

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE  
May 9, 2023 Session

**FILED**  
06/26/2023  
Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. MICHAEL E. ODOM**

**Appeal from the Circuit Court for Houston County  
No. 2020-CR-68     Suzanne Lockert-Mash, Judge**

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**No. M2022-00756-CCA-R3-CD**

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Defendant, Michael E. Odom, was convicted by a Houston County jury of assault and elder abuse. The trial court imposed a two-year sentence, suspended to supervised probation after sixty days of incarceration. Defendant appeals the trial court’s order denying his motion for a new trial. On appeal, Defendant argues that the jury instruction on elder abuse was incomplete and that the trial court improperly commented on matters of fact during trial testimony. Following our review of the entire record, the briefs of the parties, and oral argument, we affirm the judgments of the trial court.

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

JILL BARTEE AYERS, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and MATTHEW J. WILSON, JJ., joined.

Thomas Blaine Dixon, Erin, Tennessee, for the appellant, Michael E. Odom.

Jonathan Skrmetti, Attorney General and Reporter; Edwin Alan Groves, Jr., Assistant Attorney General; Ray Crouch, District Attorney General; and Talmage Woodall, Assistant District Attorney General, for the appellee, State of Tennessee.

## OPINION

### Factual and Procedural Background

#### *Trial*

This case arises from a dispute between Defendant and the victim regarding the maintenance of a driveway used by the victim that crosses a narrow strip of land owned by Defendant's mother. The victim testified that the incident took place in the driveway, which has existed for about eighty years, and crosses a narrow strip of land owned by Defendant's mother. The victim uses the driveway to access his home and his farm. He described it as a "50-foot wide, 60-foot wide" strip "that goes all the way across the front of my farm that belongs to the [Defendant's mother]." On November 9, 2020, the victim was riding his lawnmower to blow leaves off the driveway when Defendant "r[a]n right up against the front of the lawnmower," cursed at him, and demanded that he get off of his mother's property. The victim testified that seconds later, Defendant "jumped and knocked me off the lawnmower, [] got on top of me and beat me in the ground, [] with his fists" for three or four minutes. The victim testified that Defendant hit him multiple times in the head and that he was "[ ] trying to get out from under him, trying to hit him" but that he was unable to because of his strength at seventy-three years old. His arms and legs were bruised up, and his "face all beat up." Pictures of the victim's injuries were admitted as exhibits.

After the incident, the victim "walked off back up towards his house, [] got on the lawnmower and went down to the house and called [his] wife and called 911." He then got on his tractor and drove to Defendant's house "to tell [Defendant's] mother what he had done." Defendant's mother was not home, so the victim drove down the driveway where he waited for his wife and the police. The victim did not seek medical attention for his injuries because he had not been vaccinated against COVID-19 and did not want to go to be exposed to the virus at the hospital. According to the victim, he did nothing to provoke Defendant to assault him; he was "doing the same thing for [twenty-eight] years . . . ke[eping] that side of that driveway maintained." On cross-examination, the victim agreed that the summer before this incident, he and Defendant had a heated conversation about the property lines. Following the assault, the victim filed an easement action to secure his access to the driveway and his house and farm.

After both direct and cross-examination of the victim, the trial court questioned him regarding the location of the property dispute, as well as the access and use, asking approximately sixteen questions, using some leading questions. Following the trial court's questions, it asked if either attorney had any follow-up questions. Both answered in the negative.

Officer Zachary Hallam and Deputy Amanda Baker of the Houston County Sheriff's Office responded to the scene; Officer Hallam's body camera recorded their investigation. Officer Hallam testified that the victim was "in pretty bad shape," had bruising, "blood all over him, [] [and] cuts on his arms." He further testified that the left of the victim's face "was already starting to turn colors," and the "entire whites of his eyes were already filling with blood." He testified that he waited with the victim until EMS arrived because he was "worried about an orbital socket being fractured or something of that nature." He further testified that the victim did not want to go to the hospital because he had not been vaccinated against COVID-19. Officer Hallam also testified that when he arrested Defendant, he observed that Defendant had no visible injuries. The body camera footage was played for the jury and exhibited to Officer Hallam's testimony. The video indicated that Defendant had no visible injuries.

Defendant presented a different version of the incident and claimed that he acted in self-defense. Defendant testified that he decided to clean leaves off his property, and as he was returning to the house to start his lawnmower, he heard the victim start his lawnmower. He testified that the victim's behavior was "typical" in that when he tries to mow the strip of property in question, "he'll try to beat [him] to the punch," to try to mow it so Defendant cannot. Defendant also testified that the victim would cut the grass so low that he could not cut it himself. Defendant was aware that the victim had "filed for a prescriptive easement," which, Defendant said, was a way to "homestead somebody else's property." Defendant decided to "maintain [his family's] property so that [the victim] couldn't . . . take it away from us."

According to Defendant, he walked quickly toward the victim when he heard him start his lawnmower, and when the victim saw Defendant he drove up to him and almost hit him with the lawnmower. Defendant testified that "he drove within [four] to [six] inches of me." At that point, Defendant said, "this is our property. . . . [T]his is our responsibility, and I'm going to maintain our property from now on." Defendant testified that the victim responded, "I'm going to put you in prison." The parties argued back and forth "a dozen times." Defendant then stepped aside and told the victim that he was going to the house to call the police.

According to Defendant, when he turned to leave, the victim "stood up on the lawnmower" while it was "still in gear," so it "lurched forward about [three] feet." Defendant explained that when a lawnmower seat comes up, "it activates the kill switch and kills the engine." After the mower lurched forward, he could see the victim "running at [him]" out of the corner of his eye, and thought he would "tackle him." Defendant tried to sidestep him, but the victim grabbed him with his right arm, and they "crashed into the ground." Defendant was concerned that the victim would "pin [him] to the ground [and]

beat [him] unconscious.” The victim punched him three times; Defendant responded by punching back three times. Defendant testified that he suffered a permanent injury, a “blind spot” that “looks like a fly flying” around in his eye.

When the fighting stopped, Defendant said that he “started doing first aid” on the victim because he was concerned about bleeding. After checking for injuries, Defendant told the victim that they started this “fight on [the victim’s] terms,” and that “we’re going to end it on [Defendant’s] terms.” Defendant told the victim that because he assaulted him on his own property, he “ought to have [him] arrested.” He also told the victim “I’ll let you off the hook if you don’t turn around and call the law on me.” Defendant then testified that the victim went to his home, and when he returned he said, “I called the law. They’re on the way. I called the law first. That gives me the upper hand. I’m going to put you in prison.” Defendant testified that he had a cut inside his mouth and that he had “huge swelling” from the punch between his eyes. Defendant claimed that he acted in self-defense and did not know the age of the victim. Defendant maintained that he was “attacked on [his] own property,” and defended himself.

Following the direct, cross, and redirect examination of Defendant, the trial court questioned Defendant. The trial court asked Defendant approximately thirty-six questions about Defendant’s age, the victim’s mower, how the victim was able to dismount when the mower lurched forward, and the location of both parties during the incident. The following is a portion of the exchange between the court and Defendant:

THE COURT: And so you said that you were standing there by his front tire?

WITNESS: Yes, ma’am.

THE COURT: And then when you all were finished—whatever you said, the—he accelerated and then stood up? Is that what you said?

WITNESS: No, ma’am. I was standing on—it would be his right side next to the front tire.

THE COURT: Uh-huh. (Affirmative)

WITNESS: Okay. I turned to go back to the house to call the police.

THE COURT: Uh-huh. (Affirmative)

WITNESS: When I started to turn, okay, he stood up on the lawnmower, okay. So the lawnmower, I guess—I assume what happened is he took his—

THE COURT: Well, no assumption. You just say what happened.

WITNESS: Well, it lurched forward. The lawnmower lurched forward about [three] feet, and then it lurched—and then I'm standing next to the – the back tire.

THE COURT: Uh-huh. (Affirmative)

WITNESS: And he steps off of the lawnmower.

THE COURT: To the right or to the left?

WITNESS: It'd be to his left.

THE COURT: Uh-huh. (Affirmative)

WITNESS: He landed on the pavement to the driveway. When he landed on the pavement with both feet, he hit—he kind of spun out of my vision. And I'm looking at the lawnmower because I'm—I'm looking down at the lawnmower. I'm thinking, well, he just jerked the guts out of this lawnmower. It's, you know, it's finished, you know.

THE COURT: So your back was to him when he lurched forward?

WITNESS: When he lurched forward—

THE COURT: Because you said you turned around to go toward the house so your back was to him; is that correct?

WITNESS: I was turned at about a—if you draw the axis—along the axis of the lawnmower, I was standing at the front tire. I was looking at him. He was in the seat, so I'd say I was turned at about a 45-degree angle to the axis of the lawnmower.

THE COURT: Okay. To the left?

WITNESS: I was turned—Yes ma'am, to the left.

THE COURT: Okay. I'm just trying to see where you all were situated there. And so, when it launched—lurched forward, then you were standing there at the back of the tire. And so if you were turned to the left, then you had to turn back to the right to see the tire then, correct?

WITNESS: I'm standing in the same spot, so when the lawnmower moved—when the lawnmower lurched forward about, I'd say, approximately [three] feet—well, from the distance from the front tire to the back tire, whatever that is. When it lurched forward, I'm standing even with the back tire.

THE COURT: I've got that. What I'm saying is that if you were turning to your left to go to your house and he lurched forward, then you were either looking away and you had to turn back to look at the lawnmower; is that correct?

WITNESS: Okay. I think I understand what you're asking.

THE COURT: Yeah.

WITNESS: I was turned at about a [forty-five] degree angle. I had started to turn, okay. I was turning with my body, but my eyes [were] still on him. It's kind of like—

THE COURT: All I'm asking you is that you saw him lurch forward then because you said your eyes—were on him--

WITNESS: I see him stand up on the lawnmower.

THE COURT: —regardless of what your body—okay.

WITNESS: Yes. My body was turning—

THE COURT: Was that before or after it lurched?

WITNESS: I'm standing looking at him. I'm turning to go. My body's turning but my eyes are still on him.

THE COURT: We've got that. I want to know, did you see him lurch forward because you said your eyes were on him regardless of where your body is. That's all I'm asking. You saw him lurch. You saw him stand up.

WITNESS: Yes, ma'am.

THE COURT: Correct?

WITNESS: I seen him stand up.

THE COURT: I just need to know, did you see him stand up?

WITNESS: Yes, ma'am.

THE COURT: So you're saying that the lawnmower lurched forward.

WITNESS: Yes.

THE COURT: So the lawnmower was in gear all the time that you all were sitting there having this conversation?

WITNESS: I guess.

THE COURT: Okay. And so it lurched forward. He was able to stand up with it lurching forward, jump off, twist, turn, come around, and grab you before you knew anything was happening; is that correct?

WITNESS: He stood up, then the lawn--

THE COURT: I just need to know, is that a correct statement?

WITNESS: No, ma'am. It's not.

THE COURT: Okay. Tell me what happened then.

WITNESS: He stood up. As he's standing up, the lawnmower's lurching forward.

THE COURT: So he was standing up as the lawnmower's lurching forward?

WITNESS: Yes.

THE COURT: Okay. And then what happened?

WITNESS: As he's lurching forward—as the lawnmower's lurching forward, he's standing up on the lawnmower. I guess he kind of, you know, lost his balance. So he just—he just stepped off of it.

THE COURT: He lost his balance while he was on the lawnmower.

WITNESS: Yes. And he just stepped off of it to his left.

THE COURT: Okay. And he stepped off. Did he stumble?

WITNESS: He landed on his feet.

THE COURT: So he did not stumble. All right.

WITNESS: He—It wasn't a smooth landing, but—because the lawnmower's moving forward.

THE COURT: Well, that's what I'm asking.

WITNESS: It's kind of like jumping off a hay wagon when you're a kid.

THE COURT: Right.

WITNESS: And it's moving when you jump off, you know. You don't make just a perfect landing.

THE COURT: No. You usually fall and tumble when you do that. So did he fall and tumble?

WITNESS: No, ma'am.

THE COURT: Okay. So he was able to jump off a lurching lawnmower, not stumble, not fall, remain upright, and then come around and tackle you or attempt to tackle you before you knew what happened; is that correct?

WITNESS: Yes, ma'am.

When the trial court completed its questioning, it asked if either of the attorneys had any follow-up questions, and both answered in the negative. Defendant did not object to the content or scope of the trial court's questions. Based upon the proof, the jury convicted Defendant as charged.



## *Sentencing Hearing*

At the sentencing hearing on January 31, 2022, the victim and Defendant again both testified about the incident as well as a series of allegations that occurred after the trial, including alleged violation of a no contact order. Defendant testified that he thought his trial was a “sham” and that the trial court was biased and “prosecuted [him] from the bench.” Defendant thought the court “took [the victim’s] side” and that its “mind was made up. . . before it ever happened.”

The trial court denied that Defendant’s trial was a “sham” explaining that it did not know anything about the parties or their property dispute before trial. The trial court also explained that when testimony is not clear, the court asks for clarification. The trial court stated that the testimony Defendant gave of “[the victim] being able to jump off his lawnmower—and run and do all this, I—I didn’t find very credible. As a matter of fact, I found your testimony totally incredible at the –at the jury trial, in that.” The trial court stated, if “testimony is such that I’m really not sure, you know, where something is or how far it is from a road or where a fence is, I have to ask that for clarification. That’s the reason why I ask that.”

The trial court considered mitigating and enhancement factors, expressed concern that Defendant “did not follow the orders of this Court prior to sentencing to have no contact with [the victim],” gave “great weight” to the fact that Defendant had no prior criminal history, and sentenced Defendant an effective sentence of two years’ imprisonment, suspended to supervised probation after sixty days of incarceration. Defendant filed a timely motion for new trial. The trial court denied the motion for new trial, and Defendant filed this timely notice of appeal.

## **Analysis**

### **I. Jury Instructions**

Defendant first contends that the jury instruction on elder abuse was incomplete because it cross-referenced the definition of “knowingly” provided earlier in the instruction, and thus omitted an essential element of the offense. The State responds that this issue is waived because Defendant failed to raise the issue in the trial court, and that there was no plain error. The State contends that the trial court did not breach a clear and unequivocal rule of law, and Defendant cannot show that review of the alleged error is necessary to do substantial justice. We agree with the State.

A party must contemporaneously object to incomplete jury instructions to preserve the issue for plenary appellate review. *State v. Faulkner*, 154 S.W.3d 48, 58 (Tenn. 2005). And a party challenging erroneous or inaccurate jury instructions must at least raise the issue in the motion for new trial. *Id.*; see also Tenn. R. Crim. P. 30(b); Tenn. R. App. P. (3)(e). Otherwise, this Court may only review the issue for plain error. See *Faulkner*, 154 S.W.3d at 58; Tenn. R. App. P. 36(a), (b).

“An erroneous or inaccurate jury charge, as opposed to an incomplete jury charge, may be raised for the first time in a motion for a new trial and is not waived by the failure to make a contemporaneous objection.” *Faulkner*, 154 S.W.3d at 58. Defendant’s argument appears to claim that this is an incomplete instruction issue. Defendant did not contemporaneously object to the trial court’s jury instruction on elder abuse, nor did he request a special jury instruction. He also failed to challenge the jury instruction in his motion for new trial. Because Defendant failed to raise this issue in the trial court, he waived plenary appellate review. Thus, we will review the issue for plain error.

Defendant contends that cross-referencing the definition of “knowingly” was plain error. To establish plain error,

- (a) The record must clearly establish what occurred in the trial court;
- (b) A clear and unequivocal rule of law must have been breached;
- (c) A substantial right of the accused must have been adversely affected;
- (d) The accused did not waive the issue for tactical reasons; and
- (e) Consideration of the error is ‘necessary to do substantial justice’.

*State v. Smith*, 24 S.W.3d 274, 282 (Tenn. 2000) (quoting *State v. Adkisson*, 899 S.W.2d 626, 641-42 (Tenn. Crim. App. 1994)). If the defendant fails to establish even one of these criteria, he is not entitled to relief. *State v. Vance*, 596 S.W.3d 229, 254 (Tenn. 2020).

Under the United States and Tennessee Constitutions, a defendant has a constitutional right to trial by jury. U.S. Const. amend. VI; Tenn. Const. art. 1, § 6; see *State v. Bobo*, 814 S.W.2d 353, 356 (Tenn. 1991); *Willard v. State*, 130 S.W.2d 99, 100 (Tenn. 1939). The trial court has a duty “to give a complete charge of the law applicable to the facts of a case.” *State v. Harbison*, 704 S.W.2d 314, 319 (Tenn. 1986); see also Tenn. R. Crim. P. 30. Jury instructions must, however, be reviewed in the context of the entire charge rather than in isolation. See *Sandstrom v. Montana*, 442 U.S. 510, 527 (1979); see also *Cupp v. Naughten*, 414 U.S. 141, 146-47 (1973) (“[A] single instruction to a jury may not be judged in artificial isolation, but must be viewed in the context of the overall charge.”); *State v. Phipps*, 883 S.W.2d 138, 142 (Tenn. Crim. App. 1994). A charge is a prejudicial error “if it fails to fairly submit the legal issues or if it misleads the jury as to the applicable law.” *State v. Hodges*, 944 S.W.2d 346, 8352 (Tenn. 1997). The adequacy

of a jury instruction is a question of law that is reviewed de novo with no presumption of correctness. *State v. Clark*, 452 S.W.3d 268, 295 (Tenn. 2014). “Jury instructions must be reviewed in their entirety,” and “[p]hrases may not be examined in isolation.” *State v. Rimmer*, 250 S.W.3d 12, 31 (Tenn. 2008); *State v. Guy*, 165 S.W.3d 651, 659 (Tenn. Crim. App. 2004); *State v. Dellinger*, 79 S.W.3d 458, 502 (Tenn. 2002).

The trial court’s instruction on the elder abuse charge identified every element of the charged offense. The written instructions provided that “[t]he definition of ‘knowingly’ has been previously provided for your reference.” The definition of “knowingly” was in fact set forth three pages earlier in the instructions where the elements of assault were set out. Tennessee courts have repeatedly upheld the use of cross-references in jury instructions. *State v. Cravens*, 764 S.W.2d 754, 756 (Tenn. 1989); *State v. Bargery*, No. W2016-00893-CCA-R3-CD, 2017 WL 4466559, at \*67-69 (Tenn. Crim. App. Oct. 6, 2017); *State v. Wilson*, No. M2017-01854-CCA-R3-CD, 2009 WL 2567863, at \*11 (Tenn. Crim. App. Aug. 20, 2009).

Considering the jury instructions in the context of the entire charge rather than in isolation, the trial court did not omit the definition of “knowingly” from its instruction on elder abuse. The instruction identified every element of the charge and the jury had the complete definitions needed to correctly apply the law. There was no breach of a clear and unequivocal rule of law, and thus no plain error. Defendant is not entitled to relief.

## **II. Trial Court’s Questions**

Defendant next contends that the trial court’s questions to Defendant violated the prohibition against judicial commentary “with respect to matters of fact,” arguing that the trial judge’s line of questioning impeached Defendant’s credibility as a witness. The State responds that the trial court’s questioning was designed to clarify Defendant’s testimony, not damage his credibility. The State further contends that any error was harmless because video and photographic evidence independently undermined Defendant’s self-defense theory. Additionally, the State contends that the trial court properly instructed the jury that its questioning of witnesses was not intended to convey any opinion on matters of fact. We agree with the State.

It is undisputed that Defendant did not contemporaneously object or otherwise call attention to the trial court’s questioning of Defendant at any time during the trial. *See State v. Falcon*, No. E2015-00935-CCA-R3-CD, 2016 WL 4409792, \*1, 9 (Tenn. Crim. App. Aug. 17, 2016)- (quoting Tenn. R. Evid. 614 (although subsection (b) authorizes the trial court’s interrogation of witnesses, subsection (c) requires that any objection to the court’s interrogation “may be made at the time or at the next available opportunity when the jury is not present”)). Defendant’s failure to lodge a contemporaneous objection results in a

waiver of plenary review of this issue. *See* Tenn. R. App. P. 36(a) (“Nothing in this rule shall be construed as requiring relief be granted to a party responsible for an error or who failed to take whatever action was reasonably available to prevent or nullify the harmful effect of any error.”); *see also* *State v. Killebrew*, 760 S.W.2d 228, 235 (Tenn. Crim. App. 1988). For this reason, we review this issue for plain error under the factors set forth above.

In this case, Defendant has failed to establish that “a clear and unequivocal rule of law has been breached.” *Smith*, 24 S.W.3d. at 282 (quoting *Adkisson*, 899 S.W.2d at 641-42). Although our state constitution forbids trial judges to comment on the evidence in a case, *see* Tenn. Const. art. VI, § 9 (“The Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law.”), the Tennessee Rules of Evidence specifically allow the court to “interrogate witnesses,” *see* Tenn. R. Evid. 614(b), as long as “the questioning complies with the constitutional mandate,” *see id.*, Advisory Comm’n Comments. “So long as the inquiry is impartial, trial courts may ask questions to either clarify a point or to supply any omission.” *State v. Schiefelbein*, 230 S.W.3d 88, 188 (Tenn. Crim. App. 2007) (citing *Collins v. State*, 416 S.W.2d 766 (Tenn. 1967); *Parker v. State*, 178 S.W. 438 (Tenn. 1915)).

Here, the trial court questioned both the victim and Defendant regarding specific facts of the altercation. The trial court stated during both the trial and the sentencing hearing, that its questions were focused on where the parties were situated during the confrontation. During the sentencing hearing, the trial judge stated, “when testimony is not clear, the court asks for clarification.”

While the trial court’s questioning was lengthy and included some leading questions to both parties, the questions were directed at clarifying the facts of the case. And while the trial court’s questioning of Defendant was lengthier than that of the victim, it was again clear on its intent to clarify facts. At no point did the trial court comment on the evidence. Defendant’s concern that the trial court’s questioning revealed inconsistencies with his self-defense theory, which may have damaged his credibility, is misplaced. If “the record establishes that the court’s questions were designed to clarify the testimony being offered,” it does not matter that the witness’ answers “bolstered the State’s position.” *See Agostinho v. State*, No. M2014-01928-CCA-R3-PC, 2015 WL 5451483, at \*6 (Tenn. Crim. App. Sept. 16, 2015) (rejecting constitutional claim despite the post-conviction court’s “unusually rigorous” questioning of the petitioner).

Additionally, the trial court instructed the jury that if it asked questions of a witness, “that does not indicate that I have any opinion about the facts in the case or that I have any opinion with respect to that witness’ credibility.” The jury is presumed to follow the trial court’s instruction. *State v. Robinson*, 146 S.W.3d 469, 494 (Tenn. 2004). “In order to overcome this presumption, an accused must show by clear and convincing evidence that

such instruction was not followed.” *State v. Vanzant*, 659 S.W.2d 816, 819 (Tenn. Crim. App. 1983). Furthermore, the jury was able to view the video and photographic evidence showing that Defendant had no visible injuries to judge Defendant’s credibility. In this context, we cannot say that the trial court’s questioning of Defendant had any impact on his credibility, nor that it affected the jury. *See Falcon*, 2016 WL 4409792 at \*4. Consequently, there was no breach of a clear and unequivocal rule of law, and thus, no plain error.

### **Conclusion**

For the foregoing reasons, the judgments of the trial court are affirmed.

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JILL BARTEE AYERS, JUDGE