

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs August 7, 2019

FILED

10/30/2019

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. JAMES ANTHONY MCCURRY

**Appeal from the Circuit Court for Madison County
No. 17-535 Roy B. Morgan, Jr., Judge**

No. W2018-01780-CCA-R3-CD

A Madison County Circuit Court Jury convicted the Appellant, James Anthony McCurry, of aggravated kidnapping, a Class B felony, attempted aggravated robbery, a Class C felony, and being a felon in possession of a handgun, a Class E felony, and he received an effective sentence of twenty-one-years in confinement. On appeal, the Appellant claims that the evidence is insufficient to support the convictions and that his effective sentence is excessive. Based upon the record and the parties' briefs, we affirm the judgments of the trial court.

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

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and D. KELLY THOMAS, JR., JJ., joined.

Jeremy B. Epperson, Jackson, Tennessee, for the appellant, James Anthony McCurry.

Herbert H. Slatery III, Attorney General and Reporter; Jonathan H. Wardle, Assistant Attorney General; Jody S. Pickens, District Attorney General; and Bradley Champine, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

In October 2017, the Madison County Grand Jury indicted the Appellant for especially aggravated kidnapping, attempted aggravated robbery, and unlawful possession of a weapon. The victim of the alleged offenses was Thomas Lewis Curry, Sr.

At trial, the victim testified that on the morning of July 15, 2017, he went outside his home on East Chester Street to work on his car. The Appellant drove into the

victim's driveway in a white sedan. The Appellant had been to the victim's house previously because the Appellant knew the victim's niece. However, the victim did not know the Appellant.

The victim, who was sixty-three years old at the time of the incident, testified that the Appellant said, "Unc, I want to talk to you." The Appellant cracked open the passenger-side door of his car and tried to "coax" the victim inside. The victim felt uncomfortable but got into the car because he thought the Appellant wanted to talk about an issue involving the victim's niece. The victim sat in the front passenger seat but kept one leg partially out of the car. The victim said that the Appellant had "[g]old teeth and blackened eyes," that the Appellant "looked very dangerous," and that he was "fearful" of the Appellant. The Appellant told the victim that he was not going to do anything to the victim, but the victim "had a feeling . . . something was fixing to happen."

The victim testified that the Appellant suddenly grabbed his left arm or leg with the Appellant's right hand and that the Appellant said, "Give it up." The Appellant used his left hand to open and reach into the center console, and the victim saw a small automatic pistol. The pistol had a hammer, and the hammer was cocked. The victim had been a member of the "101st Airborne," was a "sharp shooter," and had prior experience with guns. The Appellant was holding the gun in his left hand, and the victim grabbed the gun and put it into "safe mode." The victim said that if he had made a mistake, the Appellant would have "emptied" the gun into him. The Appellant, who was still holding the gun, tried to point it at the victim, but the victim pushed it away.

The victim testified that the Appellant demanded his "billfold," that they struggled over the gun, and that he was in fear. At some point, the Appellant moved the gun from his left hand into his right hand, put his left hand through the steering wheel, and moved the gear shift into reverse. The car went backward into the street, and the Appellant stepped on the gas pedal and "fire-balled down East Chester." The Appellant told the victim, "If you don't let it go, I'm gonna kill both of us." The Appellant bit the victim's arm, and the victim later discovered he had a broken finger.

The victim testified that the Appellant drove "well over five hundred feet," that they continued to struggle over the gun, and that the car hit a tree. The passenger-side door opened, and the victim was thrown out of the car with the pistol. The victim walked to the driver's side of the car. He was holding the gun but did not point it at the Appellant. The Appellant put the car into gear and drove north, and the victim started running home. Someone driving by picked up the victim and took him home, and he telephoned the police.

The victim testified that the police photographed his injuries and that he gave them an oral statement. On July 19, he gave a written statement to Investigator Ron Pugh at the police department. The victim testified at the Appellant's preliminary hearing, identified the Appellant in court, and was confident about his identification. He said that his finger was broken for "a long time" before he realized it and that he had surgery on his finger. Recovering from the surgery took at least four months, he lost the ability to straighten his finger, and he still had pain in his finger at the time of trial.

On cross-examination, the victim testified that prior to this incident, he had seen the Appellant "around" but that the Appellant "didn't have anything to do" with him. The victim said that he did not know the Appellant's mother on July 15, 2017, but knew her at the time of trial. He talked to the police on July 15 but did not give them a formal statement. At that point, defense counsel showed the victim a statement he gave to the police on July 15. The victim identified the statement as "their report" and said that "they wrote that." He acknowledged signing the statement at 10:51 a.m. at his home but said he did not read it before he signed it. The victim denied telling the police that he did not know the identity of his attacker and said that he did not remember what he told the police that day because he was "traumatized." The victim acknowledged that he never referred to the Appellant by name on July 15 and that he described his attacker simply as a "black male." He also acknowledged that he did not tell the police the Appellant demanded his billfold or said, "Give it up." The victim said he did not do so because he "wasn't asked anything about it." However, when the victim gave his statement to Investigator Pugh four days later, he "told the whole story." The victim acknowledged testifying at the Appellant's preliminary hearing that he knew the Appellant's mother. He said at trial, though, that he did not remember if he knew her at the time of the preliminary hearing.

The victim acknowledged that the Appellant did not pull him into the car, and he denied telling the police on July 15 that the Appellant grabbed him when he got close to the car. After the Appellant put the car into reverse and the car went into the street, the Appellant drove the car forward with his left hand. The victim acknowledged that the car traveled much farther than five hundred feet and that it hit a tree near a gas station. He said that he could have shot the Appellant after the wreck but that he did not want to hurt the Appellant. The Appellant drove away, and Robert Pirtle drove the victim home. The victim described Pirtle as a friend who just happened to be driving by at the time. The victim said he did not tell the police about Pirtle because Pirtle was not involved in the case and was "an innocent person."

The victim testified that he did not know if his finger was broken during this incident and that he never mentioned a broken finger to the police because he did not

know it was broken when he spoke with them. The victim did not seek treatment for his finger until August 10, 2017.

On redirect examination, the victim testified that he was very upset when he talked to the police on July 15 and that the police never asked him to name his attacker. The victim knew the Appellant's name and would have given it to the police, and he gave the name to Investigator Pugh on July 19. The victim said he did not think Pirtle saw any part of the incident with the Appellant.

Officer Joseph Mitchell of the Jackson Police Department (JPD) testified that on July 15, 2017, he responded to a robbery call on East Chester Street. When he arrived, the victim told him what had happened and showed him a gun that the victim had taken from his attacker. Officer Mitchell photographed the victim, and he described the photographs for the jury. The victim had a bite mark on his left arm, blood on the left side of his white t-shirt, and blood on his left thumb. The victim described his attacker as an African-American male with "dreads" and with "a lot of tattoos on his arms." The victim said his attacker also had a goatee, "looked like the rapper Little Wayne," and had been "beaten up" recently. Officer Mitchell knew the Appellant fit that description and issued a "be-on-the-lookout" for him.

Officer Mitchell testified that about twenty minutes later, he went to a home on Craig Street and photographed a white car in the back yard. The car had front-end damage, the passenger-side front tire was damaged, and a hospital visitor's tag was inside the car. Officer Mitchell did not see any drugs in the car.

On cross-examination, Officer Mitchell testified that the victim gave him an oral statement, that he wrote down everything the victim said, and that he prepared a report. Officer Mitchell identified his report and acknowledged that it provided as follows: "Mr. Curry stated he had . . . [seen] the man before in the neighborhood but was not familiar with him. Mr. Curry informed me that the unknown black male asked for his niece." Officer Mitchell said he did not ask the victim if the victim had met his attacker prior to July 15.

Officer Zachary White of the JPD testified that on July 15, 2017, he assisted Officer Mitchell on East Chester Street. Officer White "cleared" a gun and collected it. He also responded to a call at a home on Craig Street and spoke with the homeowner, who told him that an African-American man had run through her front door and asked for help. She told the man to leave, and he did so. She then noticed that a white Toyota Camry was in her back yard and that a cellular telephone, a shirt, a pair of sunglasses, and a set of keys were on her couch. Officer White saw an emergency room visitor's tag inside the car, and the tag was from Trauma Room 5. Officer White had seen the

Appellant in Trauma Room 5 a few days earlier. He explained that he had responded to a drug overdose call at an apartment complex, that the Appellant looked like he had been beaten, and that he followed the Appellant to the hospital in an ambulance.

On cross-examination, Officer White testified that the victim had blood on his t-shirt. However, Officer White did not know whose blood was on the shirt. Officer White acknowledged that the homeowner said the man who ran through her front door was “bloody.”

Investigator Chris Chestnut of the JPD testified that he interviewed the Appellant on July 21, 2017, and that the Appellant admitted driving to the victim’s house on July 15. The Appellant then told Investigator Chestnut as follows: The victim was the Appellant’s “drug dealer,” and the Appellant went to the victim’s house to explain why he did not have the victim’s money. Their conversation occurred “[a]t or around” the Appellant’s car. The victim pulled a gun on the Appellant, they struggled over the gun, and the Appellant tried to drive away. The victim somehow ended up inside the Appellant’s car. The Appellant drove down the street and intentionally hit a tree to stop the victim. The Appellant drove away and went to “a girl’s house.” The Appellant left his car at the girl’s house because he was not supposed to be driving, and the girl could tell Investigator Chestnut what happened. The Appellant did not report the incident to the police because he “didn’t want to be classified as a snitch.”

On cross-examination, Investigator Chestnut testified that the Appellant had a cut or mark on one of his knuckles. The Appellant said the injury occurred during the incident with the victim, and Investigator Chestnut photographed the injury. Investigator Chestnut acknowledged that the Appellant waived his Miranda rights and that the Appellant wanted to talk with him.

On redirect examination, Investigator Chestnut testified that the Appellant said he “got bit” during the assault. Investigator Chestnut stated that he did not see any bite marks on the Appellant’s hands and acknowledged that the injury on the Appellant’s knuckle could have resulted from a struggle over a handgun.

Investigator Ron Pugh of the JPD testified that he was the case manager and that he obtained a formal written statement from the victim on July 19, 2017. Investigator Pugh researched the Appellant’s criminal history, found that he had a prior conviction for aggravated assault, and charged him with being a felon in possession of a handgun. He said he had not heard of “Shaunta McMurry” prior to the Appellant’s trial.

On cross-examination, Investigator Pugh testified that he did not question the victim about discrepancies between the victim’s July 15 and July 19 statements because

he did not know on July 19 that the victim had given a statement on July 15. Investigator Pugh said the wreck occurred near a gas station, and he identified a report prepared by Investigator Chestnut. According to the report, the Appellant claimed that “[a] clerk was outside and should have seen the vehicle drive past and the struggle.” Investigator Pugh did not request that the evidence be analyzed for fingerprints or DNA. At the conclusion of Investigator Pugh’s testimony, the State rested its case.

Shaunta McMurray testified that she worked at a gas station on East Chester Street. On July 15, 2017, McMurray was outside the gas station and saw “this car coming down, down East Chester.” The car was white and had four doors. She said the car “caught” her attention because “[i]t wasn’t moving normally as a car’s supposed to move down the street. It was like they was struggling in the car.” McMurray said that the driver was holding the steering wheel and that the passenger “had the door or something.” She described the passenger as an “old” man and said the driver had “dreads.”

McMurray testified that the car went onto the sidewalk and almost hit a woman who was waiting for a bus. The passenger “rolled up out [of] the car and ran toward the gas station.” He had a gun in his hand and “had his arm out.” A truck pulled up, the passenger jumped into the back of the truck, and the truck went in the direction from which the white car had come. The driver of the white car sped away.

On cross-examination, McMurray testified that she thought the incident occurred about 1:00 p.m. She said that the driver of the white car had his arm on the steering wheel and was using his other arm “to keep the passenger from doing whatever he was trying to do to [the driver].” McMurray never called the police but spoke with a detective at her home that day. She said she thought the truck was waiting on the passenger of the white car because the truck pulled up as soon as the passenger ran to the gas station. The passenger was wearing a black shirt and blue jeans. The State showed McMurray a picture of the victim, wearing a white t-shirt, that was taken by Officer Mitchell on July 15, 2017. McMurray identified the victim as the passenger of the white car and said he could have changed clothes. She said that she did not know the driver or the passenger of the white car, and she acknowledged that she did not know what happened in the car prior to her seeing it on East Chester Street. On redirect examination, McMurray testified that the Appellant subpoenaed her to trial.

At the conclusion of McMurray’s testimony, the jury convicted the Appellant of aggravated kidnapping as a lesser-included offense of especially aggravated kidnapping, attempted aggravated robbery, and being a felon in possession of a handgun. After a sentencing hearing, he received an effective sentence of twenty-one years in confinement.

II. Analysis

A. Sufficiency of the Evidence

The Appellant claims that the evidence is insufficient to support the convictions. The State argues that the evidence is sufficient. We agree with the State.

When an appellant challenges the sufficiency of the convicting evidence, the standard for review by an appellate 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); Tenn. R. App. P. 13(e). The State is entitled to the strongest legitimate view of the evidence and all reasonable or legitimate inferences which may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). Questions concerning the credibility of witnesses and the weight and value to be afforded the evidence, as well as all factual issues raised by the evidence, are resolved by the trier of fact. State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). This court will not reweigh or reevaluate the evidence, nor will this court substitute its inferences drawn from the circumstantial evidence for those inferences drawn by the jury. Id. Because a jury conviction removes the presumption of innocence with which a defendant is initially cloaked at trial and replaces it on appeal with one of guilt, a convicted defendant has the burden of demonstrating to this court that the evidence is insufficient. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

A guilty verdict can be based upon direct evidence, circumstantial evidence, or a combination of direct and circumstantial evidence. State v. Hall, 976 S.W.2d 121, 140 (Tenn. 1998). “The jury decides the weight to be given to circumstantial evidence, and [t]he inferences to be drawn from such evidence, and the extent to which the circumstances are consistent with guilt and inconsistent with innocence, are questions primarily for the jury.” State v. Rice, 184 S.W.3d 646, 662 (Tenn. 2006) (quoting Marable v. State, 313 S.W.2d 451, 457 (Tenn. 1958)). “The standard of review ‘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)).

Relevant to this case, aggravated kidnapping is defined as false imprisonment committed while the defendant is in possession of a deadly weapon or threatens the use of a deadly weapon. Tenn. Code Ann. § 39-13-304(a)(5). “A person commits the offense of false imprisonment who knowingly removes or confines another unlawfully so as to interfere substantially with the other’s liberty.” Tenn. Code Ann. § 39-13-302(a). Aggravated robbery is the intentional or knowing theft of property from the person of

another by putting the person in fear and accomplished with a deadly weapon. Tenn. Code Ann. § 39-13-401(a), -402(a)(1). Theft of property occurs when a person, with the intent to deprive the owner of property, knowingly obtains or exercises control over the property without the owner's effective consent. Tenn. Code Ann. § 39-14-103. A person commits criminal attempt when the person acts with intent to complete a course of action that would constitute the offense, and the conduct constitutes a substantial step toward the commission of the offense. Tenn. Code Ann. § 39-12-101(a)(3). Finally, a person commits an offense who possesses a handgun and has been convicted of a felony. Tenn. Code Ann. § 39-17-1307(c)(1).

The Appellant contends that the evidence is insufficient to support his convictions because the victim's testimony at trial was inconsistent with his prior statements and previous testimony; the victim "kept vital information" about Robert Pirtle from the police, the prosecution, and the Appellant; the State failed to collect fingerprint or DNA evidence when such evidence was available; and the State "failed to follow-up" with Shaunta McMurray despite being informed about her by the Appellant. We disagree with the Appellant.

Taken in the light most favorable to the State, the evidence shows that the Appellant lured the victim into his car by claiming that he wanted to talk with the victim about the victim's niece. The Appellant grabbed the victim's left side, demanded the victim's wallet, and pulled a gun on the victim. When the victim struggled with the Appellant and pushed the gun away, the Appellant put his car into reverse and backed out of the victim's driveway. The Appellant bit the victim's arm and sped down East Chester Street. He and the victim continued to struggle over the gun, and the car hit a tree. The force of the impact knocked the victim out of the car with the gun. The Appellant sped away, and the victim returned home and telephoned the police. The victim gave the gun to the police, and the police photographed the victim's injuries, which included a bite mark on his left arm. Questions concerning the credibility of the witnesses, the weight and value to be given the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact, not this court. State v. Tuttle, 914 S.W.2d 926, 932 (Tenn. Crim. App. 1995). The jury was in the best position to judge the credibility of the witnesses, and the jury obviously accredited the victim's testimony. Thus, the evidence is sufficient to support the convictions.

B. Excessive Sentence

The Appellant claims that his effective twenty-one-year sentence is excessive because the trial court failed to consider and apply a mitigating factor and because the record does not support the imposition of consecutive sentencing. The State argues that

the trial court did not abuse its discretion in sentencing the Appellant. We agree with the State.

At the sentencing hearing, the victim testified that he thought he broke his finger during the Appellant's attack and that he wore a cast for four months. The victim said that "everything . . . changed" after the attack, that he was "on [his] guard more," and that he was fearful of people sometimes. He stated that the Appellant tried to kill him and that the incident "changed his whole world." On cross-examination, the victim acknowledged that he carried on his daily routine after the attack and that he did not realize his finger had been broken until weeks later.

The State introduced the Appellant's presentence report into evidence. According to the report, the thirty-eight-year-old Appellant left high school in the eleventh grade because he was committed to a juvenile facility but obtained his GED in prison. In the report, the Appellant admitted that he used marijuana, cocaine, and heroine in the past and admitted to using drugs prior to his incarceration in this case. The Appellant did not report any mental health issues, but the officer who prepared his report noted that he was "very agitated and angry [and] extremely upset at the outcome of his jury trial." Regarding the Appellant's physical condition, he reported numbness in his hand due to a gunshot wound and high blood pressure. The report showed that the Appellant worked as a cook at McDonalds from April to June 1996 and in litter pick-up at GLT Company from August to December 2006. The Appellant was paroled from prison in October 2015, and he was unemployed until at least January 2016. The Appellant was working at Kirklands Warehouse in March 2016 and at U.S. Farathane in October 2016. The Appellant said in the report that he was still working at U.S. Farathane when he was arrested in this case. The report did not show any other employment.

The Appellant stated in the report that he had been "locked up most of his life," and the report showed that he had prior felony convictions of possession of cocaine with intent to sell, aggravated assault, reckless aggravated assault, reckless endangerment, and evading arrest and prior misdemeanor convictions of simple possession, reckless driving, driving on a revoked license, and violating the financial responsibility law. From 1990 to 1996, the Appellant was adjudicated delinquent for evading arrest, criminal trespass, possession of marijuana, theft of property valued more than \$1,000, resisting arrest, aggravated assault, assault, burglary, and vandalism.

At the conclusion of the hearing, the trial court found the following enhancement factors applicable to the Appellant's sentences: (1), that "[t]he defendant has a previous history of criminal convictions or criminal behavior, in addition to those necessary to establish the appropriate range"; (10), that "[t]he defendant had no hesitation about committing a crime when the risk to human life was high"; and (16), that "[t]he defendant

was adjudicated to have committed a delinquent act or acts as a juvenile that would constitute a felony if committed by an adult.” Tenn. Code Ann. § 40-35-114(1), (10), (16). The trial court found no mitigating factors applicable. The trial court sentenced the Appellant as a Range II offender to fifteen years to be served at one hundred percent for aggravated kidnapping, a Class B felony; as a Range III, persistent offender to thirteen years for attempted aggravated robbery, a Class C felony; and as a career offender to six years for being a felon in possession of a handgun, a Class E felony. See Tenn. Code Ann. § 40-35-112(b)(2), (c)(3), (c)(5).

Regarding consecutive sentencing, the trial court found that the Appellant was a professional criminal who had knowingly devoted his life to criminal acts as a major source of livelihood; that he was an offender whose record of criminal activity was extensive; and that he was a dangerous offender whose behavior indicated little or no regard for human life and no hesitation about committing a crime in which the risk to human life was high. See Tenn. Code Ann. § 40-35-115(b)(1), (2), (4). The trial court ordered that the Appellant serve the fifteen- and thirteen-year sentences concurrently but that he serve the six-year sentence consecutive to the other two for a total effective sentence of twenty-one years in confinement.

This court reviews the length, range, and manner of service of a sentence imposed by the trial court under an abuse of discretion standard with a presumption of reasonableness. State v. Bise, 380 S.W.3d 682, 708 (Tenn. 2012); see also State v. Pollard, 432 S.W.3d 851, 859 (Tenn. 2013) (applying the standard to consecutive sentencing). In determining a defendant’s sentence, the trial court considers the following factors: (1) the evidence, if any, received at the trial and the sentencing hearing; (2) the presentence report; (3) the principles of sentencing and arguments as to sentencing alternatives; (4) the nature and characteristics of the criminal conduct involved; (5) evidence and information offered by the parties on enhancement and mitigating factors; (6) any statistical information provided by the administrative office of the courts as to sentencing practices for similar offenses in Tennessee; (7) any statement by the defendant in his own behalf; and (8) the potential for rehabilitation or treatment. See Tenn. Code Ann. §§ 40-35-102, -103, -210; see also Bise, 380 S.W.3d at 697-98. The burden is on an appellant to demonstrate the impropriety of his sentence. See Tenn. Code Ann. § 40-35-401, Sent’g Comm’n Cmts.

In determining a specific sentence within a range of punishment, the trial court should consider, but is not bound by, the following advisory guidelines:

- (1) The minimum sentence within the range of punishment is the sentence that should be imposed, because the general assembly set the minimum length of sentence for

each felony class to reflect the relative seriousness of each criminal offense in the felony classifications; and

(2) The sentence length within the range should be adjusted, as appropriate, by the presence or absence of mitigating and enhancement factors set out in §§ 40-35-113 and 40-35-114.

Tenn. Code Ann. § 40-35-210(c).

Although the trial court should consider enhancement and mitigating factors, the statutory enhancement factors are advisory only. See Tenn. Code Ann. § 40-35-114; see also Bise, 380 S.W.3d at 701; State v. Carter, 254 S.W.3d 335, 343 (Tenn. 2008). Our supreme court has stated that “a trial court’s weighing of various mitigating and enhancement factors [is] left to the trial court’s sound discretion.” Carter, 254 S.W.3d at 345. In other words, “the trial court is free to select any sentence within the applicable range so long as the length of the sentence is ‘consistent with the purposes and principles of [the Sentencing Act].’” Id. at 343 (quoting Tenn. Code Ann. § 40-35-210(d)). Appellate courts are “bound by a trial court’s decision as to the length of the sentence imposed so long as it is imposed in a manner consistent with the purposes and principles set out in sections -102 and -103 of the Sentencing Act.” Id. at 346.

First, the Appellant contends that the trial court should have considered as a mitigating factor that he released the victim alive. Tennessee Code Annotated section 39-13-304(b)(2), the aggravated kidnapping statute, requires that a trial court consider as a mitigating factor that the Appellant voluntarily released the victim alive. As noted by the State, though, the record does not reflect that the Appellant made that argument at sentencing because the Appellant failed to include the parties’ arguments in the sentencing hearing transcript. It is an appellant’s duty to provide a record that is sufficient “to convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal.” Tenn. R. App. P. 24(b). Moreover, the Appellant did not mention the mitigating factor in his motion for new trial or at the hearing on his motion for new trial. Therefore, this issue has been waived. Tenn. R. App. P. 36(a). In any event, the evidence at trial showed that the victim was able to escape from the Appellant because the Appellant crashed his car into a tree, which threw the victim out of the car. Thus, the Appellant was not entitled application of this factor.

The Appellant also contends that the trial court erred by ordering consecutive sentencing because the trial court failed to make specific findings on the record to support its determination that he was a professional criminal or that he was a dangerous offender. The Appellant does not contest the trial court’s imposing consecutive sentencing based

upon his extensive criminal history. As noted by the State, that factor alone supported the trial court's imposition of consecutive sentencing. State v. Adams, 973 S.W.2d 224, 231 (Tenn. Crim. App. 1997). Regardless, as to the trial court's imposing consecutive sentencing based upon the Appellant's being a professional criminal, the trial court did not explain its reasoning for applying that criterion. However, the Appellant was adjudicated delinquent as a juvenile and has been committing crimes since he was eighteen years old. He even stated in the presentence report that he had been "locked up" for most of his life. The Appellant, who is almost forty years old, has had scant employment, and he tried to rob the victim less than two years after being released from prison. Accordingly, we conclude that the State established by a preponderance of the evidence that the Appellant knowingly devoted his life to criminal activity as a major source of livelihood.

As to the trial court's finding that the Appellant was a dangerous offender, our case law clearly reflects that in order to impose consecutive sentencing based upon finding that a defendant is a dangerous offender, a court must also find the Wilkerson factors: (1) that "the aggregate sentence reasonably relates to the severity of the offenses" and (2) "that the total sentence is necessary for the protection of the public from further crimes by the defendant." Pollard, 432 S.W.3d at 862. In this case, the trial court specifically addressed the Wilkerson factors and found that consecutive sentencing was necessary to protect the public from the Appellant and that consecutive sentencing reasonably related to the severity of the offenses. Therefore, we conclude that the trial court did not abuse its discretion by ordering consecutive sentencing based on the Appellant's being a dangerous offender.

III. Conclusion

Based upon the record and the parties' briefs, we affirm the judgments of the trial court.

NORMA MCGEE OGLE, JUDGE