

FILED

09/17/2026

Clerk of the
Appellate Courts

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
July 21, 2026 Session

STATE OF TENNESSEE v. ERIC AUSTIN BYRD

Appeal from the Criminal Court for Knox County
No. 124666 Hector I. Sanchez, Judge

No. E2025-01190-CCA-R3-CD

Defendant, Eric Austin Byrd, appeals his Knox County Criminal Court convictions for driving under the influence (DUI), failure to maintain lane, and failure to exercise due care, for which he received an effective sentence of eleven months, twenty-nine days, with all but 180 days suspended to supervised probation. Defendant asserts that (1) the trial court erred by limiting Defendant's cross-examination of Tennessee Highway Patrol (THP) Sergeant Ricky Powers regarding his training and understanding of field sobriety tests (FSTs); and (2) the trial court erred during sentencing by improperly considering the Knox County District Attorney's Facebook post as evidence of general deterrence and by considering his pending first degree murder charge in Loudon County. Following a thorough review, we affirm the judgments of the trial court.

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

ROBERT L. HOLLOWAY, JR., J., delivered the opinion of the court, in which ROBERT H. MONTGOMERY, JR., and STACY L. STREET, JJ., joined.

Daniel B. Morrell and Brady D. Smith, Knoxville, Tennessee, for the appellant, Eric Austin Byrd.

Jonathan Skrmetti, Attorney General and Reporter; Courtney N. Orr, Deputy Attorney General; Charme P. Allen, District Attorney General; and Mitch D. Eisenberg and Caleb A. Smothers, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

I. Factual and Procedural Background

The May 2023 term of the Knox County Grand Jury indicted Defendant for DUI, failure to maintain lane, and failure to exercise due care arising from a June 18, 2022 single-car accident in Knoxville. *See* Tenn. Code Ann. §§ 55-8-123, -8-136, -10-401.

At trial, Danielle Turner testified that, around 11:00 a.m. on June 18, 2022, she was driving on Northshore Drive in Knoxville when she saw a white truck in front of her swerve sharply into a roadside ditch and continue for about one-tenth of a mile, hitting trees and bushes. Ms. Turner stated that the weather was clear and sunny, that no cars were traveling past them in the opposite lane at the time the truck left the road, and that no potholes or other road conditions existed to cause the truck to swerve. Ms. Turner said that the truck's bed cover flew off and landed in a ditch on the opposite side of the road, that the truck's windshield shattered, and that the airbags deployed. Ms. Turner called 911 and reported the accident as she followed the truck for about one-eighth of a mile until it pulled into the parking lot of a Weigel's convenience store (Weigel's). Ms. Turner testified that the truck passed places where it could have stopped before reaching Weigel's. Ms. Turner saw the male driver, later identified as Defendant, exit the truck. Defendant was "messing with the airbags" or trying to push them back in. Ms. Turner noted that he "seemed pretty calm" and was smoking a cigarette beside the gas pumps. Ms. Turner drove to a nearby Rural Metro Fire Station (Rural Metro) and informed them about the accident.

Rural Metro paramedic Misty Weimer responded to Weigel's and examined Defendant. According to Ms. Weimer, Defendant told her that he was driving when one of his tires "went off the roadway" and that he "over corrected and went off the other side and came back on" before driving to Weigel's to check the damage. She denied that Defendant said that someone "forced him off the road or was in his lane."

Ms. Weimer testified that Defendant had small scratches and pieces of broken glass on his arms, as well as "white dried saliva on the corners of his mouth." Defendant denied that he was injured and denied being under the influence of medications, drugs, or alcohol.

On cross-examination, Ms. Weimer agreed that she had not been specifically trained regarding impairment. Ms. Weimer stated that Defendant's pulse rate was normal and his blood sugar was 130. She stated that "very high blood sugar" in "the 300 range" could cause dry mouth, dehydration, and "white accumulations." Ms. Weimer testified that Defendant's pupils were "normal size and reactive" and that he had no difficulty stepping up into the ambulance. She did not smell alcohol on Defendant.

THP Sergeant Ricky Powers was dispatched to Weigel's. Sergeant Powers observed that Defendant had bloodshot, watery eyes, dry mouth, a white film around his mouth, a drowsy appearance, and slightly slurred speech. Defendant denied drinking alcohol and said that he had taken prescription medications the preceding night, including gabapentin, escitalopram, primidone, and alprazolam.

Sergeant Powers testified that he had completed DUI investigation training and Advanced Roadside Impaired Driving Enforcement (ARIDE) training and was a Drug Recognition Expert (DRE). He had made more than fifty DUI arrests and conducted almost one hundred DUI investigations. Sergeant Powers explained that his arrest decision depended on the totality of the circumstances rather than any single indicator of impairment.

Sergeant Powers administered FSTs. Sergeant Powers stated that Defendant swayed, repeatedly lost his balance, stepped out of position, failed to follow several instructions, and stumbled while attempting to perform the tests. Defendant told Sergeant Powers that he suffered from vertigo and had cervical-spine and thoracic-lumbar conditions. Sergeant Powers ultimately concluded, based on the totality of the circumstances, that Defendant was impaired by a depressant. Defendant declined to provide a breath or blood sample.

Sergeant Powers' police cruiser recording reflected that Defendant's mother arrived before Defendant was transported to jail and spoke to him through the backseat window. She asked Defendant where the "back to the truck" was, and he said that, if it was not on the truck, it was "back past the roundabout." Defendant stated, "A guy was in my lane and I swerved over to miss him, and I swerved into the . . . ditch, and the ditch got ahold of me and yanked me down in there, and then by the time I yanked back up it was too late." Defendant's mother spoke to Sergeant Powers and told him that Defendant took seizure medications. Defendant interjected and stated that Sergeant Powers told him that, if his mother arrived before they left, Defendant would be "good to go." Sergeant Powers responded that he told Defendant that he would allow Defendant's mother to speak to him, not that Defendant could go with her. Defendant asked his mother, "There no way you could've been driving?" and his mother responded, "Not with the report."

On cross-examination, Sergeant Powers acknowledged that he did not conduct a twelve-step DRE evaluation and that he was unfamiliar with Defendant's normal speech or the effect of Defendant's seizure medications on his speech. He agreed that medical conditions could mimic impairment; vertigo or a head injury could explain swaying; and repetitive speech and slow, deliberate movements could be consistent with a head injury,

back injury, or seizures. Sergeant Powers also acknowledged that he knew alternative FSTs for drivers with physical limitations but did not offer Defendant those tests.

Sergeant Powers testified that his FST and ARIDE “wet lab” training involved alcohol intoxication. He stated that the walk-and-turn and one-leg-stand tests were based on alcohol but were validated as general indicators of impairment. He agreed that he had not been given information about standardized FSTs as applied to prescription drugs. When defense counsel questioned Sergeant Powers about validation studies and the percentage reliability of FST “clues,” the State objected, arguing that the questioning entered expert-testimony territory and that Sergeant Powers had not been offered or qualified as an expert in validation studies. The trial court instructed defense counsel to avoid validation studies and other matters in the “expert realm,” while permitting questioning that did not require expert qualification. Defense counsel continued cross-examination, and Sergeant Powers agreed that all identified indicators of impairment could have medical explanations and that standardized FSTs alone could make it difficult to distinguish impairment from a medical condition.

The jury convicted Defendant as charged.

At the sentencing hearing, the State presented additional evidence concerning Defendant’s conduct after the crash. Rural Metro firefighter Matthew Reyes testified that, when he first encountered Defendant, Defendant was sitting in his truck and asked for a knife. When told none was available, Defendant tried to burn the deployed airbags with a lighter and said that, once they were out of the way, he could continue driving. On cross-examination, Mr. Reyes agreed that the crash involved a fairly significant impact and that people with head injuries can appear confused; he stated that this was “kind of what [he] saw with [Defendant] that day.”

THP Trooper Eion Rohrbaugh testified that he had participated in more than one hundred DUI investigations and that DUI incidents in Knox County were “on the rise.” He was familiar with Knox County District Attorney General Charme Allen’s Facebook page, which had a “couple thousand” followers and published information about DUI and vehicular-homicide cases. The State introduced a post from General Allen’s Facebook page about Defendant’s conviction that had been shared to a public Knox County crime-watch group. Trooper Rohrbaugh testified that sharing a post made it visible to group members and potentially to others. On cross-examination, he acknowledged that he did not know whether the District Attorney General published every trial result or whether other news outlets had published information about Defendant’s case.

The presentence report reflected a 2019 conviction for possession of a handgun while intoxicated and a 2020 DUI conviction. A certified judgment showed that, after the offenses in this case, Defendant pleaded guilty to aggravated reckless driving and simple possession of marijuana arising from a July 2022 arrest. Defendant's driving record reflected three prior personal injury accidents and reckless driving citations in March 2020 and July 2022. In addition, the presentence report reflected that Defendant had a pending first degree murder charge in Loudon County.

Defendant presented proof concerning his health, substance abuse treatment, character, and prospects for rehabilitation. His mother, Mary Lea Byrd, testified that Defendant suffered a grand mal seizure in 2019, fell onto concrete, sustained multiple facial fractures, a neck fracture, and a traumatic brain injury, and thereafter received treatment and prescription medications. She stated that Defendant later sought treatment at an addiction clinic, where his medications were managed and he was drug tested weekly. She also testified that Defendant was a licensed pilot who could no longer fly because of his seizures and medications and that he had not worked as a pilot since his illness. On cross-examination, Ms. Byrd acknowledged Defendant was arrested and convicted for offenses that occurred while he was released on bond in this case. She agreed that Defendant had been arrested in August 2024 for a first degree murder that allegedly occurred in 2019.

The State requested confinement, relying in part on deterrence. It argued that Trooper Rohrbaugh's testimony established that DUI offenses were increasingly prevalent in the community and that publicity of DUI convictions through the District Attorney General's Facebook page and other social-media groups increased the deterrent effect of Defendant's sentence. Defense counsel responded that the District Attorney General's Office could select which cases to publicize and argued that the limited reaction to Defendant's post did not establish a significant deterrent effect.

In allocution, Defendant acknowledged that he had experienced "some tough times" and made "poor decisions," stated that he was trying to get his life back on track, and emphasized his support system and willingness to comply with the court's requirements.

The trial court stated that it considered the sentencing hearing evidence, the presentence report, the principles of sentencing, the parties' arguments concerning sentencing alternatives, and the nature and characteristics of the criminal conduct. The court acknowledged that the presentence report included information about Defendant's pending first degree murder charge but expressly stated that it would not consider that charge. The court found Defendant's allocution genuine.

Regarding the offense, the trial court emphasized that Defendant drove under the influence, left the roadway for an extended distance, caused part of his vehicle to fly across the roadway, continued to Weigel's, attempted to free the airbag so that he could keep driving, and later tried to persuade his mother to say that she had been driving. The court found that Defendant did not necessarily have a long criminal history but had infractions indicative of impaired driving. It found confinement necessary to avoid depreciating the seriousness of the offenses and particularly suited to deterrence, citing the testimony concerning the District Attorney General's Facebook efforts. The court further found that the statutory forty-eight hour minimum would not provide the "wake-up call" Defendant needed and that, although Defendant was "on [his] way" toward rehabilitation, he needed to be held accountable.

For DUI, the trial court imposed eleven months and twenty-nine days, with all but 180 days suspended to supervised probation. It imposed thirty days for failure to exercise due care, concurrent with the DUI sentence.

In his motion for new trial, Defendant argued, as relevant here, that the trial court improperly limited his cross-examination of Sergeant Powers concerning his standardized FST training and improperly relied on the District Attorney General's Facebook post to support confinement based on general deterrence. Defendant also asserted that the court's reference to the pending first degree murder charge raised concern that the charge influenced the 180-day sentence.

At the motion for new trial hearing, the trial court found that Sergeant Powers testified as a lay witness and that questioning drawn from the DUI manual would elicit expert testimony. The court reiterated that it had not considered Defendant's pending murder charge. As to deterrence, the court found that media outlets disseminate the District Attorney General's press releases to the public and that members of the public could see them and be deterred from driving under the influence. The court concluded that 180 days of confinement was warranted by the facts of the case, denied the motion for new trial, and Defendant timely appealed.

II. Analysis

A. Exclusion of Testimony from Sergeant Powers

Defendant contends that the trial court erred by limiting his cross-examination of Sergeant Powers regarding his "retention and understanding of [FST] training," ARIDE tests, and DRE tests. He notes that, given the lack of blood testing, testimony about the

“proper application and knowledge” of FSTs was “absolutely crucial” to his defense. Defendant argues that his questioning was appropriate for a lay witness.

The State responds that the trial court did not abuse its discretion by narrowly limiting questioning regarding validation studies, which entered the domain of expert testimony.

Both the United States and Tennessee Constitutions guarantee a criminal defendant the right to confront and cross-examine witnesses brought against him or her. *See* U.S. Const. amend. VI; Tenn. Const. art. I, § 9. In *State v. Sayles*, 49 S.W.3d 275, 279 (Tenn. 2001), our supreme court explained:

A defendant has the right to examine witnesses to impeach their credibility or to establish that the witnesses are biased. This includes the right to examine a witness regarding any promises of leniency, promises to help the witness, or any other favorable treatment offered to the witness. *See State v. Smith*, 893 S.W.2d 908, 924 (Tenn. 1994); *see also State v. Spurlock*, 874 S.W.2d 602, 617 (Tenn. Crim. App. 1993). An undue restriction of this right may violate a defendant’s right to confrontation under the Sixth Amendment of the United States Constitution and Article I, Section 9, of the Tennessee Constitution. *See Smith*, 893 S.W.2d at 924; *see also State v. Black*, 815 S.W.2d 166, 177 (Tenn. 1991).

The propriety, scope, manner, and control of the cross-examination of witnesses rests within the sound discretion of the trial court. *State v. Dishman*, 915 S.W.2d 458, 463 (Tenn. Crim. App. 1995). Absent a clear abuse of discretion that results in manifest prejudice to the defendant, this court will not interfere with the trial court’s exercise of its discretion on matters pertaining to the examination of witnesses. *State v. Johnson*, 670 S.W.2d 634, 636 (Tenn. Crim. App. 1984) (citing *Monts v. State*, 379 S.W.2d 34 (Tenn. 1964)). The trial court has authority to “exercise appropriate control over the presentation of evidence and conduct of the trial when necessary to avoid abuse by counsel.” Tenn. R. Evid. 611(a).

The parties agree that Sergeant Powers was not qualified as an expert and was, therefore, a lay witness. Lay witnesses may give testimony in the form of an opinion where the testimony is “(1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness’s testimony or the determination of a fact in issue.” Tenn. R. Evid. 701(a). The testimony is not objectionable merely because it embraces an ultimate issue before the jury. Tenn. R. Evid. 704. “The distinction between an expert and a non-expert witness is that a non-expert witness’s testimony results from a process of

reasoning familiar in everyday life and an expert’s testimony results from a process of reasoning which can be mastered only by specialists in the field.” *State v. Newsom*, No. M2020-00681-CCA-R3-CD, 2021 WL 1753409, at *16 (Tenn. Crim. App. May 4, 2021), *perm. app. denied* (Tenn. Sept. 22, 2021) (citations omitted).

The admissibility of lay testimony and expert testimony is within the broad discretion of the trial court and will not be overturned on appeal absent an abuse of discretion. *See State v. McCloud*, 310 S.W.3d 851, 864-65 (Tenn. Crim. App. 2009) (discussing that the admissibility of expert testimony pursuant to Tennessee Rules of Evidence 702 and 703 and lay opinion evidence pursuant to Tennessee Rule of Evidence 701 are reviewed under the abuse of discretion standard). “A trial court abuses its discretion when it applies incorrect legal standards, reaches an illogical conclusion, bases its ruling on a clearly erroneous assessment of the proof, or applies reasoning that causes an injustice to the complaining party.” *State v. Phelps*, 329 S.W.3d 436, 443 (Tenn. 2010).

This court has held that, “[w]ith the exception of the [Horizontal Gaze Nystagmus] test, [FSTs] are not scientific tests requiring testimony of a qualified expert pursuant to Tennessee Rule of Evidence 702” and that “police officers generally do not need to be qualified as expert witnesses in order to testify about their administration and interpretation of [FSTs].” *State v. Blair*, No. M2009-01987-CCA-R3-CD, 2011 WL 743396, at *8 (Tenn. Crim. App. Mar. 3, 2011), *perm. app. denied* (Tenn. July 20, 2011) (citations omitted); *see State v. Murphy*, 953 S.W.2d 200 (Tenn. 1997). In addition, “an officer may offer lay opinion testimony as to a driver’s performance on field sobriety tests, fitness to operate a motor vehicle, and degree of intoxication.” *State v. Gwinn*, No. E2016-01228-CCA-R3-CD, 2017 WL 1505615, at *6 (Tenn. Crim. App. Apr. 26, 2017), *perm. app. denied* (Tenn. Aug. 16, 2017).

In this case, the record does not reflect that the trial court abused its discretion by finding that questions about validation studies—specifically, asking Sergeant Powers about the efficacy rate of FSTs when substances other than alcohol were present—would involve “a process of reasoning which can be mastered only by specialists in the field.” *Newsom*, 2021 WL 1753409, at *16. We note that Defendant did not make an offer of proof to show how Sergeant Powers would have answered such questions.

Even assuming that the trial court improperly limited Defendant’s cross-examination, any constitutional error was harmless beyond a reasonable doubt. A limitation on cross-examination implicates the constitutional right to confrontation, but such an error is nonstructural and does not require automatic reversal. *See State v. Howell*, 868 S.W.2d 238, 253 (Tenn. 1993). The applicable standard is whether the State has demonstrated “beyond a reasonable doubt that the error complained of did not contribute

to the verdict obtained.” *State v. Rodriguez*, 254 S.W.3d 361, 371 (Tenn. 2008) (quoting *Chapman v. California*, 386 U.S. 18, 24 (1967)).

In determining whether the improper limitation of cross-examination was harmless beyond a reasonable doubt, we consider (1) the importance of the witness’s testimony to the State’s case; (2) whether the testimony was cumulative; (3) the presence or absence of evidence corroborating or contradicting the witness on material points; (4) the extent of cross-examination otherwise permitted; and (5) the overall strength of the State’s case. *Howell*, 868 S.W.2d at 253 (citing *Delaware v. Van Arsdall*, 475 U.S. 673, 684-85 (1986)).

Applying these factors, we conclude that any limitation on Defendant’s cross-examination of Sergeant Powers was harmless beyond a reasonable doubt. First, although Sergeant Powers’s testimony concerning the FSTs was relevant to the State’s proof of impairment, it was not the sole evidence supporting Defendant’s conviction. Second, much of the evidence Defendant sought to develop through the restricted line of questioning was cumulative because the jury otherwise heard evidence concerning the limitations of Sergeant Powers’s testing and alternative explanations for Defendant’s behavior. Third, other evidence corroborated Sergeant Powers’s observations of Defendant’s impairment, while the jury also heard evidence from which it could evaluate alternative explanations for Defendant’s conduct. Fourth, Defendant was otherwise afforded substantial latitude to cross-examine Sergeant Powers, including questioning him about the administration and limitations of the FSTs and circumstances bearing on the reliability of his observations. Finally, considering the overall strength of the State’s proof, the excluded line of questioning was not sufficiently significant to undermine confidence in the verdict. Accordingly, we are satisfied beyond a reasonable doubt that any limitation on Defendant’s cross-examination of Sergeant Powers did not contribute to the verdict. *See Howell*, 868 S.W.2d at 253; *Van Arsdall*, 475 U.S. at 684.

B. Sentencing

Defendant challenges the trial court’s imposition of a split-confinement sentence on two grounds. First, he contends that the court improperly gave weight to the District Attorney General’s Facebook post as evidence of general deterrence. Second, he contends that the court improperly considered extrajudicial information concerning his pending first degree murder charge in Loudon County. Both arguments concern the court’s decision to require Defendant to serve 180 days in jail rather than the statutory minimum of forty-eight hours for DUI. *See Tenn. Code Ann. § 55-10-402(a)(1)* (stating that, upon the first conviction for DUI, an offender “shall . . . be sentenced to serve in the county jail or workhouse not less than forty-eight (48) consecutive hours nor more than eleven (11) months and twenty-nine (29) days”).

Trial courts possess considerable flexibility in misdemeanor sentencing and are not required to make the same detailed findings applicable to felony sentencing. *See State v. Troutman*, 979 S.W.2d 271, 273-74 (Tenn. 1998). Although *Troutman* continues to govern the substantive principles applicable to misdemeanor sentencing, this court has repeatedly applied the *Bise* abuse of discretion standard with a presumption of reasonableness when reviewing misdemeanor sentencing decisions. *See State v. Hampton*, No. W2018-00623-CCA-R3-CD, 2019 WL 1167807, at *12 (Tenn. Crim. App. Mar. 12, 2019) (collecting cases), *no perm. app. filed*; *see also State v. Bise*, 380 S.W.3d 682, 707 (Tenn. 2012); *State v. King*, 432 S.W.3d 316, 324 (Tenn. 2014). A trial court must impose a misdemeanor sentence consistently with the purposes and principles of the Tennessee Criminal Sentencing Reform Act of 1989. Tenn. Code Ann. § 40-35-302(b).

In determining whether to impose confinement, a trial court should consider whether confinement is necessary to protect society by restraining a defendant with a long history of criminal conduct; whether confinement is necessary to avoid depreciating the seriousness of the offense or is particularly suited to provide an effective deterrence; and whether less restrictive measures have frequently or recently been applied unsuccessfully. Tenn. Code Ann. § 40-35-103(1). The court should also consider the defendant's potential, or lack of potential, for rehabilitation. Tenn. Code Ann. § 40-35-103(5). The sentence imposed "should be no greater than that deserved for the offense committed," Tenn. Code Ann. § 40-35-103(2), and "should be the least severe measure necessary to achieve the purposes for which the sentence is imposed." Tenn. Code Ann. § 40-35-103(4).

1. Facebook post

Defendant argues that the Facebook post should not have been considered by the trial court as evidence of general deterrence because "[t]he State cannot create its own enhancement factors" and the relative lack of community engagement with the post meant that its value as evidence of general deterrence was "suspect at best, and an egregious manipulation of the principles of sentencing at worst."

As a preliminary matter, the State argues in its brief that Defendant waived this issue for failure to contemporaneously object to the Facebook post's admission. At oral argument, the State clarified that Defendant had not waived plenary review of whether the trial court abused its discretion by weighing the Facebook post but only any issue related to the admission of the post. We do not read Defendant's argument to dispute the admission of the Facebook post itself, only the weight afforded to it by the trial court; accordingly, we will examine this issue under plenary review.

In rendering its sentence, the trial court found the circumstances of the offenses “extremely concerning”—Defendant’s driving under the influence, leaving the roadway, endangering other drivers, continuing to drive to a gas station, smoking beside the gas pump, and trying to cut or burn the airbags so that he could continue to drive. The court found “most concerning” that Defendant attempted to avoid responsibility by asking Ms. Byrd to say she was driving. The court further found that Defendant had previous infractions “indicative of driving under the influence” and that confinement was necessary to avoid depreciating the seriousness of the offenses.

The trial court concluded that the minimum sentence of forty-eight hours in confinement would not give Defendant “the wake-up call that [he] need[ed.]” The court noted that, although Defendant had the potential for rehabilitation and was making progress toward that goal, he needed to be held accountable for his past wrongs.

The trial court’s brief discussion of the Facebook post followed its more extensive findings concerning the seriousness of Defendant’s conduct and the need to hold him accountable. The court also concluded that confinement was particularly suited to provide effective general deterrence. In support of that conclusion, the court cited testimony that the Facebook post had reached thousands of followers and Trooper Rohrbaugh’s testimony that DUI offenses were “on the rise” in Knox County and that, by September 2024, he had made more than twice as many DUI arrests as he had made during all of 2023. The record does not support Defendant’s assertions in his appellate brief and at oral argument that the trial court afforded the Facebook post “significant weight” or “strong weight.”

Even assuming that the Facebook post was entitled to little or no weight in assessing general deterrence, the remaining considerations independently support the sentence imposed. The trial court relied on the seriousness of Defendant’s conduct, his attempt to continue driving after the accident, his effort to avoid responsibility, and his prior driving related infractions. These findings demonstrate that the court’s confinement decision did not depend on the Facebook post.

The trial court considered the appropriate principles of misdemeanor sentencing, identified multiple grounds for confinement, and explained its reasoning on the record. Because the court imposed a within-range sentence consistent with the purposes and principles of the Sentencing Act, its decision is entitled to a presumption of reasonableness. *Bise*, 380 S.W.3d at 707. Defendant has not overcome that presumption, and we conclude that the trial court properly exercised its discretion by imposing a split confinement sentence that included 180 days in confinement.

2. First degree murder charge

Defendant argues that the trial court erred by “using extrajudicial information in the sentencing analysis” by mentioning that it would not consider the first degree murder charge. Defendant acknowledges that the court “went out of [its] way to say this matter was not being given weight,” but maintains that “the mere fact that it was raised at all is concerning.” The State did not respond to this issue in its appellate brief but stated at oral argument that the charge was not extrajudicial information.

The first degree murder charge was not extrajudicial information because it appeared in the presentence report, which was introduced at the sentencing hearing without objection, and Ms. Byrd testified on cross-examination that Defendant had been charged with first degree murder in Loudon County. Moreover, the trial court explicitly stated at both the sentencing hearing and the motion for new trial hearing that it did not consider the charge in determining the sentence. As defense counsel conceded at oral argument, Defendant does not assert that the trial court was being dishonest when it made those statements. The trial court therefore did not err, and Defendant is not entitled to relief on this basis.

III. Conclusion

Based upon the foregoing, we affirm the judgments of the trial court.

s/Robert L. Holloway, Jr.
ROBERT L. HOLLOWAY, JR., JUDGE