IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
February 6, 2018 Session

STATE OF TENNESSEE v. MICHAEL JOHN STITTS

Appeal from the Circuit Court for Madison County
No. 15-515 Roy B. Morgan, Jr., Judge

No. W2017-00209-CCA-R3-CD

The Defendant, Michael John Stitts, was convicted by a Madison County jury of attempted first degree premeditated murder, aggravated assault, aggravated burglary, and employing a firearm during the commission of a dangerous felony, and he received an effective sentence of sixty-one years. On appeal, the Defendant argues that (1) the evidence was insufficient to support his convictions; (2) the trial court erred in denying his motion to suppress statements made to police; (3) the trial court erred in allowing the State to amend the indictment to reflect the proper offense date; (4) he is entitled to reversal based on juror bias; (5) the trial court erred in placing the Defendant in restraints immediately before the jury verdict was read, and (6) the trial court erred in sentencing him as a Range III offender and in imposing partial consecutive sentences. After review of the record and applicable law, we affirm the judgments of the trial court but remand for entry of a corrected judgment to reflect the proper sentencing range for the attempted first degree murder conviction.

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

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN and J. ROSS DYER, JJ., joined.

Joshua B. Dougan, Jackson, Tennessee (on appeal); Robert L. Thomas, Jackson, Tennessee (at trial and on appeal); George Morton Googe, District Public Defender, and Jeremy B. Epperson, Assistant District Public Defender (at hearing), for the appellant, Michael John Stitts.

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

OPINION

FACTUAL AND PROCEDURAL HISTORY

During the early morning hours of April 6, 2015, the victim, Ms. Mary Ann Greer, was at the residence of her boyfriend, Mr. John Forrest. Mr. Forrest had left for work early in the morning. The victim then heard someone knocking on the door. Realizing that the Defendant, her ex-boyfriend, was at the door, the victim called 9-1-1 and reported that he was attempting to enter the residence. While the 9-1-1 operator was on the line with the victim, the victim told the operator that the Defendant had broken in. The operator instructed the victim to lock herself in a room. The victim hid in the bathroom, but the bathroom door did not have a lock. The victim became unresponsive to the 9-1-1 operator, but her screams could be heard on the 9-1-1 recording, which was entered into evidence.

The victim testified that the Defendant shot her once in her chest and once in her arm. During the attack, the Defendant told the victim, "If [the Defendant] can't have [the victim], ain't nobody else going to have [her]." As a result of her gunshot wounds, the victim had fifteen surgeries, and her arm was amputated. She stated that she was hospitalized from April until August of 2015. She also suffered a stroke between the attack and trial, but she did not know if the stroke was caused by her injuries. As a result of her stroke, the victim had difficulty remembering the details of the attack. Her vision also had worsened since the attack, but she did not know if that was related to her injuries. The victim's medical records were admitted into evidence.

On cross examination, the victim testified that her romantic relationship with the Defendant lasted about five years. She stated that although she did not see the Defendant knocking on the door on the morning of the attack, she knew it was him. She agreed that she called both Mr. Forrest and 9-1-1 during the attack but could not remember in which order she called. She recalled telling investigators that the Defendant had kicked in the door and clarified that the Defendant did so in addition to pulling an air conditioning unit out of a window. She acknowledged that she did not see the Defendant kicking in a door or pulling the air conditioning unit out of the window. She further stated that the Defendant shot through both the bedroom and bathroom doors with the shotgun and that she was struck once when he shot through the bathroom door.

The victim testified that on April 4th, just two days before the attack, the Defendant attempted to run the victim and Mr. Forrest off the road. She also testified that the Defendant had previously set her car tires on fire. She had filed a police report but acknowledged that she did not see the Defendant set the tires on fire.

Officer Jonathan McCrury of the Jackson Police Department ("JPD") was the first officer on the scene. He originally arrived at the residence across the street due to the information he received from dispatch. After realizing he was at the wrong house, he heard a "crash" or "loud noise" from across the street. He went to the area where he heard the noise, walked around to the rear of the house, and saw the Defendant lying on the grass. Once the Defendant saw Officer McCrury, the Defendant got up and ran to the next door neighbor's backyard. Officer McCrury pursued, pulling out his Taser and ordering him on the ground. As the Defendant complied, JPD Officers Matthew Fullerton and Steven Overton arrived and took the Defendant into custody.

As the officers were leading the Defendant to the patrol cars, Officer Fullerton observed a shotgun lying on the ground on top of a brown gun bag. The gun was in the corner of Mr. Forrest's yard and was within five to six feet of the Defendant when Officer McCrury saw him. After searching the Defendant's person, the officers found twenty-one .28 gauge shotgun shells in his front pants pocket. Inside the gun was a spent shell casing. Both Officer McCrury and Officer Fullerton could smell fresh gunpowder and believed the gun had been recently fired. The officers both testified that the barrel was bent and that there was dirt inside the barrel. Officer Fullerton did not believe the gun would fire in such state but opined that the gun "looked as though it may have malfunctioned … when [the bullet] was trying to exit the shell casing." Officer Fullerton noted that the gun could not have been fired again while the spent casing was still in the gun.

Officer McCrury remained at the patrol car with the Defendant and the shotgun while Officer Overton and JPD Officer Chris Farris attempted to locate the victim. Although the officers had apprehended the Defendant, they still were not certain which residence was the origin of the emergency call. Officers Overton and Farris first spoke to a neighbor who stated that the disturbance had come from Mr. Forrest's house next door. The officers went to the house and saw a shell casing on the porch in front of the door and what appeared to be a bullet hole in the front door. The officers knocked and announced themselves. The Defendant, who was still in custody with Officer McCrury, "spontaneously" shouted for the officers to kick in the door. Officer Overton knocked on the door again and announced that the suspect was in custody and that everything was safe. The officers heard a faint, "I can't, help me," come from inside. Officer Overton then kicked in the door and found the victim leaning against the couch. The Defendant's instruction to kick in the door was reflected in a video recording admitted into evidence.

Officers Farris and Overton both described the victim's injuries as a "softball size hole" in her chest and a gunshot wound to her right arm. Officer Fullerton responded with a first-aid kit, and the officers "fashioned an occlusive dressing over her sucking

chest wound." They tried to keep the victim conscious and talking until Emergency Medical Services arrived.

Dr. Donald Brent Hatcher, a physician and the assistant director of the Emergency Room at Jackson-Madison County General Hospital, testified that he treated the victim on the day of the shooting. He described the victim's right arm as "in pieces held together by muscle and tissue" and noted that the victim "could have bled out" if such injury had been left untreated. He testified that the victim was immediately put on a ventilator as a result of her chest wound and noted that such injury could have been life-ending if left untreated. Dr. Hatcher transferred the victim to a multi-specialty trauma center.

The responding officers testified about the evidence found at the residence. An air conditioning window unit was lying in the backyard against the house. There was a shell casing on the front porch and another in the kitchen. There were bullet holes in the front door, in the bathroom door, in another interior door frame, and in the bathroom sink. Blood was splattered and smeared in various rooms of the house, and vomit was splattered in the bathroom.

Special Agent Christie Smith, a forensic scientist with the Tennessee Bureau of Investigation, tested the Defendant's clothing and the shotgun for DNA evidence. She concluded that a sample from the exterior of the barrel of the shotgun and a sample from the "forestock" of the shotgun had DNA profiles consistent with that of the victim. The Defendant's tennis shoes and jeans also had DNA profiles consistent with that of the victim. The Defendant's shirt had a DNA profile of a mixture of at least two people, with the victim and Defendant as contributors.

Officer McCrury transported the Defendant to the police station for questioning. While being transported and without being asked any questions by Officer McCrury, the Defendant told Officer McCrury that he had taken the shotgun from someone's house and that the owner of the gun was asleep and did not know the Defendant had taken it. The Defendant stated the address of the home from which he took the gun, and Officer McCrury testified that the home was approximately one quarter to one half of a mile from the crime scene. The admitted video evidence reflected the Defendant's statements. Officer McCrury testified that the Defendant appeared anxious before the victim was found but once he was transported away from the crime scene, he was calm and did not appear to be under the influence of any drug or intoxicant.

The Defendant was questioned on three occasions, and he gave two written statements. Before each interview, the Defendant was read his *Miranda* rights and signed a waiver. Investigator Isaiah Thompson testified that the Defendant was "nonchalant"

and "playing possum" during his first interview. He explained that the Defendant would appear alert when not being asked questions but would pretend to be sleepy or under the influence as soon as he was asked a question. He stated that the Defendant did not appear to be under the influence and was "absolutely acting" as though he were. He acknowledged on cross examination that the Defendant was not tested for drugs and was not seen by a medical professional. He stated that the Defendant did not appear to require any medical attention or drug testing. During the interview, the Defendant was left alone for a few minutes to rest, and then Investigator Thompson returned with JPD Investigator John Chew. Investigator Chew described the Defendant's behavior as "very odd," noting that the Defendant put his head on the desk and would not talk to them. He also believed the Defendant's behavior was an "act" and that the Defendant was not actually sick or intoxicated.

After the Defendant's first interview, he was transported from the police station to the jail. Investigator Chew testified that he believed Officer Allen Randolph transported the Defendant. Investigator Chew stated that one of the officers working at the jail collected the Defendant's clothing and gave the clothing to Investigator Chew as evidence.

Later that afternoon, the Defendant requested to speak with investigators, so he was transported back to the police station. The Defendant gave a verbal statement, which was reduced to writing by Investigator Chew. The Defendant reviewed the statement before signing it. The typed-written statement was dated April 6th at 1:35 p.m. and said:

> Last night I was up all night. I have not been able to sleep since I got out of jail. I was in a relationship with [the victim] for 5 years before I was locked up. She stayed in contact with me the first year and a half but then she stopped talking to me. I wanted to have my family back and I paid her phone bill when I first got out of jail so we could talk. I wanted to check on her and the grandkids. I did everything I could to take care of her. This morning I went over to her friend's house and knocked on the door. Nobody would answer the door so I shot it. After I shot it I walked around the side of the house to see if I could hear anyone inside. I heard someone moving inside so I went around back and pulled the air conditioner out of the window. I crawled through the window and went inside the house. Someone was in the bathroom and had the door closed. They would not open the bathroom door so I shot through it. I heard [the victim] sa[y] that she had been hit. I tried to open the door but she was up against it. I finally opened the door and we started to fight over the gun. She had the barrel and I had the bottom part. The gun went off when we were fighting over it. I did not know if she was hit but I saw blood. We w[ere] still fighting for

> the gun and I was able to get it away from her. I hit her with the barrel in her head or top half of her body. I left the bathroom and went through the window I came in. I did not intend to hurt [the victim]. I went over [to] the house to deal with the guy friend that she was dating. We had a car accident and my truck hit his in the rear. The brakes on my truck went out but he lied to the police and told them that I tried to run them off the road. I love [the victim] more than I love myself and wish that I could take what happened back. I feel like I was not myself, like the devil had me and was telling me what to do. [The victim] was at the wrong place at the wrong time. I took the gun from the house that I live in. They were sleeping and did not know about it. I got the shells from … [Mr. Forrest's] truck. It was locked so I got the keys off the wall and opened the truck up.

Investigator Chew testified that the Defendant appeared of clear mind and had normal behavior when giving his type-written statement. Officer Thompson agreed that the Defendant was "very alert" and "normal" during this interview.

After giving his type-written statement, the Defendant was transported back to the jail, and he requested to speak to investigators again on the following day. He was taken to the police station, where he read a handwritten statement that he had written prior to that interview. It was dated April 7th, sometime between 5:00 and 6:00 p.m., and said:

> On April 6, 2015[,] I … was arrested … in a backyard next door to where [the victim] was shot[.] I'm not the shooter and I was in the backyard next door to pick up the shotgun and shells that John Forrest purchase[d] from me. Well he … paid me $150.00 to bring him a shotgun around 12:30 a.m. on April 6, 2015. I was told by him to be back over there later to pick up the gun from the backyard by the air conditioner in [the] back of the house. I didn't go in the house[.] John Forrest knock[ed] the air conditioner out and the window out to make it seem[] like someone else done it. At 12:00 or 11:55 p.m. I spent my last $5.00 getting gas at Citgo gas station. I love [the victim] and her family but I wouldn't hurt her or her family. I will hurt myself before [I] hurt her or her family. Well y[']all can ask anybody about me and they will tell you [I]'m not that type of person to shoot and harm [the victim]. John Forrest left home[,] went to sign in at work but came back home and he left before the police came. He was wearing beige pants and a blue shirt like some work clothes. He probably did this because I said at the accident that [the victim] had [AIDS] and he need[ed] to get check[ed] out. I have [a] back problem and can't do any heavy lifting or climbing due to a bullet in my back close to my spine in my lower back. Well [I] didn't commit these charges [I']m accused of but will do all [I] can

> to help officers to arrest and convict this John Forrest the suspect who done this to [the victim]. He … was driving a Chevy Blazer[,] maroon in color … when he left [and] went back to work.

The Defendant signed the end of the statement and wrote under his signature, "Please help [the victim] to convict her suspect." Both the typed-written and the subsequent handwritten statements were entered into evidence.

Mr. James Mayo testified that he owned the gun used during the shooting. He did not know the gun was missing until contacted by Investigator Chew. Investigator Chew visited Mr. Mayo on the day after the shooting and showed him a picture of the gun, which Mr. Mayo confirmed belonged to him. He stated that he kept the gun in a closet at his girlfriend's house, which was just around the corner from the crime scene. Mr. Mayo's girlfriend was also the Defendant's cousin, and the Defendant had been staying with her at the time of the shooting. Mr. Mayo testified that the barrel was not bent before the shooting. On cross examination, he stated that he had cleaned the gun a few days before the shooting and had set it in the closet. He stated that he would leave the gun unloaded but that he kept bullets for the gun in his truck. He never told the Defendant where he kept the gun or the bullets. On redirect examination, Mr. Mayo opined that he did not believe the gun would fire if a shell casing was jammed in the gun.

Mr. John Forrest testified that he owned the residence where the shooting occurred and that he was in a relationship with the victim at the time of the shooting. The victim stayed at his residence the night of April 5th into the morning of April 6th. He left for work at approximately 4:35 a.m. Shortly after arriving at work, his work-issued beeper alerted him to call the victim. He called, and the victim said that somebody was beating at the door. He instructed the victim to call 9-1-1 and said he would be there as quickly as he could. Five minutes later, he tried calling the victim again, but she did not answer. When he arrived home, he saw police cars and an ambulance. He testified that the victim did not have memory or vision problems prior to the shooting.

Mr. Forrest stated that he had met the Defendant on April 4th when the Defendant rear-ended his vehicle. He testified that he had picked up the victim to take her to work that morning. The Defendant pulled up next to Mr. Forrest, and Mr. Forrest saw the Defendant's truck coming toward the front end of Mr. Forrest's vehicle. Mr. Forrest swerved off the road to avoid being hit. He got back on the road, and then the Defendant got in front of Mr. Forrest's vehicle and "jammed" his brakes. Mr. Forrest drove into the grass and went around him to avoid hitting the back of his truck. As Mr. Forrest started turning onto another road, the Defendant hit the back of Mr. Forrest's vehicle, causing his vehicle to hit the vehicle in front of him. After they had stepped out of their vehicles, the Defendant tried to hand Mr. Forrest his insurance card and said that his brakes had failed.

The Defendant testified that at approximately 4:00 a.m. on the morning of the shooting, he was with Mr. Phillip Taylor. They were sitting in Mr. Taylor's van, which was parked at Mr. Taylor's residence. Mr. Taylor was smoking marijuana, which the Defendant believed was "laced" with "something." He remained in the van with Mr. Taylor for about twenty to twenty-five minutes with the windows rolled up. After leaving, the Defendant felt "real bad, real sick." He attempted to call Mr. Taylor, but there was no response. He tried to call other people, as well, but no one answered. He also attempted to stop by someone's house, but no one answered the door. He then "just blanked out." He recalled returning to his cousin's house, where he was staying. He did not recall going to Mr. Forrest's residence or seeing the victim. He remembered being arrested and seeing "some woman" talking to an officer while he was sitting in a patrol car. He recalled being transported to the police station.

The Defendant testified that he was "involuntarily intoxicated" so he "wasn't aware of … who [he] was or what was going on" when investigators attempted to question him. He could not recall who interviewed him in his initial interview but remembered Investigators Thompson and Chew interviewing him the second time. He stated that he did not give the investigators information because he was "messed up" and "needed help." He was not taken to the hospital and was not seen by a doctor. He recalled being transported from the police station to the jail. He stated that Investigator Chew collected his clothing from him. He testified that he did not request a third interview with the investigators. He claimed that the interview was recorded on a cassette player rather than a digital recorder. He maintained that he still "[w]asn't feeling too well" during the third interview but that he could "focus a little better." The Defendant refuted his type-written statement.

The Defendant testified that the police were never called at any point during his relationship with the victim and that they never had any domestic disputes or altercations. He stated that he did not make any telephone calls to the victim or see the victim prior to the day of the shooting. He denied ever setting the victim's tires on fire and explained that it was just a "rumor" that he did so. The Defendant recalled his accident with Mr. Forrest that occurred on April 4. He stated that his brakes failed and that he ran into Mr. Forrest's vehicle. He attempted to speak with Mr. Forrest, but Mr. Forrest refused to talk to him. He then approached the victim and the other woman involved in the accident. He apologized to the other woman, explained that he brakes had failed, and informed her that he had insurance coverage. He testified that he did not know Mr. Forrest was driving the vehicle until after the accident occurred. Later that day, he purchased new brakes.

On cross examination, the Defendant acknowledged his prior 2010 conviction for theft of property over $1000. He initially did not recall telling officers to kick in Mr. Forrest's door after he was taken into custody. However, he later acknowledged doing so

after he remembered seeing an officer speaking with a woman and overhearing talk about "a woman or something." He maintained that he did not know the victim was inside the residence. After reviewing the video footage from the inside of the patrol car, he agreed that it was his voice instructing officers to kick in the door. He did not recall telling Officer McCrury from where he got the shotgun. He did not recall giving investigators any of the information contained in his typed-written statement. When shown the handwritten statement, he stated that the handwriting "probably" belonged to him but that he "wasn't aware of what was going on" at the time he wrote it. On redirect examination, the Defendant claimed that the information provided in his typed-written statement came from what investigators told him during questioning rather than from his own memory.

JPD Officer Cary Hart testified that she responded to the accident involving Mr. Forrest and the Defendant on April 4. Mr. Forrest told her that a car had been following him closely and hit him as he turned onto another road, which pushed Mr. Forrest's vehicle into the vehicle in front of him. The Defendant claimed his brakes went out. It was not reported that the Defendant tried to run Mr. Forrest and the victim off the road. Officer Hart noted that Mr. Forrest said that he believed the Defendant "did it on purpose" because he was the victim's "ex." Officer Hart stepped inside a nearby restaurant to speak privately with the victim. She asked whether the victim was afraid of the Defendant or if he said or did anything to make the victim think he had hit them on purpose. The victim was "nonchalant" and "kind of shrugged her shoulders and said no." The Defendant was not arrested in connection with the accident. On cross examination, Officer Hart noted, "It is very common for a domestic violence victim to be afraid to speak to police."

Officer Allen Randolph of the JPD testified that he did not recall transporting the Defendant from the police station to the jail or speaking with Investigator Chew on the day of the shooting.

Mr. Bobby Lewis Anderson, Mr. Finis Carroll, and Ms. Patricia Anderson each testified that they knew the Defendant while he was still in a relationship with the victim. They each testified that they were unaware of any domestic abuse or disturbances between the Defendant and the victim. Mr. Anderson and Ms. Anderson both testified that they observed the Defendant speaking with the victim on the telephone in the months prior to the shooting and that the Defendant always appeared happy during these conversations.

The jury found the Defendant guilty of all charges. He was subsequently sentenced to forty years for attempted first degree murder, fifteen years for aggravated assault, fifteen years for aggravated burglary, and six years for employing a firearm during the commission of a dangerous felony. The aggravated burglary and aggravated

assault sentences were to run concurrently, with the remaining sentences running consecutively. The Defendant's motion for a new trial was denied, and he timely appeals.

ANALYSIS

The Defendant argues on appeal that the evidence was insufficient to support his convictions. He also asserts that the trial court erred in denying his motion to suppress his two written statements and in allowing the State to amend the indictment to correct a typographical error. He argues that a juror failed to disclose her familial relation to one of the State's witnesses and that the trial court erred in placing the Defendant in restraints immediately prior to the reading of the jury's verdict. He also asserts that the trial court erred in sentencing him as a Range III offender and in running his attempted murder sentence consecutively.

I. Sufficiency of the Evidence

The Defendant argues that the evidence presented at trial was insufficient to support his convictions. When a defendant challenges the sufficiency of the evidence, this court must determine whether the evidence is sufficient "to support the finding by the trier of fact of guilt beyond a reasonable doubt." Tenn. R. App. P. 13(e). The appellate court examines the relevant statute to determine the essential elements for the offense and analyzes the evidence admitted at trial to determine whether each element is adequately supported. *State v. Stephens*, 521 S.W.3d 718, 723-24 (Tenn. 2017). The court determines "'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.'" *Id.* at 724 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

The standard of review remains the same regardless of whether the conviction is based upon direct or circumstantial evidence. *Id.* (citing *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011)). "'[T]he State is entitled to the strongest legitimate view of the evidence and all reasonable or legitimate inferences which may be drawn therefrom.'" *Id.* (quoting *State v. Harris*, 839 S.W.2d 54, 75 (1992)). This court does not reweigh the evidence. *Id.* (citing *State v. Evans*, 838 S.W.2d 185, 191 (Tenn. 1992)). Instead, "'a jury verdict, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts' in the testimony in favor of the State." *Id.* (quoting *Harris*, 839 S.W.2d at 75). The conviction replaces the presumption of innocence with a presumption of guilt. *Id.* (citing *Evans*, 838 S.W.2d at 191). On appeal, the defendant has the burden of demonstrating why the evidence is insufficient to support the verdict. *Id.* (citing *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982)).

The Defendant was convicted of attempted first degree premeditated murder, aggravated burglary, aggravated assault, and employing a firearm in the commission of a dangerous felony. As it relates to this case, criminal attempt occurs when a person "[a]cts with intent to complete a course of action or cause a result that would constitute the offense, under the circumstances surrounding the conduct as the person believes them to be, and the conduct constitutes a substantial step toward the commission of the offense." T.C.A. § 39-12-101(a). First degree murder is the "premeditated and intentional killing of another." T.C.A. § 39-13-202(a)(1). As charged here, aggravated assault occurs when a person "[i]ntentionally or knowingly commits an assault," which was charged here as "caus[ing] serious bodily injury to another," and "involved the use or display of a deadly weapon." T.C.A. §§ 39-13-101(a)(1) (2014); 39-13-102(a)(1)(A)(iii) (2014). Aggravated burglary is the entering of a habitation without the owner's consent and with the intent to commit first degree murder, as charged here. T.C.A. §§ 39-14-402(a)(1), -403(a). Finally, "[i]t is an offense to employ a firearm during the… [c]ommission of a dangerous felony," which in this case was attempted first degree murder. T.C.A. § 39-17-1324(b)(1), (i)(1)(A).

When viewed in the light most favorable to the State, the proof established that the victim called 9-1-1 to report that the Defendant was attempting to enter the residence. The Defendant shot through the front door, took an air conditioning window unit out of a window, crawled through the window, and shot through the bathroom door, injuring the victim. The victim was shot again from a position which allowed her DNA to get on both the shotgun and the Defendant's clothing. The Defendant then left out of the same window through which he entered, and was found lying in the backyard of Mr. Forrest's residence. Two samples taken from the shotgun found near the Defendant and samples taken from the Defendant's tennis shoes, jeans, and shirt, had DNA profiles consistent with that of the victim. He had twenty one shotgun shells in his pocket. He told law enforcement that he took the gun from the house in which he was staying without the owner's permission and that he separately retrieved ammunition from the owner's vehicle, which was corroborated by Mr. Mayo. The Defendant gave a written statement the same afternoon the offenses were committed, in which he admitted to breaking and entering into the residence, as well as to shooting the victim. Although the Defendant provided a subsequent statement that essentially recanted his initial statement, the jury determines the weight to be given to a defendant's statement. *See Monts v. State*, 400 S.W.2d 722, 734 (Tenn. 1966); *Wynn v. State*, 181 S.W.2d 332, 333 (Tenn. 1944) ("[The jury is to determine whether defendant made the confession and whether the statements contained in it are true."); *State v. Theron Davis*, No. W2002-00446-CCA-R3-CD, 2003 WL 21339000, at *9 (Tenn. Crim. App. May 28, 2003).

The Defendant challenges his conviction for attempted first degree murder, arguing that the evidence is insufficient to establish premeditation. A premeditated act is

"done after the exercise of reflection and judgment." T.C.A. § 39-13-202(d). Tennessee Code Annotated section 39-13-202(d) further states:

> "Premeditation" means that the intent to kill must have been formed prior to the act itself. It is not necessary that the purpose to kill preexist in the mind of the accused for any definite period of time. The mental state of the accused at the time the accused allegedly decided to kill must be carefully considered in order to determine whether the accused was sufficiently free from excitement and passion as to be capable of premeditation.

The existence of premeditation is for the trier of fact to determine and may be inferred from the surrounding circumstances. *State v. Young*, 196 S.W.3d 85, 108 (Tenn. 2006); *State v. Suttles*, 30 S.W.3d 252, 261 (Tenn. 2000). Factors that support a finding of premeditation include but are not limited to: the use of a deadly weapon upon an unarmed victim; the particular cruelty of the killing; the nature of the killing; the firing of multiple shots; evidence establishing motive; declarations by the defendant of an intent to kill; evidence of procurement of a weapon; lack of provocation by the victim; failure to render aid; preparations before the killing for concealment of the crime; the destruction or secretion of evidence; and calmness immediately after the killing. *State v. Adams*, 405 S.W.3d 641, 663 (Tenn. 2013); *State v. Bland*, 958 S.W.2d 651, 660 (Tenn. 1997); *State v. Larkin*, 443 S.W.3d 751, 815-16 (Tenn. Crim. App. 2013); *State v. Halake*, 102 S.W.3d 661, 669 (Tenn. Crim. App. 2001).

The jury's finding of premeditation was supported by the evidence presented at trial. The Defendant used a deadly weapon, a shotgun, on an unarmed victim, who was hiding in the bathroom at the time she was shot. *See Bland*, 958 S.W.2d at 660. The Defendant shot the victim twice, and shot through multiple doors in the house. *See State v. Caldwell*, 671 S.W.2d 459, 463 (Tenn. 1984) (noting that "premeditation was shown by the multiple shots to the victim's skull"). The Defendant told law enforcement, when he was being transported to the police station and in his typed-written confession, that he procured the shotgun from the house in which he was staying, took shells from Mr. Mayo's truck, and proceeded to Mr. Forrest's residence. *Sikes v. State*, 524 S.W.2d 483, 486 (Tenn. 1975) (noting that premeditation was shown where a defendant approached a house while carrying a loaded shotgun, fired a first shot, and manually "'pumped'" the gun before firing a second shot). The evidence showed that the victim was hiding from the Defendant in the bathroom and did not provoke him. *See Larkin*, 443 S.W.3d at 815-16*; Halake*, 102 S.W.3d at 669. The Defendant did not render aid and immediately fled the house after shooting the victim. *See Larkin*, 443 S.W.3d at 815-16. Officer McCrury's testimony and the video recording from the Defendant's arrest show that the Defendant was calm immediately after the shooting. *See Bland*, 958 S.W.2d at 660

("Calmness immediately following a killing is evidence of a cool, dispassionate, premeditated murder.") (citing *State v. West*, 844 S.W.2d 144, 148 (Tenn. 1992)).

The Defendant challenges the sufficiency of the evidence supporting all of his convictions, arguing that the victim's testimony at trial was unreliable, that the DNA evidence failed to connect the Defendant to the shotgun that was recovered at the crime scene, and that it was not shown that the Defendant was wearing the clothing that had the victim's DNA on it at the time he was arrested.

As previously noted, a jury's guilty verdict, approved by the trial court, credits the testimony of the State's witnesses and resolves all conflicts in favor the State. *Stephens*, 521 S.W.3d at 724. The rationale behind this rule is that "[t]he trial judge and the jury see the witnesses face to face, hear their testimony and observe their demeanor on the stand." *Bolin v. State*, 405 S.W.2d 768, 771 (Tenn. 1966). The Defendant argues that the victim's own testimony showed that she had memory issues and was not a reliable witness. However, the jury heard the victim's testimony regarding her memory issues and the corroborating 9-1-1 call. By returning guilty verdicts, the jury clearly resolved the issue of credibility in the State's favor, and we may not now reconsider the jury's assessment of credibility. *See State v. Carruthers*, 35 S.W.3d 516, 558 (Tenn. 2000).

The Defendant argues that the evidence was insufficient because his DNA was not found on the shotgun or the clothing he was allegedly wearing at the time he was arrested. "[A] criminal offense may be established exclusively by circumstantial evidence." *Dorantes*, 331 S.W.3d at 379 (citing *Duchac v. State*, 505 S.W.2d 237, 241 (Tenn. 1973); *Marable v. State*, 313 S.W.2d 451, 456-58 (Tenn. 1958)). Here, physical evidence showed that the victim's DNA was on the shotgun and the Defendant's clothing and that the Defendant's DNA was found on his shirt. Witness testimony placed the Defendant outside the crime scene, within the vicinity of the shotgun, and the Defendant admitted to taking and firing the shotgun. Witness testimony also showed that the Defendant was wearing the clothing that later testified positive for the victim's DNA, even though the clothing was not tested to determine if the Defendant's "wear DNA" was on the clothing. Although the Defendant presented contradictory testimony regarding these facts, the jury heard the all of the evidence and testimony and settled the conflict in favor of the State. *See Stephens*, 521 S.W.3d at 724.

II. Motion to Suppress

The Defendant asserts that his two written statements were involuntary because he was involuntarily intoxicated after being in a van with Mr. Taylor while Mr. Taylor smoked marijuana that the Defendant believed had been "laced" with "something."

1. Suppression Hearing

Investigator Thompson was the only witness to testify at the suppression hearing. He stated that the Defendant was read his *Miranda* rights and signed a waiver prior to each interview. In regards to the Defendant's initial interview after being arrested, Investigator Thompson testified that each set of questioning lasted about five to ten minutes. His description of the Defendant's behavior in the initial interview was consistent with his testimony at trial that the Defendant was "playing possum." He noted that the Defendant was "wide awake" and "very alert" when he entered the room, but as soon as the questioning began, the Defendant "tried to act like he didn't know where he was at and he became sleepy all of [the] sudden." His testimony regarding the second and third interviews, during which the Defendant gave his two written statements, was consistent with his testimony at trial.

On cross examination, Investigator Thompson agreed that the Defendant had not been promised anything and had not been coerced in any way. On redirect examination, he stated that there were no signs that the Defendant was under the influence of any alcohol or drugs.

The audio recordings of all three interviews were introduced into evidence and reviewed by the trial court. The court specifically credited Investigator Thompson's testimony of the Defendant's "possum game" and concluded that, under the totality of the circumstances, the Defendant gave his statements "freely, voluntarily, knowingly, and intelligently." The court noted that there was no showing that the Defendant had any physical or mental disabilities, that the length of the interviews were not an undue burden, that there was no delay in presenting the Defendant to a magistrate, that there was no proof that the Defendant was deprived access to his family, friends, or counsel if he wanted, that there was no evidence of physical abuse or threats of abuse, that he was advised of his rights each time, that two of the interviews were conducted upon the Defendant's request, that there was no proof the Defendant was deprived food or water, that the first interview stopped when the Defendant wanted it to end, that there was no yelling, cursing, or threats except the discussion of the criminal process itself, that there was no proof of coercion, and that there was no proof of alcohol or drug use or sleep deprivation.

2. Analysis

"On appeal from the denial of a motion to suppress, we review the trial court's legal conclusions de novo with no presumption of correctness." *State v. Dailey*, 273 S.W.3d 94, 100 (Tenn. 2009) (citing *State v. Walton*, 41 S.W.3d 75, 81 (Tenn. 2001); *State v. Yeargan*, 958 S.W.2d 626, 629 (Tenn. 1997)). This court defers to the trial

court's findings of fact unless the evidence preponderates against such findings. *State v. Northern*, 262 S.W.3d 741, 747 (Tenn. 2008). "Questions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996). The prevailing party is entitled to the strongest legitimate view of the evidence from the suppression hearing, as well as "all reasonable and legitimate inferences that may be drawn from that evidence." *Id*. In evaluating the correctness of a trial court's ruling on a pretrial motion to suppress, this court may consider proof adduced both at the suppression hearing and at trial. *State v. Henning*, 975 S.W.2d 290, 299 (Tenn. 1998).

The Fifth Amendment to the United States Constitution and article I, section 9 of the Tennessee Constitution provide the accused with a right against self-incrimination. *See Walton*, 41 S.W.3d at 81. Whether a confession is voluntary is a question of fact, and the State has the burden of proving voluntariness by a preponderance of the evidence. *State v. Sanders*, 452 S.W.3d 300, 306 (Tenn. 2014). "[T]he essential inquiry under the voluntariness test is whether a suspect's will was overborne so as to render the confession a product of coercion." *State v. Climer*, 400 S.W.3d 537, 568 (Tenn. 2013) (citing *Dickerson v. United States*, 530 U.S. 428, 433-35 (2000)). The trial court must examine the totality of the circumstances surrounding the confession. *Id.* Circumstances relevant to this inquiry include:

> [T]he age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured[,] intoxicated[,] or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep[,] or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse.

Id. (quoting *State v. Huddleston*, 924 S.W.2d 666, 671 (Tenn. 1996)).

Here, Investigator Thompson testified that the Defendant did not appear to be intoxicated or require medical attention. Instead, he believed based on his experience as an investigator that the Defendant was "playing possum" and intentionally acting as though he were sick or intoxicated in an effort to avoid talking to law enforcement. The audio recordings were consistent with Investigator Thompson's description of the interviews. They also demonstrated that when the Defendant asked for the interview to

end, the investigators ceased questioning him. At trial, Investigator Chew testified that he did not believe the Defendant was under the influence or sick and that the Defendant's behavior was an "act." The Defendant testified at trial that he believed he was involuntarily intoxicated by being in a vehicle with Mr. Taylor as Mr. Taylor smoked marijuana the Defendant believed had been "laced" with "something."

We note that the Defendant's motion to suppress did not include an allegation that he was intoxicated when giving his statements, and the Defendant did not present any evidence or testimony at the hearing to support this contention. The allegation that the Defendant was intoxicated by being in close proximity of Mr. Taylor was first raised at trial. Nevertheless, the trial court made specific findings regarding the circumstances to be considered in determining the voluntariness of a statement. The court credited the testimony of Investigator Thompson at the motion hearing that the Defendant was "playing possum" and did not appear intoxicated. We conclude that the evidence does not preponderate against the court's findings. Accordingly, the Defendant is not entitled to relief.

III. Amended Indictment

The Defendant argues that the trial court erred in allowing the State to amend the offense date in one count of the indictment the week prior to trial. Tennessee Rule of Criminal Procedure 7(b) authorizes the court to permit an amendment to an indictment without the defendant's consent where jeopardy has not yet attached, "no additional or different offense is charged and no substantial right of the defendant is prejudiced." The Defendant argues that a substantial right of his was prejudiced given the proximity to trial and because he had to alter his trial strategy. However, the Defendant fails to explain how his trial strategy was affected. The amendment changed the date April 12, 2015, in Count 4 to reflect the correct offense date of April 6, 2015. The remaining counts in the indictment had the correct offense date and all of the counts arose from the same incident. Because the Defendant has not shown that a substantial right was prejudiced by the amendment, he is not entitled to relief. *See State v. Kennedy*, 10 S.W.3d 280, 284-86 (Tenn. 1999) (allowing the State to amend the date in an indictment); *State v. Burkley*, 804 S.W.2d 458, 460-61 (Tenn. Crim. App. 1990) (concluding the trial court did not err in allowing the state to amend an indictment the day before trial where "the defendant was … on notice of the offense and the particular misconduct for which he was charged").

IV. Juror Bias

The Defendant asserts that following the conclusion of the trial, he "was made aware of the possibility that one of the jurors during the trial … was related to" Mr.

Forrest, which was not disclosed by the juror during voir dire. However, the Defendant concedes that he "is still working on trying to confirm said information." "Where a juror is not legally disqualified or there is no inherent prejudice, the burden is on the Defendant to show that a juror is in some way biased or prejudiced." *State v. Caughron*, 855 S.W.2d 526, 549 (Tenn. 1993). Because the Defendant concedes that there is no evidence to support the contention that a juror was related to Mr. Forrest, he is not entitled to relief on this ground. *See Smith v. State*, 357 S.W.3d 322, 348 (Tenn. 2011) ("We have never presumed bias absent either an affirmative statement of bias, willful concealment of bias, or failure to disclose information that would call into question the juror's bias, and we decline to do so now.")

V. Use of Restraints

The Defendant maintains that he is entitled to a new trial because his right to due process was violated when he was placed in restraints immediately before the jury returned to read its verdict. "It is a well-settled principle of due process that every defendant in a criminal case be afforded the 'physical indicia of innocence.'" *State v. Hall*, 461 S.W.3d 469, 497 (Tenn. 2015) (citing *Kennedy v. Cardwell*, 487 F.2d 101, 104 (6th Cir. 1973); *Mobley v. State*, 397 S.W.3d 70, 100 (Tenn. 2013)). Tennessee courts have condemned the use of restraints during a trial "absent certain safeguards designed to assure that it would not influence the issue of innocence or guilt." *Id.* at 497 (citing *State v. Smith*, 639 S.W.2d 77, 681 (Tenn. Crim. App. 1982); *Willocks v. State*, 546 S.W.2d 819, 822 (Tenn. Crim. App. 1976)).

Here, the trial transcript does not indicate whether the Defendant objected to the use of restraints, whether the trial court heard arguments regarding the use of restraints, or on what basis the court determined that restraints were necessary. The only explanation available in the record is from the trial court during the hearing on the Defendant's motion for new trial. The court noted that the jury had already deliberated and completed the verdict forms before they saw the Defendant in any restraints and that the Defendant's "temperament certainly becomes violent on occasion." Because the Defendant failed to provide an adequate appellate record reflecting what occurred at the trial regarding the placement of the Defendant into restraints, this issue is waived. *See* Tenn. R. App. P. 24(b) ("[T]he appellant shall have prepared a transcript of such part of the evidence or proceedings as is necessary to convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal."); *State v. Arnekio Jackson*, No. W2015-02236-CCA-R3-CD, 2017 WL 3228339, at *3 (Tenn. Crim. App. July 28, 2017) (concluding that an issue was waived because a portion of a relevant bench conference was not included in the trial transcript), *no perm. app. filed*. Furthermore, the Defendant has failed to establish plain error. *See State v. Donald Smith*, 24 S.W.3d 274, 282 (Tenn. 2000) (citing *State v. Adkisson*, 899 S.W.2d 626, 641-

41 (Tenn. Crim. App. 1994)) (noting that a defendant must show five factors to establish plain error, including that the record clearly establishes what occurred in the trial court).

VI. Sentencing

The Defendant asserts that he should have been sentenced as a Range II, rather than a Range III offender, for his aggravated assault and aggravated burglary convictions. He also asserts that the trial court erred in running his attempted first degree murder sentence consecutively.

1. Sentencing Hearing

The Defendant was convicted of attempted first degree murder, a Class A felony; aggravated assault, a Class C felony; aggravated burglary, a Class C felony; and employing a firearm during the commission of a dangerous felony, a Class C felony. T.C.A. §§ 39-11-117(a)(2); 39-13-102(e)(1)(A)(ii) (2014); 39-14-403(b); 39-17-1324(h)(1). The defense and State agreed that the Defendant qualified as a Range II, multiple offender for the attempted first degree murder charge and that the mandatory statutory minimum for employing a firearm during the commission of a dangerous felony is six years of imprisonment. *See* T.C.A. §§ 39-17-1324(h)(1); 40-35-106.

The issue left before the trial court was the appropriate range for the aggravated assault and aggravated burglary convictions. The State contended that the Defendant qualified as a Range III, persistent offender because he had five prior felonies. The Defense argued that there were only four prior felonies because two of the prior aggravated assault offenses occurred on the same date, November 16, 1991. The indictment for both offenses charged that the Defendant, "did unlawfully, intentionally and knowingly by displaying and/or using a deadly weapon … cause [the victims] to reasonably fear imminent bodily injury by threatening to shoot [the victims] …." The court noted that it did not have the 1991 aggravated assault statute to review, but it relied on the language of the indictment to determine that threatened bodily injury was an element of the offenses, which fell under the exception to allow the convictions count as two separate prior felonies. *See* T.C.A. § 40-35-107(b)(4). The court concluded that the Defendant had five prior felonies, which qualified him as a Range III offender for the aggravated assault and aggravated burglary convictions.

The trial court applied no mitigating factors and six enhancement factors: that the Defendant had a previous history of criminal behavior, that the victim's personal injuries were particularly great, that the Defendant had previously failed to comply with conditions of a sentence involving release into the community, that the Defendant had no hesitation about committing a crime when the risk to human life was high, that the

Defendant was on parole at the time the offenses were committed, and that the Defendant had committed acts as a juvenile that would constitute a felony if committed by an adult. *See* T.C.A. § 40-35-114(1), (6), (8), (10), (13), and (16) (2014). The Defendant received within-range sentences of forty years for attempted first degree murder, fifteen years for aggravated assault, fifteen years for aggravated burglary, and six years for employing a firearm. *See* T.C.A. §§ 39-17-1324(h)(1); 40-35-112(b)(1), (c)(3).

The trial court noted that the sentence for employing a firearm was statutorily mandated to run consecutively. *See* T.C.A. § 39-17-1324(e)(1). The court determined that the attempted first degree murder sentence would run consecutively, while the aggravated assault and aggravated burglary sentences would run concurrently to one another for an effective sentence of sixty-one years.

2. Range Classification

A trial court's sentencing decisions are generally reviewed for abuse of discretion, with a presumption of reasonableness granted to within-range sentences that reflect a proper application of the purposes and principles of sentencing. *State v. Bise*, 380 S.W.3d 682, 707-08 (Tenn. 2012); *see also State v. Joseph Cordell Brewer, III*, No. W2014-01347-CCA-R3-CD, 2015 WL 4060103, at *7-8 (Tenn. Crim. App. June 1, 2015) (applying an abuse of discretion standard to trial court's determination of range classification). A trial court abuses its discretion when it applies an incorrect legal standard, reaches an illogical conclusion, bases its decision on a clearly erroneous assessment of the evidence, or employs reasoning that causes an injustice to the party complaining. *State v. Herron*, 461 S.W.3d 890, 904 (Tenn. 2015).

A Range III, persistent offender includes a defendant who has received [a]ny combination of five (5) or more prior felony convictions within the conviction class or higher or within the next two (2) lower felony classes." T.C.A. § 40-35-107(a)(1). In determining the number of prior convictions, "convictions for multiple felonies committed within the same twenty-four-hour period constitute one (1) conviction," except where "the statutory elements include … threatened bodily injury to the victim or victims." T.C.A. § 40-35-107(b)(4). A trial court must determine beyond a reasonable doubt that the defendant has the requisite number of prior felony convictions to qualify as a Range III offender. T.C.A. § 40-35-107(c).

The only prior convictions at issue on appeal are the Defendant's two 1992 convictions for aggravated assault. The Defendant argues that the convictions should have counted as only one prior conviction because they were from the same course of conduct and the resulting sentences were served concurrently. Under the twenty-four-hour rule, the convictions would count as one prior conviction for sentencing purposes

because both offenses were committed on November 16, 1991. *See* T.C.A. 40-35-107(b)(4). However, the trial court determined that threatened bodily injury was an element of aggravated assault as charged against the Defendant in 1991, which qualifies under the exception to the twenty-four-hour rule. *See id.* As charged against the Defendant in 1991, a person commits aggravated assault when he "[c]ommits an assault as defined in § 39-13-101" and "[u]ses or displays a deadly weapon." T.C.A. § 39-13-102(a)(1)(B) (1991). Assault was defined as "[i]ntentionally or knowingly caus[ing] another to reasonably fear imminent bodily injury." T.C.A. § 39-13-101(a)(3) (1991).

At oral argument, the Defendant requested this court to distinguish between a "threatened bodily injury" and "fear of imminent bodily injury," arguing that it is possible to cause someone to fear bodily injury without actually threatening bodily injury. Although the Defendant's brief argues that the convictions should count as one conviction because of the twenty-four-hour rule, his brief does not include this argument or any argument relating to the exception for threatened bodily injury applied by the trial court. Nevertheless, the specific term "threatened bodily injury" need not be in the offense statute to be considered an element of the offense. *See State v. Montez James*, No. W2011-01213-CCA-R3-CD, 2012 WL 4340658, at *18 (Tenn. Crim. App. Sept. 24, 2012) ("We agree … that the terminology 'exposing the other person to substantial risk of bodily injury' is the legal equivalent of 'threatened bodily injury.'"); *State v. Iwanda Anita Buchanan*, No. M2007-02870-CCA-R3-CD, 2008 WL 4467185, at *5 (Tenn. Crim. App. Oct. 6, 2008) (noting that robbery, which involves "putting the person in fear," and aggravated assault both "contain elements that the defendant cause or threaten to cause bodily injury"). We conclude that the trial court did not err by determining threatened bodily injury was an element of aggravated assault and that the two aggravated assault convictions were not subject to the twenty-four-hour rule. Accordingly, the court did not abuse its discretion in sentencing the Defendant as a Range III offender.

3. Consecutive Sentencing

The Defendant argues that the trial court erred in running his attempted first degree murder sentence consecutively, specifically arguing that the court erred in refusing to apply any mitigating factors and in giving too much weight to the enhancement factors. The decision to impose consecutive sentences rests within the sound discretion of the trial court. *State v. Hayes*, 337 S.W.3d 235, 266 (Tenn. Crim. App. 2010). The standard of review for consecutive sentencing is abuse of discretion with a presumption of reasonableness. *State v. Pollard*, 432 S.W.3d 851, 859 (Tenn. 2013). "So long as a trial court properly articulates reasons for ordering consecutive sentences, thereby providing a basis for meaningful appellate review, the sentences will be presumed reasonable and, absent an abuse of discretion, upheld on appeal." *Id.* at 862. Consecutive sentencing is "guided by the general sentencing principles providing that the

length of a sentence be 'justly deserved in relation to the seriousness of the offense' and 'no greater than that deserved for the offense committed.'" *State v. Imfeld*, 70 S.W.3d 698, 708 (Tenn. 2002) (citing T.C.A. §§ 40-35-102(1), -103(2)).

To impose consecutive sentencing, the trial court must find by a preponderance of the evidence at least one of seven factors listed in Tennessee Code Annotated section 40-35-115(a), which includes: the defendant's "record of criminal activity is extensive" and "[t]he 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." T.C.A. § 40-35-115(b)(2), (b)(4). The trial court need only find one of the criteria listed in the statute to properly impose a consecutive sentence. *State v. Alder*, 71 S.W.3d 299, 307 (Tenn. Crim. App. 2001). When basing its consecutive sentencing determination on the "dangerous offender classification, the trial court must conclude that the evidence has established that the aggregate sentence is 'reasonably related to the severity of the offenses' and 'necessary in order to protect the public from further criminal acts.'" *Pollard*, 432 S.W.3d at 863 (quoting *State v. Wilkerson*, 905 S.W.2d 933, 938 (Tenn. 1995)).

Here, the court found that the Defendant's criminal record was extensive and that he 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 was high. The court made specific findings that "the circumstances surrounding the commission of the offense[s were] aggravated"; that "confinement for an extended period of time [wa]s necessary to protect society from the Defendant's unwillingness to lead a productive life, and the Defendant's resort to criminal activity in the furtherance of an antisocial lifestyle"; and that "the aggregate length of the sentence reasonably relates to the … offenses." Because the trial court properly articulated its reasons for the consecutive sentence, the sentence is presumed reasonable, and we conclude that the trial court did not abuse its discretion. *See Pollard*, 432 S.W.3d at 862.

CONCLUSION

Based on the foregoing, the judgments of the trial court are affirmed. We note that the Defendant was sentenced as a Range II, multiple offender on Count 1, attempted first degree murder. The judgment form shows that the Defendant was sentenced as a Range III, persistent offender, but reflects the correct Range II sentence. Accordingly, we remand this matter for entry of a corrected judgment reflecting that the Defendant was properly sentenced as a Range II offender on Count 1.

JOHN EVERETT WILLIAMS, JUDGE