

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs April 25, 2023

FILED

05/15/2023

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. ROBERT VERNON GOUGE

**Appeal from the Criminal Court for Knox County
No. 116839 Kyle A. Hixson, Judge**

No. E2022-01001-CCA-R3-CD

The Defendant, Robert Vernon Gouge, was convicted of three counts of rape of a child, one count of attempted rape of a child, and one count of aggravated sexual battery. The trial court imposed an effective sentence of ninety-nine years. On appeal, the Defendant challenges the legal sufficiency of the evidence supporting his conviction of aggravated sexual battery in count four and his conviction of rape of a child in count five.¹ He also argues that his effective sentence of ninety-nine years is excessive. We respectfully disagree and affirm the judgments of the trial court.

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

TOM GREENHOLTZ, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., P.J., and TIMOTHY L. EASTER, J., joined.

J. Liddell Kirk, Madisonville, Tennessee (on appeal), and Douglas P. Nanney, Knoxville, Tennessee (at trial), for the appellant, Robert Vernon Gouge.

Jonathan Skrmetti, Attorney General and Reporter; Courtney Orr, Senior Assistant Attorney General; Charne P. Allen, District Attorney General; and Rachel S. Lambert and Tammy Hicks, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

¹ The Defendant does not challenge the sufficiency of the evidence sustaining his remaining convictions. As such, we do not recite or address the testimony and evidence regarding those convictions.

FACTUAL BACKGROUND

On December 11, 2019, the Knox County Grand Jury returned a five-count presentment against the Defendant alleging five separate counts of rape of a child involving the victim, B.M.² Specifically, counts one, two, three, and four alleged separate acts of digital penetration performed by the Defendant on the victim “[o]n or about the day of _____ October, 2012, and on divers and diverse days between that date and the 13th day of October, 2016.” In addition, count five alleged that the Defendant performed an act of “sexual penetration” on the victim. On April 26, 2021, the trial against the Defendant began.

A. JURY TRIAL

1. The State’s Proof

Investigator Shaun Sakovich with the Knoxville Police Department was the State’s first witness. Investigator Sakovich testified that in early April 2019, he received a referral from the Department of Children’s Services (“DCS”) to investigate an allegation of sexual abuse involving the Defendant and his stepdaughter, the victim. The investigator contacted the assigned DCS case worker, and they conducted a forensic interview with the fifteen-year-old victim.

After the forensic interview, Investigator Sakovich went to the Defendant’s home on Beta Drive to speak with the Defendant’s mother. Investigator Sakovich also conducted a telephone interview with the Defendant’s cousin, R.M., while he was incarcerated in the Knox County Jail. The investigator asserted, “I did not doubt [the victim’s] disclosures based on what [R.M.] told me.”

The Defendant’s first cousin, R.M., testified that he began living with the Defendant and the victim’s mother in 1998 after his mother died. R.M. testified that sometime during March 2019, the Defendant said that “he might have to go on the run” with R.M. When R.M. asked why, the Defendant responded that he and B.M. had watched a movie with a sex scene. The Defendant said that “before they went to bed[,] she kissed him—they [were] French kissing and he was touching on her.” The Defendant said he touched the victim’s “breasts and private area.”

² It is the practice of this Court to refer to victims of sexual offenses by their initials.

The Defendant did not say how old the victim was at the time of the touching. Nevertheless, R.M. told the Defendant's mother what the Defendant had said, and she told R.M. to "keep quiet." Ignoring the instruction, R.M. told B.M.'s mother what the Defendant had said.

The victim's mother testified that she met the Defendant in 2003, a couple of weeks after the victim was born. The victim's mother acknowledged that around this time, beginning in 2007, she was using opiates, marijuana, and heroin. However, she had been "drug-free" since she "went into the Suboxone clinic" on November 1, 2015.

The victim's mother and the Defendant dated for ten or eleven years and lived together for a while. However, the relationship ended in 2010 or 2011, and they stopped living together. The victim's mother said she broke up with the Defendant when she discovered he was using methamphetamine.

However, even after her mother's relationship with the Defendant ended, the victim continued seeing him. The victim's mother explained that the Defendant was the victim's "father figure" and that he "basically raised her." At first, the victim was eager to visit the Defendant. After that, she became reluctant to see him. The victim's mother said she was incarcerated in December 2015, and the victim went to live with the Defendant and his mother for approximately three months.

In May or June 2017, the victim disclosed to her mother that the Defendant had sexually abused her, and the victim's mother confronted the Defendant. The Defendant said that "he had never touched her. He would never touch her." The victim's mother believed the Defendant.

However, after R.M. said the Defendant revealed that he had "touched" and "messed with" the victim, the victim's mother finally believed the victim's accusations. The victim's mother also recalled that the Defendant had often said to the victim, "If you weren't my daughter, I would marry you." The Defendant started making such comments when the Defendant was in kindergarten.

The victim testified that she was seventeen years old at the time of trial and that she was born on October 14, 2003.³ At the time of the trial, she was a junior in high school. The victim was shown an exhibit depicting her age when she began each grade of school,

³ We have omitted the victim's testimony regarding the convictions that the Defendant does not challenge on appeal.

and she agreed that the exhibit was “an accurate representation of what year [she was] in each grade.” This school grade chart showed as follows:

YEARS	GRADE	AGES
2009-2010	Kindergarten	5-6
2010-2011	1st	6-7
2011-2012	2nd	7-8
2012-2013	3rd	8-9
2013-2014	4th	9-10
2014-2015	5th	10-11
2015-2016	6th	11-12
2016-2017	7th	12-13
2017-2018	8th	13-14
2018-2019	9th	14-15
2019-2020	10th	15-16
2020-2021	11th	16-17

The victim did not know her biological father, and she grew up thinking of the Defendant as her father figure. She testified that he “was in my life before I could even really talk. For as long as I can remember.” The victim lived with the Defendant and her mother until she was eight years old. She “felt safe” around the Defendant and felt “[I]ike he was [her] dad.” After the victim’s mother and the Defendant separated, the victim visited the Defendant’s home, which he shared with his family.

The victim recalled that she went to live with the Defendant in December of her fifth-grade year after her mother went to jail. She lived with him until September of her sixth-grade year.

Regarding count four, the victim said that she and her mother moved to an apartment on Minnis Avenue in September of her sixth-grade year. A little while after moving into the apartment, the victim was outside playing when she saw the Defendant “coming down the stairs from his friend’s house.” Because she had not seen the Defendant for “a couple of months,” the victim asked if he would like to see the apartment. The victim had a

babysitter then, but the babysitter “had walked over to the Handy Dandy to get the food from the deli.”

The victim said that when she first saw the Defendant, he had grabbed her “butt.” However, she did not think about the grabbing and took him to the apartment to show him around. Afterward, they sat on the floor and talked. At that point, the Defendant rested his hand on the victim’s thigh, moved closer to her, and digitally penetrated her. She stated that “[h]e had his hands inside my vagina area[,] and he got his fingers on the outside until someone had knocked on the door.” However, she acknowledged that the Defendant did not “touch any part that went past th[e] outer lips” of her vagina.

Regarding count five, the victim testified that she visited the Defendant’s house sometime during her sixth-grade year to visit her cousin. She and her cousin wanted to ride bicycles, but they could not be outside without an adult because it was dark. As such, the Defendant agreed to chaperone them.

The victim went inside his bedroom to ask how long it would take him to get ready to go outside. She sat on the bed, waiting for the Defendant to put on his shoes. She could not recall “the extent of how things led into place,” but she remembered “being placed on the bed and him trying to have sex with me.” The Defendant “pulled [her] pants down and he had pulled his pants down.” He then made her touch his penis. The victim testified that the Defendant tried to penetrate her vagina with his penis. He managed to touch “the skin on the inside” of the lips of her vagina. Before he could go further, she “started crying and yelling for someone and he – someone knocked on the door.” The Defendant then “got up and pulled his pants back up[.]”

The victim first told her mother about the Defendant’s abuse when she was ten years old, and she disclosed the abuse to her mother again when she was in the seventh grade. However, her mother told the victim to “not speak like that, to not say things like that”; accordingly, the victim decided not to disclose the abuse again “because she didn’t think anyone would believe [her].” However, her mother later asked the victim about the subject after the Defendant “told [R.M.] that he had done things to [the victim] and [the victim’s mother] believed [R.M.]”

On cross-examination, defense counsel asked, “In your sixth-grade year when you were in that apartment there, I guess around November of your sixth-grade year, and you had a babysitter and she had left to go to the store?” The victim responded, “Yes.” The victim explained that she allowed the Defendant into the apartment “[b]ecause I trusted him.” The victim said that the last incident of molestation occurred “at the apartment on Minnis Avenue.” The incident when she was supposed to ride bicycles with her cousin and the Defendant put his penis inside her occurred during a “day visit,” but she could not

recall the exact date. In addition, she could not remember what grade she was in, though she thought she was “in between fifth grade, sixth-grade age.”

2. The Defendant’s Proof

After the State rested its case, the Defendant testified in his own defense. The Defendant testified that none of the events alleged by the victim occurred. He said that he “never slept in the bed with [the victim],” he never reached between the victim’s legs and touched her vaginal area, and he never “touched [the victim] sexually with [his] penis or with [his] hands.”

The Defendant said that the victim did not visit him until 2015 when the victim’s mother was arrested. The Defendant acknowledged that during the time he lived at the Beta Drive home, he slept on the front porch or the “sunroom” as it was designated throughout the trial. He asserted that throughout the time of the allegations made by the victim, he was experiencing medical conditions that would prevent him from “restrain[ing] a six-month-old baby, much less a nine, ten, eleven, twelve, thirteen-year-old girl that didn’t want to be there.”

3. State’s Election and Verdict

At the close of proof, the State announced its concession that its evidence “would not support a rape of a child charge as charged” in count four; therefore, the State requested that the trial court send the charge to the jury “as the lesser-included aggravated sexual battery,” and the trial court agreed. As to count four, the State elected to rely upon the events alleged to have occurred during September of the victim’s sixth-grade year in which the Defendant “put his hands inside her pants and put his finger on the outside of the lower part of her vagina.” As to count five, the State elected to rely upon the events alleged to have occurred during the victim’s sixth-grade year in which the Defendant penetrated the victim with his genitals.

Following the conclusion of the trial, the jury found the Defendant guilty of three counts of rape of a child, one count of attempted rape of a child, and one count of aggravated sexual battery.

B. SENTENCING HEARING

At the July 30, 2021, sentencing hearing, the State elected not to present any live testimony but submitted the Defendant’s presentence investigation report and sealed

psychosexual report as exhibits. The Defendant presented his mother and sister as witnesses.

1. Presentence Report

The presentence investigation report reflected that the forty-seven-year-old Defendant had been convicted of driving without a license in August 2016. The Defendant stated that his mental and physical health were “fair” but that he had been diagnosed with “PTSD, anger issues, and depression” in 2017. The Defendant advised that he used marijuana from 1983 until 2019; he used methamphetamine socially from 1994 until 2019; he smoked cocaine “off and on” from 1983 to 2015; he used heroin “rarely” from 2018 to 2019; he used suboxone “off and on” from 2014 to 2015; and he used opioids, both prescribed and unprescribed, from 1998 to 2017.

B.M.’s victim impact statement was attached to the presentence report. The victim’s grandparents completed the statement, and it reflected that “[a]s an 8 [year] old [the victim] didn’t understand why this was being done to [her].” The statement further reflected that the Defendant “should be imprisoned for the [entirety] of his life so another child would not have to go through what [the victim] did.”

2. Defendant’s Proof

The Defendant’s mother testified that the Defendant was “a good man,” that “[h]e does things for [her],” and that she “couldn’t ask for anything better.” She stated that the Defendant had lived with her most of his life and that when he was not permanently employed, he took “side jobs.” The Defendant’s mother agreed he came from a “broken home,” but she did not recall the Defendant’s stepfather abusing him.

She said the Defendant “suffered from bipolar or depression.” Seven or eight years prior, the Defendant was involved in a motorcycle accident in which he was injured; the Defendant took pain medicine for the injuries and developed a substance abuse problem. The Defendant’s substance abuse clouded his judgment “some of the time.” The Defendant’s mother stated that “[the Defendant’s] not the monster that you think he is. . . . [H]e’s loving, he’s tenderhearted. I’ve never seen him being mean to any little kid[.]”

The Defendant’s sister also testified that the Defendant was a good man, stating, “[H]e’s helped with my kids.” She acknowledged that the Defendant became addicted to drugs after he was injured in a motorcycle accident. She also testified, though, that the Defendant was “not mean to kids. He’s always loved kids. . . . [H]e’s just a friend[,] and

. . . they love him[,] and they still do. . . . [The kids] were never afraid of him, not even [the victim].”

On cross-examination, the Defendant’s sister said that she and the Defendant had both cried on the telephone “over this.” She said, “There was no – just the remorse for what he did. He did not do it. He did not do nothing to her.” She explained, “It’s remorse for the – it’s for all of the whole thing together. I mean, that whole thing, the whole situation, remorseful for the whole thing and this, having to go through all of this, both of them having to do through this. It don’t need to be happening.”

C. TRIAL COURT’S SENTENCE

Before announcing its sentence, the trial court stated that it considered “the purposes and principles of the Tennessee Sentencing Reform Act”; the evidence presented at the sentencing hearing; the Defendant’s presentence report; the nature and characteristics of the criminal conduct; the results of the Defendant’s risk and needs assessment; the enhancement and mitigating factors; and the Defendant’s psychosexual report.

In considering the length of the Defendant’s sentence, the trial court considered as mitigating factors that the “defendant’s criminal conduct neither caused nor threatened serious bodily injury” and that the Defendant was abused as a child by his stepfather and had a “somewhat turbulent” childhood.” Tenn. Code Ann. §§ 40-35-113(1), (13) (2019).

The trial court also considered as enhancement factors that the defendant has a previous history of criminal convictions or criminal behavior in addition to those necessary to establish the appropriate range and that the offenses involved a victim and were committed to gratify the defendant’s desire for pleasure or excitement. *Id.* §§ 40-35-114(1), (7) (2019). The court also found that the Defendant “abused a position of private trust.” *Id.* § 40-35-114(14).

After weighing both the mitigating and enhancement factors, the trial court determined that the Defendant’s case “call[ed] for an upward deviation somewhat of the sentences from the minimum allowable set forth in the statute[.]” The trial court reiterated that “this was not a one-off situation” and that the Defendant “repeatedly abused the victim.” It also expressed concern about the Defendant’s amenability to correction and his “unwillingness to recognize the damage that he inflicted upon the victim.” The court stated that it could not “stress enough the wrongfulness of [the Defendant’s] actions, the serious effect that it’s had on the victim in this case going forward. And I think that his sentence in this case needs to reflect that.”

The trial court determined that the Defendant's home was permeated by a "culture" that fostered these crimes. The trial court explained that testimony at trial reflected that Defendant made "sexualized remarks towards the victim in front of other family members" and suffered no consequences. The trial court also noted that R.M. was a convicted sex offender and "was given refuge in [this] house where children were present." R.M. further testified that his family had threatened to ostracize him if he testified against the Defendant, which reflected that "the family was more interested in protecting [the Defendant] and shielding him from the consequences of his conduct than they were [in] [R.M.] doing the right thing[.]"

The State requested that the trial court impose consecutive sentences under Tennessee Code Annotated section 40-35-115(b)(5) for "two (2) or more statutory offenses involving sexual abuse of a minor[.]" In considering the request, the trial court found that the Defendant was the victim's "de facto father figure" and that he took advantage of that relationship and repeatedly abused the victim over three or four years, undetected. The trial court said that it could not "overstate how serious that is and how the sentence should reflect how wrong that is in some way."

The trial court also observed that the Defendant's offenses showed "a situation of escalating abuse," noting that the Defendant started with "mere petting" then progressed to "digital penetration, until one of the last incidents that we heard proof of was the incident before the bicycle ride where there was full blown intercourse that occurred between the defendant and the victim." The court acknowledged that the Defendant's actions "stained and scarred" three to four years of the victim's life and that "this will always be a part of her life." The court also referenced B.M.'s victim impact statement, stating she "did not understand why this was happening to her." The court found that although her words were "simple," they were "powerful."

After reviewing the evidence, the trial court imposed a sentence of twenty-seven years on each of the three convictions of rape of a child, nine years on the conviction of attempted rape of a child, and nine years on the conviction of aggravated sexual battery. The trial court ordered that the sentences be aligned consecutively for an effective sentence of ninety-nine years.

D. JUDGMENT AND APPEAL

The judgments of conviction were entered on August 4, 2021, and the Defendant filed a timely notice of appeal on August 18, 2021. On appeal, the Defendant argues there was insufficient evidence to convict him of counts four and five, aggravated sexual battery and rape of a child, respectively. He also contends that the trial court abused its discretion

by imposing consecutive sentences. For its part, the State asserts that the evidence was sufficient to support the Defendant's convictions and that the trial court acted within its discretion in imposing consecutive sentences. We agree with the State and respectfully affirm the judgments of the trial court.

ANALYSIS

A. SUFFICIENCY OF THE EVIDENCE

The Defendant first challenges the sufficiency of the evidence presented at trial to sustain the convictions of aggravated sexual battery in count four and of rape of a child in count five. More specifically, the Defendant argues that the victim was not under the age of thirteen at the time of the alleged offenses, and the convictions cannot be sustained by the proof. We respectfully disagree.

“The standard for appellate review of a claim challenging the sufficiency of the State's evidence is ‘whether, after viewing 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.’” *State v. Miller*, 638 S.W.3d 136, 157 (Tenn. 2021) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). “The standard of review is the same whether the conviction is based upon direct or circumstantial evidence.” *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011) (internal quotations and citations omitted).

On appeal, this Court “neither re-weighs the evidence nor substitutes its inferences for those drawn by the jury.” *State v. Wagner*, 382 S.W.3d 289, 297 (Tenn. 2012) (citing *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997)). Moreover, the trier of fact, and not this Court, resolves “all questions as to the credibility of trial witnesses, the weight and value of the evidence, and issues of fact raised by the evidence.” *State v. Lewter*, 313 S.W.3d 745, 747 (Tenn. 2010). “Because a verdict of guilt removes the presumption of innocence and raises a presumption of guilt, the criminal defendant bears the burden on appeal of showing that the evidence was legally insufficient to sustain a guilty verdict.” *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009).

On appeal, the Defendant does not contest that unlawful sexual contact occurred. Instead, he contends, “specifically as to counts 4 and 5, the evidence does not conclusively establish that these incidents occurred while the victim was under the age of thirteen.” The Defendant argues that two dates were undisputed at trial: (1) the victim's October 14, 2003 birthdate; and (2) the victim's mother's arrest in December 2015. The Defendant contends that the victim said she went to live with him in December 2015 and stayed until September 2016; therefore, the incident alleged in count five, where the victim was visiting the

Defendant and riding bicycles with her cousin and the Defendant had intercourse with her, could not have happened before she was thirteen. The Defendant further contends that the victim said she invited him into the apartment a “couple of months” after moving to the apartment, which “would be no earlier than November 2016. And she turned age thirteen on October 14, 2016.”

1. Aggravated Sexual Battery

In count four, the Defendant was convicted of aggravated sexual battery, which required the State to prove beyond a reasonable doubt that there was “unlawful sexual contact with a victim by the defendant or the defendant by a victim and the victim [was] less than thirteen (13) years of age.” Tenn. Code Ann. § 39-13-504(a)(4) (2018). Sexual contact is defined as

the intentional touching of the victim’s, the defendant’s, or any other person’s intimate parts, or the intentional touching of the clothing covering the immediate area of the victim’s, the defendant’s, or any other person’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) (2018). The State specifically elected the incident after the victim and her mother moved into the apartment on Minnis Avenue during the victim’s sixth-grade year, and the Defendant touched her vagina.

At trial, the victim testified that she was born on October 14, 2003. She testified that the Defendant “touched [her]” on the day she allowed the Defendant into her Minnis Avenue apartment, specifically recalling that the Defendant “had his hands inside [of] [her] vagina area and he got his fingers on the outside.” As we said earlier, the Defendant does not dispute that the touching occurred; he only contests the proof of the victim’s age at the time.

The victim testified that she allowed the Defendant into the apartment on Minnis Avenue during the fall of her sixth-grade year, noting that she and her mother moved into the apartment in September of that year. She also agreed on cross-examination that the touching occurred “around November of [her] sixth-grade year.” The school chart offered by the State reflected that the victim was eleven years old when she began her sixth-grade year in 2015. The accuracy of the chart was confirmed by the victim specifically, and it was reinforced by her testimony that she was seventeen years old and a junior in high school during the April 2021 trial, as the chart confirms. Therefore, with the victim’s

twelfth birthday occurring on October 14, 2015, the victim would have been twelve years old when the abuse occurred “around November” of her sixth-grade year.

The Defendant questions the sufficiency of the proof regarding the victim’s age. He argues that because the Defendant and the victim’s mother testified that she went to jail in December 2015—and therefore could not have moved into the apartment until September 2016—the victim was mistaken about the timeline. He also asserts that the victim “turned age thirteen on October 14, 2016.” In other words, the Defendant challenges the credibility of the victim. However, “[t]he credibility of the witnesses, the weight to be given their testimony, and the reconciliation of conflicts in the proof are matters entrusted to the jury as the trier of fact.” *State v. Campbell*, 245 S.W.3d 331, 335 (Tenn. 2008). Consequently, “a jury verdict, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts’ in the testimony in favor of the State.” *State v. Jones*, 568 S.W.3d 101, 133 (Tenn. 2019) (quoting *State v. Harris*, 839 S.W.2d 54, 75 (Tenn. 1992)).

In this case, the victim confirmed multiple times that she moved into the Minnis Avenue apartment in September of her sixth-grade year and that the unlawful sexual contact, as alleged in count four, occurred “a little bit after [she] had moved into these apartments.” She also specifically testified that her mother went to jail in December of her *fifth-grade* year, 2014, contrary to her mother’s testimony. The jury heard the conflicting testimony and resolved this conflict in favor of the victim, and we will not revisit these findings. *State v. Keithandre Murray*, No. M2021-00688-CCA-R3-CD, 2022 WL 17336522, at *5 (Tenn. Crim. App. Nov. 30, 2022) (“We must decline the defendant’s invitation to reevaluate the credibility of the witnesses or to revisit inconsistencies in the testimony because both fall solely within the purview of the jury as the trier of fact.”), *perm. app. denied* (Tenn. Mar. 8, 2023). Moreover, we note that “the testimony of a minor victim, alone, is sufficient to uphold a conviction for aggravated sexual battery.” *State v. Steven R. Bryson*, No. W2013-00777-CCA-R3-CD, 2014 WL 1600928, at *8 (Tenn. Crim. App. Apr. 21, 2014) (citing *State v. Smith*, 42 S.W.3d 101, 106 (Tenn. Crim. App. 2000)).

We conclude that a rational trier of fact could have found that the victim was less than thirteen years old when the unlawful sexual contact occurred and that, therefore, the evidence is legally sufficient to support the Defendant’s conviction of aggravated sexual battery. Accordingly, we respectfully affirm the Defendant’s conviction in count four.

2. Rape of a Child

In count five, the Defendant was convicted of rape of a child, which required the State to prove beyond a reasonable doubt that there was “the unlawful sexual penetration

of a victim by the defendant or the defendant by a victim, if the victim is more than three (3) years of age but less than thirteen (13) years of age.” Tenn. Code Ann. § 39-13-522(a) (2018) (subsequently amended). Again, the Defendant does not contest the sufficiency of the proof establishing unlawful sexual penetration. Instead, he asserts that the proof does not show that the victim was less than thirteen years of age at the time of the unlawful penetration.

At trial, the victim testified that sometime during her sixth-grade year or “in between fifth grade, sixth-grade age,” she visited her cousin, who lived at the Defendant’s residence, so that they could ride bicycles together. While she was at the Defendant’s home, the Defendant attempted to penetrate her vagina with his penis, getting “on the skin on the inside” of her vagina. The Defendant stopped only when the victim started “crying and yelling for someone[.]” The victim said that the last incident of molestation occurred “at the apartment on Minnis Avenue”; accordingly, the incident in count five must have happened before the incident at the apartment.

As noted above, the victim was twelve years old when the incident at the apartment occurred. Accordingly, the proof established that the victim was at most twelve years old and possibly eleven years old at the time of the attempted rape of a child. We note that “the testimony of a child victim, alone, is sufficient to uphold a conviction for child rape.” *State v. Bradley Cox*, No. W2014-00800-CCA-R3-CD, 2015 WL 3796463, at *8 (Tenn. Crim. App. June 17, 2015) (citing *State v. Elkins*, 102 S.W.3d 578, 582-83 (Tenn. 2003)). Moreover, “[t]he jury, as the finder of fact, obviously accredited the testimony of the victim.” *State v. Douglas Wayne Young*, No. E2009-00765-CCA-R3-CD, 2011 WL 497851, at *9 (Tenn. Crim. App. Feb. 14, 2011). As before, we will not revisit the jury’s findings in this regard.

We conclude that a rational trier of fact could have found that the victim was less than thirteen years old when the unlawful penetration occurred. Therefore, because the evidence is legally sufficient to support the Defendant’s conviction of rape of a child, we respectfully affirm the Defendant’s conviction in count five.

B. SENTENCING

The Defendant also argues that the trial court erred by imposing an “excessive” sentence of ninety-nine years. The Defendant asserts “a far lesser sentence” would accomplish the trial court’s goal of keeping the Defendant imprisoned for the rest of his life and protecting the public. The Defendant specifically challenges the trial court’s imposition of consecutive sentencing.

“[W]hen a defendant challenges the length of a sentence that falls within the applicable statutory range and reflects the purposes and principles of sentencing, the appropriate standard of appellate review is abuse of discretion accompanied by a presumption of reasonableness.” *State v. King*, 432 S.W.3d 316, 321 (Tenn. 2014) (citing *State v. Bise*, 380 S.W.3d 682, 706-07 (Tenn. 2012)). While trial courts need not comprehensively articulate their findings with regard to sentencing, “sentences should be upheld so long as the statutory purposes and principles, along with any applicable enhancement and mitigating factors, have been properly addressed [on the record].” *Bise*, 380 S.W.3d at 706. Our supreme court has also recognized that the *Bise* standard applies to the review of a trial court’s determination of consecutive sentencing as well. See *State v. Pollard*, 432 S.W.3d 851, 860 (Tenn. 2013) (“[T]he discretionary language as to consecutive sentencing calls for the adoption of an abuse of discretion standard with a presumption of reasonableness.”).

The offense of rape of a child is a Class A felony offense. At the time of the Defendant’s offenses, the law required that he be sentenced as a Range II offender, Tenn. Code Ann. § 39-13-522(b)(2)(A) (2018) (since amended), with an applicable sentencing range between twenty-five and forty years, Tenn. Code Ann. § 40-35-112(b)(1) (2019). The Defendant’s convictions for attempted rape of a child and aggravated sexual battery were each Class B felony offenses. Tenn. Code Ann. §§ 39-12-107(a) (2018), 39-13-504(b) (2018). As a Range I, standard offender, the applicable sentencing range for these two offenses was between eight and twelve years. Tenn. Code Ann. § 40-35-112(a)(2).

In this case, the trial court imposed the following within-range sentences:

- Count 1: Rape of a Child: 27 years.
- Count 2: Rape of a Child: 27 years.
- Count 3: Attempted Rape of a Child: 9 years.
- Count 4: Aggravated Sexual Battery: 9 years.
- Count 5: Rape of a Child: 27 years.

The Defendant does not appear to challenge the length of any individual sentence. For example, he raises no issue with the application of any enhancement factors, and he does not argue that the trial court failed to apply any mitigating factors. Because the trial court’s sentence for each offense is within the correct statutory range and reflects the

purposes and principles of sentencing, we afford the trial court's individual sentences a presumption of reasonableness. *Bise*, 380 S.W.3d at 708.

The Defendant's challenge to his sentence appears related to the consecutive nature of the sentences. The trial court aligned each sentence consecutively, resulting in an effective sentence of ninety-nine years. The Defendant argues that this aggregate sentence is greater than necessary to protect the public. He further contends that there was only one victim, that no proof shows that the trauma she suffered will last a lifetime, and that she "remain[s] alive, in school, and even working." The State contends that the trial court properly considered both the relevant mitigating and enhancement factors and that the trial court did not abuse its discretion in ordering consecutive sentences. We agree with the State.

The process of imposing discretionary consecutive sentences pursuant to Tennessee Code Annotated section 40-35-115 involves two steps. First, the trial court must find by a preponderance of the evidence that "the defendant qualifies for consecutive sentencing under one of the classifications set forth in section 40-35-115(b)." *State v. Perry*, 656 S.W.3d 116, 127 (Tenn. 2022) (footnote omitted). Second, the trial court must "then choose whether, and to what degree, to impose consecutive sentencing based on the facts and circumstances of the case, bearing in mind the purposes and principles of sentencing." *Id.*

The trial court found that the Defendant was qualified for consecutive sentences pursuant to Tennessee Code Annotated section 40-35-115(b)(5). This statute permits consecutive sentences to be considered when

[t]he defendant is convicted of two (2) or more statutory offenses involving sexual abuse of a minor with consideration of the aggravating circumstances arising from the relationship between the defendant and victim or victims, the time span of defendant's undetected sexual activity, the nature and scope of the sexual acts and the extent of the residual, physical and mental damage to the victim or victims[.]

Tenn. Code Ann. § 40-35-115(b)(5).

In this case, the Defendant was found guilty of five separate offenses of sexual abuse against the victim. The trial court found that the relationship the Defendant had with the victim was that of a "de facto father figure" and that this relationship gave the Defendant "access" to the victim so that he could commit the offenses. The court found that the "time span of the defendant's undetected sexual activity was quite extensive," occurring over

three to four years. The court found the nature of the acts involved a “situation of escalating abuse” that was “very troubling.” The trial court also considered the residual effect of this abuse on the victim. While the court acknowledged it could not know how this abuse would manifest later, it considered B.M.’s victim impact statement where she stated that at eight years old, “she did not understand why this was happening to her.” The court concluded its analysis as follows:

For these reasons, I do find by a preponderance of the evidence that subsection 115(b)(5) applies in this case. And I do find that consecutive sentencing will be appropriate in this case. The sentence I’m about to impose I believe is necessary to protect the public against further criminal conduct by the defendant, specifically to protect children from his predatory and sexualized behavior. And I believe that the aggregate sentence that I’m about to impose will reasonably relate to the severity of the offenses committed, which are, as I stated, just about as severe as it comes when it comes to criminal conduct that is in our Code.

We conclude that the trial court carefully considered and weighed each of the aggravating circumstances listed in section 40-35-115(b)(5). It also found that the aggregate sentence was necessary to protect the public and reasonably related to the severity of the offenses. We agree and conclude that the aggregate sentence here is not unreasonable under the circumstances. *Cf. State v. James Allen Perry*, No. E2015-01227-CCA-R3-CD, 2016 WL 2901817 (Tenn. Crim. App. May 13, 2016) (affirming partial consecutive sentences in a case involving the years-long sexual abuse and exploitation of the minor victim, who was between ten and thirteen years old, by a family friend, resulting in an effective sentence of 106 years). Accordingly, we conclude that the trial court acted within its discretion in imposing the sentence in this case.

CONCLUSION

In summary, we hold that the evidence presented at trial was sufficient to sustain the Defendant’s convictions for rape of a child, attempted rape of a child, and aggravated sexual battery. We also hold that the trial court acted within its discretion to impose the total effective sentence of ninety-nine years. Accordingly, we respectfully affirm the judgments of the trial court.

TOM GREENHOLTZ, JUDGE