

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
August 11, 2026 Session

FILED

09/16/2026

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. HARSHAL DILIP TRIVEDI

Appeal from the Circuit Court for Lincoln County
No. 24-CR-9 Forest A. Durard, Jr., Judge¹

No. M2025-00328-CCA-R3-CD

The defendant, Harshal Dilip Trivedi, was convicted by a Lincoln County Circuit Court jury of three counts of assault and one count of resisting arrest, for which he received an effective sentence of eleven months and twenty-nine days suspended to probation after service of 150 days in jail. At a later contempt hearing, the defendant was found guilty of criminal contempt and received a sentence of ten days in jail. On appeal, the defendant argues: (1) the trial court erred in denying his motion to suppress; (2) the trial court erred in denying his motion to dismiss the charge of resisting arrest or alternatively failing to declare the statute unconstitutional; (3) the trial court abused its discretion in admitting evidence he made racial epithets; (4) the trial court wrongly instructed the jury on protection of property; (5) the evidence is insufficient to sustain his convictions for assault; (6) the trial court abused its discretion in sentencing; and (7) the evidence is insufficient to sustain his conviction of criminal contempt. Following a thorough review of the record, the briefs, and oral arguments of the parties, we affirm the judgments of the trial court.

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

J. ROSS DYER, J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER, P.J., and ROBERT H. MONTGOMERY, JR., J., joined.

Drew Justice, Murfreesboro, Tennessee, for the appellant, Harshal Dilip Trivedi.

Jonathan Skrmetti, Attorney General and Reporter; Elizabeth Evan, Assistant Attorney General; Robert J. Carter, District Attorney General; and Amber Sandoval and Cindy Wiseman, Assistant District Attorneys General, for the appellee, State of Tennessee.

¹ Judge Durard recused himself from hearing the Motion for Criminal Contempt; therefore, Chancellor James B. Cox presided over the defendant's contempt hearing.

OPINION

Facts and Procedural History

The defendant was indicted for three counts of aggravated assault involving the display of a deadly weapon and one count each of resisting arrest and evading arrest,² arising out of an incident at the Budget Inn which the defendant and his family operated in Fayetteville, Tennessee.

State's Proof

On December 2, 2022, Peyton Keith, Brandon Thompson, and Roger Wilbur, employees of Star Construction, a telecommunications subcontractor for AT&T, were assigned a job at Budget Inn in Fayetteville. The crew was “installing an anchor for a telephone pole in the back” and was working “in the field beside the Budget [Inn] . . . [with] no intention of going in to the back of the Budget [Inn].”³ As Mr. Thompson explained, they were “staying outside working on a utility right-of-way which is the . . . power route easement.” Their work trucks, which were marked with “Star Construction, AT&T contractor,” were parked “[r]ight up the fence line, . . . not in the driveway of the Budget [Inn]” or “blocking traffic from going in and out of the [m]otel.” Budget Inn had ordered fiber installation from AT&T, and the Star Construction crew was doing the prep work for AT&T.

The crew went onto “a construction site next door to [the motel]” in an “open field” where they were working on a utility pole. At some point, Mr. Keith walked back to the truck to get a tool, and the defendant “c[a]me out of the motel and . . . started yelling . . . about moving the truck,” to which Mr. Keith yelled back that he did not have a key. The other two crew members “heard the commotion and came walking up” to find out what was going on. The defendant was “cussing and saying white hillbilly trash get off my property.” According to Mr. Keith, the defendant was “being very aggressive with it, just the hand gestures he was making at the time.”

The defendant went back inside the motel and returned holding what appeared to be a knife from what the crew members could tell from a distance. After the defendant's arrest, it was discovered that the alleged knife was actually a letter opener. The defendant “approach[ed] closer” while making “threatening gestures” with the “knife,” saying he was going to “slice all ya’ll’s white hillbilly trash throats[.]” Mr. Thompson testified that he

² The evading arrest charge was dismissed based on the statute of limitations prior to trial.

³ Witnesses used the terms “motel” and “inn” interchangeably throughout the trial. However, there is no dispute they all were referring to the same location.

heard the defendant threaten to get a gun and saw the defendant holding his hand under his shirt while asserting, “I have a gun[.]”

The crew started to move the work trucks, and while they were doing so, Mrs. Gayatri Trivedi, the defendant’s mother, approached the workers and inquired what they were doing on her property. They informed her that they were “out here for your service order for fiber,” and she told them, “[J]ust stay here, you are fine.” Mrs. Trivedi “start[ed] yelling back at [the defendant] . . . and then that is when he took his knife or whatever and chunked it at her and that is when she ducked down[.]” At some point, Mr. Thompson called 911. All three of the crew members testified they were afraid the defendant might hurt them. Mr. Wilbur elaborated, “[T]o be honest, . . . I had looked to make sure there was a shovel or something there if he did come where I could defend myself.”

The State introduced the 911 calls and surveillance video recording from the motel into evidence. The video recording showed the defendant gesturing wildly and aggressively at someone outside the motel lobby, apparently yelling. Then, the defendant and Mrs. Trivedi can both be seen going outside. The defendant then walked quickly back into the lobby and went behind the desk. He can then be seen taking a metal object from a can on the desk and returning outside, holding the object in the air. The defendant returned to the door of the lobby holding the metal object and then went back outside. He repeated this pattern several times. Eventually, he returned to the lobby, and Mrs. Trivedi remained outside.

Several officers from the Lincoln County Sheriff’s Office responded to the call at the motel. According to dispatch, there was an incident involving an “[a]ggravated assault potentially with a knife or firearm involved, possible domestic.” When the officers arrived, they “could hear what appear[ed] to be some type of argument or exchange of words between a male and female inside the Budget Inn.” The State entered the bodycam footage from three officers, Officer Doug Allen, Deputy Owen Blackwelder, and Sergeant Tull Malone,⁴ as evidence and played it for the jury.

As the bodycam footage was played, Sergeant Jacob Campbell narrated that officers entered the lobby of the motel as Mrs. Trivedi is clapping and “yelling . . . they are coming.” Deputy Trey Minor described that Mrs. Trivedi “was a little confrontational at first” and told the officers the male voice was her “employee.” The officers caught sight of the defendant behind Mrs. Trivedi and asked him to come out. He refused. They also “asked him to show . . . his hands.” However, the defendant refused to comply and actually turned and “fled back into the – it ended up being the living quarters of the Budget Inn, that’s when the taser was deployed striking the left upper portion of the back and pulling him

⁴ Sergeant Malone had become Sheriff of Lincoln County at the time of trial.

back[.]” Deputy Minor explained, “He turned and ran from me, still the whole time I am asking him to stop and show me his hands and come and talk to me[.]” The defendant did not comply, and Deputy Minor “didn’t know if he had a weapon, a knife or gun, or what and if he was going to get it. So yes, I tased him.” The officers reiterated at trial that they were responding to a call concerning a subject armed with a knife and gun and had not been able to rule out the presence of a weapon when the tasing occurred.

Despite having been tased, the defendant continued to fight Deputy Minor and “tr[ie]d to roll around,” so the deputy tased the defendant a second time. In the bodycam footage, other officers are heard telling the defendant to “stop fighting.” Deputy Minor recounted that the defendant “resisted me by running from me, resisted while I was trying to cuff him, resisted when he was trying to go to the car.” He testified, “And once I get him through the corridor of the office and house part to the outside, I’m thinking one of the videos I reviewed you could see where he kind of turns from me . . . several times he kept trying to turn from me, instead of walking with me.” Deputy Minor suffered a significant injury to his shoulder and torn biceps,” requiring surgery, due to his struggle with the defendant. According to Sergeant Campbell, after they seized the defendant inside the motel, the defendant proclaimed that the officers needed a warrant and has since filed a lawsuit against the police department.

While the other officers were dealing with the defendant, Sergeant Campbell escorted Mrs. Trivedi out of the living quarters into the lobby. After the defendant was arrested, Mrs. Trivedi accompanied the officers through the living quarters, and she picked up a stainless-steel letter opener from the top of the defendant’s dresser and showed it to the officers.

Defendant’s Proof

Mrs. Trivedi, the defendant’s mother and owner of the Budget Inn, noticed the three unfamiliar men in front of the motel on December 2, 2022. None of them approached to explain their presence, and she did not know why they were there. One of them was wearing a blue checked shirt and another was wearing a blue baseball cap. According to Mrs. Trivedi, none of the victims were dressed in any sort of uniform. She claimed the three men must have “jump[ed]” over their “big gate” bearing a private property sign because she specifically saw at least one of them doing so.

According to Mrs. Trivedi, when the defendant saw the three men, he “don’t do nothing. He just was scared about 3 unknown people and he tried to save his mother’s life.” She said the defendant simply went outside and told the men to “get off my property[.]” She admitted the defendant waved the letter opener but said he did not threaten the men. He never said anything about getting a gun or shooting anyone. While reviewing

a portion of the surveillance video, Mrs. Trivedi claimed that when she bent down, she was picking up a rock to throw at the men because she did not know who they were and wanted them to leave her property. She denied that the defendant threw a knife or letter opener at her.

On cross-examination, Mrs. Trivedi denied putting in a work order to have fiber installed. She agreed that on the day the AT&T subcontractors were there, there was also electrical work being done at the back of her property. Mrs. Trivedi claimed that the workers with whom she was angry were in a van and were not wearing the same clothes as those depicted in the bodycam footage. Mrs. Trivedi insisted that she was angry with the AT&T subcontractors but claimed they had changed clothes and vehicles.

The defendant testified that on the day in question, he was cleaning one of the rooms when he noticed that the cable to the room had gone out. The cable service was provided by a satellite in the motel's back yard. As he was going to the office to discuss the outage with his mother, he noticed a "strange suspicious male coming out of [the] back yard[.]" Concerned, the defendant asked the man "who are you, and why are you here," but the man "gave no response."

The defendant claimed that he interacted with the men for two and a half minutes before he procured the letter opener. During that time, he asked the men multiple times for their identities and reason for being on the motel's property. However, "[n]ever at no point do they say who they are, why they are on the property and if they are leaving." The men were dressed like "regular Joe's" and not wearing reflective vests or hard hats. The defendant also claimed that one of their vehicles "was blocking the main entrance of our motel, completely."

The defendant averred the letter opener was "harmless" and "useless as a letter opener." He demonstrated to the jury that the letter opener could not slit his throat. He denied telling the men he would "slit their throats" and explained that he only grabbed the letter opener because it looked "kind of scary" and he wanted "to have them go away." However, he admitted to holding the letter opener up in the air and repeatedly saying "move away, go away." Yet, he never got close enough to the victims that he could have hurt them even if the letter opener had been capable of doing so. The defendant denied throwing a "knife" at his mother and explained that when she was shown bending down on the surveillance video it was because she was picking up a rock to throw at "the remaining truck trespassing on our property." The defendant went back inside the motel and did not observe any subsequent interaction his mother might have had with the men.

The defendant was in his bedroom inside the living quarters of the motel when he saw the police arrive on the surveillance feed. He assumed the "trespassers" had called the

police, having made up some lie to get the police involved. He watched from the surveillance video as a deputy “push[ed]” his mother to the side and entered the office.

When he encountered the deputy in the foyer area between the motel office and residential area, he instinctively turned away fearful of being shot because the deputy had his arm raised holding what appeared to be a gun. He was not resisting arrest. After he was tased the first time, the pain forced him to the floor, and he was “simply lying on the ground” when he was tased a second time. Throughout the ordeal, he did not fight with the officers, but he did declare that he would call his lawyer and sue the police. Despite his anger, he did not fight with the officers as they walked him to the patrol car and claimed that, instead, the bodycam video showed the deputy “slinging me around like I was a rag doll.”

On cross-examination, the defendant explained that there had been instances in the past when he called the police on trespassers, and the deputies from the Lincoln County Sheriff’s Office were “hostile and aggressive” and “treat[ed] us like we [we]re the criminals.”

The jury returned with verdicts convicting the defendant of the lesser-included offense of assault in Counts 1 through 3 and resisting arrest in Count 5. Following a sentencing hearing, the trial court imposed an effective sentence of eleven months and twenty-nine days suspended to probation after service of 150 days in jail. Subsequently, the defendant was held in criminal contempt and sentenced to ten days in jail.

The defendant appealed.

Analysis

On appeal, the defendant argues that: (1) the trial court erred in denying his motion to suppress; (2) the trial court erred in denying his motion to dismiss the charge of resisting arrest or alternatively failing to declare the statute unconstitutional; (3) the trial court abused its discretion in admitting evidence he made racial epithets; (4) the trial court wrongly instructed the jury on protection of property; (5) the evidence is insufficient to sustain his convictions for assault; (6) the trial court abused its discretion in sentencing; and (7) the evidence is insufficient to sustain his conviction of criminal contempt.

I. Motion to Suppress

The defendant argues that the trial court erred in denying his motion to suppress. The State responds that the trial court properly denied the motion. We agree with the State.

Prior to trial, the defendant filed a motion to suppress evidence, namely his identification as the suspect, gleaned during the warrantless intrusion into his home and arrest. At the onset of the suppression hearing, the State entered the 911 call and police bodycam footage as exhibits.

On the 911 call, Mr. Thompson reported that he and his co-workers were threatened by a man with a knife and gun at the Budget Inn. In the background, Mrs. Trivedi is heard asking Mr. Thompson, "Did you do your work?" When Mr. Thompson responded that the police were on the way, Mrs. Trivedi said, "Police? Oh Don't worry You finish your work. You finish out here. You finish." Mr. Thompson told the dispatcher that Mrs. Trivedi was telling them to finish, but "this guy's crazy. He literally brought a knife outside and started running toward our trucks with it."

The bodycam footage showed officers at the entrance to the motel lobby saying, "Police department, come outside." Mrs. Trivedi came outside, and an officer asked, "Where's your husband?" Mrs. Trivedi responded that her husband was out of the country, and an officer asked, "Where's the other male?" Mrs. Trivedi said the other male was her employee. An officer told Mrs. Trivedi to bring him out, and she said, "No sir, I'm sorry." The officers then made entry in the motel lobby, and Mrs. Trivedi said, "No, he's coming, he's coming." The officers repeatedly told the defendant to "come out," but he did not comply and instead yelled that the officers were trespassing.

The defendant took off towards the back area behind the motel office, and an officer followed and ultimately tased him. From the bodycam footage, it appeared that the tasing officer was in the intermediary area between the office and residential area, and the defendant was essentially in the doorway of the intermediary area and residential area. Another officer escorted a hysterical Mrs. Trivedi back to the lobby. An officer told the defendant to "roll over and put your hands behind your back," and another officer told the defendant to get his "hands off" one of the officers. When one of the officers attempted to handcuff him, the defendant "reared up" and continued struggling at which point another officer yelled at him to "quit fighting." The defendant continually yelled that the officers were trespassing and that he wanted a lawyer.

Finally, after the defendant was handcuffed and in custody and as he was being escorted to a patrol car, the defendant at least twice called the escorting officer a "white trash pig." The defendant also kept pulling against the officer escorting him, while turning around to shout more slurs and curses at the officers behind him. Then, as the defendant sat in the patrol car, he continued yelling, "white trash pigs, f*cking hillbill[i]es, dirty f*ucking KKK."

Mrs. Trivedi informed the officers that the defendant “has some mind problems.” She explained that the “AT&T people” came to put in fiber, and “they are not [a] problem. They are doing [our] work.” The defendant was only upset because they did not ask for permission first. Mrs. Trivedi said that she told the defendant she would throw a rock at him if he did not stop. She elaborated that the defendant was scared because they had a drug dealer on the property the night before. She tried to get the defendant to calm down and told him she would call the police if he did not, so the defendant went inside.

After the defendant was secured in the patrol car, Mrs. Trivedi escorted officers into the living quarters behind the motel office. She took the officers to the defendant’s bedroom, where she picked up a letter opener from the top of the dresser and showed it to them. An officer held up the letter opener, and Mrs. Trivedi said, “He don’t use this.”

One of the officers spoke with the victims. The side of their truck read, “Star Construction, LLC, A Telephone Company Contractor,” and reflective cones were in the bed of the long truck. The victims were dressed in reflective vests and wearing hard hats. One of the victims asked the officer if they could return to the property on the other side of the motel where they had abruptly left some machinery.

The defendant testified at the suppression hearing that the motel is his home in addition to his business. He entered photographs of the motel lobby and residential area as exhibits to explain the layout of the area. In the lobby, there is a door marked “private” that leads to an office behind a glass partition. In the office, there is another door marked “private” that leads to an intermediary room between the office and residence. Lastly, there is a door in the intermediary room, also marked “private,” that leads to the residential hallway. The defendant said he was tased in the residential hallway. Regardless, defense counsel asserted that the same Fourth Amendment rights applied to whether the defendant was in a “residence” or a “business.”

The trial court reserved ruling on the issue and ultimately issued an order denying the motion to suppress. The court found that the officers were responding to a call that someone armed with a knife was threatening utility workers with bodily harm and that the suspect had indicated he had a firearm. The complainant on the call also said that he saw the suspect throw a knife at a woman. The court recounted:

Body cam footage shows two officers arriving to the scene in about eight minutes after the 911 call. By this time, [the] [d]efendant had retreated back into the [m]otel. Officers approach and met with the mother just outside the exterior door to the small lobby. She is a bit evasive and dishonest with her answers. At this point, officers have not located the [d]efendant, any knife or any gun. When the mother refuses to get her son, Deputy Minor steps into

the lobby then the mother exclaims “he is coming, he is coming.” [The] [d]efendant apparently has either entered the office area through the rear door or, at least, opened the same and then tried to slam the door on [Deputy] Minor when he approached. Once the door is breached, the [d]efendant is finally subdued and escorted out to a patrol vehicle. Later, with the mother present, [Sergeant] Campbell finds what he believes to be the weapon laying in plain view on the [d]efendant’s dresser. The mother is actually the one who picks up the weapon as she seemingly is voluntarily escorting officers through the apartment.

The court concluded that the above-mentioned facts “justif[ied] a warrantless intrusion into the apartment” due to the exigencies of the situation. Then, citing *State v. Hutchison*, 482 S.W.3d 893, 919-20 (Tenn. 2016), the court held that the letter opener was admissible because it was in plain view.

The Fourth Amendment to the United States Constitution and Article I, section 7 of the Tennessee Constitution guarantee freedom from unreasonable searches and seizures. These guarantees exist to “safeguard the privacy and security of individuals against arbitrary invasions of government officials.” *Camara v. Municipal Court*, 387 U.S. 523, 528 (1967); see *State v. Downey*, 945 S.W.2d 102, 106 (Tenn. 1997). A search and seizure conducted under a valid search warrant is presumptively reasonable, but a warrantless search is presumptively unreasonable, and the evidence discovered is subject to suppression unless the State demonstrates the search or seizure was conducted pursuant to an exception to the warrant requirement. *State v. McCormick*, 494 S.W.3d 673, 678 (Tenn. 2016) (internal citations omitted). The State has the burden of demonstrating, by a preponderance of the evidence, that a warrantless search passed constitutional muster. *State v. Harris*, 280 S.W.3d 832, 839 (Tenn. Crim. App. 2008).

The commonly recognized exceptions to these warrant requirements are: (1) search incident to an arrest, (2) the plain view doctrine, (3) consent to the search, (4) *Terry* stop and frisk, and (5) the existence of exigent circumstances. *State v. Cox*, 171 S.W.3d 174, 179 (Tenn. 2005). Our supreme court has provided the following non-exclusive list of “frequently-arising situations that have been found to be sufficiently exigent” to justify the warrantless search of a residence: “(1) hot-pursuit, (2) to thwart escape, (3) to prevent the imminent destruction of evidence, (4) in response to an immediate risk of serious harm to the police officers or others, and (5) to render emergency aid to an injured person or to protect a person from imminent injury.” *State v. Meeks*, 262 S.W.3d 710, 723 (Tenn. 2008) (citations omitted). “To determine whether a law enforcement officer faced an emergency that justified acting without a warrant, this Court looks to the totality of the circumstances.” *Missouri v. McNeely*, 569 U.S. 141, 149 (2013). This analysis focuses on the information

known to the officer at the time of the search and any reasonable inferences that may be drawn therefrom. *Meeks*, 262 S.W.3d at 723-24.

Suppression issues on appeal are subject to a well-established standard of review. Appellate courts are bound by a trial court's findings of facts determined after a suppression hearing unless the evidence preponderates against them. *State v. Bell*, 429 S.W.3d 524, 528 (Tenn. 2014). "The credibility of the witnesses, the weight and value of the evidence, and the resolution of conflicts in the evidence are matters entrusted to the trial court as the trier of fact." *Id.* at 529 (citing *State v. Echols*, 382 S.W.3d 266, 277 (Tenn. 2012)). "The prevailing party in the trial court is entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from that evidence." *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996). However, this Court reviews the trial court's application of the law to the facts de novo with no presumption of correctness. *See State v. Montgomery*, 462 S.W.3d 482, 486 (Tenn. 2015) (citing *State v. Walton*, 41 S.W.3d 75, 81 (Tenn. 2001)).

The defendant disagrees with the trial court's finding of "hot pursuit" as an exigent circumstance justifying the warrantless entry into his business/home. However, the facts, in the light most favorable to the State, justified the entry. Officers were dispatched to the Budget Inn in response to a domestic disturbance. A 911 call reported that a man who worked at the motel was threatening utility workers with a knife and gun, that he had thrown a knife at a woman on the scene, and that he was "going crazy." Officers arrived at the scene within minutes, and as they began to assess the situation, they heard a male and female arguing inside. Mrs. Trivedi came to the door and told the officers the man was her employee, and she would not have him come outside. The officers directed the defendant to come out, but he did not comply. They also requested that the defendant show them his hands, and again, he refused to comply. At this point, they reasonably believed that the armed and extremely agitated defendant posed an immediate threat justifying the warrantless entry.

The Sixth Circuit cases relied on by the defendant, namely *United States v. Saari*, 272 F.3d 804 (6th Cir. 2021), and *United States v. Morgan*, 743 F.2d 1158 (6th Cir. 1984), are readily distinguishable. In *Saari*, the Sixth Circuit determined that officers' "constructive entry" was not justified by exigent circumstances because they were not "responding to a swiftly developing situation" or an "immediate threat," and the defendant "was peaceably occupying his home when the officers arrived." *Saari*, 272 F.3d at 809-10. It is also of note that there was some significant lapse of time before the officers encountered the defendant in *Saari* considering they first went to the residence of the defendant's ex-wife and then "eventually" went to the defendant's apartment. *See id.* at 806. In *Morgan*, the Sixth Circuit determined that officers were not "responding to an emergency" or in "hot pursuit" of the defendant where they assembled at a coffee shop and

waited for the sheriff before proceeding to the defendant's house. 743 F.2d 1162. The court also observed that neither was the "warrantless intrusion . . . the result of an ongoing field investigation." *Id.* at 1164.

Whereas here, the totality of the circumstances known to the officers at the time were that the defendant had verbally threatened the victims while yielding a knife and one of the victims had seen the defendant throw something at Mrs. Trivedi, all while yelling aggressively and threatening to get a gun. Officers quickly responded to the developing domestic situation and immediate threat. Moreover, we also observe that in both *Saari* and *Morgan* the defendants' motions to suppress had been granted and the appeals were made by the State, meaning the standard of review was in the defendants' favor.

Additionally, though not relied on by the trial court, the parties were questioned during oral argument as to whether the defendant's identity would have inevitably been discovered by law enforcement. Though the defendant claimed he would not have been discovered, the record does not support his argument.

Under the inevitable discovery doctrine, illegally obtained evidence is admissible if the evidence would have otherwise been discovered by lawful means. *Nix v. Williams*, 467 U.S. 431, 444, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984); *State v. Ensley*, 956 S.W.2d 502, 511 (Tenn.Crim.App.1996). Proof of inevitable discovery "involves no speculative elements but focuses on demonstrated historical facts capable of ready verification or impeachment." *Nix*, 467 U.S. at 444 n. 5, 104 S.Ct. 2501.

Here, most of the defendant's interactions with the victims and Mrs. Trivedi were captured on the motel's security cameras which were obtained and reviewed by law enforcement. Additionally, as testified to by Deputy Minor, the defendant had a history with the Lincoln County Sheriff's Department being called to the motel to resolve disputes between the defendant and a guest. Thus, law enforcement was familiar with the defendant prior to the instant matter and would have been able to identify him from the security video. Therefore, even if their entry into the motel office and residential space was improper, the discovery of the defendant's identity as the perpetrator would have been inevitably discovered.

Finally, we note the defendant did not specifically challenge admission of the letter opener at the suppression hearing because he considered it "exculpatory" in that it was not a knife. Regardless, because the entry into the business/home was justified, the officers' finding the letter opener in plain view was permissible. *See Hutchison*, 482 S.W.3d at 919-20.

The defendant is not entitled to relief on this issue.

II. Motion to Dismiss

The defendant argues that the trial court erred in denying his motion to declare the resisting arrest statute unconstitutional and/or dismiss the resisting arrest charge. The State responds that the defendant waived this issue for failing to request a ruling from the trial court and that he cannot establish plain error. We determine the trial court did not err in denying the motion and decline to reach the constitutional issue.

Before trial, the defendant filed a motion to declare the resisting arrest statute unconstitutional and/or dismiss the charge from the indictment. However, the trial court failed to enter a pretrial ruling on the motion, and the defendant did not bring it to the court's attention until the motion for new trial three months later. The court acknowledged in its ruling on the motion for new trial that it had inadvertently failed to enter an order on the motion to dismiss, but that it was overruled for the same reason as the motion to suppress – because the officers' entry into the motel was not unlawful.

We need not belabor whether the defendant waived this issue because, waiver notwithstanding, the defendant is not entitled to relief. The defendant argues that his arrest was unlawful because the officers' entry was unlawful, and therefore, he should be permitted to resist an unlawful arrest against officers who are essentially “criminal[s] with a badge.” However, as explained above, exigent circumstances warranted officers' entry into the motel, meaning the officers' entry was not unlawful and the defendant's arrest was not unlawful. We need not reach the defendant's constitutional question as “[i]t is well-settled in Tennessee that ‘courts do not decide constitutional questions unless resolution is absolutely necessary to determining the issues in the case and adjudicating the rights of the parties.’” *Waters v. Farr*, 291 S.W.3d 873, 882 (Tenn. 2009) (quoting *State v. Taylor*, 70 S.W.3d 717, 720 (Tenn. 2002)).

Our research has revealed a case in accord with our determination. In *State v. Roberts*, a defendant convicted of resisting arrest argued that “the Tennessee Constitution protect[ed] his actions” and “section 39-16-602(b) [wa]s unconstitutional because it abolishe[d] his right to resist an unlawful arrest.” 106 S.W.3d 658, 663-64 (Tenn. Ct. App. 2002). The court of appeals determined it need not reach the constitutional issue because the lower court had not acted arbitrarily in having the defendant taken to a holding cell, from which the resisting arrest charge transpired. *Id.* at 661, 664.

The defendant is not entitled to relief on this issue.

III. Evidence of Racial Epithets

The defendant argues that the racially derogatory comments he directed towards the victims and police officers were irrelevant and prejudicial and, therefore, should have been excluded. The State responds that the trial court acted within its discretion in admitting the evidence. We agree with the State.

Before trial, the defendant filed a motion seeking exclusion of racially charged comments, such as “white trash hillbillies” and “white trash pigs,” that he made toward the victims and police officers during the course of the encounter. The trial court denied the motion in a written order,⁵ finding that the defendant’s comments to the victims were relevant “to show his intent to harm and . . . supporting the element of placing them in reasonable fear of bodily injury.” The court continued that the defendant’s comments to the officers showed his “intent to be uncooperative and resistant while being placed in custody.” The court determined that the probative value of the evidence was “not substantially outweighed by their potential prejudicial effect.” However, the court offered to give a limiting instruction upon the defendant’s request.

Tennessee Rule of Evidence 401 provides that “[r]elevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Tenn. R. Evid. 401. Relevant evidence is typically admissible, while irrelevant evidence is inadmissible. Tenn. R. Evid. 402. However, relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Tenn. R. Evid. 403. Unfair prejudice is defined as “[a]n undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.” *State v. Banks*, 564 S.W.2d 947, 951 (Tenn. 1978) (internal quotation omitted). Further, “[p]rejudice becomes unfair when the primary purpose of the evidence at issue is to elicit emotions of ‘bias, sympathy, hatred, contempt, retribution, or horror.’” *State v. Young*, 196 S.W.3d 85, 106 (Tenn. 2006) (citations and internal quotation marks omitted).

The admissibility of evidence is within the sound discretion of the trial court, and this Court will not interfere with that discretion absent a clear showing of abuse of

⁵ The order indicates there was a hearing on the motion on September 10, 2024, but the transcript from that hearing is not in the record.

discretion. *See State v. Clayton*, 535 S.W.3d 829, 859 (Tenn. 2017). This Court finds an abuse of discretion when the trial court applies “an incorrect legal standard or reaches a conclusion that is “illogical or unreasonable and causes an injustice to the party complaining.”” *State v. Lewis*, 235 S.W.3d 136, 141 (Tenn. 2007) (quoting *State v. Ruiz*, 204 S.W.3d 772, 778 (Tenn. 2006)).

On appeal, the defendant argues that the racial comments should have been excluded because they had no probative value and “tended to inflame” the jury. The record, however, indicates that the trial court did not abuse its discretion in allowing such evidence. The defendant’s aggressive and agitated manner toward the victims while hurling racial slurs and threatening them with a metal object all painted the picture of showing the defendant’s intent to place the victims in fear of bodily injury. We can easily say the slurs were “a step on one evidentiary route to the ultimate fact.” *See Old Chief v. United States*, 519 U.S. 172, 179 (1997). Likewise, the defendant’s belligerence toward the police officers was indicative of his being uncooperative and resistant throughout the encounter. *Cf. State v. Forrest*, No. M2002-02434-CCA-R3-CD, 2003 WL 21909350, at *2 (Tenn. Crim. App. Aug. 11, 2003) (testimony of the defendant’s being hostile and using racial slurs relevant to establish the defendant’s belligerent demeanor as evidence of intoxication). Moreover, while certainly offensive, the comments were not so inflammatory that the prejudicial effect would substantially outweigh their probative value.

The defendant’s reliance on *United States v. Hazelwood*, 979 F.3d 398 (6th Cir. 2020), is unpersuasive. *Hazelwood* was a wire and mail fraud case in which recordings of the defendant, a businessman, using profanity and making racial slurs was admitted to show that the defendant’s conduct was incompatible with his defense theory that he would never do anything to jeopardize his company’s reputation or success. *Id.* at 402-05. The 6th Circuit commented that the fact the defendant used “utterly repulsive language in private” did not make it more likely that he committed wire fraud, and “[t]he extraordinary risk of prejudice posed by the offensive recordings needs little explanation.” *Id.* at 408-09, 412. Unlike *Hazelwood*, the present case is not one in which comments at issue are from a defendant’s private conversation which is unrelated to the charged offense. Rather, here, the defendant’s use of racial slurs occurred at the time of the offenses and when paired with his aggressive and belligerent behavior arguably made it more likely that he intended to place the victims in fear and to resist arrest.

The defendant is not entitled to relief.

IV. Protection of Property Instruction

The defendant argues that the trial court gave an erroneous instruction on protection of property, which “unfairly narrowed [his] defense.” He claims the court wrongly

instructed the jury that the defendant could only protect his property from someone guilty of criminal trespass, by reciting the definition from Tennessee Code Annotated section 39-14-405 and allowing the jury to infer consent. The State responds that the trial court properly instructed the jury. We agree with the State.

It is well-settled in Tennessee that a “defendant has a right to a correct and complete charge of the law, so that each issue of fact raised by the evidence will be submitted to the jury on proper instructions.” *State v. Garrison*, 40 S.W.3d 426, 432 (Tenn. 2000). Accordingly, trial courts have the duty to give “a complete charge of the law applicable to the facts of the case.” *State v. Davenport*, 873, S.W.2d 283, 287 (Tenn. Crim. App. 1998) (citing *State v. Harbison*, 704 S.W.2d 314, 319 (Tenn. 1986)). An instruction will only be considered prejudicially erroneous if it fails to submit the legal issues fairly or misleads the jury as to the applicable law. *State v. Faulkner*, 154 S.W.3d 48, 58 (Tenn. 2005) (citing *State v. Vann*, 976 S.W.2d 93, 101 (Tenn. 1998)).

The trial court discussed the jury instructions with the parties in a jury-out hearing after the close of the proof. Defense counsel asserted that subsection (a) of Tennessee Code Annotated section 39-11-614 was “the only one we really need.” Defense counsel acknowledged that the defendant did not “deny these men were most likely there to do some work, [but] there is a dispute over whether these men sort of went out of bounds by going specifically in to the back yard without asking[.]” The court determined it would instruct the jury on subsections (a) and (c) and include the definition of “trespasser” from the Tennessee Pattern Jury Instructions 14.05. Defense counsel responded, stating:

We will just sort of object on the record. The trespassing instruction is for like criminal trespassing whereas I would say the defense of property trespassing is broader and can include something that might not rise to the level of criminal trespass. For example, it says it is a defense to criminal trespass if you reasonably think you can be on the property and stuff like that. Where I would say that would not necessarily absolve you of being a civil trespasser.

The court responded that the “burden is a little different and the testimony here is they were certainly there for a commercial activity, that is unquestionable.”

The trial court ultimately instructed the jury on protection of property found in Tennessee Pattern Jury Instruction 40.08 as follows:

Included in the [d]efendant’s plea of not guilty is his plea of protection of property. A person in lawful possession of real or personal property is justified in threatening or using force against another when and to the degree

it is reasonably believed that force is immediately necessary to prevent or terminate the other's trespass on the land or in lawful interference with the property. A person is not justified in using deadly force to prevent or terminate the other's trespass on real estate or unlawful interference with personal property.

The court also provided the following instruction on criminal trespass from Tennessee Pattern Jury Instruction 14.05:

A trespasser is a person who

- (1) knowingly enters or remains on property or a portion thereof belonging to someone else and,
- (2) does not have the owner's effective consent to enter or remain.

You may infer consent in the case where property that is used for commercial activity available to the general public or in the case of other property when the owner has communicated the owner's intent that the property be opened to the general public.

Effective consent means assent in fact, whether expressed or apparent, including, assent by one legally authorized to act for another.

The defendant takes issue with the instruction given by the trial court on two fronts: (1) it told the jurors he could only be acquitted if the victims acted "knowingly" and (2) it allowed the jury to infer consent because it was a commercial property. As he did before the trial court, the defendant argues that civil trespass is more broad than criminal trespass, and the trial court erred in limiting his protection or property defense to actions meeting the criminal trespasser definition. However, the defendant's argument overlooks that the protection of property defense found in Tennessee Code Annotated section 39-11-614 is a defense to *criminal* responsibility. As such, it is logical that the relevant definition came from the criminal statute and not civil or, more specifically, tort case law.

To this end, the defendant is aggrieved that the trial court did not provide the *full* law on criminal trespass in its definition, pointing to subsection (b) of the criminal trespass statute which provides a defense to prosecution for criminal trespass. *See* Tenn. Code Ann. § 39-14-405(b). However, in our view, it would have been confusing and unnecessary for the trial court to discuss a defense within a definition within a defense. The court defined what it meant to be a trespasser, and in no way improperly limited the defendant's defense of protection of property.

The defendant is not entitled to relief.

V. Sufficiency

The defendant challenges the sufficiency of the evidence convicting him of assault. The State insists the evidence is sufficient, and we agree with the State.

When the sufficiency of the evidence is challenged, the relevant question of the reviewing court is “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *see also* Tenn. R. App. P. 13(e) (“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 findings by the trier of fact of guilt beyond a reasonable doubt.”); *State v. Evans*, 838 S.W.2d 185, 190-92 (Tenn. 1992); *State v. Anderson*, 835 S.W.2d 600, 604 (Tenn. Crim. App. 1992). All questions involving the credibility of witnesses, the weight and value to be given the evidence, and all factual issues are resolved by the trier of fact. *See State v. Pappas*, 754 S.W.2d 620, 623 (Tenn. Crim. App. 1987). “A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State.” *State v. Grace*, 493 S.W.2d 474, 476 (Tenn. 1973). Our Supreme Court has stated the rationale for this rule:

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

Bolin v. State, 405 S.W.2d 768, 771 (Tenn. 1966) (citing *Carroll v. State*, 370 S.W.2d 523 (1963)). “A jury conviction removes the presumption of innocence with which a defendant is initially cloaked and replaces it with one of guilt, so that on appeal a convicted defendant has the burden of demonstrating that the evidence is insufficient.” *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982).

Guilt may be found beyond a reasonable doubt where there is direct evidence, circumstantial evidence, or a combination of the two. *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990) (citing *State v. Brown*, 551 S.W.2d 329, 331 (Tenn. 1977); *Farmer v. State*, 343 S.W.2d 895, 897 (Tenn. 1961)). The standard of review for sufficiency of the evidence “is the same whether the conviction is based upon direct or

circumstantial evidence.” *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011) (quoting *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009)). Moreover, the jury determines the weight to be given to circumstantial evidence and the inferences to be drawn from this evidence, and the extent to which the circumstances are consistent with guilt and inconsistent with innocence are questions primarily for the jury. *See id.* at 379. Circumstantial evidence alone may be sufficient to support a conviction. *State v. Richmond*, 7 S.W.3d 90, 91 (Tenn. Crim. App. 1999). This Court, when considering the sufficiency of the evidence, shall not reweigh the evidence or substitute its inferences for those drawn by the trier of fact. *Id.* This Court will not exchange its “inferences for those drawn by the trier of fact from circumstantial evidence.” *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990).

A person commits assault who intentionally or knowingly causes another to reasonably fear imminent bodily injury. Tenn. Code Ann. § 39-13-101(a)(2). The defendant asserts that the evidence is insufficient to sustain his three convictions for assault because he never got close enough to the victims for his threat to qualify as “imminent” and he was protecting his property by threatening the use of force.

All three victims testified the defendant was holding what appeared to be a knife while making threatening gestures and saying he was going to “slice” their throats. All three victims expressed fear of the defendant’s hurting them. Although, there is no sound on the surveillance footage from the motel, it is apparent the defendant was yelling based on his agitated and aggressive mannerisms. The defendant does not dispute that he wielded a letter opener, which he admitted to doing because it looked “scary.” Moreover, Mrs. Trivedi admitted that the defendant “waved” the letter opener at the victims.

The defendant avers that because he was thirty to fifty feet away from the victims, his threat was not imminent and was only conditioned on the victims’ refusal to leave. In his reply brief, the defendant takes issue with the State’s characterization of his argument as an assertion of a “zone of danger,” which this Court has rejected in the context of assault. *See State v. Fisher*, 2018 WL 3060369, at *3 (Tenn. Crim. App. June 20, 2018), *perm. app. denied* (Tenn. Sept. 13, 2018); *State v. Johnson*, 2010 WL 3565761, at *6 (Tenn. Crim. App. Sept. 15, 2010). However, as stated in *Johnson*, “[t]he point at issue is not whether the victim was within a certain physical area within which he might be harmed . . . , but whether his fear of imminent bodily injury was reasonable.” Here, the victims were confronted by an agitated and irate man, wielding what appeared to be a knife while making threats to “slice” them. Additionally, at least one of the victims, Mr. Thompson, testified that he heard the defendant threaten that he was going to get a gun and then heard the defendant state, as he was holding his hand under his shirt, that he had a gun. None of the victims testified that they thought they would not be harmed if they complied with the defendant’s demands, nor would a reasonable person necessarily presume the defendant’s

threats were conditional. In the light most favorable to the State, a rational trier of fact could have found that the victims were in reasonable fear of imminent bodily injury.

As to the defendant's assertion that the evidence is insufficient because it "failed to overcome a key defense, Protection of Property," we likewise determine that a rational trier of fact could have found that the defendant's conduct was not justified.

It is a general defense to a criminal prosecution that a defendant's conduct is justified. Tenn. Code Ann. § 39-11-601. A defendant may assert a protection of property defense, which states, "A person in lawful possession of real or personal property is justified in threatening or using force against another, when and to the degree it is reasonably believed the force is immediately necessary to prevent or terminate the other's trespass on the land or unlawful interference with the property." *Id.* § 39-11-614(a). "Once a general defense is fairly raised, it is incumbent upon the State to negate, beyond a reasonable doubt, the application of a general defense." *State v. Cole-Pugh*, 588 S.W.3d 254, 264 (Tenn. 2019).

The victims testified that they did not encroach on the motel property, and even if they had, they were on site to do the prework for AT&T pursuant to a work order placed by the owner of the motel. Their work trucks were clearly marked with, "Star Construction, AT&T contractor," and the bodycam footage showed they were wearing hard hats and reflective vests as contractors would. At trial, the defendant and Mrs. Trivedi testified that the victims were on the motel property and that they had not placed a work order for fiber. However, the victims testified that when they told Mrs. Trivedi they were there for her "service order for fiber," she told them to "just stay here, you are fine," which indicates she had placed a work order. Credibility of the witnesses is a classic jury question, and by its verdict, the jury accredited the testimonies of the victims. In light of this determination, the victims were not trespassers, and the defendant was not entitled to use defense of property as a justification for assaulting them.

The defendant is not entitled to relief on this issue.

VI. Sentencing

The defendant argues that the trial court abused its discretion by denying judicial diversion. The State responds that the court acted within its discretion. We affirm the trial court's denial of judicial diversion.

The trial court conducted a sentencing hearing, at which Deputy Minor testified that the defendant had a history of aggressive behavior toward deputies from the Lincoln County Sheriff's Office, and "[t]here was a couple of other reports between [the defendant]

and some victims or tenants of the [m]otel where he smacked somebody.” The deputy had also learned from the defendant’s first attorney that the attorney “had fired [the defendant] . . . [and] got some threats from him.” Deputy Minor recounted that on the day of the present offense, the defendant directed racial slurs at him and the other deputies at the scene. Deputy Minor said that he had a significant injury to his shoulder and a torn bicep, requiring two surgeries, from “having to fight” the defendant to “get his cuffs on [and] he was resisting[.]”

The State entered a certified copy of another pending case in which the defendant was charged with disorderly conduct, resisting arrest, and evading arrest, arising out of events that occurred about three months before the present case. Deputy Minor testified that there is a need to deter the type of behavior exhibited by the defendant and that jail time is a deterrent for this type of behavior. He did not believe the defendant should be placed on diversion.

Two of the victims gave victim impact statements. Mr. Wilbur expressed how upsetting it was to have his life threatened while trying to provide a service to the defendant. Mr. Keith stated that the incident had “changed the way [he] go[es] into situations and the way [he] look[s] at people now.”

The defendant’s father, Dilip Trivedi, testified that the defendant had never been arrested before and did not use controlled substances or drink alcohol. He said that the defendant regularly volunteered at their temple and taught at the Hindu Cultural Center of North Alabama. The president of the Hindu Cultural Center wrote a character reference letter on the defendant’s behalf. Mr. Trivedi believed the defendant was “mentally sound.” Mr. Trivedi said the victims should have asked permission at the front desk to be on the motel property the day of the incident, and that the defendant had the right to “scare them off with a gun or knife or anything[.]”

The defendant testified that he did not call the police on the victims because he had called the police a few months earlier over “a woman trespassing on our property. She was illegally occupying one of our rooms and . . . [f]or over an hour she was told to leave and she refused to do so,” and the responding officer was “very hostile and dismissive.” The defendant admitted that he “lost [his] cool and called [the woman] a b*tch” in front of the officer.

In an effort to illustrate how the police handled the prior incident as an explanation for the defendant’s not calling the police with regard to the present incident, the defense played the bodycam footage from the prior September 3, 2022, incident, and it was entered

as an exhibit at the hearing.⁶ In its entirety, on the bodycam footage, the woman told the officers that she was trying to “straighten up” her room when the defendant came in and started “threatening to shoot [her] with a gun” and called her a “piece of white trash” and a “whore.” She tried to explain to the defendant that she thought checkout time was at 12:30 and was not trying to stay over. From the parking lot, the bodycam picked up the defendant yelling from inside the office. Another motel guest said he heard the defendant screaming at the woman, and the defendant called him an “inbred hillbilly.”

Out of sight of the camera, the defendant is heard yelling, “Get out of my property, you stupid b*tch.” The camera turned to the defendant, who is standing in the door of the office, as he continued to yell at the woman. The defendant went back into the office, and an officer followed him warning him to stop or he would face disorderly conduct charges. The defendant continued yelling at the officers from the office. The defendant’s uncle and aunt were at the scene, and his uncle told the officers that the defendant was “a crazy guy” multiple times. The defendant’s aunt said she was scared when the defendant was angry because she could not handle him.

The defendant testified that he would cooperate if placed on probation, and that he learned from this incident he needed to “be patient” and keep his “cool even if [he] feel[s] [he is] being wronged[.]” The defendant said his physical health was “very good” and denied having a mental health diagnosis. The defense presented at the hearing a copy of “the diversion certificate” from the Tennessee Bureau of Investigation.

On cross-examination, the defendant was asked what caused him “to go so belligerent” on the woman involved in the September 2022 incident, and he explained that she “kept lying” and he “lost [his] cool.” The defendant denied that he threatened her life. The defendant did not view the phrases “white trash hillbillies” or “white trash pigs” as racial slurs.

In sentencing the defendant, the trial court applied enhancement factor (3), that the offense involved more than one victim, based on the “pretty significant injuries” Deputy Minor sustained during the arrest. *See* Tenn. Code Ann. § 40-35-114(3). After discussing its reasons for doing so, the court declined to apply the other enhancement factors advanced by the State or apply any mitigating factors asserted by the defendant. The court imposed a sentence of eleven months and twenty-nine days for each of the three assault convictions and six months for the resisting arrest conviction, to be served concurrently.

The court then turned to the question of alternative sentencing. The court found that the defendant’s physical health was “fine” but was concerned that the defendant had “some

⁶ Referenced as Exhibit 4 in the trial court’s findings below.

emotional underlying issues . . . with anger or some type of explosive personality disorder.” As for the defendant’s social history, the court noted the defendant had “a good letter from the temple[.]” However, turning to the facts and circumstances surrounding the offenses and the nature and circumstances of the conduct involved, the court observed that “this got way out of hand” and that the defendant was “the catalyst of that getting out of hand[.]” The court also noted that there was “an injury to the deputy [when] [a]ll [the defendant] had to do was cooperate.” The court acknowledged that the defendant had no prior criminal history, which weighed in his favor, but that the defendant’s “previous actions and character” were “concerning to the court.”

Turning to whether the defendant “might reasonably be expected to be rehabilitated,” the court found that the lack of criminal history meant his “potential for rehabilitation should be good.” However, the defendant’s being “largely dismissive of this whole situation” and “produc[ing] excuses for [his] behavior when there [are] not any excuses[,] . . . reflects upon [his] ability to be rehabilitated.” The court noted that lack of candor at sentencing can weigh against rehabilitation.

Because the defendant had never been on probation before, the court stated there was no evidence of whether he would abide by the terms of probation. Considering the interests of society in being protected from the defendant’s possible future conduct, the court noted that “[i]t is a factually driven consideration based upon history or lack thereof. I don’t know that I would characterize them as great but very concerning. . . . [W]hat I have seen at sentencing and at trial is of great concern to the [c]ourt.” The court did, however, note that measures less restrictive than confinement had not been recently or frequently applied unsuccessfully.

In considering whether a sentence of full probation would unduly depreciate the seriousness of the offense, the court noted that “[m]ultiplicity of offenses . . . can be used to deny probation when individual offenses are not as egregious.” The court said, “In this situation as I mentioned taking it as a whole, I do find to be pretty egregious because we had [three] utility workers and several officers all of who[m] were subjected to personal peril by your actions that day.” The court acknowledged Deputy Minor’s testimony that “confinement would be a deterrent” in this case.

Taking everything into account, the trial court ordered the defendant to serve 150 days of his sentence in the Lincoln County Jail. Moments later, during a discussion about an appeal bond, the court commented that it needed to address the *Electroplating* factors. See *State v. Electroplating, Inc.*, 990 S.W.2d 211, 228-29 (Tenn.Crim.App.1998).

Turning to the *Electroplating* factors, the court noted that it had already discussed the defendant’s amenability to correction, the circumstances of the offense, the defendant’s

criminal history, social history, physical and mental health, and deterrence during its discussion about alternative sentencing. The court then stated:

Of course, the [c]ourt has to weigh those factors against each other and explain its decision. In this particular case[,] I addressed all of these except really whether judicial diversion would serve the ends of justice. I hear what the defendant says and I hear what the State says in this case, and I don't believe the judicial diversion would serve the ends of justice.

We have had [what] appears to be a pattern of unacceptable behavior as evidenced by Exhibit No. 4. And I'm not passing judgment on whether what I saw on Exhibit No. 4 rose to the level of any criminality, but I am saying that the behavior causes concern. Because as far as the yelling and screaming and not cooperating with law enforcement, all of that was demonstrated on both the body cam video in the trial and Exhibit 4 in the sentencing hearing. And to further the fact I feel like the defendant is rather dismissive of this situation and tries to cast blame on his behavior on everybody but himself. I don't feel he is taking personal responsibility. The only thing – step he [took] toward that was to recognize perhaps he needed to be more patient.

For these reasons, the court denied judicial diversion.

Again, the defendant argues that the trial court abused its discretion in denying his request for judicial diversion. He asserts that the court retaliated against him for “a prior instance of protected speech,” only denied diversion after already sentencing him, and “never gave any concrete reason for rejecting judicial diversion.”

A defendant is eligible for judicial diversion if he is found guilty or pleads guilty to a Class C, D, or E felony, has not been previously convicted of a felony or a Class A misdemeanor, has not been previously granted judicial or pretrial diversion, and is not seeking deferral for certain sexual offenses. *See* Tenn. Code Ann. § 40-35-313(a)(1)(B)(i). “Eligibility under the statute does not, however, constitute entitlement to judicial diversion; instead, the decision of whether to grant or deny judicial diversion is entrusted to the discretion of the trial court.” *State v. King*, 432 S.W.3d 316, 323 (Tenn. 2014). The trial court must consider several common law factors:

(a) The accused's amenability to correction, (b) the circumstances of the offense, (c) the accused's criminal record, (d) the accused's social history, (e) the accused's physical and mental health, and (f) the deterrence value to the accused as well as others. The trial court should also consider whether

judicial diversion will serve the ends of justice – the interests of the public as well as the accused.

Id. at 326 (quoting *State v. Parker*, 932 S.W.2d 945, 958 (Tenn. Crim. App. 1996)). “[T]he trial court must weigh the factors against each other and place an explanation of its ruling on the record.” *Id.* (citing *Electroplating, Inc.*, 990 S.W.2d at 229).

When the trial court considers the common law factors, “specifically identifies the relevant factors, and places on the record its reasons for granting or denying judicial diversion,” then this Court will “apply a presumption of reasonableness and uphold the grant or denial so long as there is any substantial evidence to support the trial court’s decision.” *Id.* at 327. Our supreme court previously explained:

Although the trial court is not required to recite all of the *Parker* and *Electroplating* factors when justifying its decision on the record in order to obtain the presumption of reasonableness, the record should reflect that the trial court considered the *Parker* and *Electroplating* factors in rendering its decision and that it identified the specific factors applicable to the case before it. Thereafter, the trial court may proceed to solely address the relevant factors.

Id.

The defendant contends that the trial court denied diversion in retaliation for his expression of free speech as shown in Exhibit 4 when he “called a woman a b*itch and yelled at police, petitioning them to arrest her as a trespasser.” This assertion is unfounded. In our view, it is apparent that the court did not deny diversion in retaliation for the defendant’s speech, but instead, because of the defendant’s history of displaying aggressive and belligerent behavior and an inability to control himself when angered.

The defendant also asserts that the trial court only denied diversion after it had already sentenced him and cites *State v. Turco*, No. W2001-01085-CCA-R3-CD, 2001 WL 1078284 (Tenn. Crim. App. Sept. 14, 2001), *perm. app. denied* (Tenn. Feb. 19, 2002), for the proposition that “after a judge has already imposed a sentence, he may not later modify the sentence downward to judicial diversion under Rule 35 [of the Tennessee Rules of Criminal Procedure].” In *Turco*, the defendant pled guilty and received a one-year sentence on probation. *Turco*, 2001 WL 1078284 at *1. Five months after the defendant’s probationary term had been fully served, the trial court granted the defendant’s motion to reduce a previously ordered sentence pursuant to Rule 35 and placed him on judicial diversion. *Id.* We do not read the holding in *Turco* in the exact same lens as the defendant, but regardless, the situation in *Turco* is clearly distinguishable, as the defendant in our case

certainly had not served his sentence and/or sought modification under Rule 35 when judicial diversion was addressed. In short, *Turco* is not instructive on the present case. Moreover, as the defendant pointed out in his reply brief, the court's findings have to take place at a sentencing hearing. See Tenn. Code Ann. § 40-35-210. Here, the trial court's findings did take place at the sentencing hearing because the hearing had not come to completion when the trial court addressed judicial diversion.

As to the defendant's contention that the trial court "never gave any concrete reason for rejecting judicial diversion," the record shows otherwise. The court delineated the *Electroplating* factors and expressly adopted many of the findings it had made when denying alternative sentencing. In fact, at one point during its alternative sentencing consideration, the trial court stated, "Of course some of this dovetails back into the factors to consider for judicial diversion."

Taking these findings together,⁷ the court found that the defendant's physical health was "fine" but was concerned that the defendant had "some emotional underlying issues . . . with anger or some type of explosive personality disorder." As for the defendant's social history, the court noted the defendant had "a good letter from the temple[.]" With regard to the circumstances of the offense, the court observed that "this got way out of hand" and the defendant was "the catalyst of that getting out of hand[.]" The court also noted that there was "an injury to the deputy [when] [a]ll [the defendant] had to do was cooperate." The court acknowledged that the defendant had no prior criminal history, which weighed in his favor, but that some of the defendant's prior behavior was "concerning to the court." Respecting Deputy Minor's opinion, the court commented that confinement would be a deterrent to the type of behavior exhibited by the defendant. The court explicitly determined that judicial diversion would not serve the ends of justice because of how the defendant was "rather dismissive of this situation and trie[d] to cast blame on his behavior on everybody but himself." There is substantial evidence in the record to support these findings, and the trial court's decision is entitled to a presumption of correctness. The defendant simply disagrees with the trial court's viewpoint.

The defendant is not entitled to relief on this issue.

VII. Criminal Contempt

⁷ As noted by another panel of this Court, "judicial diversion is a form of probation. See Tenn. Code Ann. § 40-35-313(a)(1)(A). Accordingly, we read the trial court's findings regarding the [d]efendant's suitability for full probation as applicable equally to h[is] suitability for judicial diversion." *State v. Braxton*, No. W2004-02506-CCA-R3-CD, 2005 WL 3059435, at *9 n.4 (Tenn. Crim. App. Nov. 10, 2005), *perm. app. denied* (Tenn. Mar. 20, 2006).

The defendant lastly argues that the evidence is insufficient to sustain his conviction for criminal contempt.

The record shows that on January 7, 2025, the trial court conducted a hearing on the defendant's motion to continue the motion for new trial in order to obtain Deputy Minor's medical records. After hearing arguments from the parties, the trial court stated that it would let the defendant file a written motion but said, "[Y]ou have got an uphill climb here. Your client is not convicted of any assaultive offense involving Deputy Minor. But I mean frankly your client's behavior that day was egregious and that is what got him where he is. It was just handled very poorly."

As the defendant and his family began to leave the courtroom, the following happened:

MS. SIMMONS:⁸ (Gasp.) He just shot you a bird.

THE COURT: Who did?

UNIDENTIFIED COURT OFFICER: Trivedi.

MS. SIMMONS: Trivedi's father.

OFFICER MITCHELL: No, it was Trivedi.

THE COURT: I didn't see it. You need to go have a conversation with him.

. . . .

OFFICER MITCHELL: It was Trivedi.

MS. SIMMONS: Oh, it was Trivedi? Okay, well then it was Trivedi. Yes, sir, it was.

THE COURT: We will take care of that.

OFFICER MITCHELL: That was bad.

MS. SIMMONS: That was bad. That was really bad.

⁸ "Ms. Simmons" is Alyssa Simmons, the Lincoln County Circuit Court Clerk.

THE COURT: So I didn't see it because I was looking at this paperwork. That would be a thing, a contemptuous act, the State would need to file a petition for contempt and assign the appropriate judge to hear it --

GENERAL SANDOVAL: Yes, Your Honor.

THE COURT: -- if they decide to do that. I could not hear that because it was directed at me. That is just the kind of behavior that led him to 150 days in jail.

The State filed a motion for criminal contempt due to the "vulgar [hand] gesture" the defendant directed at the trial court. A pro tem judge heard the motion.

At the hearing, the State played two videos of the occurrence, and they were admitted into evidence. Screenshots taken from the security videos were also admitted into evidence. Defense counsel asserted that the courtroom security footage showed the defendant had "2 fingers up" and that his "middle finger . . . [w]as actually somewhat bent, and . . . is not particularly consistent with the so-called vulgar gesture." Defense counsel claimed the defendant was actually "engaging" in a "religious gesture from his country[,] . . . calling on the Hindu [g]od Shani . . . of earthly justice."

Ms. Simmons testified that on January 7, 2025, she observed the defendant make a vulgar hand gesture toward the judge, and it caused a disruption in the courtroom. She described that the defendant "lunged toward the [j]udge" when he made the gesture. Ms. Simmons reviewed the eleven-page court docket for that day, and it was entered into evidence.

Officer Martha Mitchell with the Lincoln County Sheriff's Office testified that she was present as security on the day in question. Officer Mitchell recounted, "[Defense counsel] was going toward the door, he motioned for his clients to come down. As they come down and were headed out the door, [the defendant] leaned in and held up his middle finger." She said the gesture was directed "[t]o the judge," and "there was a huge gasp, they just could not believe he done that."

Sergeant Tammy McDonald with the Lincoln County Sheriff's Office testified that she was in the courtroom that day and heard gasping and discussion "about possibly an individual flipping a bird to the [j]udge," but she did not witness it first-hand. She and another officer had a discussion with the defendant in the hallway, and the defendant said he had "made a peace sign[.]"

Sergeant Jonathan Allen with the Lincoln County Sheriff's Office testified that he also heard the commotion in the courtroom that day. Sergeant Allen pulled screenshots from the courtroom security video, and it was his opinion the defendant had "his middle finger up in the air."

On behalf of the defendant, Rashmi Chauhan, a practitioner of the Hindu religion, testified that people who believe in the god Shani wear a ring on their middle finger and "then whenever they ask for the prayer for justice they will show those 2 fingers and then say give me justice." She believed the defendant and his parents followed the god Shani and wore rings on their middle fingers. She reviewed the courtroom security video and thought the defendant's gesture was consistent with displaying a symbol to Shani.

On cross-examination, Ms. Chauhan agreed she was not in the courtroom on the day in question and did not know if the defendant had a ring on his middle finger that day. Ms. Chauhan acknowledged that typically a Hindu would pray to Shani on a Saturday while burning a lamp with oil and wearing yellow or orange but that one could pray every day or wear any colors. She restated that the gesture for praying to Shani involved the index finger and the middle finger.

Dilip Trivedi, the defendant's father, testified that the defendant is "really religious" and "follows all of the customs." He said that the defendant wore a steel ring on his middle finger because it "represents the Saturn . . . [the] [g]od of Justice[.]" He demonstrated that holding up the middle finger with the ring on would call upon the god of justice. During Mr. Trivedi's testimony, the defense entered a video of the defendant performing a religious ritual. Mr. Trivedi said, "We worship Saturn every day because it is called justice of [g]od, as well as it brings prosperity and financially, you know, stability also[.]"

The pro tem court found the defendant guilty of criminal contempt, noting that its decision was "heavily based on the video." The court said that it was "not required to forgo its own common sense or its experiences. And in a court in Lincoln County . . . [t]hat symbol means . . . F-*C-K You, that is what it means. I'm making a finding that's what it means[.]" The court found that the defendant "extended his middle finger alone, ring or no ring, it does not matter He bent all of his other digits and extended his single middle finger."

The court found that the defendant's gesture was not done in an act of prayer because it did not occur in the "manner and methods by which [he] would have been otherwise praying[.]" The court noted that the gesture was "not consistent" with the "nature and type of reverence that would be associated with a Hindu truly engaged in a prayer ritual, he was not, very simply he was not." The court pointed out that the two

defense witnesses had “disagreement between their 2 testimonies as to what the [g]od’s names are, what the correct ritual is, when its application is and what occurs.”

The court observed that “[y]ou don’t have to do anything except look at the video to conclude it was a willful act.” Moreover, there was “no question” that the defendant’s actions “caused a disruption” in the courtroom. The court noted that the clerk was “in the midst of taking care of a[n] [eleven] page docket and the deputy sees something like that and their initial reaction is a gasp, they have seen a lot of stuff.” The court found that the defendant’s action “stopped [the clerk] from fulfilling th[e] duty” to “take care of all of her cases . . . because of what it did to overtake her emotions at that time.” In addition, the court found that the defendant’s actions caused the court deputy to investigate what happened, so “[s]he could not do her job” of being “in charge of all of the inmates.”

The court summarized, “If you come in the courtroom flipping off participants or the [j]udge or anybody in the courtroom willfully, you ought to be held in contempt. Period.” The court commented, “I don’t think this is a close call. Despite the excuses given I don’t think it is close call and I’m not at all anything except severely disappointed that would even be argued in the face of that video.” Accordingly, the court found the defendant in willful contempt of the court beyond a reasonable doubt and sentenced him to ten days in jail.

A person charged with criminal contempt is presumed innocent, and guilt must be proven beyond a reasonable doubt. *Black v. Blount*, 938 S.W.2d 394, 399 (Tenn. 1996). Once convicted, however, the contemnor loses the presumption of innocence and bears the burden of overcoming the presumption of guilt on appeal. *State v. Beeler*, 387 S.W.3d 511, 519 (Tenn. 2012). The reviewing court gives the prevailing party the strongest legitimate view of the evidence and all reasonable and legitimate inferences to be drawn from the evidence. *Furlong v. Furlong*, 370 S.W.3d 329, 338 (Tenn. Ct. App. 2011). On appeal, this Court determines whether, viewing the evidence in the light most favorable to the State, a rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Beeler*, 387 S.W.3d at 519; *Cottingham v. Cottingham*, 193 S.W.3d 531, 538 (Tenn. 2006); *Black*, 938 S.W.2d at 399.

As is relevant here, Tennessee Code Annotated section 29-9-102 empowers the trial court to punish as contempt cases of “[t]he willful misbehavior of any person in the presence of the court, or so near thereto as to obstruct the administration of justice” or “[a]ny other act or omission declared a contempt by law.” Tenn. Code Ann. § 29-9-102(1), (6).

“Although acts constituting contempt cover a wide range, the most familiar forms of contempt are found in acts which hinder, delay, and obstruct the administration of

justice.” *In re Brown*, 470 S.W.3d 433, 443 (Tenn. Ct. App. 2015) (citations and internal quotation marks omitted). “[C]riminal contempt of court that obstructs the administration of justice has generally been defined as any willful misconduct which embarrasses, hinders, or obstructs a court in its administration of justice or derogates the court’s authority or dignity, thereby bringing the administration of law into disrepute[.]” *Black*, 938 S.W.2d at 399. “Examples of this type of behavior include disrespectful, unreasonable, or ‘turbulent’ conduct; . . . and ‘direct personal misbehavior . . . as to interfere with the procedure of the court.’” *State v. Whetsone*, No. E2010-02333-CCA-R3-CO, 2011 WL 5147795, at *10 (Tenn. Crim. App. Oct. 31, 2011) (quoting *State v. Turner*, 914 S.W.2d 951, 958 (Tenn. Crim. App. 1995)), *perm. app. denied* (Tenn. Apr. 11, 2012).

In the light most favorable to the State, the evidence shows that the defendant raised his middle finger and directed it at the trial court, exhibiting “disrespect” to the judge and causing a disruption to court proceedings. The trial court could take judicial notice that a raised middle finger is a vulgar gesture in Tennessee. *See State v. Rogers*, No. M2003-00381-CCA-R3-CD, 2004 WL 343719, at *1 n.1 (Tenn. Crim. App. Feb. 24, 2004). A judicially noticed fact “must be one not subject to reasonable dispute, in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Tenn. R. Evid. 201(b). Although the defendant contends in his reply brief that the offensiveness of the gesture is subject to reasonable dispute because he offered an alternate meaning, “within the territorial jurisdiction of the trial court” the gesture is not subject to reasonable dispute. Notably, the defendant’s own witness, Ms. Chauhan indicated that the correct way to pray to the Hindi god Shani would not be by raising just the middle finger. Further, the defendant’s argument that there was no proof he lived in the area is of no avail because the intake form attached to the petition for criminal contempt showed the defendant’s address as Fayetteville, Tennessee, and his place of birth as Tennessee. The defendant has not met his burden of overcoming the presumption of guilt.

The defendant is not entitled to relief on this issue.

Conclusion

Based on the foregoing authorities and reasoning, we affirm the judgments of the trial court.

S/ *J. ROSS DYER*

J. ROSS DYER, JUDGE