IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

JULY 1996 SESSION

FILED

October 15, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,	)	
	)	
APPELLEE,	)	
	)	No. 03-C-01-9601-CC-00041
	)	
	)	Blount County
v.	)	
	)	D. Kelly Thomas, Jr., Judge
	)	
	)	(Statutory Rape, Contributing to
	)	the Delinquency of a Minor, and
	)	Contributing to the Unruliness of
	)	a Minor)
JACKSON FANN,	)	
	)	
APPELLANT.	)	

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OPINION FILED:_____

AFFIRMED AND REMANDED

Joe B. Jones, Presiding Judge

O P I N I O N

The appellant, Jackson Fann, was convicted of three counts of statutory rape, a Class E felony, two counts of contributing to the unruliness of a minor, a Class A misdemeanor, and contributing to the delinquency of a minor, a Class A misdemeanor, by a jury of his peers. The trial court found the appellant was a standard offender and imposed a Range I sentence consisting of a $3,000 fine and confinement for two (2) years in the Department of Correction for each count of statutory rape. These three sentences are to be served consecutively. The trial court sentenced the appellant to confinement for eleven months and twenty-nine days in the Blount County Jail for each count of contributing to the unruliness of a minor and contributing to the delinquency of a minor. These three sentences are to be served concurrently to all other sentences. The effective sentence imposed by the trial court is confinement for six (6) years in the Department of Correction and fines totaling $9,000. In this Court, the appellant contends the evidence contained in the record is insufficient to support his convictions because (a) the two victims were accomplices and (b) their testimony was not corroborated. The judgment of the trial court is affirmed. This case is remanded for the entry of an amended judgment in Count I of indictment number 8227.

The victims, C.E. and T.D.E.,[1] were thirteen years of age when the crimes in question were committed. Both victims were truants, and they had been cited to appear before a "Truancy Board." The victims talked about their mutual problem. They concluded they would be deprived of their freedom by the "Truancy Board." The victims agreed they would run away from home to avoid being "sent off" to a juvenile penal institution.

During the first week of January 1994, the victims ran away from home. They planned to travel to South Carolina where T.D.E.'s mother lived. However, they did not have sufficient funds to make the trip. On the evening of January 5, 1994, the victims went to the appellant's[2] home and asked if they could spend the night. The appellant agreed. The victims asked the appellant if he would take them to South Carolina in his vehicle. The appellant told the victims he could not leave town because he was caring for his elderly

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[1]It is the policy of this Court to use the initials of children who have been the victim of a sex-related offense.

[2]C.E. testified that the appellant was her father's uncle. This would make the appellant her great-uncle.

mother. The victims then asked the appellant if he would give them sufficient funds to make the trip.

On January 6, 1994, the victims had no place to go. If they returned to their respective homes, they feared they would be taken into custody by the authorities. They did not have the funds necessary for the trip to South Carolina.

The appellant took the victims to Knoxville. He visited C.E.'s father, who was being treated in a local hospital, while the victims waited in the appellant's vehicle. Later, they went to a bus station and discovered that a ticket to South Carolina would cost $55 for each of them. The bus was scheduled to leave the next morning.

The appellant and the victims returned to Blount County, and the appellant obtained a room at the Americana Motel in Maryville. Once inside the room the appellant told the victims if they would have sexual intercourse with him, he would provide them with sufficient funds to make the trip to South Carolina. During direct examination, C.E. was asked: "Did you agree to those terms?" She answered the question by stating: "No. We didn't want to, but we did." The appellant had sexual intercourse with C.E. first while T.D.E. sat on the side of the bed. He then had sexual intercourse with T.D.E. The appellant told the victims they should "call guys [they knew] up and sleep with them for money." He also stated he would subtract the cost of the motel room from the cost of the bus tickets.

On the evening of January 6th, the appellant left the motel to purchase food for the victims. He also purchased beer for their consumption. T.D.E. consumed two or three cans of beer. C.E. abstained.

On the morning of January 7, 1994, the victims were supposed to board a bus for South Carolina at 6:00 a.m. They awoke when the appellant came to the room at 11:00 a.m. The appellant took the victims to the Highway 73 Motel in Maryville. The victims refused to stay at the motel after seeing how "nasty" the room was kept. They returned to the Americana Motel. Later, the appellant had sexual intercourse with C.E. while T.D.E. sat on the side of the bed.

On the morning of January 8, 1994, the appellant gave the victims $65 and took them to a relative's home. Shortly thereafter, C.E. and her mother went to local authorities.

C.E. surrendered, and she was released to her mother. C.E. gave a police officer a statement outlining what had occurred between the evening of January 5th and January 8th.

The investigating officer had C.E. make a telephone call to the appellant. C.E. told the appellant the police were asking about him and the Americana Motel. The appellant was aware of the Americana and the Highway 73 motels. The appellant told C.E. to tell the police she did not know him and she was never at the Americana Motel. He also told C.E. he did not use his real name, and he did not put his vehicle tag number on the registration form at the Americana Motel. He did use his real name and gave his tag number at the Highway 73 Motel. He explained to C.E. he had an alibi. Her father and Teresa Jones would tell the police and testify in court that he was with them during the time in question.

When the officers went to arrest the appellant, they introduced themselves to the person answering the door. They immediately heard someone running to the rear of the house. The officers ran to the back of the residence. They saw the appellant being taken into custody by two officers as he exited a back window. Although no one had indicated the reason why the appellant was being arrested, the appellant told the officers "that he was being framed by the girls, that he didn't know anything about any rape."

The appellant gave the officers a statement following his arrest. He admitted being at the Highway 73 Motel, but he denied going to the Americana Motel. He told the police he had an alibi defense, namely, he was with C.E.'s father and Teresa Jones during the dates in question.

The victims testified they were afraid of the appellant. However, they did not feel they could seek assistance from another person while they were with the appellant. If they contacted a parent or relative, they feared they would be arrested by the police, placed in jail, and later placed in a juvenile penal institution. They did not have sufficient funds to travel to South Carolina. In other words, they were dependent upon the appellant.

I.

It is a well-settled rule of law that an accused can not be convicted of a felony on the uncorroborated testimony of an accomplice.[3] A person is an accomplice if he or she knowingly, voluntarily, and with common intent participates with the principal offender in the commission of the crime alleged in the charging instrument.[4] A child can be an accomplice in a sex-related case.[5] When a child is deemed an accomplice, the testimony of the child, like an adult, must be corroborated.[6]

The question of who determines whether a witness is an accomplice depends upon the evidence introduced during the course of a trial.[7] When the undisputed evidence clearly establishes the witness is an accomplice as a matter of law, the trial court, not the

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[3]State v. Bigbee, 885 S.W.2d 797, 803 (Tenn. 1994); State v. Harris, 839 S.W.2d 54, 75 (Tenn. 1992), cert. denied, 507 U.S. 954, 113 S.Ct. 1368, 122 L.Ed.2d 746 (1993); State v. Henley, 774 S.W.2d 908, 913 (Tenn. 1989), cert. denied, 497 U.S. 1031, 110 S.Ct. 3291, 111 L.Ed.2d 800 (1990); Monts v. State, 214 Tenn. 171, 191, 379 S.W.2d 34, 43 (1964); Boulton v. State, 214 Tenn. 94, 96, 377 S.W.2d 936, 938 (1964); Scott v. State, 207 Tenn. 151, 155, 338 S.W.2d 581, 583 (1960); Sherrill v. State, 204 Tenn. 427, 433, 321 S.W.2d 811, 814 (1959); Stanley v. State, 189 Tenn. 110, 115-16, 222 S.W.2d 384, 386 (1949); Shelly v. State, 95 Tenn. 152, 155, 31 S.W. 492, 493 (1895); State v. McKnight, 900 S.W.2d 36, 47 (Tenn. Crim. App. 1994), per. app. denied (Tenn. 1995); State v. Adkisson, 899 S.W.2d 626, 643 (Tenn. Crim. App. 1994); Bethany v. State, 565 S.W.2d 900, 903 (Tenn. Crim. App.), cert. denied (Tenn. 1978); Prince v. State, 529 S.W.2d 729, 731 (Tenn. Crim. App.), cert. denied (Tenn. 1975); Gable v. State, 519 S.W.2d 83, 84 (Tenn. Crim. App. 1974), cert. denied (Tenn. 1975); Henley v. State, 489 S.W.2d 53, 56 (Tenn. Crim. App.), cert. denied (Tenn. 1972); Scola v. State, 4 Tenn. Crim. App. 485, 489, 474 S.W.2d 144, 145, cert. denied (Tenn. 1971).

[4]See Monts, 214 Tenn. at 191, 379 S.W.2d at 43; Clapp v. State, 94 Tenn. 186, 194, 30 S.W. 214, 216 (1895); Adkisson, 899 S.W.2d at 643; State v. Roe, 612 S.W.2d 192, 194 (Tenn. Crim. App. 1980), per. app. denied (Tenn. 1981); Bethany, 565 S.W.2d at 903; Conner v. State, 531 S.W.2d 119, 123 (Tenn. Crim. App.), cert. denied (Tenn. 1975); Smith v. State, 525 S.W.2d 674, 676 (Tenn. Crim. App. 1974), cert. denied (Tenn. 1975); Marshall v. State, 497 S.W.2d 761, 764 (Tenn. Crim. App.), cert. denied (Tenn. 1973); Moore v. State, 1 Tenn. Crim. App. 190, 194, 432 S.W.2d 684, 686-87, cert. denied (Tenn. 1968).

[5]See Boulton, 214 Tenn. at 96, 377 S.W.2d at 937(boy fourteen years of age an accomplice); Scott v. State, 207 Tenn. 151, 155, 338 S.W.2d 581, 583 (1960)(teenager); Sherrill, 204 Tenn. at 432-33, 321 S.W.2d at 814(children ten and eleven years of age accomplices); Henley v. State, 489 S.W.2d 53, 56 (Tenn. Crim. App.), cert. denied (Tenn. 1972)(fifteen-year-old an accomplice); Underwood v. State, 3 Tenn. Crim. App. 583, 587, 465 S.W.2d 884, 886 (1970), cert. denied (Tenn. 1971)(sixteen-year-old an accomplice); Britt v. State, 1 Tenn. Crim. App. 768, 772, 450 S.W.2d 48, 50 (1969), cert. denied (Tenn. 1970)(a stepdaughter between ages of nine and sixteen who engaged in sexual intercourse with a stepfather an accomplice).

[6]Boulton, 214 Tenn. at 96-97, 377 S.W.2d at 938; Scott, 207 Tenn. at 158, 338 S.W.2d at 584; Sherrill, 204 Tenn. at 433, 321 S.W.2d at 814-15; Henley, 489 S.W.2d at 56; Underwood, 3 Tenn. Crim. App. at 587, 465 S.W.2d at 886; Britt, 1 Tenn. Crim. App. at 773, 450 S.W.2d at 50.

[7]Bethany, 565 S.W.2d at 903.

jury, must decide this issue.[8] On the other hand, if the evidence adduced at trial is unclear, conflicts, or subject to different inferences, the jury, as the trier of fact, is to decide if the witness is an accomplice.[9] If the jury finds the witness is an accomplice, the jury must decide whether the evidence adduced was sufficient to corroborate the witnesses' testimony.[10]

II.

A.

The appellate courts have addressed the nature, quality, and sufficiency of the evidence required to corroborate the testimony of an accomplice on numerous occasions. In Sherrill v. State,[11] the Supreme Court said:

> The rule of corroboration as applied and used in this State is that there must be some evidence independent of the testimony of the accomplice. The corroborating evidence must connect, or tend to connect the defendant with the commission of the crime charged; and, furthermore, the tendency of the corroborative evidence to connect the defendant must be independent of any testimony of the accomplice. The corroborative evidence must of its own force, independently of the accomplice's testimony, tend to connect the defendant with the commission of the crime.
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> This corroborative evidence need not be direct evidence, but the rule of corroboration is satisfied even though the evidence is entirely circumstantial. The corroboration need not of itself be adequate to support a conviction, but it must be sufficient to meet the requirements of the rule and it is sufficient to meet the requirements of the rule if it fairly and legitimately tends to connect the defendant with the commission of the crime charged.[12]

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[8]Ripley v. State, 189 Tenn. 681, 687, 227 S.W.2d 26, 29 (1950); Bethany, 565 S.W.2d at 903; Smith, 525 S.W.2d at 676; Abbott v. State, 508 S.W.2d 801, 803 (Tenn. Crim. App.), cert. denied (Tenn. 1974).

[9]Ripley, 189 Tenn. at 687, 227 S.W.2d at 28-29; Bethany, 565 S.W.2d at 903; Bright v. State, 563 S.W.2d 908, 910 (Tenn. Crim. App. 1977), cert. denied (Tenn. 1978); Conner, 531 S.W.2d at 123; Smith, 525 S.W.2d at 676-77; Abbott, 508 S.W.2d at 803.

[10]Ripley, 189 Tenn. at 687, 227 S.W.2d at 28-29.

[11]204 Tenn. 427, 321 S.W.2d 811 (1959).

[12]204 Tenn. at 435, 321 S.W.2d at 815.

In short, the evidence must confirm in some manner that (a) a crime has been committed and (b) the accused committed the crime.[13]

B.

The evidence corroborating the testimony of an accomplice may consist of direct evidence, circumstantial evidence, or a combination of direct and circumstantial evidence.[14] The quantum of evidence necessary to corroborate an accomplice's testimony is not required to be sufficient enough to support the accused's conviction independent of the accomplice's testimony[15] nor is it required to extend to every portion of the accomplice's testimony.[16] To the contrary, only slight circumstances are required to corroborate an accomplice's testimony.[17] The corroborating evidence is sufficient if it connects the accused with the crime in question.[18]

Evidence which merely casts a suspicion on the accused or establishes he or she had an opportunity to commit the crime in question is inadequate to corroborate an accomplice's testimony.[19] Also, evidence that the defendant was present at the situs of the crime and had the opportunity to commit the crime is not sufficient.[20]

III.

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[13]Boulton, 214 Tenn. at 99, 377 S.W.2d at 939; see State v. Sparks, 727 S.W.2d 480, 483 (Tenn. 1987); Mathis v. State, 590 S.W.2d 449, 454 (Tenn. 1979); Bethany, 565 S.W.2d at 903; Henley, 489 S.W.2d at 56.

[14]Sparks, 727 S.W.2d at 483; Henley, 489 S.W.2d at 56.

[15]Sparks, 727 S.W.2d at 483.

[16]Stanley v. State, 189 Tenn. 110, 116-17, 222 S.W.2d 384, 387 (1949).

[17]Sparks, 727 S.W.2d at 483; Stanley, 189 Tenn. at 116, 222 S.W.2d at 386; Bolton v. State, 591 S.W.2d 446, 448 (Tenn. Crim. App.), per. app. denied (Tenn. 1979); Bethany, 565 S.W.2d at 904; Bright, 563 S.W.2d at 910; Boaz v. State, 537 S.W.2d 716, 718 (Tenn. Crim. App. 1975), cert. denied (Tenn. 1976).

[18]Stanley, 189 Tenn. at 117, 222 S.W.2d at 387.

[19]Boulton, 214 Tenn. at 99, 377 S.W.2d at 939.

[20]Mathis, 590 S.W.2d at 454.

The question of whether the two victims were accomplices was controverted. The appellant contended during the trial and in this Court that the victims were accomplices as a matter of law. The State of Tennessee contended in the trial court it was a question of fact whether the victims were accomplices. In this Court, the state contends the issue is academic because the evidence is sufficient to corroborate the testimony of the victims.

This Court is of the opinion the question of whether the victims were accomplices was one of fact for the jury, albeit a very close question. It is unknown whether the jury found the victims were not accomplices, or the victims were accomplices, but their testimony was corroborated. The facts support both views.

There was sufficient evidence to corroborate the victims' testimony. During the telephone conversation with C.E., the appellant told C.E. to deny she was at the Americana Motel with him. He also stated he did not use his real name or give the clerk the tag number of his van when he registered at the Americana. C.E. did not mention the Highway 73 Motel. The appellant did mention this motel and admitted he used his real name and gave his license number to the clerk. He also told C.E. he had concocted an alibi defense.

When the officers went to arrest the appellant, he attempted to flee the residence. Flight can give rise to an inference that a party is guilty of a crime. After the officers had wrestled the appellant to the ground, he told the officers the girls were framing him and he was unaware of a rape. No one had mentioned why the officers were there to arrest the appellant prior to his making this statement.

The appellant gave the officers a statement following his arrest. He admitted being at the Highway 73 Motel, but he denied going to the Americana Motel.

In conclusion, the appellant's own statements are sufficient to corroborate the testimony of the victims. He admitted checking into the Americana Hotel; he admitted going to the Highway 73 Motel; he attempted to flee when the officers arrived at the residence; and he stated spontaneously he was being framed and he was unaware of a rape before knowing why the officers were there to arrest him. He concocted an alibi defense. He told C.E. to deny she had been to the Americana Motel and to deny she knew him. He told C.E. she could tell police she met him one time in October and he was not present at the motel.

The appellant was charged in indictment number 8227 with (a) contributing to the delinquency of T.D.E. in Count I and (b) contributing to the unruliness of T.D.E. in Count II. The jury returned a verdict of guilty in both counts. The verdict returned in Count II states: "We the jury find the Defendant guilty of contributing to the unruliness of a minor and assess no fine." The trial court approved the verdict. However, the judgment states the appellant was convicted of "Contributing to Del." in Count II.

Obviously, there was a clerical mistake made when typing the nature of the offense on the judgment. Rule 36, Tennessee Rules of Criminal Procedure, provides that "[c]lerical mistakes in judgments . . . arising from oversight or omission may be corrected by the court at any time. . . ." Therefore, this cause is remanded to the trial court for the entry of an amended judgment which reflects the appellant was convicted of contributing to the unruliness of a minor in Count II of indictment number 8227.

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JOE B. JONES, PRESIDING JUDGE

CONCUR:

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DAVID G. HAYES, JUDGE

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WILLIAM M. DENDER, SPECIAL JUDGE