IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

FEBRUARY 1996 SESSION

STATE OF TENNESSEE,	)	
	)	No. 02-C-01-9506-CC-00173
APPELLEE,	)	
	)	Benton County
v.	)	
	)	Julian P. Guinn, Judge
MILBURN EARL WALLACE,	)	
	)	(Criminal Attempt to Commit Rape)
APPELLANT.	)	

FOR THE APPELLANT:

Larry G. Bryant
Assistant District Public Defender
P. O. Box 663
Camden, TN 38320

OF COUNSEL:
Guy T. Wilkinson
District Public Defender
P. O. Box 663
Camden, TN 38320

FOR THE APPELLEE:

Charles W. Burson
Attorney General & Reporter
500 Charlotte Avenue
Nashville, TN 37243-0497

Charlotte H. Rappuhn
Assistant Attorney General
450 James Robertson Parkway
Nashville, TN 37243-0493

G. Robert Radford
District Attorney General
P. O. Box 686
Huntingdon, TN 38344

Todd A. Rose
Asst. District Attorney General
P. O. Box 94
Paris, TN 38242

OPINION FILED: _____

AFFIRMED

Joe B. Jones, Presiding Judge

OPINION

The appellant, Milburn Earl Wallace, was convicted of criminal attempt to commit rape, a Class C felony, by a jury of his peers. The trial court, finding that the appellant was a multiple offender, imposed a Range II sentence of six (6) years confinement in the Department of Correction. The appellant contends that the evidence is insufficient, as a matter of law, to support a finding by a rational trier of fact that he is guilty of attempted rape beyond a reasonable doubt.

The judgment of the trial court is affirmed.

The appellant and his grandmother were next door neighbors to the victim. On May 19, 1994, the appellant asked the victim if he could use her telephone. The victim permitted the appellant to use the phone. She also gave him a glass of water.

When the victim returned from turning out a light in the bathroom, the appellant was standing in the hallway. He tried to force the victim into a bedroom, but she successfully escaped to the living room. The appellant grabbed the victim's arm, they fell into a chair, and subsequently fell to the floor. The appellant tried to hold the victim with his legs. She was able to escape and ran outside the residence shouting for help. The appellant chased the victim. She picked up a stick and threatened to hit the appellant. He then picked up a bigger stick and forced the victim to drop her stick. The appellant grabbed the victim's arms, pulled her into a ditch, and then into his trailer home. The victim was screaming for help. The appellant's grandmother was watching but did not help stop the attack. He hit the victim in the head to get her to stop screaming and pushed her into the trailer home.

The appellant threw the victim to the couch and, thereafter, pulled her onto the floor. He pulled down his pants and exposed his reproductive organ. He then pulled up the victim's dress and removed her pantyhose. When he saw that the victim was menstruating, he immediately stopped and sat down on the couch. The victim arose. She attempted to get her pantyhose back. However, the appellant held the pantyhose behind his back and refused to give the pantyhose to the victim. She left the appellant's trailer, returned to her home, and called her mother in-law.

The state introduced pictures showing injuries suffered by the victim: a long bruise on her leg, multiple bruises on her arm, a bruise under her arm, and a bruise on her shoulder. The victim also suffered a black eye and a cut ear. The state also introduced

the victim's torn dress, torn bra, and torn pantyhose. The defense offered no proof.

When an accused challenges the sufficiency of the convicting evidence, this Court must review the record to determine if the evidence adduced at trial is sufficient "to support the finding of the trier of fact of guilt beyond a reasonable doubt." Tenn. R. App. P. 13(e). This rule is applicable to findings of guilt based upon direct evidence, circumstantial evidence, or a combination of direct and circumstantial evidence. State v. Dykes, 803 S.W.2d 250, 253 (Tenn. Crim. App.), per. app. denied (Tenn. 1990).

In determining the sufficiency of the convicting evidence, this Court does not reweigh or reevaluate the evidence. State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App.), per. app. denied (Tenn. 1990). Nor may this Court substitute its inferences for those drawn by the trier of fact from circumstantial evidence. Liakas v. State, 199 Tenn. 298, 305, 286 S.W.2d 856, 859, cert. denied, 352 U.S. 845, 77 S.Ct. 39, 1 L.Ed.2d 49 (1956). To the contrary, this Court is required to afford the State of Tennessee the strongest legitimate view of the evidence contained in the record as well as all reasonable and legitimate inferences which may be drawn from the evidence. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978).

Questions concerning the credibility of the witnesses, the weight and value to be given the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact, not this Court. Cabbage, 571 S.W.2d at 835. In State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973), our Supreme Court said: "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."

Since a verdict of guilt removes the presumption of innocence and replaces it with a presumption of guilt, the accused, as the appellant, has the burden in this Court of illustrating why the evidence is insufficient to support the verdicts returned by the trier of fact. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). This Court will not disturb a verdict of guilt due to the sufficiency of the evidence unless the facts contained in the record are insufficient, as a matter of law, for a rational trier of fact to find that the accused is guilty beyond a reasonable doubt. Tuggle, 639 S.W.2d at 914.

Before an accused may be convicted of criminal attempt to commit rape under the

facts of this case, the state is required to prove beyond a reasonable doubt that the accused (1) acted with specific intent to unlawfully sexually penetrate the victim, (2) used force or coercion, and (3) took a "substantial step" towards committing rape. Tenn. Code Ann. §§ 39-12-101(a)(3); 19-13-503(a)(1). What constitutes a substantial step will vary depending on the individual facts of each case. Sentencing Commission Comments to Tenn. Code Ann. § 39-12-101; State v. Reeves, 916 S.W.2d 909, 912 (Tenn. 1996).

In this case, the evidence of the appellant's guilt is overwhelming. The evidence is clearly sufficient to support a finding by a rational trier of fact that the appellant was guilty of criminal attempt to commit rape beyond a reasonable doubt. Tenn. R. App. P. 13(e); Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

The judgment of the trial court is affirmed.

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JOE B. JONES, PRESIDING JUDGE

CONCUR:

_____
GARY R. WADE, JUDGE

_____
JERRY L. SMITH, JUDGE