

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs July 7, 2015

STATE OF TENNESSEE v. JARROD REESE SPICER

**Appeal from the Circuit Court for Obion County
No. CC-13-CR-202 William B. Acree, Judge**

No. W2014-01817-CCA-R3-CD - Filed August 31, 2015

Defendant, Jarrod Reese Spicer, was convicted by an Obion County jury of second degree murder and aggravated robbery and sentenced to serve concurrent sentences of twenty-five and twelve years, respectively, as a standard offender. On appeal, Defendant argues that there was insufficient evidence to support his convictions and that the trial court abused its discretion by sentencing him to the maximum sentence for each conviction. Discerning no error, we affirm the judgments of the trial court.

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

TIMOTHY L. EASTER, J., delivered the opinion of the Court, in which JOHN EVERETT WILLIAMS and D. KELLY THOMAS, JR., JJ., joined.

Joseph P. Atnip (on appeal), District Public Defender, and Harold E. Dorsey (at trial), Alamo, Tennessee, for the appellant, Jarrod Reece Spicer.

Herbert H. Slatery III, Attorney General and Reporter; Tracy L. Alcock, Assistant Attorney General; Thomas A. Thomas, District Attorney General; and Jim Cannon, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

This is a direct appeal from Defendant's convictions and sentences in the Circuit Court of Obion County for second degree murder and aggravated robbery.

Facts and Procedural History

On October 7, 2013, Defendant was indicted for two counts of felony murder, one count of premeditated first degree murder, one count of aggravated robbery, and one count of theft of property valued at \$500 or less. All of these charges resulted from the death of John Thomas Hood. The following evidence was adduced at trial.

Eugene Jones testified that he was Mr. Hood's next door neighbor in March 2008. They also were friends; they drank beer and "put in a garden together." Because Mr. Hood was seventy-seven years old and in poor health, Mr. Jones would go to Mr. Hood's house each morning and night to check on his wellbeing. Mr. Hood drank alcohol every day, and it was not unusual for him to be drinking when Mr. Jones arrived in the morning. Mr. Hood often told Mr. Jones that he was not feeling well.

On March 3, 2008, Mr. Jones checked on Mr. Hood in the morning and then returned around 8:30 p.m. Mr. Jones noticed that all of Mr. Hood's lights were still on. Mr. Jones discovered Mr. Hood's body "down between the door" by the stove in the kitchen. Mr. Hood appeared injured and was "ice cold" when Mr. Jones touched him. Mr. Jones returned to his house and told his stepson to call 911.

Allen Walker testified that he was a patrolman for the Troy Police Department in March 2008. On March 3, 2008, Officer Walker was dispatched to Mr. Hood's house. He entered the home and found Mr. Hood's body on the floor "up against the refrigerator." Officer Walker observed that "some of the stuff in the bedroom looked like it had been gone through," including the dresser. There was a broken glass table in the bedroom.

Larry Farley testified that he was the Chief of Police for the Troy Police Department. However, at the time of Mr. Hood's death in March 2008, Chief Farley was a patrol officer. Prior to his death, Chief Farley estimated that he visited Mr. Hood's house between thirty and forty times because Mr. Hood lived across the street from Chief Farley. On the day Mr. Hood was found dead, Chief Farley conducted a "welfare check" around 3:00 p.m. because Mr. Jones reported that Mr. Hood had not been outside as was his usual habit. Mr. Hood appeared to be "fine" because he was sitting on the couch drinking a glass of tea. Chief Farley did not enter the house but spoke to Mr. Hood through the door. Chief Farley did not get close enough to ascertain whether Mr. Hood was intoxicated, but he was aware that Mr. Hood drank alcohol.

Shelby Merryman testified that she was an investigator for the State of Tennessee Adult Protective Services ("APS") when Mr. Hood was found dead. APS "investigate[s] neglect and abuse of elderly people." Before Mr. Hood died, Investigator Merryman

visited his home “many times” while investigating Shirley Spicer. Ms. Shirley Spicer was Defendant’s mother, and she lived with Mr. Hood.

On February 28, 2008, Investigator Merryman received a referral about Ms. Shirley Spicer, and she visited Mr. Hood’s house on February 29, 2008, accompanied by the chief of police. Investigator Merryman went “to make sure that Ms. [Shirley] Spicer was getting all the services . . . that she wasn’t being neglected or abused or under self-neglect, that she was refusing services or anything like that.” When Investigator Merryman made her visit, Ms. Shirley Spicer was at Mr. Hood’s house because she had previously insisted on being released from the hospital. Investigator Merryman was aware that Mr. Hood was a “heavy drinker,” which was why she had asked the police chief to accompany her. However, when they arrived at the house, Mr. Hood did not appear to be intoxicated; he was drinking coffee and reading the newspaper.

Investigator Merryman talked to Mr. Hood and learned that he was “in charge of Ms. [Shirley] Spicer’s medications.” Mr. Hood kept a “clear plastic box with a white lid, and all the medications were in the box, but it was so full the lid could not be closed on it.” There were between fifteen and twenty bottles inside the plastic box. The plastic box was “right by [Ms. Shirley Spicer’s] hospital bed, which was in the living room.” Investigator Merryman took an inventory of Ms. Shirley Spicer’s medications and discovered several pain medications. “There [were] two or three bottles of hydrocodone. There was phenobarbital. Mr. Hood himself had some cough syrup that was in the box along with Ms. [Shirley] Spicer’s medication that was also hydrocodone. It was a high dosage. . . . Gabapentin is sometimes used for pain. It was there also.” Investigator Merryman’s inventory report listed that she also found propanol and a “phenol patch,” both of which are pain medications.

On March 3, 2008, Ms. Shirley Spicer was returned to the hospital because she had fallen into a coma. On March 4, 2008, after Mr. Hood’s death, Ms. Shirley Spicer’s daughters possessed the plastic box with her medications. Investigator Merryman again took an inventory of the medication within the plastic box and discovered that all of the pain medication was missing, along with some of the other medication that had been there on February 29, 2008. Investigator Merryman testified that “anything with a street price pretty much” was missing. Among other things, Investigator Merryman noted that the following medications were missing: forty tablets of hydrocodone, ninety tablets of phenobarbital, ninety tablets of gabapentin, sixty tablets of methadone, and sixteen tablets of another pain medication.

Ms. Spicer’s pharmacy records indicated that she filled a prescription for forty tablets of hydrocodone on January 24, 2008, and again on February 22, 2008. When Investigator Merryman made her inventory on February 29, 2008, she noticed that the February 22nd prescription was untouched and that there was a second bottle that

contained two tablets of hydrocodone. Investigator Merryman did not know the date of the second bottle. Consequently, it was clear to Investigator Merryman that Ms. Spicer was not taking her medication properly.

Mr. Hood's bottle of liquid hydrocodone appeared to be "relatively full" on February 29th, but on March 4th, "it had only a fourth left." Investigator Merryman knew from her training that it is dangerous to mix liquid hydrocodone and alcohol. Mixing these substances can result in heart failure or coma and can ultimately cause death.

Dr. Marco Ross, the Deputy Chief Medical Examiner at the Shelby County Medical Examiner's Office in Memphis, performed an autopsy on Mr. Hood's body on March 5, 2008. Dr. Ross "found evidence of strangulation that consisted of some abrasions or scrape marks on the front of the neck, as well as a fracture of part of the thyroid cartilages, which is one of the cartilaginous structures in the larynx or the wind box area of the neck, as well as some hemorrhages on the front part of that cartilage." Fractured thyroid cartilage is a "serious bodily injury" that is primarily associated with strangulations and hangings and is caused by "a fair amount of force in order to break that cartilage." Although the fracture alone cannot cause death, usually "it indicates . . . that there is sufficient force to the neck to compress blood vessels in the airway and . . . cut[] off blood supply and oxygen from getting to the brain, and that's what results in death." Mr. Hood also had "an abrasion just above the outer part of the left eyebrow region, and then he had . . . an abrasion or scrape mark on the left side of his nose." This abrasion could be caused by "any kind of blunt impact," such as contact with an object or a fall or a head-butt.

Regarding other ailments, Mr. Hood also "had a volvulus of the cecum and distal ileum with intestinal necrosis . . . [meaning] that a portion of his large intestine and small intestine had twisted on itself, cutting off . . . its own blood supply and causing that portion of intestine to die off." Mr. Hood also had heart disease, including "mild to moderate coronary artery disease [and] some disease of the blood vessels that supply the blood to the heart." Mr. Hood also had "microscopic disease of the blood vessels in his kidneys and hepatic steatosis, which are fatty changes of the liver."

Dr. Ross was unable to determine the immediate cause of Mr. Hood's death. The affected portion of Mr. Hood's intestine "was so severely necrosed that [it] independently, in and of itself, . . . could have been the primary cause of death." Because Mr. Hood was "physically compromised by the intestinal injury, . . . any type of strangling maneuver would have induced sufficient amount of stress both on his heart and on the brain that essentially might have been sort of like the straw that broke the back type thing that might have been a somewhat final insult." However, Dr. Ross could not determine "whether or not [Mr. Hood's death] was actually primarily a result of the main

thing being the intestinal necrosis with the effects of strangling contributing to it or whether it was primarily strangling with the necrosis contributing to it.” Dr. Ross agreed that “the strangling could have been the cause of death or could have contributed to his death because of his other complications.” On one occasion, Dr. Ross agreed that the necrotic intestine “could have been the cause of death in and of itself.” However, on a later occasion, when asked, “But there’s no question that a chronic bowel, in and of itself, could have been the[] cause of death with no other contributing factors?” Dr. Ross responded, “[B]ecause of the strangulation, I think the strangulation, at the very least, is a contributing factor.”

Mr. Hood’s body was embalmed before the autopsy, so Dr. Ross could not test his blood for intoxicants. There was some alcohol in the fluid of Mr. Hood’s eyes, but Dr. Ross could not determine whether this alcohol was present because of the embalming fluid or because Mr. Hood had imbibed alcohol before he died. Dr. Ross detected methanol, but the level found in Mr. Hood’s body was “likely from the embalming fluid.” Dr. Ross also tested Mr. Hood’s urine and detected hydrocodone and a breakdown product of hydrocodone. He could not determine whether the hydrocodone was ingested in liquid or tablet form. Because “there are so many variables involved,” Dr. Ross could only determine that Mr. Hood had taken hydrocodone and could not determine how much hydrocodone he took before he died. If Mr. Hood had been drinking alcohol and taking hydrocodone when he died, Dr. Ross said that he “couldn’t rule out” that it may have been a contributing factor to his death.

Thomas Quillons testified that he was engaged to Defendant’s ex-wife and had known Defendant for about three and one-half years. In November 2013, Mr. Quillons was incarcerated for seventeen days in the “county jail” for failure to pay fines. His jail cell was next to that of Defendant, who was also incarcerated. The two men conversed with each other frequently.

Eventually, Defendant asked Mr. Quillons to contact Investigator William Sanford and tell the investigator that a man named Steve Pollock told Mr. Quillons that he killed Mr. Hood. However, Defendant admitted to Mr. Quillons that he, not Mr. Pollock, actually killed Mr. Hood, but Defendant said that it was an accident. Defendant knew Mr. Hood because he lived with Defendant’s mother, Ms. Shirley Spicer, who was in a “nursing home or something” at the time. Defendant explained that he went to Mr. Hood’s house, and they got into an argument. Defendant did not tell Mr. Quillons what caused the argument. According to Defendant, Mr. Hood pulled a .38 caliber handgun from the cushions in his chair, and Defendant knocked the gun out of Mr. Hood’s hand. The altercation ended with Defendant “grabbing [Mr. Hood] by the neck and sliding him down the refrigerator” so that Mr. Hood “was sitting like a frog or something.” Mr. Hood had an empty bottle of liquid hydrocodone in his hand. Mr. Quillons denied

knowing Mr. Hood or knowing anything about the murder until Defendant told him what happened.

To bolster Mr. Quillons's credibility when lying about Mr. Pollock, Defendant provided Mr. Quillons with details of the murder which Defendant knew were not in the police report about Mr. Hood's death. Defendant knew that Mr. Hood had hydrocodone in the "top of a closet." Defendant moved a table with a glass top into the closet, stood on the table, and retrieved four or five bottles of hydrocodone, which were either 90 or 120 count bottles. The glass table top broke. Defendant also took a .45 caliber pistol from Mr. Hood's house, which he later sold. Defendant also took the .38 caliber handgun and threw it into the Mississippi River.

Ned Pickens testified that he was a retired police officer and had known Defendant for four or five years. Mr. Pickens once bought a "big ole rusty gun" from Defendant. He could not recall the caliber of the weapon but said that it "might have been" a .44 caliber or .45 caliber. William Sanford testified that he worked for the Obion County Sheriff's Department and became the lead investigator on this case in 2013. He first met with Mr. Pickens on May 13, 2008, and Mr. Pickens gave him a handgun. When investigators asked Mr. Pickens about the gun, he gave them what he thought "looked like" the gun he purchased from Defendant. Mr. Pickens said that he was not certain it was the same gun because his eyesight was very poor.

Chief Farley testified that Mr. Hood had previously shown Chief Farley the two handguns that he owned. One of the handguns was "a .45 automatic and the other one was a revolver." Mr. Hood usually kept the revolver in his chair in the living room, but he kept the .45 pistol in another room. Mr. Hood "always kept [the revolver] in the chair where he was sitting." Approximately three weeks after Mr. Hood's death, Chief Farley was shown the .45 pistol retrieved from Mr. Pickens, and it "looked just like the one [Mr. Hood] had."

Breanna Weaver testified that she was twenty-two years old and had known Defendant for about nine years. Sometime in March 2008, Defendant called Ms. Weaver and asked her to meet him at a motel to use crack cocaine together. Around midnight, she joined him at the Budget Inn in Haiti, Missouri. Inside the room, there were two guns and hydrocodone pills on the table. Defendant told Ms. Weaver that the pills were from Mr. Hood. Ms. Weaver knew that Mr. Hood lived with Defendant's mother in Troy. One of the guns was "short" and the other "was not that long but longer than the other." Ms. Weaver said the shorter gun looked like the .45 handgun that was retrieved from Mr. Pickens. Defendant did not talk to Ms. Weaver about the guns.

Ms. Weaver observed Defendant acting "scared." Defendant admitted that he had gotten into a fight with Mr. Hood and choked him. Defendant said that he thought he

killed Mr. Hood but that he had not intended to kill Mr. Hood. Defendant told Ms. Weaver that he went to Mr. Hood's house "to see if he could get his pills, and they got to fighting [be]cause he wouldn't give them to him, so that's when he choked him."

Ms. Weaver used crack cocaine during the day that she met Defendant at the motel. Despite Ms. Weaver being only sixteen years old, Defendant had sex with her in exchange for crack cocaine. After having sex, they smoked crack together, which was when Defendant made the admissions about Mr. Hood. Defendant told Ms. Weaver that the pills belonged to Mr. Hood before they had sex, but he made the admissions about what happened after they had sex and began smoking crack.

Ms. Weaver was not questioned by law enforcement during the initial investigation into Mr. Hood's death. However, she gave a statement to the police on August 5, 2013, and again on August 27, 2013. Ms. Weaver acknowledged that she did not mention Defendant's admissions in her first statement. She explained that, initially, she was afraid that if she admitted everything that had happened with Defendant in the motel, her statement might adversely impact the custody status of her child. However, once she learned of all the other witnesses who had given statements to the police, she decided to "tell the whole truth instead of half the truth." Ms. Weaver denied making the second statement to avoid additional charges. At the time of her first statement, Ms. Weaver already knew that she "was going to prison anyway," and she was still incarcerated when she testified at trial.

Toby Hicks testified that he was Defendant's brother-in-law and had been married to Defendant's sister, Rhonda Hicks, for about twenty years. The night before Mr. Hood died, Mr. Hicks and Defendant, accompanied by their wives, went to Mr. Hood's house, and Mr. Hood gave Defendant some hydrocodone.

When Mr. Hicks became nonresponsive to the prosecutor's direct examination, the court held a jury-out hearing. Mr. Hicks denied giving any statements to law enforcement officers about this case and denied speaking with either the prosecutor or defense counsel about the case. He claimed that he had memory difficulties and "a lot of health problems." The trial court declared Mr. Hicks to be a hostile witness.

Following testimony from Sheriff Jerry Vastbinder about interviewing Mr. Hicks and taking his statement, the trial court advised Mr. Hicks that he was in jeopardy of committing aggravated perjury if he lied during his testimony. The prosecutor attempted to refresh Mr. Hicks's memory of giving a written statement by reading the statement to Mr. Hicks. Mr. Hicks acknowledged that the signature on the written statement looked like his signature, but denied that he could remember giving the statement. However, when the jury reentered the courtroom and the trial proceeded, Mr. Hicks eventually admitted to having a meeting with law enforcement officers about Mr. Hood's murder.

He affirmed the contents of the July 24, 2013 statement as read to him by the prosecutor. During cross-examination, Mr. Hicks explained that he was diagnosed with colon cancer six months before the trial and was “wiped out” at the beginning of his testimony because he had mixed up his medications that morning.

On March 3, 2008, “near dark,” Mr. Hicks and his wife went to visit Ms. Shirley Spicer in the hospital in Union City, Tennessee. The weather was “bad.” As they drove across the Mississippi River Bridge, Defendant called and said that he was almost run off the road by an “eighteen wheeler” and was turning around to go back to Haiti, Missouri. Mr. Hicks did not see Defendant’s vehicle pass them in the opposite direction and “knew he was lying, but . . . didn’t know why at the time.”

According to Mr. Hicks, “all the family” was aware that Ms. Shirley Spicer was in very poor health. A few weeks before Mr. Hood’s death, Defendant told Mr. Hicks that “he would not stand for [Mr. Hood] to get all of his mother’s belongings,” “even if he had to kill Tom Hood.” Mr. Hicks was at the hospital when a family member informed him that Mr. Hood was dead. Mr. Hicks went to Mr. Hood’s house and saw Mr. Hood “laying in the floor by the stove and refrigerator.” There was a bottle of liquid hydrocodone on the stove. Mr. Hicks and his wife stayed at Mr. Hood’s house overnight and discovered that Mr. Hood’s and Ms. Shirley Spicer’s hydrocodone pills were missing, along with Ms. Shirley Spicer’s “old silver half-dollars and dimes,” which were in a bank bag. Mr. Hood’s guns were missing. Ms. Shirley Spicer’s purse only had two dollars inside and her bank account only had \$600. However, Shirley had just received a disability check for \$710.

Ms. Shirley Spicer passed away several days later. A few days after her funeral, Mr. Hicks visited Defendant’s house. Defendant showed him a black .45 caliber pistol, which did not have a serial number. Defendant told Mr. Hicks to shoot the pistol, so Mr. Hicks “shot it two times into a [television] and dug out the slugs.” Mr. Hicks took the bullets to the police and told them about the gun.

Over a month later, Mr. Hicks and Defendant were at The Pony, a “strip joint” in Poplar Bluff, Missouri, where Mr. Hicks and Defendant visited “a whole bunch of times,” when Mr. Hicks asked Defendant if he killed Mr. Hood. Defendant “immediately said Mike Pollock did it.” However, “later in the evening, [Defendant] said that he had done the killing but it was an accident and that he didn’t mean to do it. [Defendant] said he was mad about [Mr. Hood] getting all his mother’s possessions.” Mr. Hicks admitted that Defendant was “snorting meth” and “eating methadone and hydrocodone and drinking straight whiskey on ice” when he made these statements. Mr. Hicks also admitted that he was “real intoxicated” and “high” on hydrocodone, Xanax, valium, methadone, alcohol, and “probably . . . methamphetamine.” However, Mr. Hicks

testified that that this conversation “stuck in [his] head” because “you don’t know what people could do.”

A “short time later,” while Mr. Hicks was at Defendant’s house, Defendant told Mr. Hicks that “he had sold [Mr. Hood]’s gun to a police officer named Ed Pickens in Homestown, Missouri.” Mr. Hicks told the Alcohol, Tobacco, and Firearms agent in Pemiscot County about the pistol, and the gun was retrieved.

On a night in May 2013, Mr. Hicks was with Defendant and Defendant’s brother, Jason Spicer, at Defendant’s house. The Spicer brothers were “real bad doped up on meth.” Defendant said that “he wasn’t going to see [Mr. Hood] get any of [his] mom’s stuff. [Defendant] said it belonged to [him]. [Defendant] said it was an accident but that he killed [Mr. Hood].” Mr. Hicks testified that Defendant said “he hit [Mr. Hood] one time but he thought he knocked him out.”

After the State rested its case-in-chief, Defendant called two witnesses to testify on his behalf. JoNelle Spicer testified that she was married to Defendant in March of 2008, but they are now divorced. On March 3, 2008, Defendant and Ms. JoNelle Spicer left their home in Haiti, Missouri, around 4:30 pm and began driving to Troy, Tennessee, to visit Defendant’s mother. Ms. JoNelle Spicer acknowledged that Toby and Rhonda Hicks were supposed to meet her and Defendant in Troy.

There was “bad” weather and “pouring down” rain. Ms. JoNelle Spicer was on the phone with Mrs. Hicks when a truck almost ran Defendant’s vehicle off the road. The couple began bickering and arguing, and Ms. JoNelle Spicer got scared. She told Defendant to take her home, and they returned around 5:00 p.m. Defendant walked into the house with Ms. JoNelle Spicer, and then he left again a few minutes later. Defendant was gone for about twenty minutes before returning to the house. Twenty minutes was consistent with how long it would take Defendant to go obtain crack cocaine. He stayed with Ms. JoNelle Spicer at the house and then left again around midnight. Ms. JoNelle Spicer did not see Defendant again until the following night around 9:30 or 10:30 p.m. at a motel room. Defendant only opened the door as far as the chain would allow, so she could not see anything inside.

Ms. JoNelle Spicer acknowledged that she gave a statement to police that said, “I’ve thought about it to remember, and I know that [Defendant] left in that old green truck and was gone for several hours. My daughter was home and remembers all this.” However, Ms. JoNelle Spicer testified that this statement was the result of a misunderstanding and that she signed the statement and initialed that page only after this portion had been crossed out.

Even though Ms. Spicer and Defendant are divorced and Defendant has remarried, they are “better friends now than [they] were” before their divorce. When they were married, Defendant made a living as a “hustler.” Ms. JoNelle Spicer explained, “He would swap. He would trade cars, lawn mowers, whatever. If there was a dollar to be made on it, he was there, whether it be guns, pills, cars, trucks, whatever.” Ms. Spicer witnessed Defendant “constant[ly]” trading handguns and hydrocodone pills for money or other items.

Amanda Spicer testified that she was Defendant’s current wife. She said that Defendant “hustles” and receives a “disability check” to make a living. It was not unusual for Defendant to trade guns or hydrocodone pills, and she had witnessed him do it on “numerous occasions.”

The jury returned inconsistent verdicts. Defendant was found guilty of voluntary manslaughter as a lesser included offense of the first count of felony murder, guilty of second degree murder as a lesser included offense of the second count of felony murder, and not guilty of premeditated murder. The jury also found Defendant guilty of aggravated robbery and theft. The trial court merged the voluntary manslaughter conviction into the second degree murder conviction and merged the theft conviction into the aggravated robbery conviction.

The trial court held a sentencing hearing on July 25, 2014. As a standard offender, the court ordered Defendant to serve concurrent sentences of twenty-five years for the murder conviction and twelve years for the aggravated robbery conviction. After his motion for new trial was denied, Defendant timely appealed.

Analysis

Defendant raises two issues on appeal: whether there is insufficient evidence to support his convictions, and whether the trial court abused its discretion by giving Defendant the maximum sentence for each conviction.

I. Sufficiency of the Evidence

When a defendant challenges the sufficiency of the evidence, this Court is obliged to review that claim according to certain well-settled principles. The relevant question the reviewing court must answer is whether any rational trier of fact could have found the accused guilty of every element of the offense beyond a reasonable doubt. *See* Tenn. R. App. P. 13(e); *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). The jury’s verdict replaces the presumption of innocence with one of guilt; therefore, the burden is shifted onto the defendant to show that the evidence introduced at trial was insufficient to support such a verdict. *State v. Reid*, 91 S.W.3d 247, 277 (Tenn. 2002). The prosecution is entitled to

the “strongest legitimate view of the evidence and to all reasonable and legitimate inferences that may be drawn therefrom.” *State v. Goodwin*, 143 S.W.3d 771, 775 (Tenn. 2004) (quoting *State v. Smith*, 24 S.W.3d 274, 279 (Tenn. 2000)). It is not the role of this Court to reweigh or reevaluate the evidence, nor to substitute our own inferences for those drawn from the evidence by the trier of fact. *Reid*, 91 S.W.3d at 277. Questions concerning the “credibility of the witnesses, the weight to be given their testimony, and the reconciliation of conflicts in the proof are matters entrusted to the jury as the trier of fact.” *State v. Wagner*, 382 S.W.3d 289, 297 (Tenn. 2012) (quoting *State v. Campbell*, 245 S.W.3d 331, 335 (Tenn. 2008)). “A guilty verdict by the jury, approved by the trial court, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the prosecution’s theory.” *Reid*, 91 S.W.3d at 277 (quoting *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997)). The standard of review is the same whether the conviction is based upon direct evidence, circumstantial evidence, or a combination of the two. *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011); *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009).

Second degree murder is the “knowing killing of another.” T.C.A. § 39-13-210(a)(1). Aggravated robbery is “the intentional or knowing theft of property from the person of another by violence,” which causes “serious bodily injury.” T.C.A. §§ 39-13-401(a), -402(a)(2). A person acts intentionally “with respect to the nature of the conduct or to a result of the conduct when it is the person’s conscious objective or desire to engage in the conduct or cause the result.” T.C.A. § 39-11-302(a). A person acts knowingly “with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist.” T.C.A. § 39-11-302(b). Additionally, 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.” *Id.*

Although conflicting evidence was presented at trial, there was sufficient evidence for a rational jury to find that Defendant knowingly killed the victim. Three witnesses, Mr. Quillons, Mr. Hicks, and Ms. Weaver, testified that Defendant admitted to them that he killed Mr. Hood. Defendant told all three of these individuals that the killing was an accident, although he told Mr. Hicks that he did not want Mr. Hood to receive Ms. Shirley Spicer’s possessions when she died. Defendant told Mr. Quillons and Ms. Weaver that he got into an argument with Mr. Hood which led to a physical altercation. Although Defendant did not tell Mr. Quillons the cause for the argument, he told Ms. Weaver that it happened when Mr. Hood refused to give Defendant hydrocodone. Defendant told Mr. Quillons that he grabbed Mr. Hood by the throat and slid him down the refrigerator onto the floor. Defendant told Ms. Weaver that he choked Mr. Hood, and he told Mr. Hicks that he hit Mr. Hood once. The medical examiner found external and internal physical evidence that Mr. Hood had been strangled. He also found an abrasion on Mr. Hood’s forehead that was consistent with blunt force.

It is the province of the jury to reconcile all of the evidence, and we conclude that there is sufficient evidence from which the jury could have concluded that Defendant acted knowingly when he assaulted and killed Mr. Hood. Furthermore, the jury was permitted to reject Defendant's alibi defense presented through his ex-wife, Ms. JoNelle Spicer.

The evidence is also sufficient for the jury to find that Defendant's strangulation of Mr. Hood caused his death. The medical examiner specifically testified that he believed the strangulation was "at the very least" a contributing factor to Mr. Hood's death. Although the jury heard evidence about Mr. Hood's necrotic intestine and his drug and alcohol use, it was entitled to weigh that evidence as it deemed appropriate.

The evidence is also sufficient to support a conviction for aggravated robbery. As discussed above, evidence was presented that Defendant and Mr. Hood got into an argument over hydrocodone, which Mr. Hood had previously provided to Defendant. When Mr. Hood's house was inventoried after his death, a substantial amount of painkilling medications and two handguns were missing. Defendant told Ms. Weaver that he had hydrocodone pills which came from Mr. Hood, and she saw two guns on a table, one of which looked like a .45 caliber pistol. Defendant told Mr. Quillons that he broke a glass-top table while retrieving hydrocodone pills from Mr. Hood's closet. Officer Walker observed the broken glass-top table. Defendant also told Mr. Quillons that he took two handguns from Mr. Hood's home, threw the .38 caliber gun in the Mississippi River, and sold the .45 caliber gun. Shortly after the murder, Defendant showed Mr. Hicks a .45 caliber pistol and told him to shoot it. Later, Defendant told Mr. Hicks that he sold the .45 caliber pistol to a police officer in Missouri with the last name of Pickens. Mr. Pickens testified that he bought a "big ole rusty gun" from Defendant, which was probably a .44 or .45 caliber weapon. He testified that the gun shown to him at trial looked like the one he bought from Defendant, although he could not be certain because his eyesight was failing.

The jury is entitled to determine the credibility of all of the witnesses and evaluate all of the evidence. Defendant is not entitled to relief on the basis of insufficient evidence to support his convictions.

II. Sentencing

When a defendant challenges the length or manner of service of a within-range sentence, this Court reviews the trial court's sentencing decision under an abuse of discretion standard with a presumption of reasonableness. *State v. Caudle*, 388 S.W.3d 273, 278-79 (Tenn. 2012); *State v. Bise*, 380 S.W.3d 682, 708 (Tenn. 2012). This presumption applies to "within-range sentencing decisions that reflect a proper

application of the purposes and principles of the Sentencing Act.” *Bise*, 380 S.W.3d at 707. A trial court abuses its discretion in sentencing when it “applies an incorrect legal standard, or reaches a decision which is against logic or reasoning that causes an injustice to the party complaining.” *State v. Kyto Sihapanya*, ___S.W.3d___, No. W2012-00716-SC-R11-CD, 2014 WL 2466054, at *2 (Tenn. Apr. 30, 2014) (per curiam) (internal quotation omitted). This deferential standard “does not permit an appellate court to substitute its judgment for that of the trial court.” *Id.* (citing *Myint v. Allstate Ins. Co.*, 970 S.W.2d 920, 927 (Tenn. 1998)).

A trial court must consider all of the following when fashioning a proper sentence:

(1) any evidence received at the trial and sentencing hearing, (2) the pre-sentence report, (3) the principles of sentencing and arguments as to sentencing alternatives, (4) the nature and characteristics of the criminal conduct, (5) any mitigating or statutory enhancement factors, (6) statistical information provided by the administrative office of the courts as to sentencing practices for similar offenses in Tennessee, (7) any statement that the defendant made on his own behalf, and (8) the potential for rehabilitation or treatment.

Id. at *1 (citing T.C.A. §§ 40-35-102, -103, -210(b)(1)-(7)).

Tennessee Code Annotated section 40-35-103 dictates that sentences involving confinement be based on the following considerations:

- (A) Confinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct;
- (B) Confinement 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) Measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant[.]

T.C.A. § 40-35-103(1). Additionally, the sentence imposed “should be no greater than that deserved for the offense committed” and also “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).

In this case, the State introduced Defendant’s pre-sentence report as an exhibit, which enumerates several previous criminal convictions. The State also made exhibits of

certified copies of some of Defendant's previous convictions, one for possession of a controlled substance, two for passing bad checks, and one for failure to return leased property.

In reaching its decision, the trial court noted that it had considered all evidence presented throughout the trial proceedings and the pre-sentence report and also had considered the sentencing statutes and guidelines. The court observed that Defendant "continues to have absolutely no remorse for what happened" because, in the pre-sentence report, he alleged that someone else was responsible for Mr. Hood's death. The court quoted from the sentencing principles in Tennessee Code Annotated section 40-35-102, noting the severity of the crime of murder and the need for deterring others from similar conduct. The court also quoted from the sentencing principles in Tennessee Code Annotated section 40-35-103(1)(A)-(C), which it found applicable in this case. The court found that Defendant had a long history of criminal conduct, including uncharged conduct that was revealed during the trial. The certified judgments indicate that Defendant has previously violated probation or parole.

Considering Tennessee Code Annotated section 40-35-113, the court did not find any applicable mitigating factors. Considering Tennessee Code Annotated section 40-35-114, the court found that two enhancement factors were applicable to the murder conviction: (1) previous history of criminal behavior and (4) the victim was particularly vulnerable because of his age of seventy-seven years. For the aggravated robbery conviction, the court found that enhancement factors one and four were again applicable and also found that enhancement factors six and ten were applicable: the inflicted injuries to the victim were particularly great and the crime was committed without hesitation even with high risk to human life.

Defendant received a within-range sentence for both of his convictions, and the trial court explained the reasons for its decision on the record. Defendant does indeed have a previous history of criminal behavior, as shown by the pre-sentence report and the certified convictions. Similarly, the record supports the trial court's application of enhancement factors four, six, and ten, identified above.

Our supreme court has "continued to emphasize the need for trial courts to 'place on the record, either orally or in writing, what enhancement or mitigating factors were considered, if any, as well as the reasons for the sentence, in order to ensure fair and consistent sentencing.'" *State v. King*, 432 S.W.3d 316, 322 (Tenn. 2014) (quoting *Bise*, 380 S.W.3d at 705-06 n.41). The trial court did just that and clearly considered the purposes and principles of the Sentencing Act. Affording the trial court a presumption of reasonableness, we find no evidence that the trial court abused its discretion in sentencing Defendant. Accordingly, Defendant is not entitled to relief on this issue.

Conclusion

For the foregoing reasons, we find that there is sufficient evidence to support Defendant's convictions and that the trial court did not abuse its discretion in sentencing Defendant. The judgments of the trial court are affirmed.

TIMOTHY L. EASTER, JUDGE