IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

JUNE SESSION, 1999

STATE OF TENNESSEE,	)	**C.C.A. NO. W1998-00558-CCA-R3-CD**
	)	
Appellee,	)	
	)	
	)	**MADISON COUNTY**
VS.	)	
	)	**HON. WHIT LAFON,**
WILLIAM CURTIS WAGNER,	)	**JUDGE**
	)	
Appellant.	)	(Aggravated Assault, DUI,
	)	Evading Arrest)

ON APPEAL FROM THE JUDGMENT OF THE
CIRCUIT COURT OF MADISON COUNTY

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OPINION FILED _____

AFFIRMED IN PART; REMANDED

DAVID H. WELLES, JUDGE

OPINION

On February 26, 1996, the Madison County Grand Jury indicted the Defendant, William Curtis Wagner, on eight counts of aggravated assault, three counts of vandalism, three counts of leaving the scene of an accident, and one count each of driving while under the influence of a drug and/or intoxicant, reckless driving, reckless endangerment, evading arrest, and violation of the seat belt law. All charges arose from one extended incident. Following a jury trial, the Defendant was found guilty of two counts of aggravated assault, four counts of assault, three counts of vandalism over $500, one count of leaving the scene of an accident with bodily injury, one count of leaving the scene of an accident with property damage, one count of driving under the influence, one count of reckless driving, one count of reckless endangerment with a deadly weapon, and one count of felony evading arrest. Following a sentencing hearing, he received an effective sentence of six years.[1]

The Defendant now appeals his convictions and his sentences, presenting five issues for our review: (1) whether the state proved beyond a reasonable doubt that he was voluntarily intoxicated; (2) whether his convictions for vandalism and assault violate principles of double jeopardy; (3) whether his sentences are excessive; (4) whether the trial court erred by denying his motion to dismiss all aggravated assault counts; and (5) whether the evidence is sufficient to support his convictions for leaving the scene of an accident.

[1] The Defendant was sentenced to four years for each aggravated assault conviction; eleven months and twenty-nine days for each assault conviction; two years for each conviction of vandalism; eleven months and twenty-nine days for leaving the scene of an accident with bodily injury; thirty days for leaving the scene of an accident with property damage; eleven months and twenty-nine days for driving under the influence; eleven months and twenty-nine days for reckless driving; two years for reckless endangerment; and two years for felony evading arrest. Sentences for all convictions were to be served concurrently, except for the sentence for felony evading arrest, which was to be served consecutive to all other sentences.

In 1995, the Defendant, a truck driver for approximately eight years at the time of trial, was working as a mechanic and a driver for Brown's Towing and Truck Repair in Virginia. On November 18, 1995, the Defendant was returning to Virginia from Brinkley, Arkansas, towing a disabled truck. He said he had been driving for approximately seventeen hours with less than two hours of sleep when he decided to stop at a truck stop in West Memphis, Arkansas. The Defendant went inside the store, purchased a fountain drink and a pack of Goody's powders, called home, and walked back to his truck to sleep.

According to the Defendant, as he was climbing back into his truck, he was approached by a man who was parked next to him in the parking lot. He conversed with the man, whom he did not know, for thirty to forty-five minutes. The Defendant testified that during the conversation, he allowed the man to a put a powdery substance into his fountain drink. Although the stranger referred to the substance as "crank," the Defendant maintained that he believed it was caffeine. The Defendant testified that after conversing with the man, he climbed into his truck and tried to sleep. After thirty minutes to an hour had passed, he decided to get back on the road.

Ralph McGuire, a truck driver, was traveling eastbound on I-40 through Madison County when he felt "a nudge from the rear-end" of his truck. He testified he heard a voice on his CB radio that said, "If I can't get you this way, I'll get you this way," and he turned to see the Defendant's truck beside his door. He stated that the Defendant swerved to hit him again but missed when McGuire braked quickly and pulled onto the shoulder of the road to evade him.[2]

[2] The exact order of collisions between the Defendant's truck and other vehicles is unclear from the record. Therefore, the order has been approximated in this recitation of facts, and quotations of the Defendant's statements made immediately prior to or contemporaneously with each collision have been linked to each incident as best possible.

Lieutenant Mark Williams of the Haywood County Sheriff's Department received a call to be on the lookout for a tractor-trailer wrecker towing a truck. He testified that in response to the call, he drove to an exit on I-40, pulled his car onto the entrance ramp, and began to observe the eastbound traffic. Almost immediately, he observed the Defendant's vehicle proceeding down the interstate, swerving from side to side. Williams, who was in an unmarked car, radioed back that he had found the vehicle and activated his dashboard blue lights and flashers to pull the Defendant over. The Defendant responded by speeding up. Williams then turned on his siren, again to no avail, and attempted to pass the Defendant, who swerved at him as he began to pull forward. Williams reported the pursuit and requested assistance.

Gordon Jacobs and Barry Siler, both state troopers, joined in the pursuit. Both were driving fully marked cars with all emergency equipment activated, including lights and sirens, but the Defendant still did not stop. Jacobs reported that during the pursuit, the Defendant's wrecker was "slinging" the truck in tow behind it back and forth across the interstate "like a wrecking ball." Williams reported that "[b]etter than 50" vehicles were forced to dodge the Defendant's truck during the chase.

Troopers testified that during the chase, they heard the Defendant say over the CB radio, "Watch this shit. I'm going to slap this white car." The Defendant then "sideswiped" a Chevrolet Caprice in which Helen and Gerald Towater[3] were proceeding eastward. The Towaters pulled onto the shoulder of the road, and the Defendant kept going. The accident caused approximately $1,100 worth of damage to the Towaters' vehicle.

[3] In the record, Mr. Towater is referred to as both "Gerald" and "Jarrell" Towater.

Ben Elston and David Robinson were traveling in a Jeep on I-40 at the time of the Defendant's escapade. Elston testified that he saw the Defendant's vehicle approaching them, swerving in and out of traffic. Just as he attempted to warn Robinson, who was driving the Jeep, the Defendant swerved at them. They moved into the emergency lane, and the Defendant swerved to the right a second time, hitting a truck in front of them.

Eliga Glenn and Donald Woods were traveling in the pick-up truck that was hit. Lieutenant Williams reported that as the Defendant approached the truck, he heard the Defendant on his CB radio say, "Watch this shit." The Defendant struck the truck from behind, and upon impact, the pick-up was knocked off the interstate, flipping down a hill into a ditch. Glenn was thrown out onto the side of the interstate. Glenn sustained a "broken femur that resulted in a 30-inch rod and bone stimulators and a blood clot in [his] right eye." He underwent surgery twice for his leg and three times for his eye. Glenn testified that as a result of the accident, he now has blurred vision in his right eye. Woods suffered a dislocated hip, a broken rib, and a broken pelvis, for which more than one surgery was required. Woods also required therapy and stated that he was still taking "pain pills" at the time of the trial. The pick-up truck was "totaled."

In addition, the Defendant rear-ended a vehicle driven by R.T. Hunt, in which both Hunt's wife and their eleven-year-old son were passengers. Hunt testified that after the Defendant "bumped" him from behind the first time, he swerved off the road. The Defendant then tried to hit him a second time, but he was able to avoid a second collision. The collision caused approximately $1,000 worth of damage to Hunt's vehicle, and Hunt reported that the accident also "irritated" his "bad back."

During the continuing pursuit, Roger Wood, another state trooper, was called in to "disable" the Defendant's truck. He testified that he parked in the

median of the interstate and fired six or seven rounds at the tires of the truck as it proceeded past him. However, when the Defendant continued forward without hesitation, Wood joined the other troopers in their pursuit.

Near the end of the chase, the Defendant crossed the median and began driving eastbound in the westbound lane, forcing numerous vehicles to swerve or pull over to avoid hitting him head-on. He continued at the same pace, which was estimated by troopers to be approximately the speed limit, for about one mile. He then stopped his vehicle and emerged from the truck. The law enforcement personnel in pursuit of him also stopped their vehicles, drew their guns, and ordered the Defendant to get on the ground. Instead, the Defendant, still standing, asked, "What did I do? What's going on[?]" Lieutenant Williams then tackled him, and the Defendant was placed under arrest.

At the time of his arrest, the Defendant was staggering and sweating profusely. Lieutenant Ben Joyner, who observed the Defendant on the night of his arrest, testified that "[a]t some times, [the Defendant] appeared to be kind of sleepy, eyes partly closed like he was sleepy, and then other times, they'd be wide open, . . . just staring basically." Trooper Jacobs, who transported the Defendant to the hospital for testing, testified that the Defendant was "incoherent [and] talkative," and reported that the Defendant's eyes were dilated. Trooper Siler recalled that on the way to the hospital, the Defendant, who was sitting in the back of his patrol vehicle, "was talking about snipers going to shoot him . . ., snipers behind signs, [and] snipers in other cars going to shoot [them]." He testified that the Defendant also referred to people who had been trying to kill him while he was driving his truck. Hospital employees testified that the Defendant was "unruly and rowdy, violent."

At the hospital, the Defendant agreed to give blood and urine samples for testing. The test results revealed that he had not been drinking, but his blood

tested positive for both amphetamine and methamphetamine. His blood contained .41 micrograms per milliliter of amphetamine, which is considered a "therapeutic," not a "toxic" or "lethal," level.[4] Dawn King, a forensic scientist for the TBI crime lab who conducted tests on the Defendant's blood and urine, stated that because "methamphetamine breaks down into . . . amphetamine," the tests did not reveal whether the Defendant ingested both drugs or whether the Defendant ingested only methamphetamine, which had begun to break down inside his body. However, in searching the Defendant's truck, officers discovered a Coke bottle containing amphetamine.

The Defendant maintained that he did not remember any of the incident. He stated that after driving back onto I-40 East, he remembered only awakening in jail. He also admitted that he had previously ingested crystal methamphetamine in 1993, which caused him to believe he was having a heart attack. He insisted that had he known the substance which he was offered was crystal methamphetamine, he "would never have touched it."

The Defendant gave a statement to police on the night of his arrest in which he recounted his memory of the events leading to his arrest. Investigator Jim Medlin of the Tennessee Highway Patrol transcribed the statement. He testified that the Defendant, who was apparently disoriented, had to often stop and gather his thoughts while making the statement. The statement contained a number of discrepancies. In the statement, the Defendant reported, "Last night I ran across a boy from Mt. Airy, North Carolina. I got some crank from him. Crank is amphetamine or speed." He also alleged in his statement that a "passenger [in a car on I-40] was aiming a pistol out of [his van] at me or pointing in my general direction." Deputy Donna Reed, who was present while the Defendant made his statement to police, testified that although she recalled the

[4] Dawn King of the TBI crime lab stated that "[u]sually anything above . . . .50 micrograms per mil in amphetamine is considered a toxic level."

Defendant "saying that he thought what was being put into his drink was caffeine[,] . . . he knew what crank was."

Dr. William Ward Daniels, Jr., a psychiatrist, concluded from the hospital emergency room records from the night of the Defendant's arrest that the Defendant met the diagnosis for amphetamine intoxication. He also stated that he believed the Defendant was suffering from a substance-induced psychotic disorder on November 18, 1995 at the time that he gave his statement to police. Dr. Daniels further testified that in his practice, he had heard the word "crank" used "to describe any and all stimulant substances, anywhere from caffeine all the way to and including amphetamine-similar substances." He stated that in a clinical setting, the word "crank" is "generally used by non-addictive individuals to refer to non-amphetamine stimulants." However, Ralph McGuire, the truck driver whose truck the Defendant hit, testified that "crank" is an "illegal substance that most [truck] drivers know about ."

I. INVOLUNTARY INTOXICATION

The Defendant first argues that the State failed to prove beyond a reasonable doubt that the Defendant was not involuntarily intoxicated. Tennessee Code Annotated § 39-11-503 states that "involuntary intoxication is a defense to prosecution if, as a result of the involuntary intoxication, the person lacked substantial capacity either to appreciate the wrongfulness of the person's conduct or to conform that conduct to the requirements of the law allegedly violated." Tenn. Code Ann. § 39-11-503(c). The Sentencing Commission Comments to Tennessee Code Annotated § 39-11-203 clarify the burden of proof with regard to defenses: "The defendant has the burden of introducing admissible evidence that a defense is applicable. If the defense is at issue, the state must prove beyond a reasonable doubt that the defense does not apply." Tenn. Code Ann. § 39-11-203 (sentencing comm'n cmts). Thus, the question is whether the State presented sufficient evidence to show that the Defendant was voluntarily

intoxicated. Intoxication is voluntary when it is "caused by a substance that the person knowingly introduced into the person's body, the tendency of which to cause intoxication was known or should have been known." Tenn. Code Ann. § 39-11-503(d)(3).

Tennessee Rule of Appellate Procedure 13(e) prescribes that "[findings] of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the finding by the trier of fact beyond a reasonable doubt." Tenn R. App. P. 13(e). "Questions concerning the credibility of the witnesses, the weight and value to be given the evidence, as well as all factual issues raised by the evidence, are resolved by the trier of fact, not this Court." State v. Pappas, 754 S.W.2d 620, 623 (Tenn. Crim. App. 1987) (citing State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973)). Nor may this Court re-weigh or re-evaluate the evidence in the record below. State v. Evans, 838 S.W.2d 185, 191 (Tenn. 1992) (citing State v. Cabbage, 571 S.W.2d 832, 836 (Tenn. 1978)).

A jury verdict approved by the trial judge accredits the State's witnesses and resolves all conflicts in favor of the State. Grace, 493 S.W.2d at 476 (citing State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983)). On appeal, the State is entitled to the strongest legitimate view of the evidence and all inferences therefrom. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982) (citing Cabbage, 571 S.W.2d at 835). Because a verdict of guilt removes the presumption of innocence and replaces it with a presumption of guilt, the accused has the burden in this Court of illustrating why the evidence is insufficient to support the verdict returned by the trier of fact. McBee v. State, 372 S.W.2d 173, 176 (Tenn. 1963); see also Evans, 838 S.W.2d at 191 (citing Grace, 493 S.W.2d at 476); Tuggle, 639 S.W.2d at 914.

The Defendant insists that he believed the powdery substance which he ingested was caffeine and argues that because he was misinformed by the man who supplied him with the substance, his intoxication was involuntary. However, in his statement to police immediately after his arrest, the Defendant admitted that "a boy from . . . North Carolina" had given him "crank" and explained that "[c]rank is amphetamine or speed." In addition, although he reported to Deputy Reed that he believed that he had merely taken caffeine, Reed testified that "he knew what crank was" and understood that "crank" is not caffeine. Finally, Ralph McGuire, a truck driver himself, testified that crank is "an illegal substance most drivers know about." We believe that the record reflects sufficient evidence from which the jury could have concluded that the Defendant's intoxication was voluntary. The jury was presented with the Defendant's explanation of his intoxication and apparently rejected it. Therefore, we will not disturb the jury's finding of fact on appeal.

II. DOUBLE JEOPARDY

The Defendant next contends that his convictions for vandalism, aggravated assault, and assault violate principles of double jeopardy.[5] Specifically, he argues that these convictions arose from the same course of conduct directed at Mr. and Mrs. Towater, Donald Woods,[6] and R.T. Hunt.

In State v. Denton, our supreme court presented the test to be used in analysis of double jeopardy issues. 938 S.W.2d 373 (Tenn. 1996). The court concluded that the "resolution of a double jeopardy punishment issue under the Tennessee constitution requires the following: (1) a Blockburger analysis of the

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[5] The Defendant was convicted of assault against Ralph McGuire, Helen and Jarrell Towater, and R.T. Hunt; aggravated assault against Donald Woods and Eliga Glenn; and vandalism of property belonging to R.T. Hunt, Jarrell and Helen Towater, and Donald Woods. Although the Defendant refers in his brief only to his convictions for assault and vandalism, it appears from his inclusion of Donald Woods' name in this argument that he intends to include aggravated assault in this analysis as well.

[6] In his brief, the Defendant mistakenly refers to Donald Woods as "Gerald Woods."

statutory offenses; (2) an analysis, guided by the principals of Duchac, of the evidence used to prove the offenses; (3) a consideration of whether there were multiple victims or discrete acts; and (4) a comparison of the purposes of the respective statutes." Id. at 381. The court emphasized that no one step in the analysis of a double jeopardy issue is determinative. Id. Rather, "the results of each must be weighed and considered in relation to each other." Id.

The first step requires a Blockburger analysis of the offenses. In Blockburger v. United States, the United States Supreme Court announced the following test: "[W]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of an additional fact which the other does not." 284 U.S. 299, 304 (1932). Under Tennessee statutory law, assault occurs when one "(1) [i]ntentionally, knowingly or recklessly causes bodily injury to another; (2) [i]ntentionally or knowingly causes another to reasonably fear imminent bodily injury; or (3) [i]ntentionally or knowingly causes physical contact with another and a reasonable person would regard the contact as extremely offensive or provocative." Tenn. Code Ann. § 39-13-101(a). Aggravated assault occurs when one intentionally, knowingly or recklessly commits assault and "[c]auses serious bodily injury to another; or . . . [u]ses or displays a deadly weapon." Tenn. Code Ann. § 39-13-102(a). Vandalism occurs when "[a]ny person . . . knowingly causes damage to or the destruction of any real or personal property of another . . . knowing that the person does not have the owner's effective consent." Tenn. Code Ann. § 39-14-408(a). Clearly, as the Defendant concedes, these offenses involve different statutory elements and therefore pass muster under a Blockburger analysis.

The second step requires an analysis of the evidence used to prove the offenses. In Duchac v. State, the Tennessee Supreme Court reaffirmed the use

of the "same evidence" test in determining whether two offenses are the "same" under the law:

> A defendant has been in jeopardy if on the first charge he could have been convicted of the offense charged in the second proceeding.
>
> One test of identity of offenses is whether the same evidence is required to prove them. If the same evidence is not required, then the fact that both charges relate to, and grow out of, one transaction, does not make a single offense where two are defined by the statutes. If there was one act, one intent and one volition, and the defendant has been tried on a charge based on that act, intent, and volition, no subsequent charge can be based thereon, but there is no identity of offenses if on the trial of one offense proof of some fact is required that is not necessary to be proved in the trial of the other, although some of the same acts may necessarily by proved in the trial of each.

505 S.W.2d 237, 239 (Tenn. 1973) (citing 21 Am. Jur.2d Criminal Law § 82).

We conclude that the same evidence was not used to support the Defendant's convictions for assault, aggravated assault, and vandalism. The State showed that the Defendant committed assault against McGuire, the Towaters, and Hunt by intentionally swerving at them, thereby causing them to reasonably fear imminent bodily injury. To prove that the Defendant committed aggravated assault against Woods and Glenn, the State demonstrated that the Defendant committed assault against the victims, causing each of them serious bodily injury. Finally, the State demonstrated that the Defendant vandalized the vehicles owned by Hunt, the Towaters, and Woods by showing that the Defendant knowingly damaged the vehicles and by proving the extent of damage to each vehicle. Thus, different evidence was used in proving each separate offense.

Third, we must consider whether there were multiple victims or discrete acts. Our supreme court has noted that "generally, if a criminal episode involves several victims who have personally been victimized, the evidence could sustain multiple convictions." Denton, 938 S.W.2d at 381 (citing State v. Goins, 705

S.W.2d 648, 650 (Tenn. 1986)). In the case before us, there were clearly multiple victims and numerous discrete acts.

Finally, we must consider the purposes of the statutes at issue in this case. The Defendant argues that "the purposes of the statutes prohibiting vandalism and assault are the same: to prevent physical attacks upon persons or their property." We must disagree. The crimes of assault and vandalism are quite distinct from one another. Assault is a crime against a person, while vandalism is a crime against property; for this reason, the statutes governing these crimes are housed in two separate sections of our code. A large majority of the statutes in our code are aimed at protecting either people or property. To accept the Defendant's contention, we would be forced to accept the broad proposition that the purposes of most statutes in our code are alike. We decline to do so, and we therefore cannot accept the Defendant's contention that the purposes of these statutes are the same.[7] In sum, we conclude that the Defendant's convictions for assault, aggravated assault, and vandalism do not violate principles of double jeopardy.

III. SENTENCING

Third, the Defendant argues that his sentence is excessive. Following a hearing, he received four years for each of his aggravated assault convictions, to be served concurrently with one another and with all other sentences, except his two-year sentence for felony evading arrest.[8] Thus, he received an effective sentence of six years.

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[7] The Defendant also apparently argues that his due process rights were violated because the crime of assault is "essentially incidental" to the crime of vandalism. He points to the case of State v. Anthony, 817 S.W.2d 299 (1991), to support this proposition. Because the Defendant fails to fully articulate his argument or cite any law which specifically supports his argument, we do not address this issue as a separate contention. The Defendant envelops this argument within his argument concerning double jeopardy, and we believe that our resolution of the double jeopardy issue sufficiently encompasses resolution of this issue as well.

[8] See supra note 1.

In sentencing the Defendant, the trial court noted the following enhancement factors:

> (1) The defendant has a previous history of criminal convictions or criminal behavior in addition to those necessary to establish the appropriate range;
> . . .
> (3) The offense involved more than one (1) victim;
> . . .
> (6) The personal injuries inflicted upon or the amount of damage to property sustained by or taken from the victim was particularly great;
> . . .
> (12) During the commission of the felony, the defendant willfully inflicted bodily injury upon another person, or the actions of the defendant resulted in the death of or serious bodily injury to a victim or a person other than the intended victim;
> . . .
> (16) The crime was committed under circumstances under which the potential for bodily injury to a victim was great . . . .

Tenn. Code Ann. § 40-35-114(1), (3), (6), (12), (16). The court applied no mitigating factors.

When an accused challenges the length, range, or manner of service of a sentence, this Court has a duty to conduct a de novo review of the sentence with a presumption that the determinations made by the trial court are correct. Tenn. Code Ann. § 40-35-401(d). This presumption is "conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances." State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991).

When conducting a de novo review of a sentence, this Court must consider: (a) the evidence, if any, received at the trial and sentencing hearing; (b) the presentence report; (c) the principles of sentencing and arguments as to sentencing alternatives; (d) the nature and characteristics of the criminal conduct involved; (e) any statutory mitigating or enhancement factors; (f) any statement made by the defendant regarding sentencing; and (g) the potential or lack of potential for rehabilitation or treatment. State v. Smith, 735 S.W.2d 859, 863 (Tenn. Crim. App. 1987); Tenn. Code Ann. §§ 40-35-102, -103, -210.

If our review reflects that the trial court followed the statutory sentencing procedure, that the court imposed a lawful sentence after having given due consideration and proper weight to the factors and principles set out under the sentencing law, and that the trial court's findings of fact are adequately supported by the record, then we may not modify the sentence even if we would have preferred a different result. State v. Fletcher, 805 S.W.2d 785, 789 (Tenn. Crim. App. 1991).

Having reviewed the record, we conclude that although the trial judge considered the circumstances of this case, the record does not affirmatively show that he considered the sentencing principles mandated by the legislature. The trial judge further did not address the Defendant's request for alternative sentencing considerations. Our review is thus de novo without a presumption that the determinations made by the trial judge are correct. We will now proceed to address each of the Defendant's arguments regarding his sentence.

A. Enhancement and Mitigating Factors

The Defendant first challenges the application of the following enhancement factors: (3) that there was more than one victim; (6) that the personal injury and amount of damage was particularly great; and (16) that the crime was committed under circumstances under which the potential for bodily injury was great. He contends that these factors are inherent in the offenses of reckless endangerment, reckless driving, assault, aggravated assault, vandalism over $500, and evading arrest.

While the trial judge in this case summarized the enhancement factors which he applied, he failed to articulate on the record which factor applied to which crime. Certain enhancement factors which the trial court considered in this case are inherent in certain offenses of which the Defendant was convicted. For example, factor (6) is not applicable to a crime involving serious bodily injury and

therefore would not be applicable to the offense of aggravated assault. See State v. Jones, 883 S.W.2d 597, 602 (Tenn. 1994). However, because at least one enhancement factor is applicable to each of the crimes of which the Defendant was convicted, and after fully considering the nature and extent of the criminal conduct involved, we conclude there is ample justification in the record before us to uphold the length of each sentence imposed.

In addition, the Defendant urges us to consider as mitigating factors that he "showed great remorse throughout the proceedings in the trial court" and that his "liability insurance carrier paid $650,000 to the victims in this case." See Tenn. Code Ann. § 40-35-114(13). With regard to the payment made to the victims by the Defendant's insurance carrier, the trial court stated, "That doesn't cut any ice with the Court. That just merely shows the Court what a horrible thing that happened." After thoroughly reviewing the record in this case, we see no reason to give greater weight to these factors than did the trial court.

B. Alternative Sentencing

The Defendant next argues that he should have been granted some form of alternative sentencing. Because the Defendant was convicted of Class C and E felonies as a Range I standard offender, he is presumed to be a favorable candidate for alternative sentencing absent evidence to the contrary. See Tenn. Code Ann. § 40-35-102(6). However, this presumption may be overcome if:

> (A) [c]onfinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct;
> (B) [c]onfinement is necessary to avoid depreciating the seriousness of the offense or confinement is particularly suited to provide an effective deterrence to others likely to commit similar offenses; or
> (C) [m]easures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant . . . .

Tenn. Code Ann. §40-35-103(1)(A)-(C).

The Defendant admitted in his testimony to having previously taken amphetamine in 1993. He was also convicted of unlawful possession of a deadly

weapon at that time and was sentenced to one year of probation. Furthermore, "untruthfulness is a factor which may be considered in determining the appropriateness of probation," and it is also "probative on the issue of amenability to rehabilitation." State v. Byrd, 861 S.W.2d 377, 380 (Tenn. Crim. App. 1993). The trial judge in this case expressed his disbelief of the Defendant's claimed ignorance of the substance he ingested, stating,

> I say this, Mr. Wagner, I'm sorry for you, but what you did and the excuse you give, the Court felt that what you did was deliberate and that you had to have known that [the drug you took] would affect you . . . . That in and of itself, without anybody being injured, is a very serious matter, and the Court feels the jury was quite lenient on you . . . .

We conclude that the Defendant's history and the seriousness of his crimes weigh heavily in favor of upholding the trial court's denial of alternative sentencing measures. Probation may be denied based on the nature of the offense, if the criminal conduct as committed can be clearly described as "especially violent, horrifying, shocking, reprehensible, offensive, or otherwise of an excessive or exaggerated degree . . ." State v. Travis, 622 S.W.2d 529, 534 (Tenn. 1981). The Defendant's conduct in this case meets this standard. The Defendant has failed to persuade us that the trial judge erred or abused his discretion in denying probation or other alternative sentencing options. We find it appropriate that the sentences be served in confinement.

C. Consecutive Sentences

Finally, the Defendant contends that the trial court erred by imposing consecutive sentences. Although both the Defendant and the State allude to the trial judge's finding that the Defendant was a dangerous offender, we are unable to discover any record of such a finding. "The record of the sentencing hearing . . . shall include specific findings of fact upon which application of the sentencing principles was based." Tenn. Code Ann. § 40-35-209. The trial judge in this case failed to make the factual findings required for imposition of consecutive sentences. See Tenn. Code Ann. § 40-35-115(b). Although the trial judge may

have believed the Defendant to be a dangerous offender, no such factual finding was made on the record.

Our supreme court stated in State v. Wilkerson, 905 S.W.2d 933 (Tenn. 1995),

> Proof that an offender's behavior indicated little or no regard for human life and no hesitation about committing a crime in which the risk to human life was high, is proof that the offender is a dangerous offender, but it may not be sufficient to sustain consecutive sentences. Every offender convicted of two or more dangerous crimes is not a dangerous offender subject to consecutive sentences; consequently, the provisions of Section 40-35-115 cannot be read in isolation from the other provisions of the Act. The proof must also establish that the terms imposed are reasonably related to the severity of the offenses committed and are necessary in order to protect the public from further criminal acts by the offender. In addition, the Sentencing Reform Act requires the application of the sentencing principles set forth in the Act applicable in all cases. The Act requires a principled justification for every sentence, including, of course, consecutive sentences.

Id. at 938.

We therefore affirm the length of the sentences imposed but we must remand this case to the trial court for further proceedings concerning whether consecutive sentences are warranted. See Tenn. Code Ann. § 40-35-209(c), § 40-35-115(d), State v. Wilkerson, 905 S.W.2d 933, 938 (Tenn. 1995).

IV. INDICTMENTS

Fourth, the Defendant challenges the indictments charging him with the offense of aggravated assault. Each indictment for aggravated assault reads as follows: The Defendant "on or about November 18, 1995, in Madison County, Tennessee . . . did unlawfully, by use of a deadly weapon, to-wit: a large wrecker pulling a truck tractor, intentionally and/or knowingly cause [the victim] to suffer and/or fear bodily injury, in violation of T.C.A. §39-13-102 . . . ." The Defendant argues that because the indictments are phrased in the disjunctive, they fail to give him adequate notice of the offense with which he was charged and ultimately convicted.

Under Tennessee law, "[w]hen the offense [charged in the indictment] may be committed by different forms, by different means or with different intents, such forms, means or intents may be alleged in the same count in the alternative." Tenn. Code Ann. § 40-13-206(a). In this case only one offense is charged. The language with which the Defendant takes issue refers only to the means by which the crime could be committed and the intents alleged. It is permissible under our law to charge different means by which to commit a single crime within one count of an indictment.

Moreover, "[t]he fundamental test of the sufficiency of an indictment is the adequacy of the notice to the defendant conveyed by its terms." Green v. State, 143 S.W.2d 713, 715 (Tenn. 1940); State v. Mayes, 854 S.W.2d 638, 640 (Tenn. 1993). We believe that the indictment in this case fulfills its purpose. It references a specific statutory section and specifies different possible intents and different means by which the Defendant could have accomplished the crime. We conclude that this provides adequate notice to the Defendant.

V. LEAVING THE SCENE OF AN ACCIDENT

Finally, the Defendant challenges the sufficiency of the evidence supporting his convictions for leaving the scene of an accident. He claims that because an accident is defined as "an unexpected, undesirable event; something occurring unexpectedly or unintentionally," no "accident" occurred in this case. He contends that his actions were intentional rather than accidental and therefore that his convictions for leaving the scene of an accident should not be allowed to stand. However, he does concede that "the collisions described in this record were unexpected and undesirable on the part of the victims."

We see no reason to closely analyze the statutes or scrutinize the Defendant's conduct to address this issue. See Tenn. Code Ann. §§ 55-10-101, -102. Rather, we reject the Defendant's argument as being contrary to the very

conduct which the legislature obviously intended to encourage, namely for those involved in collisions to remain at the scene to engage in such activities as rendering aid, notifying law enforcement officials, and providing information about the accident. To give credence to the Defendant's contentions would encourage absurd results in such cases. The evidence presented is sufficient to support the convictions. We therefore find this issue to be without any merit.

The Defendant's convictions and the length of each sentence is affirmed. This case is remanded to the trial court for further findings and conclusions regarding whether consecutive sentences are warranted.

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DAVID H. WELLES, JUDGE

CONCUR:

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DAVID G. HAYES, JUDGE

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NORMA MCGEE OGLE, JUDGE