court should have ordered community corrections, and we note, in any event, that some of his conviction offenses involved violence, which disqualified him for community corrections participation. *See* T.C.A. § 40-36-106(a)(1) (2019). Further, the record of the sentencing hearing does not reflect that community corrections placement would otherwise be appropriate, notwithstanding the violent nature of some of the offenses, under the "special needs" provisions of the community corrections statute. *See id.* at (c). Upon review, we conclude that the Defendant has not shown that the trial court abused its discretion in imposing incarceration.

In sum, the record reflects that the trial court engaged in a thorough review of the relevant factors and considerations in light of facts and circumstances of the case. The Defendant has failed to demonstrate that the court abused its discretion in its sentencing

determination. In consideration of the foregoing and the record as a whole, the judgments of the trial court are affirmed.

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ROBERT H. MONTGOMERY, JR., JUDGE