

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs May 23, 2023

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STATE OF TENNESSEE v. ERIK COURTNEY LEHTO, ALIAS

**Appeal from the Criminal Court for Knox County
No. 115466 Kyle A. Hixson, Judge**

No. E2022-00848-CCA-R3-CD

A Knox County jury convicted the defendant, Erik Courtney Lehto, of two counts of rape of a child, one count of solicitation of rape of a child, and one count of aggravated sexual battery for which he received an effective sentence of eighty-six years in prison. On appeal, the defendant contends the evidence presented at trial was insufficient to support his convictions. After reviewing the record and considering the applicable law, we affirm the judgments of the trial court.

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

J. ROSS DYER, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., P.J., and ROBERT H. MONTGOMERY, JR., J., joined.

Douglas P. Nanney, Knoxville, Tennessee (on appeal); Joshua D. Henrick, Knoxville, Tennessee (at trial), for the appellant, Erik Courtney Lehto.

Jonathan Skrmetti, Attorney General and Reporter; Lacey E. Wilber, Senior Assistant Attorney General; Charme Allen, District Attorney General; and Jordan Murray and Rachel Murray, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Facts and Procedural History

On January 15, 2019, Melissa Schubert, who formerly served as a school counselor at the victim’s elementary school, was speaking with the victim’s third-grade class concerning “stranger danger” and “good touches, bad touches.” As Ms. Schubert was discussing “what to do when someone touches where your bathing suit covers,” she noticed

the victim “got a look on her face.” The victim then raised her hand and made a statement to which Ms. Schubert informed the victim that they would talk about it after class. According to Ms. Schubert, the victim “was very quiet during the rest of the class and was looking down.” After class, the victim went to Ms. Schubert’s office at which time the two had a conversation which caused Ms. Schubert to contact her assistant principal and the school’s resource officer because they were concerned this was an “ongoing matter.”

As a result of the victim’s disclosure to Ms. Schubert, Sergeant Michael Tucker with the Knoxville Police Department responded to a “priority DCS call” at the victim’s school. Upon arriving, he spoke with the guidance counselor. Sergeant Tucker then spoke with the victim to conduct a “safety interview.” Finally, after speaking with the victim’s mother, Sergeant Tucker went to the victim’s residence and met with the defendant. At the conclusion of that conversation, Sergeant Tucker informed the defendant he had to leave the residence to which the defendant agreed without incident.

A few days later, the victim gave a forensic interview at the child advocacy center. According to the victim’s interview, which was corroborated by her trial testimony, she was sexually abused by the defendant, her biological father, on multiple occasions when she was eight years old. More specifically, the victim stated that the first incident with the defendant occurred when the defendant licked the victim’s vagina and squeezed her bottom. According to the victim, she was standing against her bedroom door and the defendant was in a “crawling position” when he placed his tongue on her uncovered vagina. After assaulting the victim, the defendant told her not to tell anyone or she would be taken away from the family. The second incident occurred “around the same time.” During this interaction, the defendant approached the victim with his pants down, exposed his penis inches away from the victim’s face, and told her that “it would make him happy if she would touch or lick his penis.” The victim refused the defendant’s request. The final incident occurred one evening when the victim woke to the defendant in her bed and “his finger in [the victim’s] anus.”

After the defendant was removed from the family home, he continued to communicate with J. L., the victim’s mother who was the defendant’s wife.¹ While most of their conversations concerned their finances and ensuring that the kids were taken care of, the two did exchange a few text messages concerning the allegations against the defendant. During one exchange in particular, the defendant stated, “I miss you all and love you very much. I think the kids need to know that.” When J. L. replied that she did not know how to respond to his message, the defendant again expressed his love of his kids and stated that “it is cruel to deny them that information.” In response, J. L. stated, “[The

¹ In order to protect minor victims of sexual abuse, this Court refers to victims and their family members by initials. No disrespect is intended.

victim's] claim of severe sexual abuse, that doesn't say love to me" to which the defendant stated, "So there is no room for forgiveness or love, in any of your lives. . . ?" In another text, the defendant told J. L. that "I lost everything and I am sorry."

In addition to testifying about her text exchanges with the defendant, J. L. also noted that between May 2018 and December 2018, the time frame of the abuse, the victim was more emotional than normal. The victim had trouble concentrating in school and was extremely clingy—the victim would want to go with J. L. whenever she went somewhere.

The defendant testified in his own defense at trial and stated he was unemployed and at the house for the majority of the time when the victim made her disclosure. Around that time, the defendant and J. L. had begun arguing about financial issues. One main point of contention between the two was the fact that the defendant had purchased the family home with a Veterans' Administration loan and only his name was on the mortgage. J. L. did not like this arrangement and wanted to have her name added to the mortgage, especially since she was the main wage earner at the time and, therefore, paying the mortgage. The defendant claimed his realtor had told him that only he could be on the mortgage, so he told J. L. that she could not be added. According to the defendant, J. L. told him that if he did not put her name on the mortgage, she would "have these allegations" brought against him, ruin his reputation, and then take the house. The defendant, however, did not take her seriously.

Although the defendant admitted to texting J. L. about forgiveness, he claimed he did not deny the allegations in the text messages because he knew that "the truth was not an option for her." His primary concern was to keep his family together. He stated that because it was hard to prove a negative and because he could not prove that something did not happen, he felt hopeless. He repeatedly denied the victim's allegations; however, he could not explain how his eight-year-old daughter knew how to discuss licking a penis or sticking a finger in an anus.

At the conclusion of the proof, the jury found the defendant guilty of two counts of rape of a child, one count of solicitation of rape of a child, and one count of aggravated sexual battery for which he received an effective sentence of eighty-six years in prison. This timely appeal followed.

Analysis

On appeal, the defendant contends the trial court "erred by overruling [the defendant's] motion for judgment of acquittal and by overruling [the defendant's] motion for new trial; and, the jury[']s verdict was against the weight of the evidence." More precisely, the defendant argues that "the credible proof" showed the victim's mother

brought the allegations against him in order to take his “home, the vehicles, and the retirement accounts in a subsequent divorce” and that there was no physical evidence to corroborate the victim’s story. The State submits that it presented sufficient evidence to support each of the defendant’s convictions and that the jury accredited the State’s proof and the victim’s testimony over that of the defendant. Upon our review, we agree with the State and affirm the jury’s verdict.

A jury conviction removes the presumption of the defendant’s innocence and replaces it with one of guilt, so that the defendant carries the burden of demonstrating to this Court why the evidence will not support the jury’s findings. *See State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). The defendant must establish that no reasonable trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979); Tenn. R. App. P. 13(e).

Accordingly, on appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable inferences which may be drawn therefrom. *See State v. Williams*, 657 S.W.2d 405, 410 (Tenn. 1983). In other words, questions concerning the credibility of witnesses and 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, and not the appellate courts. *See State v. Pruett*, 788 S.W.2d 559, 561 (Tenn. 1990).

The guilt of a defendant, including any fact required to be proven, may be predicated upon direct evidence, circumstantial evidence, or a combination of both direct and circumstantial evidence. *See State v. Pendergrass*, 13 S.W.3d 389, 392-93 (Tenn. Crim. App. 1999). Even though convictions may be established by different forms of evidence, the standard of review for the sufficiency of that evidence is the same whether the conviction is based upon direct or circumstantial evidence. *See State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011). “The standard by which the trial court determines a motion for judgment of acquittal at the end of all the proof is, in essence, the same standard which applies on appeal in determining the sufficiency of the evidence after a conviction.” *State v. Thompson*, 88 S.W.3d 611, 614-15 (Tenn. Crim. App. 2000). Moreover, “once the trial court approves the verdict as the thirteenth juror and imposes judgment,” our appellate review is limited to determining the sufficiency of the evidence. *State v. Burlison*, 868 S.W.2d 713, 719 (Tenn. Crim. App. 1993); *see* Tenn. R. Crim. P. 33(d).

As charged in this case, rape of a child is the unlawful sexual penetration of a victim by a defendant if the victim is more than three years old but less than thirteen years old. Tenn. Code Ann. § 39-13-522(a). “‘Sexual penetration’ means sexual intercourse . . . or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of the victim’s . . . body, but emission of semen is not required[.]” Tenn. Code Ann. § 39-13-501(7). Aggravated sexual battery in this case is “unlawful

sexual contact with a victim by the defendant,” and the victim is less than thirteen years old. Tenn. Code Ann. § 39-13-504(a)(4). “Sexual contact” is defined as “the intentional touching of the victim’s . . . intimate parts . . . if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification.” Tenn. Code Ann. § 39-13-501(6). Additionally, Tennessee Code Annotated section 39-12-102 provides:

(a) Whoever, by means of oral, written or electronic communication, directly or through another, intentionally commands, requests or hires another to commit a criminal offense, or attempts to command, request or hire another to commit a criminal offense, with the intent that the criminal offense be committed, is guilty of the offense of solicitation.

(b) It is no defense that the solicitation was unsuccessful and the offense solicited was not committed. It is no defense that the person solicited could not be guilty of the offense solicited, due to insanity, minority, or other lack of criminal responsibility or incapacity. It is no defense that the person solicited was unaware of the criminal nature of the conduct solicited. It is no defense that the person solicited is unable to commit the offense solicited because of the lack of capacity, status, or characteristic needed to commit the offense solicited, so long as the person soliciting or the person solicited believes that either or both have such capacity, status, or characteristic.

Here, viewing the evidence in the light most favorable to the State, the record overwhelmingly supports the jury’s verdict and the defendant’s convictions. Concerning the two convictions for rape of a child, the victim, who was eight years old at the time of the abuse, testified that on one occasion the defendant was kneeling in front of her and licked her uncovered vagina. *See* Tenn. Code Ann. § 39-13-522(a). The second rape occurred when the victim woke one night to the defendant in her bed and his finger in her anus. *Id.* According to the victim, the aggravated sexual battery occurred during the first rape. During that incident, the defendant grabbed and squeezed the victim’s bottom. *See* Tenn. Code Ann. § 39-13-504(a)(4). Finally, the defendant’s solicitation of rape of a child conviction is supported by the victim’s testimony that the defendant exposed his penis to her and told her that it would make him happy if she would touch or lick his penis. *See* Tenn. Code Ann. §§ 39-12-102(a) and 39-13-522(a). The victim’s trial testimony was corroborated by the forensic interview she gave just days after initially reporting the incident to her school counselor, her mother, and law enforcement. And, while “the testimony of a victim, by itself, is sufficient to support a conviction,” *State v. Nance*, 393 S.W.3d 212, 231 (Tenn. Crim. App. 2012) (citing *State v. Strickland*, 885 S.W.2d 85, 87 (Tenn. Crim. App. 1993)), the State presented other evidence which bolstered the credibility of the victim as well as established the defendant’s guilt.

According to the victim, the incidents of abuse took place in 2018 while she was in third grade. J. L., the victim's mother, testified that between March 2018 and December 2018, the victim was more emotional than normal. The victim had trouble concentrating in school and was extremely clingy. Anytime J. L. needed to go somewhere, the victim would insist on going. We also note that it was during this time that the defendant was unemployed and alone at the house with the victim during the day. Additionally, Ms. Schubert testified it was during her "good touches, bad touches" talk with the victim's class that the victim first attempted to disclose the abuse. When Ms. Schubert suggested that the victim speak to her after class, the victim "got very quiet" and "was looking down" for the remainder of class. Then, when the victim came to speak with Ms. Schubert after class, the victim was "very timid" and "scared." When the defendant was confronted by J. L. during several text exchanges after the abuse had been reported and the defendant had been removed from the home, the defendant not only did not deny the allegations, but in one text message he asked for forgiveness and in another admitted he "lost everything and I am sorry."

Finally, the proof at trial also showed that the defendant, who was on bond and being monitored with a G.P.S. device prior to trial, failed to show for a court date on January 28, 2020, and for the re-scheduled court date of January 30, 2020. The defendant was arrested "near the United States / Mexican border at the Border Patrol Check Point on Highway 90 West in Val Verde County, Texas" on or about January 30, 2020. A search of the defendant's vehicle at the time produced "several items of camping gear and approximately \$1641 dollars." And, as the jury was properly instructed, "flight and attempts to evade arrest are relevant as circumstances from which, when considered with other facts and circumstances in evidence, a jury can properly draw an inference of guilt." *State v. Dorantes*, 331 S.W.3d 370, 388 (Tenn. 2011) (quoting *State v. Zagorski*, 701 S.W.2d 808, 813 (Tenn. 1985)).

On appeal, the defendant claims the allegations against him are all part of a scheme by the victim's mother to ruin him financially and gain ownership of the house. The defendant testified at trial that J. L. had made such a threat to him prior to the victim's coming forward, and he denied he ever abused the victim. However, the jury heard the defendant's testimony and, by way of their verdict, clearly accredited the testimony of the victim over that of the defendant. As noted *supra*, questions concerning the credibility of witnesses and 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, and not the appellate courts. *See Pruett*, 788 S.W.2d at 561. Accordingly, we affirm the jury's verdict and the defendant's convictions.

Conclusion

Based upon the foregoing authorities and reasoning, the judgments of the trial court are affirmed.

J. ROSS DYER, JUDGE