IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs July 9, 2019

STATE OF TENNESSEE v. DARRELL WREN

Appeal from the Criminal Court for Shelby County
No. 16-05834 John W. Campbell, Judge

No. W2018-02087-CCA-R3-CD

A Shelby County jury convicted the Defendant, Darrell Wren, of second degree murder, attempt to commit second degree murder, and employing a firearm during the commission of a dangerous felony. The trial court imposed an effective forty-five year sentence. On appeal, the Defendant asserts that the evidence is insufficient to sustain his convictions for second degree murder and attempt to commit second degree murder and that the trial court's sentence is excessive. After review, we affirm the trial court's judgments and remand for the execution of a corrected judgment for the employing a firearm during the commission of a dangerous felony conviction.

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

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and J. ROSS DYER, JJ., joined.

Phyllis Aluko, Shelby County Public Defender, and Barry W. Kuhn, Assistant Shelby County Public Defender, Memphis, Tennessee, for the appellant, Darrell Wren.

Herbert H. Slatery III, Attorney General and Reporter; Ronald L. Coleman, Assistant Attorney General; Amy P. Weirich, District Attorney General; and Kirby May, Leslie Byrd and Reginald Henderson, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION
I. Facts

This case arises from the theft of a black 2001 GMC Yukon ("Yukon") the Defendant was driving and his retaliation for the theft. Based upon the Defendant's

conduct, a Shelby County grand jury indicted the Defendant for first degree premeditated murder, attempt to commit first degree premeditated murder, and employing a firearm during the commission of a dangerous felony.

At a jury trial on the charges, the parties presented the following evidence: Corry Wells testified that, in December 2015, Anterica Clark, the Defendant's girlfriend, was his neighbor. During the morning of December 14, 2015, Ms. Clark called Mr. Wells to ask for his help in retrieving the stolen Yukon. Mr. Clark agreed and explained to the jury that "the plan" was to scare the men who had stolen the truck and "get their stuff back." Mr. Wells carried a BB gun with him but was unaware of any plan to shoot the car thieves. Ms. Clark and the Defendant, along with a woman unknown to Mr. Wells, picked up Mr. Wells at "Goldie's house" where he had spent the night. The foursome drove to Oakhaven Park where the Defendant and Mr. Wells got out of the vehicle and waited so they "wouldn't spook" the car thieves. Mr. Wells recalled that Ms. Clark drove away but returned after about ten or fifteen minutes in a different vehicle. Ms. Clark backed into a parking space, and the Defendant got into the trunk. Mr. Wells said that it was at the park that he first noticed the Defendant was armed.

Mr. Wells testified that, approximately five minutes after the Defendant got into the trunk, two men in the Yukon arrived and parked next to Ms. Clark. Ms. Clark pretended to be interested in some purses that the men were selling. As she walked back to her vehicle, under the pretense of getting money to buy a purse, the Defendant "jumped out of the trunk" and began firing his gun at the Yukon. Mr. Wells, surprised by the gunfire, began to run away from the shooting. As he fled, he heard a "boom" and turned to see that the Yukon had backed out of the parking space and hit "a little bridge." The Defendant ran toward the Yukon while continuing to fire his gun. According to Mr. Wells, the Yukon "tried to take off again," ran over a sidewalk, and then "just start[ed] [rolling] after that."

Mr. Wells testified that he ran toward Goldie's house and, at some point, the Defendant caught up with him. At Goldie's house, Ms. Clark met up with the men, and Ms. Clark and the Defendant left together. Mr. Wells testified that he went to the police of his own violition and provided a statement about the incident. In a photographic line-up, he identified both the Defendant and Ms. Clark.

Jason Winburn, a Memphis Police Department ("MPD") officer, testified that, on December 13, 2015, he responded to a call about a motor vehicle theft at a gas station on Knight Arnold in Memphis, Tennessee. When he arrived, he spoke with the Defendant who had been driving the vehicle, a black 2001 GMC Yukon. The Defendant explained that he pulled into the gas station, left the keys in the Yukon while it was still running and went inside the gas station. When he returned, the Yukon was gone. The Defendant

identified Ms. Clark as the owner of the Yukon. The officer obtained the Tennessee license tag number and VIN for the Yukon.

Erick Cage, an MPD officer, testified that he was assigned the December 13 gas station vehicle theft. Officer Cage placed a phone call to Ms. Clark, and the Defendant answered the phone. Officer Cage described the Defendant as "irate" and quoted the Defendant as saying, "Well, you all ain't doing shit. I just saw my damn vehicle and basically I'm a handle this shit my damn self 'cause y'all ain't doing it." Based upon the Defendant's assertion that he had just seen the stolen vehicle, Officer Cage inquired about the Defendant's location and then dispatched officers to that area to look for the stolen Yukon. After dispatching officers, Officer Cage attempted to call the Defendant again, but no one answered. Several hours later, Officer Cage was notified of a shooting in the park involving the stolen Yukon.

Jason Backers, an MPD detective, responded to a report of a shooting at Oakhaven Park. When he arrived, he learned that two individuals had been shot and one had been transported to the hospital. Detective Backers approached the Yukon and saw a deceased male "slumped down" in the passenger seat. As he observed the victim in the Yukon, Detective Backers noticed that the vehicle matched the description of the black 2001 GMC Yukon reported stolen the previous day, December 13, 2015. After confirming the Yukon's license number, he notified Officer Cage.

Kashara Jackson testified that Ms. Clark was her "little brother's cousin" and that the Defendant was Ms. Clark's fiancé. Ms. Jackson recalled loaning her gray Nissan Altima to Ms. Clark on December 14, 2015. Ms. Jackson said a female driving a burgundy car drove Ms. Clark to Ms. Jackson's house. Ms. Clark asked to borrow Ms. Jackson's car to run an errand for Ms. Clark's mother. Ms. Jackson agreed, and Ms. Clark was gone for ten or twenty minutes. When Ms. Clark returned, she gave the keys to another adult in the house and left without speaking to Ms. Jackson.

Ms. Jackson testified that, several days later, the police came to her residence and asked questions about her Altima. Ms. Jackson gave a statement to the police and identified the Defendant in a photographic line-up as Ms. Clark's fiancé, and Ms. Clark in a separate photographic line-up as the person to whom she had loaned her car. Ms. Jackson confirmed that she lived near Oakhaven Park.

Dorothy White testified that, on the morning of December 14, 2015, Ms. Clark called to ask if Ms. White would drive her to the store and to her cousin's house. Ms. White drove a red Lexus to an apartment "off Ridgeway and Knight Arnold" to meet Ms. Clark. When she arrived, Ms. Clark asked to use Ms. White's phone to look up a purse she was interested in purchasing on "buy, sell or trade," and Ms. White gave her the

phone. At Ms. Clark's request, Ms. White then drove the Defendant, Ms. Clark, and Ms. Clark's children to Goldie's house "a street over from" Ms. Clark's cousin's house. At Goldie's house, the Defendant and Ms. Clark spoke to a man, Mr. Wells, in the yard for about five minutes before all three returned to the car. Ms. White then drove to Oakhaven Park where the Defendant and Mr. Wells stayed and drove Ms. Clark to her cousin's house before taking Ms. Clark's children to get food from a McDonald's restaurant.

While at McDonald's, Ms. Clark called one of her children who was with Ms. White and told her to "block the sell trade buy app off Facebook and change her name on Facebook." Although Ms. White thought this request was odd, she did not suspect criminal activity was the motivation. As they waited for their food at McDonald's restaurant, Ms. White heard gunfire. Shortly after hearing the gunfire, Ms. Clark called again, and her child reported "mama said come and pick her up she's walking." The child explained that Ms. Clark was walking because Ms. Jackson "had changed her mind" about loaning the car. Ms. White picked up Ms. Clark from "behind the school." Ms. Clark then instructed Ms. White to drive to Goldie's house to pick up the Defendant.

Ms. White testified that the Defendant stated that there were too many people in the car, so he got into the trunk for a short period of the drive. Somewhere in the area of Winchester and Lamar, the Defendant got out of the trunk and into the cabin of the car. Once inside the car, the Defendant stated, "That mother-f**ker got mad and ran off. He scared. He scared. . . . [Y]eah, I shot them. I shot them. I'll kill them again for my family. If my gun didn't get jammed I would have kept shooting." The Defendant told Ms. White not to tell anyone. Ms. White drove the Defendant and Ms. Clark to her home where they remained for a while before Ms. White drove them to the apartment complex where she had earlier picked them up.

Ms. White testified that when she realized what had occurred by watching the news later that night, she went to the police station and gave a statement. Ms. White consented to a search of her home, and officers recovered a gun from the air conditioning unit housed in the closet.

Ricky Coleman testified that, on December 14, 2015, he was at a friend's house located across the street from Oakhaven Park. Mr. Coleman heard some argument outside and observed the Yukon and a "[g]irl talking loud and cussing." He turned to walk away from the window and heard gunshots. He ducked down and when he looked again, he saw the Yukon backing up and a man with braids shooting at the Yukon. The Yukon hit a wall, and the shooter changed the clip in his gun and resumed shooting. The Yukon "took off again" and ran into the rail in front of the park. According to Mr.

Coleman, "the girl was hollering a[t] [the shooter] and the girl left." He further recalled seeing another male in front of the Yukon who fled across the park.

Mr. Coleman testified that he went out and approached one of the Yukon passengers, who had run across the street away from the park. The man was bleeding and asked Mr. Coleman to call for an ambulance. Mr. Coleman's friend called for an ambulance while Mr. Coleman went across the street to check on the passenger in the Yukon. Based upon his observations of the passenger, Mr. Coleman believed that the passenger was dead. The police arrived within a couple of minutes as Mr. Coleman was returning across the street.

David Garrett, an MPD detective, testified that he responded to the shooting. Detective Garrett observed a man on the curb, who was bleeding from the upper torso and lower area of his body from what appeared to be gunshot wounds. He pulled into the park and approached a black Yukon and found another man inside who was unresponsive. Detective Garrett did not see any weapons inside the vehicle. A check of the license tag number for the Yukon revealed that it had been reported stolen.

Michael Garrison, a Memphis Firefighter Paramedic, testified that he responded to the shooting and found the victim in the Yukon deceased. About this victim, Mr. Garrison stated that he had "bled out" as a result of gunshot wounds. He then examined the other Yukon passenger who had moved across the street. The second Yukon passenger had sustained a gunshot wound to his left arm and to his right leg. Mr. Garrison did not observe any weapons on this victim before he was transported to the hospital.

Demetrius James testified that, on December 14, 2015, he and his friend, Jerome Dodson, were in a black GMC Yukon at Oakhaven Park when Mr. Dodson was shot and killed. Mr. James admitted stealing the Yukon on the afternoon of December 13, 2014, from a gas station on Knight Arnold. The following morning at around 8:00, Mr. James recalled being "chased . . . [b]y somebody with dreads" at the Lakes Apartment complex in Memphis, Tennessee. As a result, he and Mr. Dodson drove away from the apartment complex.

Mr. James testified that he found two Michael Kors purses in the back of the stolen Yukon, so he and Mr. Dodson decided to sell them through Facebook. Mr. James photographed the purses and posted them on Facebook with information on how to buy the purses. Mr. James identified the cell phone number he used to take the photographs and upload the photographs to Facebook. He also identified copies of the photographs that he had taken of the purses. Mr. James agreed that he uploaded the photographs of the purses to Facebook on December 14, 2015, at 9:46 a.m. That same morning a female,

later identified as Ms. Clark, sent him a message through Facebook expressing interest in the purses and providing her cell phone number.

Mr. James testified that he communicated with Ms. Clark three or four times by phone and arranged to meet about the purses. The first phone call was placed at 1:08 p.m. and the last at 1:30 p.m. Ms. Clark determined the location of the meeting, telling Mr. James she was "already there." Mr. James drove to the designated location in Oakhaven Park while Mr. Dodson rode in the front passenger seat of the Yukon. When they arrived, they saw "a brown looking Taurus car" that was backed in to a parking space. Mr. James pulled into the parking space next to the other vehicle with the passenger side of both vehicles next to each other. Ms. Clark approached the Yukon and looked at the purse. As she returned to her car to "go get some more money," Mr. Dodson told Mr. James to drive away because he saw a male, later identified as the Defendant, "coming from behind the trunk area of the car." Mr. James looked up, and the Defendant began firing.

Mr. James described the Defendant as a black man, "[a]bout five eleven," wearing his hair in dreadlocks. Mr. James put the Yukon in reverse but "hit a bridge" while attempting to exit the park. Mr. James put the Yukon in drive and drove inside the park as the Defendant continued firing at the Yukon. Mr. James recalled that when the Defendant "got through shooting [Mr. Dodson]," he ran around to the driver's side, put the gun in Mr. James's face, and the gun "jammed." Mr. James said that the Defendant tried to "unjam" the gun but then ran through the park with a man who had been standing under a pavilion.

Mr. James testified that the Yukon "rolled back into the park." He saw that Mr. Dodson was still breathing so he ran across the street from the park and knocked on the door of a house. When no one answered, he flagged down a "security car," who notified the police. Mr. James confirmed that neither he nor Mr. Dodson was armed.

Jeffrey Garey, an MPD officer, discovered a live cartridge amidst "a bunk of spent cartridges" at the scene. He opined that a live cartridge among spent cartridges could be indicative of a gun jamming "and it being re-racked." He also observed what appeared to be recent damage to the bridge. Officer Garey photographed and collected evidence from the scene.

Fausto Frias, an MPD officer, testified that he was assigned this case as the case officer. Officer Frias stated that as part of his investigation he searched Ms. White's residence and recovered a Keltec .22 magnum pistol and two clips from a utility closet. Officer Frias spoke with the Defendant on the evening of December 15, 2015. The

Defendant denied any involvement and provided an alibi that Officer Frias was unable to verify.

Roosevelt Twilley, an MPD lieutenant, testified that he extracted cell phone data from Mr. James's cell phone. Lieutenant Twilley recovered photographs of purses uploaded for sale on Facebook and communication between Mr. James and Ms. Clark in the time leading up to the shooting.

Dr. Marco Ross, Interim Chief Medical Examiner and Forensic Pathologist at the West Tennessee Regional Forensic Center, testified as an expert witness in the field of forensic pathology. Dr. Ross confirmed that his office performed an autopsy on Jerome Dodson and that he had reviewed the report. Dr. Ross stated that Mr. Dodson was twenty years of age at the time of the autopsy and had sustained multiple gunshot wounds. Dr. Ross recounted the seven entrance wounds on the body and identified the photographs depicting the wounds. Five bullets were recovered from Mr. Dodson's body. Dr. Ross opined that the cause of death was multiple gunshot wounds and that the manner of death was homicide.

Cervinia Braswell, a Tennessee Bureau of Investigation Forensic Scientist, testified as an expert witness in the field of firearm and forensic identification. Special Agent Braswell examined the Keltec .22 caliber semiautomatic pistol and the fifty-live rounds recovered from Ms. White's apartment. She also examined the cartridge cases, bullet fragment, and unspent cartridge recovered at the shooting scene and the five bullets recovered during the autopsy. After firing the semiautomatic pistol, Special Agent Braswell determined that the bullets recovered from Mr. Dodson's body had the same class characteristics as the bullets she fired from the pistol. As to the cartridge cases recovered from the shooting scene, Special Agent Braswell determined that all fifteen cartridge cases were fired from the semiautomatic pistol.

Michael Harber, a Shelby County Sheriff's office deputy, testified that part of his job description included monitoring inmate phone calls. Deputy Harber confirmed that portions of five of the Defendant's phone calls from jail were redacted and put on a CD. The State played the redacted phone calls for the jury. The CD was not included in the record provided to this Court, and neither party has raised any issue pertaining to the contents of these phone calls.

Following the evidence, the jury convicted the Defendant of the lesser-included offenses of second degree murder and attempt to commit second degree murder and the charged offense of employing a firearm during the commission of a dangerous felony. At the sentencing hearing, the trial court imposed a twenty-five year sentence for the second degree murder conviction, a twelve year sentence for the attempt to commit second

degree murder conviction, and a ten year sentence for the employing a firearm during the commission of a dangerous felony conviction. After considering the applicable factors, the trial court ordered the sentences to run consecutively for an effective sentence of forty-seven years in the Tennessee Department of Correction. It is from these judgments that the Defendant appeals.

II. Analysis

On appeal, the Defendant asserts that the evidence is insufficient as to his convictions for second degree murder and attempt to commit second degree murder and that the trial court's sentence is excessive.

A. Sufficiency of the Evidence

The Defendant challenges only his convictions for second degree murder and attempt to commit second degree murder, asserting that he acted in a high state of passion as a result of provocation; thus, he should have been convicted of voluntary manslaughter. He argues that not only did the victims steal Ms. Clark's car, but they further intended to sell the items inside the car back to Ms. Clark, providing provocation sufficient "to lead a reasonable man to act in an irrational manner." The State maintains that the evidence is sufficient to support the convictions. It further argues that the Defendant's theory was presented to the jury, and it determined that the Defendant was not adequately provoked. We agree with the State.

When an accused challenges the sufficiency of the evidence, this Court's standard of review is whether, after considering the evidence in the light most favorable to the State, "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *see* Tenn. R. App. P. 13(e); *State v. Goodwin*, 143 S.W.3d 771, 775 (Tenn. 2004) (citing *State v. Reid*, 91 S.W.3d 247, 276 (Tenn. 2002)). This standard applies to findings of guilt based upon direct evidence, circumstantial evidence, or a combination of both direct and circumstantial evidence. *State v. Pendergrass*, 13 S.W.3d 389, 392-93 (Tenn. Crim. App. 1999) (citing *State v. Dykes*, 803 S.W.2d 250, 253 (Tenn. Crim. App. 1990)). In the absence of direct evidence, a criminal offense may be established exclusively by circumstantial evidence. *Duchac v. State*, 505 S.W.2d 237, 241 (Tenn. 1973). "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 [for sufficiency of the evidence] 'is the same whether the conviction is based upon direct or circumstantial evidence.'" *State v.*

Dorantes, 331 S.W.3d 370, 379 (Tenn. 2011) (quoting *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009)).

In determining the sufficiency of the evidence, this Court should not re-weigh or reevaluate the evidence. *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Nor may this Court substitute its inferences for those drawn by the trier of fact from the evidence. *State v. Buggs*, 995 S.W.2d 102, 105 (Tenn. 1999) (citing *Liakas v. State*, 286 S.W.2d 856, 859 (Tenn. 1956)). "Questions concerning the credibility of 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." *State v. Bland,* 958 S.W.2d 651, 659 (Tenn. 1997). "A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State." *State v. Grace*, 493 S.W.2d 474, 476 (Tenn. 1973). The Tennessee Supreme Court stated the rationale for this rule:

> This well-settled rule rests on a sound foundation. The trial judge and the jury see the witnesses face to face, hear their testimony and observe their demeanor on the stand. Thus the trial judge and jury are the primary instrumentality of justice to determine the weight and credibility to be given to the testimony of witnesses. In the trial forum alone is there human atmosphere and the totality of the evidence cannot be reproduced with a written record in this Court.

Bolin v. State, 405 S.W.2d 768, 771 (Tenn. 1966) (citing *Carroll v. State*, 370 S.W.2d 523, 527 (Tenn. 1963)). This Court must afford the State of Tennessee the "'strongest legitimate view of the evidence'" contained in the record, as well as "'all reasonable and legitimate inferences'" that may be drawn from the evidence. *Goodwin*, 143 S.W.3d at 775 (quoting *State v. Smith*, 24 S.W.3d 274, 279 (Tenn. 2000)). Because a verdict of guilty against a defendant removes the presumption of innocence and raises a presumption of guilt, the convicted criminal defendant bears the burden of showing that the evidence was legally insufficient to sustain a guilty verdict. *State v. Carruthers*, 35 S.W.3d 516, 557-58 (Tenn. 2000) (citations omitted).

Second degree murder is defined as "the knowing killing of another." T.C.A. § 39-13-210(a)(1). "A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result." T.C.A. § 39-11-302(b). A person attempts to commit second degree murder when he or she acts with intent to knowingly "cause a result that is an element of the offense, and believes the conduct will cause the result without further conduct on the person's part" or acts knowingly "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)(2)-(3).

The evidence, viewed in the light most favorable to the State, proves that the Defendant left the Yukon, unlocked with the engine running, to go inside a gas station. While in the gas station, Mr. James and Mr. Dodson stole the Yukon, and the Defendant reported the stolen vehicle to the police. The following day the Defendant saw Mr. James, at around 8:00 a.m., driving the Yukon and pursued him. That same morning, when Officer Cage spoke with the Defendant about the stolen vehicle, the Defendant expressed outrage and threatened to handle the situation himself. Consistent with this threat, the Defendant and Ms. Clark employed help from Mr. Wells, arranged for transportation, and created a plan to lure Mr. James and Mr. Dodson to Oakhaven Park. The Defendant, armed with a semiautomatic pistol, lay in wait until Ms. Clark moved away from the Yukon, and then the Defendant opened fire on Mr. James and Mr. Dodson. The Defendant followed the vehicle as the victims attempted to escape, reloaded his gun, and continued firing at the victims until his gun jammed. Shortly after the shooting, he stated, "[Y]eah, I shot them. I shot them. I'll kill them again for my family. If my gun didn't get jammed I would have kept shooting." This is sufficient evidence upon which a rational jury could find that the Defendant knowingly shot and killed Mr. Dodson and that his conduct created a substantial step toward his attempt to murder Mr. James.

The jury heard the Defendant's theory that the provocation present in this case was sufficient to lead a reasonable person to act in an irrational manner. By its verdict, however, the jury rejected the Defendant's theory of the case and found that the Defendant acted knowingly and without adequate provocation. The Defendant relies on two Tennessee Supreme Court cases in support of his contention that there was adequate provocation. *See State v. Thornton*, 730 S.W.2d 309 (Tenn. 1987); *Toler v. State*, 260 S.W. 134 (Tenn. 1923). We note that in both cases our supreme court relied upon the brevity of the time between the alleged inciting incident and the commission of the offense after considering whether "there had been sufficient time for the passion or emotion . . . to cool before the shooting." *Thornton*, 730 S.W.2d at 313. In this case, Mr. James and Mr. Dodson stole the Yukon on the afternoon of December 13, 2015, and the shooting did not occur until the following afternoon. The lapse of almost twenty-four hours, in addition to the planning and organization involved in the commission of the offenses in this case, supports the jury's rejection of the Defendant's theory.

Accordingly, we conclude that there was sufficient evidence for the jury to conclude, beyond a reasonable doubt, that the Defendant knowingly killed Mr. Dodson and attempted to kill Mr. James. The Defendant is not entitled to relief.

B. Sentencing

On appeal, the Defendant challenges the trial court's decisions regarding the length of his sentence. He asserts that the trial court did not sufficiently address the *Wilkerson* factors when it ordered consecutive sentencing. Further, he argues that the trial court sentenced him to ten years for employing a firearm during the commission of a dangerous felony but should have sentenced him to the six-year maximum sentence within the range. The State responds that the trial court correctly ordered consecutive sentencing in this case, but it agrees that the Defendant's sentence for employing a firearm during the commission of a dangerous felony should be six years pursuant to applicable statutes.

The Tennessee Criminal Sentencing Reform Act of 1989 and its amendments describe the process for determining the appropriate length of a defendant's sentence. Under the Act, a trial court may impose a sentence within the applicable range as long as the imposed sentence is consistent with the Act's purposes and principles. T.C.A. § 40-35-210(c)(2), (d) (2010); *see State v. Carter*, 254 S.W.3d 335, 343 (Tenn. 2008).

In *State v. Bise*, the Tennessee Supreme Court announced that "sentences imposed by the trial court within the appropriate statutory range are to be reviewed under an abuse of discretion standard with a 'presumption of reasonableness.'" 380 S.W.3d 682, 708 (Tenn. 2012). A finding of abuse of discretion "'reflects that the trial court's logic and reasoning was improper when viewed in light of the factual circumstances and relevant legal principles involved in a particular case.'" *State v. Shaffer*, 45 S.W.3d 553, 555 (Tenn. 2001) (quoting *State v. Moore*, 6 S.W.3d 235, 242 (Tenn. 1999)). To find an abuse of discretion, the record must be void of any substantial evidence that would support the trial court's decision. *Shaffer*, 45 S.W.3d 553, 555 (Tenn. 2001); *State v. Grear*, 568 S.W.2d 285, 286 (Tenn. 1978); *State v. Delp*, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980). The reviewing court should uphold the sentence "so long as it is within the appropriate range and the record demonstrates that the sentence is otherwise in compliance with the purposes and principles listed by statute." *Bise,* 380 S.W.3d at 709-10. In other words, so long as the trial court sentences a defendant within the appropriate range and properly applies the purposes and principles of the Sentencing Act, its decision will be granted a presumption of reasonableness. *Id.* at 707.

Tennessee Code Annotated section 40-35-115(b) provides that a trial court may order sentences to run consecutively if it finds any one of the statutory criteria by a preponderance of the evidence. T.C.A. § 40-35-115. The criteria are stated in the alternative; therefore, only one need exist to support the imposition of consecutive sentencing. *See id.*; *State v. Denise Dianne Brannigan*, No. E2011-00098-CCA-R3-CD, 2012 WL 2131111, at *19 (Tenn. Crim. App., at Knoxville, June 13, 2012), *no Tenn. R.*

App. P. 11 application filed. The imposition of consecutive sentencing, however, is subject to the general sentencing principles that the overall sentence imposed "should be no greater than that deserved for the offense committed" and that it "should be the least severe measure necessary to achieve the purposes for which the sentence is imposed[.]" T.C.A. § 40-35-103(2), (4). We review a trial court's decision to impose consecutive sentences for an abuse of discretion with a presumption of reasonableness. *State v. Pollard*, 432S.W.3rd 851, 860 (Tenn. 2013).

In this case, the trial court imposed consecutive sentencing upon finding that the appellant was "a dangerous offender whose behavior indicates little or no regard for human life and no hesitation about committing a crime in which the risk to human life is high." T.C.A. § 40-35-115(b)(5). 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 that "(1) the sentences are necessary in order to protect the public from further misconduct by the defendant and [that] (2) 'the terms are reasonably related to the severity of the offenses.'" *State v. Moore*, 942 S.W.2d 570, 574 (Tenn. Crim. App. 1996) (quoting *Wilkerson*, 905 S.W.2d at 938); *see also State v. Lane*, 3 S.W.3d 456, 461 (Tenn. 1999). "Where . . . the trial court fails to provide adequate reasons on the record for imposing consecutive sentences, the appellate court should neither presume that the consecutive sentences are reasonable nor defer to the trial court's exercise of its discretionary authority" and can either conduct a *de novo* review to determine if an adequate basis exists for consecutive sentences or remand the case to the trial court for consideration of the requisite *Wilkerson* factors. *Pollard*, 432 S.W.3d at 864-65.

The trial court in considering the specific facts of this case found the facts "frightening." It acknowledged that the jury's verdict of the lesser-included offense of second degree murder indicated that the jury considered the victims' wrongful conduct in this case but that the facts supported premeditated killing. The trial court described the Defendant's conduct as severe and brazen. The court summarized the facts as follows:

> They lure these two individuals over to a particular place, the [D]efendant hides in the trunk with a pistol, and then jumps out of the trunk and starts firing. Now, [Mr. Dodson] was shot numerous times. There are shell casings everywhere. And [Mr. James] was shot a couple of times. All this being done in a public park. In a neighborhood where there are a number of people around and saw the whole thing, and talked about bullets flying and everything else. This, I guess, is about as wild west as you can get.

The trial court reiterated its concern over the facts saying that the case was "very disturbing" and "particularly unsettling." The trial court specifically stated that the

Defendant's behavior indicated little or no regard for human life and that his conduct showed he had no hesitation about committing a crime in a public place where the risk to human life was high. The trial court stated that the circumstances surrounding the offense were aggravated due to the Defendant's repeated firing of his gun, multiple gunshot wounds sustained by two victims, and the public location of this wanton shooting. The trial court acknowledged that the victim had committed a theft but found that the Defendant acting as "judge, jury, and executioner" in response was "pretty disturbing." The trial court was concerned about the potential harm to people in the area and the frequency of citizens suffering from stray gunfire. In considering the Defendant's conduct as it related to the public nature of the park and the neighboring residential area, the trial court stated "people in their neighborhood shouldn't have to worry about being in a war zone." The trial court then ordered the Defendant to serve his convictions for second degree murder and attempt to commit second degree murder consecutively.

We conclude that the trial court addressed the *Wilkerson* factors and found consecutive sentencing was necessary to protect the public from the Defendant and that consecutive sentencing reasonably related to the severity and the seriousness of the offenses. Specifically, the trial court was troubled by the fact that the appellants chased down the victims while repeatedly firing a semiautomatic weapon in a public place, placing unrelated people in harm's way. The trial court noted the victims' criminal conduct related to the incident but found deeply concerning the Defendant's concerted actions in seeking retribution and "the brazenness" of the Defendant publicly executing an individual under circumstances that the State could not. Therefore, we conclude that the trial court did not abuse its discretion by ordering consecutive sentencing based on finding the Defendant a dangerous offender.

As to the Defendant's challenge to the length of his conviction for employing a firearm during the commission of a dangerous felony, the Defendant is correct that the sentence is improper. The Defendant does not have any prior felonies and, therefore, by statute he should receive a mandatory minimum six-year sentence. *See* T.C.A. § 39-17-1324(h)(1) (2018). The Defendant's sentencing range for a Class C felony was three to six years, therefore, the Defendant by statute should have been sentenced to six years. *See* T.C.A. § 40-35-112(a)(3)(2014). Accordingly, we remand for the trial court to enter a corrected judgment form for the employing a firearm during the commission of a dangerous felony conviction.

III. Conclusion

For the foregoing reasons, we affirm the judgments of the trial court and remand for a corrected judgment pursuant to this opinion.

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ROBERT W. WEDEMEYER, JUDGE