

**FILED**

**Nov. 19, 1996**

**IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE**

**Edith G. Crowe, Jr.  
Appellate Court Clerk**

**AT JACKSON**

**SEPTEMBER SESSION, 1996**

<b>STATE OF TENNESSEE,</b>	)	<b>C.C.A. NO. 02C01-9510-CC-00323</b>
	)	
Appellee,	)	
	)	
<b>VS.</b>	)	<b>HENRY COUNTY</b>
	)	
<b>CHRISTIAN DALE JOHNSON,</b>	)	<b>HON. JULIAN P. GUINN</b>
	)	<b>JUDGE</b>
	)	(Aggravated Sexual Battery)
Appellant.	)	(Aggravated Burglary)

**ON APPEAL FROM THE JUDGMENT OF THE  
CIRCUIT COURT OF HENRY COUNTY**

FOR THE APPELLANT:

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OPINION FILED \_\_\_\_\_

AFFIRMED

DAVID H. WELLES, JUDGE

# OPINION

The Defendant, Christian Johnson, appeals as of right pursuant to Rule 3 of the Tennessee Rules of Appellate Procedure. He was convicted by a Henry County jury of aggravated sexual battery and aggravated burglary. For the aggravated sexual battery, he was sentenced as a Range I offender to serve eight years in the Department of Correction. For the aggravated burglary, he was sentenced as a Range I offender to three years to be served concurrently with the other sentence. The Defendant appeals his conviction. We affirm the judgment of the trial court.

On the night of July 11, 1994, the ten-year-old victim in this case, B.<sup>1</sup>, was spending the night at the home of Donna Krezinski, and her boyfriend, George Briley, in Paris, Tennessee. The victim was a friend of Ms. Krezinski's two girls, ages 4 and 5. The children went to bed at approximately 10:00 that evening. The two adults went to bed between 10:30 and 11:00 p.m.

Ms. Krezinsky and Mr. Briley were sleeping in the front master bedroom, which was near the front door. They were using a box fan to cool the room because the house was hot. The children were in a bedroom in the middle of the house. The bedroom had no windows, but was next to the kitchen and dining room. The room was lit by a small lamp that was covered with a sheet to create a night light. The three children were sleeping in a bed that was pushed to the wall. The two younger children were closer to the wall, and the victim was lying

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<sup>1</sup> The policy of this Court prohibits the use of the names of minor victims in sexual abuse cases.

on the outside part of the bed closest to the door. The kitchen had a door that led to a back porch. This door was used by the occupants as the main entrance to the house. The door opened inward and was secured by a hook and eye latch lock of the type commonly used for screen doors.

At approximately 5:51 a.m. on July 12, 1994, Ms. Krezinski and Mr. Briley were awakened by someone knocking at the front door. They checked the front door, but did not see anyone. Mr. Briley checked the house, including the locks on the doors, found that they were secure, and returned to bed.

After that, the the victim was awakened by someone in her bedroom, touching her genitals. She was wearing a nightshirt and panties, and was touched underneath the panties. She opened her eyes and saw a man, who she said was ugly, with long hair on the top and shaved on the sides. At that time, the man was standing at the end of the bed. The man asked the victim whether she was "Tara" and where was her mother. She was scared and pulled the sheet over her eyes. She hid under the sheet and did not see or hear the man leave the room. The other children remained asleep during the incident. B. fell asleep.

The victim's mother and stepfather arrived at the Krezinski residence shortly before 7:00 a.m. to pick up Mr. Briley for work. The victim heard her mother in the other room, got out of bed, and told her mother about the incident. After a search of the house, they discovered that the eye of the lock to the back door had been torn from the door, and that a mop had been moved out of place.

Ms. Krezinski called the police. From the description that the victim gave of the man in her room, her mother identified Christian Johnson as someone she knew who fit the description. B. had seen the Defendant on one occasion several months before the incident. Ms. Krezinski also knew the Defendant from work, and stated that he had been in her home approximately one to two weeks before the incident. Ms. Krezinski did not consent to the Defendant being in her home on the morning on July 12, 1994.

The police canvassed Poplar Street near the Krezinski home to determine whether a child named "Tara" lived there. No neighbors who were contacted knew a child by that name. The police also looked for the Defendant and found him at the Magnolia Apartments. When they located him at 9:15 a.m., he stated that he had been with his girlfriend from midnight until 9:00 a.m. that morning. He said her name was Selina Hosford and that she lived at her uncle's home on Depot Street. The Defendant stated he didn't know the uncle's name, nor would he give directions to the house. The police questioned the occupants of the houses on Depot Street to find anyone who knew Selina Hosford. No one stated that they knew or had heard of her. A friend of the Defendant testified at trial that the Defendant came to her house at 6:00 a.m. on July 12. Her home is located one block behind the Krezinski home.

Dr. Debra Selby conducted a physical examination of B. at Henry County Medical Center. She observed redness at the opening to the vagina, but the hymen was intact. She reported that this was consistent with sexual abuse. The police and a Department of Human Services worker interviewed the victim. At the police station, B. was shown a photo array which included the Defendant.

When asked to indicate if one of the six subjects in the photographs was the man in her room, she identified the Defendant.

The Defendant presents one issue on appeal, that the evidence was insufficient to support his conviction beyond a reasonable doubt. When an accused challenges the sufficiency of the convicting evidence, the standard is whether, after reviewing 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). 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. State v. Pappas, 754 S.W.2d 620, 623 (Tenn. Crim. App.), perm. to appeal denied, id. (Tenn. 1987). Nor may this court reweigh or reevaluate the evidence. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978).

A jury verdict approved by the trial judge accredits the State's witnesses and resolves all conflicts in favor of the State. State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973). On appeal, the State is entitled to the strongest legitimate view of the evidence and all inferences therefrom. Cabbage, 571 S.W.2d at 835. Because a verdict of guilt removes the presumption of innocence and replaces it with a presumption of guilt, the accused has the burden in this court of illustrating why the evidence is insufficient to support the verdict returned by the trier of fact. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982); Grace, 493 S.W.2d at 476.

The Defendant asserts that inconsistencies in testimony by the State's witnesses preclude a showing of sufficient evidence to support the conviction. The Defendant first notes that the physician testified that vaginal redness may have other causes. He contends that the light in the room was dim and that the other children did not wake up, and that the victim went back to sleep. Therefore, he argues that the victim could have been mistaken or dreaming. He contends that there was a lack of physical evidence collected at the scene. Finally, he contends that although the victim testified that the Defendant wore a T-shirt and jeans, her mother stated that her daughter could not describe what he was wearing.

The evidence, viewed in the light most favorable to the state, shows that the Defendant broke into the Krezinski home and fondled the victim. An aggravated sexual battery occurs with unlawful sexual contact with a victim by the defendant when the victim is less than thirteen years old. Tenn. Code Ann. § 39-13-504(a)(4). In the case sub judice, the victim was ten years old when the battery occurred. She testified that she woke up with a man touching her genitals. The description she gave of the perpetrator's hairstyle was like the Defendant's hairstyle. The Defendant had recently been inside the Krezinski home and had used the back door. One of the Krezinski children, Theresa, has a name which sounds similar to "Tara", the name the Defendant said to the victim. There is direct evidence that the victim saw a man fitting the Defendant's description standing by her bed. The victim had seen the Defendant on a prior occasion and identified him from a photo lineup. She also identified the Defendant in court as the man standing by her bed. Another witness placed the Defendant within one block of the crime scene at about the time of the crime.

Although other causes were possible, the redness in the vaginal area was consistent with sexual abuse and with the victim's testimony. There is sufficient evidence to support each element of aggravated sexual battery.

An aggravated burglary is committed when one enters a habitation without the effective consent of the owner, with the intent to commit a felony, theft or assault. Tenn. Code. Ann. § 39-14-402, 39-14-403, 39-14-401(1)(A),(3). In this case, the "owner" of the home was Ms. Krezinski, who leased the house. She testified that she did not give consent to the Defendant to be in her home. The lock that was torn from the door indicates a forced entry. The victim saw the Defendant in the bedroom on the morning of July 12, 1994, sometime between approximately 5:51 a.m. and approximately 6:00 a.m. Although the Defendant claimed he was with his girlfriend at that time, no evidence was presented to corroborate his alibi. Wanda Lee testified that the Defendant came to her house around 6:00 a.m. that morning. She stated that he had been to her home many times, but it was very unusual for him to be there so early. Ms. Lee's home at the time of the incident was on Brewer Street, one street over from Poplar and the Krezinski home. There is sufficient evidence to support a conviction of aggravated burglary.

The jury obviously accredited the testimony of the State's witnesses and resolved any conflicts in the proof in the state's favor. In viewing the evidence in the light most favorable to the State, we cannot conclude that the evidence does not support the jury's verdict. We conclude that the elements of the crimes of aggravated burglary and aggravated sexual battery could have been found

beyond a reasonable doubt and that the evidence is sufficient to uphold the jury's verdict on both counts.

Therefore, we affirm the judgment of the trial court.

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DAVID H. WELLES, JUDGE

CONCUR:

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JOE B. JONES, PRESIDING JUDGE

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JERRY L. SMITH, JUDGE