

IN THE COURT OF CRIMINAL APPEALS OF
TENNESSEE

AT NASHVILLE

SEPTEMBER 1999 SESSION

FILED

November 29, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,
#M1998 00255 CCA R3 CD
Appellee,

VS.

MICHAEL BRAXTON,
Appellant.

* C.C.A.
* DAVIDSON COUNTY
* Honorable Steve R. Dozier, Judge
* (Aggravated Rape/Aggravated Assault)
*

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OPINION FILED: _____

AFFIRMED

JOHN EVERETT WILLIAMS,
Judge

OPINION

INTRODUCTION

The defendant, Michael Braxton, appeals from his convictions by a Davidson County jury of aggravated rape and aggravated assault. He was sentenced to the Department of Correction for 23 years for the aggravated rape and five years for the aggravated assault; these two sentences were ordered to be served concurrent to each other but consecutive to another preceding conviction from South Carolina. In this appeal, the defendant challenges only his convictions, arguing that:

1. The trial court erred in denying his Rule 412 motion; and
2. there was insufficient evidence to find him guilty beyond a reasonable doubt.

After careful review of the record and applicable law, we AFFIRM the defendant's convictions.

BACKGROUND

As we set forth the bulk of the evidence presented at trial in order to analyze the defendant's sufficiency challenge, we provide only a brief skeletal outline here. The victim and the defendant, Michael Braxton, were colleagues and friends at Tennessee State University when on April 15, 1996, Braxton offered her a ride to and from class. On the way back from class, looking for a place to study, the two arrived at a Days Inn Motel in Nashville, Tennessee. After checking in, the two went to their room. Hours later, at approximately 4:00 a.m., the victim, crying and dazed, left the room and went down to the lobby of the motel. She told the night manager that she had been "molested" and "raped;" he then phoned the police. Officer Hullett of the Nashville Police Department responded to the call and interviewed the victim. She was crying, upset, and had apparent bruising about her face and neck; further, she complained of a bite on her neck and pain in her wrist. She told the officer that she had been assaulted by her friend and that he had, without her consent and despite her resistance, performed oral sex on her. The defendant, Michael Braxton, was then arrested in the hotel room. The victim was taken to Nashville General Hospital where Dr. Sinor examined her. X-rays revealed a recent fracture in her wrist, and the doctor noted a bite mark on her neck.

These offenses occurred April 15, 1996. The defendant was indicted in July 1996. The jury returned guilty verdicts on March 24, 1998, and the defendant was sentenced on May 15, 1998. From those convictions, he now appeals.

ANALYSIS

RULE 412

The defendant contends that the trial court improperly denied his Rule 412 motion. See Tenn. R. Evid. 412. Rule 412 was passed by the legislature with the intention of protecting victims of rape from further pain and harassment. Accordingly, Rule 412 establishes certain procedures for and limitations on the introduction of evidence pertaining to the sexual history of the victim. In relevant part, Rule 412 provides:

- (c) Specific instances of conduct – Evidence of specific instances of a victim’s sexual behavior is inadmissible unless admitted in accordance with the procedures in subdivision (d) of this rule, and the evidence is:
- (1) Required by the Tennessee or United States Constitution, or
 - (2) Offered by the defendant on the issue of the credibility of the victim, provided the prosecutor or victim has presented evidence as to the victim’s sexual behavior, and only to the extent needed to rebut the specific evidence presented by the prosecutor or victim, or
 - (3) If the sexual behavior was with the accused, on the issue of consent, or
 - (4) If the sexual behavior was with persons other than the accused,
 - (i) to rebut or explain scientific or medical evidence, or
 - (ii) to prove or explain the source of semen, injury, disease, or knowledge of sexual matters, or
 - (iii) to prove consent if the evidence is of a pattern of sexual behavior so distinctive and so closely resembling the accused’s version of the alleged encounter with the victim that it tends to prove that the victim consented to the act charged or behaved in such a manner as to lead the defendant reasonably to believe that the victim consented.

Tenn. R. Evid. 412(c).

The defendant sought the admission of evidence of the victim's prior sexual relations with two men, and in particular, the admission of evidence of an incident during one of these relations in which she indicated that she was assaulted. The defendant argues that this evidence should be admissible as establishing a pattern of sexual behavior. See Tenn. R. Evid. 412(c)(4)(iii). In consideration of the defendant's request to introduce such evidence, the trial court held a hearing in which it found that the proffered evidence did not establish a pattern sufficient to meet the requirements of 412(c)(4)(iii). We agree.

When a defendant challenges a trial court's ruling on the admissibility of evidence under Rule 412, our review is limited. As with other evidentiary matters, the admissibility of evidence under Rule 412 lies within the discretion of the trial court. See State v. Sheline, 955 S.W.2d 42, 46 (Tenn. 1997). We will not disturb the trial court's decision absent an abuse of discretion.

In this case, it cannot be convincingly argued that the trial court abused its discretion. The victim's testimony at the hearing established only that during the course of a prior relationship, her boyfriend, after an argument, choked her and then later in that same day the two nevertheless engaged in consensual sex. She did not report the incident to the authorities and at no time regarded the prior encounter as rape. How this testimony could establish a pattern sufficient for 412(c)(4)(iii) escaped the trial court, and it escapes this Court as well. The defendant has made no showing that the trial court abused its discretion, and therefore we affirm the decision of the trial court.

It appears, although not so clearly, that the defendant also contends that the trial court erred in denying the introduction of testimony about the psychological history of the victim. The defendant sought to introduce testimony of former counselors the victim had seen at Tennessee State University regarding her prior relationships. Again, this is evidence within the scope of Rule 412; however, the defendant misconstrues the actions of the trial court. It issued no ruling on the defendant's suggested line of questioning, but rather stated,

after the hearing described above and in response to a question posed by the State:

I mean, he can call them [the psychological witnesses] and offer – there would have to be a jury out. I mean, there shouldn't be any reference to any of this counseling or anything else. I mean, it's just – I don't see how it's relevant, that – that [the victim] has had intimate relationships with two people ... But, if he wants to make some Jury-out hearing that – how it is – how it should be allowed, then depending on what she says on direct – or I he claims she opened the door for something, I mean, we'll just have to see.

The defendant never requested a “jury-out” hearing, never sought to introduce this evidence at trial, and makes no argument that the evidence is relevant. Therefore, the issue is waived.

SUFFICIENCY OF THE EVIDENCE

The defendant next contends that the evidence offered at trial was insufficient for the jury to find guilt beyond a reasonable doubt. He argues that the evidence is insufficient because it is circumstantial and does not exclude other reasonable hypotheses.

In order to review this claim, we set forth in greater detail the evidence presented to the jury, but first, our review is limited. In determining the sufficiency of the evidence, this Court does not reweigh or reevaluate the evidence. See 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. See State v. Bigbee, 885 S.W.2d 797, 803 (Tenn. 1994); State v. Harris, 839 S.W.2d 54, 75 (Tenn. 1992). On appeal, the state is entitled to the strongest legitimate view of the evidence and all legitimate or reasonable inferences which may be drawn therefrom. *Id.* This Court will not disturb a verdict of guilt due to the sufficiency of the evidence unless the defendant demonstrates that the facts contained in the record and the inferences which may be drawn therefrom are insufficient, as a matter of law, for a rational trier of fact to find the accused guilty beyond a reasonable doubt. See State v. Brewer, 932 S.W.2d 1, 19 (Tenn. Crim. App. 1996). Accordingly, it is the appellate court's duty to affirm the conviction if the evidence, viewed under these standards, was sufficient for any rational trier of fact to have the essential

elements of the offense beyond a reasonable doubt. See Tenn. R. App. P. 13(e); Jackson v. Virginia, 443 U.S. 307, 317, 99 S.Ct. 2781, 2789 (1979); State v. Cazes, 875 S.W.2d 253, 259 (Tenn. 1994).

Aggravated Rape

The defendant contends that the evidence was insufficient to support his conviction for aggravated rape. He argues that, save the “heavily impeached and contradictory testimony of the victim,” there exists no evidence.

Tennessee Code Annotated § 39-13-502 sets forth the statutory requirements of Aggravated Rape in relevant part:

- (b) Aggravated rape is unlawful sexual penetration of a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:
 - (1) Force or coercion is used to accomplish the act and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;
 - (2) The defendant causes bodily injury to the victim;
 - (3) The defendant is aided and abetted . . .

Tenn. Code Ann. § 39-13-502(a)(1-3) (emphasis added).

Further, “sexual penetration” is defined as “sexual intercourse, cunnilingus, fellatio, anal intercourse or any other intrusion” Tenn. Code Ann. § 39-13-501(7). “Bodily injury” is defined as “a cut, abrasion, bruise, burn or disfigurement; physical pain or temporary illness or impairment of the function of a bodily member, organ, or mental faculty.” Tenn. Code Ann. § 39-11-106(a)(2).

On direct examination, the victim testified that she met the defendant at Tennessee State University, where they both attend college. She said that they were friends, but never romantically involved, and would talk on the phone, workout and eat together. She described one evening during which they went to the gym together then had dinner in the car overlooking the lights of Nashville. She said that during this and their other meetings nothing romantic ever

transpired; in fact, she said that she had told the defendant that she wanted to be only friends and “nothing else.”

On the night of April 15, 1996, she said that the defendant drove her to class at the downtown campus. After their classes, the defendant then drove her to the drug store to purchase some soap and shampoo. After leaving, she said that the two talked about finding a place to study, as her dorm room was too loud. She said that she suggested that the two go to his mother’s house, but he declined. Finally, she said the two ended up at the Days Inn Motel, the defendant’s suggestion. She said that as the two checked into and arrived at their room, she discussed with the defendant the “sleeping arrangements,” as there was only one bed. She said that she told the defendant that they would sleep separately at which time he became “offended.”

Once in the room, she said that she went to bed to do her homework while the defendant went to the store for food and drink. She said that he returned twenty minutes later with wine coolers and food. She said that he then went to the Jacuzzi, which was broken, and called the front desk to complain. She said that the manger came to the room and then gave them a new room. Once there, he went to the Jacuzzi while she began doing her homework in the bed. Before getting in the bed under the covers, she removed her pants. The defendant then called to her and asked her if she wanted to join him in the Jacuzzi, she responded, “no--stop acting freaky.”

When the defendant came out of the bathroom, he sat on the couch and later on the bed talking about the death of his cousin and grandmother. She tried to comfort him, touching him on the arm, when suddenly he was on top of her on the bed. She said that she told him to “get up and turn the lights on and get off me.” She said that he then started kissing her; again, she repeated that he stop and harshly rebuked him. He then grabbed her and, restraining her, took her clothes off. As she screamed, he tried to kiss her and to engage in intercourse; however, she managed to prevent intercourse by squeezing her legs tightly together. At this point, he stopped and told her to get her things and go.

She got up, dressed, and then started arguing with the defendant. He grabbed her again and pushed her back on the bed. It was at this point that the victim testified that her wrist, bent awkwardly, was fractured. Again, he restrained her, removed her clothes, and tried to engage in intercourse. She frustrated his attempts again while all the time calling out for him to stop. During this attack, he bit her on the neck and performed oral sex on her. Afterwards, he again tried to engage in intercourse at which time she said that if he was going to “do this” that he should at least put on a condom. He got off her, went across the room, and got a condom. Again, he attempted to engage in intercourse but she frustrated this attempt. Finally, he stopped and fell asleep.

She then went to the hotel lobby, told the manager to call the police, talked to the police, and went to the hospital. At the hospital, she said they treated her injuries and released her. She later identified her attacker as the defendant and repeated this identification at trial.

On cross-examination, defense counsel confronted the victim with several perceived inconsistencies in her description of the rape as well as perceived gaps in her story. He questioned exactly what she was doing as far as struggling at various points during the attack, exactly who took her clothes off, exactly why she did not try to leave the room earlier, and exactly why her statement to police differed from her testimony.

Roger Monroe, a manager at the Days Inn Motel, testified that he was working the night of April 15, 1996, into the morning of April 16. He said that he checked the defendant and the victim into a hotel room that night. He said that the defendant requested a room with a Jacuzzi and paid by credit card. He said that thirty minutes later, the defendant called and complained that the Jacuzzi was inoperable. Monroe proceeded to the room where he observed the defendant “half-dressed” and the victim laying by herself appearing relaxed on the bed with pencil and paper. He then gave the two another room with a Jacuzzi, directly above the lobby. Monroe testified that oftentimes any noise from this room over the “average” could be heard at the front desk. On the night in question, Monroe testified that he neither heard loud noises from this room nor

received any complaints of noise. However, on cross-examination, Monroe recalled that, in fact, he might have heard a noise from the room that “concerned him” and might have called the room, at which time the phone was answered but no one spoke. The noise, as best as he could remember, subsided completely.

Later that night or morning, he testified that the victim came down to the lobby. He said she appeared daze-like, was crying, and was holding her hands to her mouth. He asked her what he could do and she responded, “Call the police.” He said that she said she had been “molested” and “raped.” He told her to go into the lobby’s bathroom and lock the door while he called the police. He said that the police wanted to speak with the victim over the phone, so she came out of the bathroom and spoke with them. He said she complained of an injured wrist, and when Monroe asked her if she knew who did this, she responded “yes.”

Officer Calvin Hullett testified that on April 16, 1996, he responded to a call at the Days Inn Motel in Nashville. He said that he interviewed the victim, who was upset and was crying. He said that he noticed bruising about her face and neck. When he asked what had happened, he said that the victim responded that she had been attacked in the motel room and that her attacker had performed oral sex on her. He said that he then inquired into her relationship with the attacker to which she responded that they were “friends.” He said that he then notified the Sex Abuse Unit and proceeded to the motel room. In the room, he said that he found the defendant laying in the bed in the nude. Further, he added that the room appeared to be in disarray with alcoholic beverages on the coffee table and a condom package on the floor.¹

Dr. Gale Sinor testified that on April 16, 1996, she treated the victim for two injuries: a wrist fracture and a bite mark to her neck. She further said that the wrist fracture, showing no signs of healing, appeared to be a recent injury (i.e., within a few days).

¹ Photographs of this scene were also introduced through the testimony of Officer Hullett.

We conclude that the defendant has not carried his burden of demonstrating that this evidence is insufficient to support the verdict. The testimony, credited by the jury, clearly establishes facts sufficient to support the conviction of aggravated rape. The testimony of the victim, Officer Hullett, and Dr. Sinor establish that she was physically injured by the defendant during this rape, see Tenn. Code Ann. § 39-13-502(a)(2), while her own testimony establishes that the defendant performed nonconsensual oral sex on her thereby fulfilling the requirement of “sexual penetration,” see Tenn. Code Ann. § 39-13-502(a). The defendant has offered no proof or convincing argument to the contrary; therefore, we find no merit in this issue.

Aggravated Assault

The defendant also contends that the evidence was insufficient to support the conviction of aggravated assault.

Tennessee Code Annotated § 39-13-102(a) sets forth the statutory requirements of Aggravated assault:

- (a) A person commits aggravated assault who:
 - (1) Intentionally or knowingly commits an assault as defined in § 39-13-101 and:
 - (A) Causes serious bodily injury to another, or
 - (B) Uses or displays a deadly weapon; or
 - (2) recklessly commits an assault as defined in § 39-13-101(a)(1), and:
 - (A) Causes serious bodily injury to another, or
 - (B) Uses or displays a weapon.

The testimony, set out above, establishes facts sufficient to support the conviction of aggravated assault. The testimony of the victim, Officer Hullett, and Dr. Sinor establish that the victim suffered bodily injury. See Tenn. Code Ann. § 39-13-102(1)(A). Her testimony further establishes that the defendant caused this injury while assaulting her. The defendant does not sufficiently challenge this testimony and has not carried his burden. Therefore, we find no merit in this issue.

CONCLUSION

Accordingly, we AFFIRM the defendant's convictions.

JOHN EVERETT WILLIAMS, JUDGE

CONCUR:

JOHN H. PEAY, Judge

DAVID H. WELLES, Judge