

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs December 20, 2022

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Clerk of the
Appellate Courts

STATE OF TENNESSEE v. BRIAN KEITH MEDLEY

**Appeal from the Criminal Court for Cumberland County
No. 19-64 Gary McKenzie, Judge**

No. E2022-00467-CCA-R3-CD

The Defendant, Brian Keith Medley, was found guilty of sexual battery and domestic assault. He was sentenced to the statutory maximum of four years as a Range II, multiple offender. On appeal, he argues that the evidence was insufficient to support his convictions and that the maximum sentence was excessive. We respectfully 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 ROBERT L. HOLLOWAY, JR., and ROBERT H. MONTGOMERY, JR., JJ., joined.

Jeffrey A. Vires, Crossville, Tennessee, for the appellant, Brian Keith Medley.

Jonathan Skrmetti, Attorney General and Reporter; Courtney N. Orr, Senior Assistant Attorney General; Bryant C. Dunaway, District Attorney General; and Philip A. Hatch, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTUAL BACKGROUND

On June 24, 2019, the Cumberland County Grand Jury charged the Defendant, Brian Keith Medley, with one count of sexual battery and one count of domestic assault. The matter came to trial on January 27, 2021.

A. STATE'S PROOF

The State's first witness was the victim, R.F.¹ She testified that from September to December of 2018, she was living with the Defendant on Penny Lane in Crossville, Tennessee. R.F. did not have a sexual relationship with the Defendant, and she slept on his couch. On December 5, R.F. and the Defendant were at the residence when his mother and sister visited the house. The Defendant got into a heated argument with his mother about her refusal to let him live with the victim. Upset by the argument, the Defendant commanded that his mother and sister leave the residence and began drinking.

As R.F. described from the witness stand, the Defendant "would play the stereo, dance, get drunk, and was mad at the world. . . . The more he drank, the worse his behavior became." She testified that he began to harm her physically:

He would occasionally slap me or order me to the couch. When I tried to leave, he would follow me and knock me down. . . . He hit me in the head. He knocked me to the floor. He drug me by the hair across the floor and down the steps from the living room to the kitchen. . . . When I fell, he grabbed my hair and kicked my ribs and my hip. At one point he jumped on my hip.

R.F. testified that, as she tried to fight the Defendant, he poured beer, bleach, and rubbing alcohol on her and that the bleach stained the black jogging suit that she was wearing. She testified that the assault resulted in her having broken ribs, a fractured hip, a severed pituitary gland, a black eye, a broken nose, and missing teeth.

R.F. testified that the physical assault then turned into a sexual assault. The Defendant asked R.F. to have sex with him, and she refused. He then commanded that she perform fellatio on him. She responded, "No way." Frustrated, he threatened, "If you don't, I'm going to kill you." She replied, "Well, you're going to have to kill me because that's not going to happen."

R.F. testified that the Defendant then "wedged his legs so that I couldn't move off the couch, one was in front, between my chest and waist, and the other one was behind my thighs, up against the back of the sofa, and he masturbated[.]" The Defendant ejaculated

¹ It is the practice of this Court to refer to victims of sexual offenses by their initials instead of their names.

on R.F.'s hair and face and on the black jogging suit she wore, and he then tried to "put his genital in [her] mouth."

R.F. testified that the Defendant soon passed out, and she took a shower. When the Defendant awoke, he ordered her to go to the store to buy more bleach and alcohol. R.F. hid the jogging suit underneath her coat and left the residence.

Once out of the house, R.F. went to the police station and spoke to Detective Donnie Hammonds. She handed him the jogging suit, and he took pictures of her injuries. The pictures depicted R.F. with a bruised eye and elbow. An investigator later swabbed her mouth to obtain a DNA sample. R.F. testified that she did not consent to the Defendant's conduct.

The State next called Detective Donnie Hammonds to testify. Detective Hammonds recalled his first meeting with R.F. at the police station, describing her appearance as being "[d]isheveled. Upset." He testified that "[s]he had bruising on her eyes[] and her nose." (*Id.*) The detective collected the discolored black jogging suit that R.F. brought to the station. He also later collected a DNA sample from the Defendant.

Law enforcement sent the DNA samples and the jogging suit to the Tennessee Bureau of Investigation ("TBI") for testing. Once there, the samples were tested by Special Agent Militza Kennedy, who testified at trial. Special Agent Kennedy testified that she discovered sperm present on the jogging suit, that the DNA profile was consistent with a mixture of two people, and that the primary contributor was the Defendant.

On cross-examination, the Defendant's attorney questioned Special Agent Kennedy, pointing out potential inconsistencies regarding her testing. Special Agent Kennedy agreed that there were stains on the jogging suit other than the one she tested. Despite there being multiple stains, Special Agent Kennedy testified that she only tested "the best sample" per TBI policy. She admitted that she did not know whether the stains on the back of the jogging suit were sperm. When asked whether another stain could be sperm, Special Agent Kennedy responded,

It could be. But, also, if you look at how the evidence is packaged, it was all together, along with this [jogging suit]. And because we're talking about body fluid, there's a big potential of transfer, so that's another reason why I am trained to select areas that could potentially give me more DNA, more information that I can use. If that one would have not been as strong, I could

have tested the one on the back. It's all from the same area, it's all from the same item, so I still did all the different testing that I had to do for that item.

After Special Agent Kennedy's testimony, the State rested.

B. DEFENSE PROOF

The Defendant testified at trial that R.F. was living at his house, but he denied that he physically or sexually assaulted her. Instead, the Defendant explained that the jogging suit had semen on it because he used it during masturbation. He also asserted that R.F. was incontinent, and he used bleach and the jogging suit to clean up after her. The Defendant explained the stains by stating that he never washed the suit because he did not have a washing machine.

The Defendant also testified that the confrontation with his mother occurred on December 6, rather than on December 5, as R.F. had testified. When the State confronted the Defendant with a recording of him telling Detective Hammonds that the incident occurred on December 5, the Defendant conceded that his mother and sister visited on December 5.

Without objection, the Defense also played the preliminary hearing testimony of Charlotte Smith, the Defendant's mother. In this testimony, Ms. Smith described the nature of the argument as being over the Defendant's refusal to quit drinking. She testified that R.F. was uninjured and not held against her will. Although Ms. Smith explained that she visited the Defendant on December 6, she later admitted that she was unsure of the exact day the visit occurred. After Ms. Smith's testimony was played for the jury, the Defense rested.

C. SENTENCING, JUDGMENT, AND APPEAL

The jury found the Defendant guilty of sexual battery and domestic assault. At the sentencing hearing, the State offered evidence about the Defendant's lengthy criminal history, which included convictions for felony burglary, felony driving under the influence (DUI), domestic violence, reckless endangerment, DUI, and public intoxication. The trial court found that the two felony convictions put the Defendant in a Range II, multiple offender classification.

Considering possible enhancement factors, the trial court found that the Defendant had a previous history of criminal conduct in addition to that required to make him a Range II, multiple offender. The court also found that the criminal conduct occurred while the Defendant was on probation for another offense. The Defendant argued at the hearing that

the lack of serious bodily injury, his level of intoxication, the unusual circumstances under which the crime was committed, and the non-serious nature of most of his previous convictions were mitigating factors. Nevertheless, the trial court did not find any applicable mitigating factors.

Applying the sentencing principles articulated in Tennessee Code Annotated section 40-35-103, the trial court found that (1) confinement was necessary to protect society by restraining the Defendant, who had a long history of criminal conduct; (2) confinement was necessary to avoid depreciating the seriousness of the offense; and (3) because the Defendant was on probation at the time of the offense, measures less restrictive than confinement had recently been applied unsuccessfully. Based on those findings, the court sentenced the Defendant to four years in custody with a 35% release eligibility date.²

The trial court denied the Defendant's motion for a new trial by written order filed on May 2, 2022, and the Defendant timely filed an appeal. In this appeal, the Defendant argues (1) that the evidence presented at trial was insufficient to support his convictions; and (2) that his sexual battery sentence was excessive. Upon review, we respectfully affirm the judgments of the trial court.

ANALYSIS

A. SUFFICIENCY OF THE EVIDENCE

The Defendant first challenges the sufficiency of the evidence supporting his convictions for sexual battery and domestic assault. More specifically, he argues that no rational trier of fact could have found him guilty beyond a reasonable doubt of sexual battery because the presence of stains on the back of the jogging suit directly contradicted the victim's testimony that he ejaculated on the front of the suit. The Defendant also argues that he was deprived of potentially exculpatory evidence by Special Agent Kennedy's decision not to test multiple stains on the jogging suit. To further support his argument, the Defendant points to inconsistencies between the testimonies of R.F. and his mother.

For its part, the State argues on appeal that the testimony of R.F. was sufficient to establish every element of the offenses of sexual battery and domestic assault. The State contends that R.F.'s testimony that the Defendant slapped her, pushed her over, and kicked her after holding her down before ejaculating on her was sufficient to support the Defendant's convictions. We agree with the State.

² The domestic assault judgment reflects that the trial court imposed a concurrent sentence of 11 months and 29 days. The Defendant raises no issue with respect to that sentence in this appeal.

“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).

As charged in this case, the offense of domestic assault occurs when one commits an assault against a domestic abuse victim. *See* Tenn. Code Ann. § 39-13-111(b) (2018). Assault, as is relevant to this case, occurs when one “[i]ntentionally, knowingly or recklessly causes bodily injury to another[.]” *Id.* § 39-13-101(a)(1) (2018). And, a “domestic abuse victim” includes “[a]dults or minors who live together or who have lived together[.]” *Id.* § 39-13-111(a)(2).

Also, the offense of sexual battery, as charged in this case, is the “unlawful sexual contact with a victim by the defendant” when “[t]he sexual contact is accomplished without the consent of the victim” and when the defendant had “reason to know at the time of the contact that the victim did not consent[.]” *Id.* § 39-13-505(a)(2) (2018). The term “sexual contact” includes “includes the intentional touching 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.” *Id.* § 39-13-501(6) (2018). In addition, the term “intimate parts” includes “semen, vaginal fluid, the primary genital area, groin, inner thigh, buttock or breast of a human being.” *Id.* § 39-13-501(2).

“A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State.” *State v. Grace*, 493 S.W.2d 474, 476 (Tenn. 1973); *State v. Cannon*, 642 S.W.3d 401, 445 (Tenn. Crim. App. 2021). In this case, the accredited testimony of R.F. established that, during the evening of December 5, 2019, the Defendant slapped her and hit her in the head. He also knocked her to the floor and dragged her by the hair across the floor and down

some steps. He grabbed her hair, kicked her ribs, and kicked and jumped on her hip. As a result of the Defendant's actions, R.F. suffered bodily injury, including broken ribs, a fractured hip, a black eye, a broken nose, and missing teeth. *See* Tenn. Code Ann. § 39-11-106(a)(3) (2018). R.F. is a "domestic abuse victim" because she was living with the Defendant at the time of the assault, a fact confirmed by both the Defendant and the victim. *Id.* § 39-13-111(a)(2).

Shortly afterward, the Defendant demanded fellatio, and R.F. refused her consent, verbally responding, "No way." R.F. testified that the response angered the Defendant, and the Defendant pinned her to the couch. As R.F. struggled against him, the Defendant masturbated over her. He ejaculated on her face and hair and then attempted to "put his genital in [her] mouth." R.F. testified that the Defendant's ejaculate also covered the arm of her jogging suit.

Notably, while no corroboration of R.F.'s testimony is required or needed to sustain the Defendant's convictions, *see State v. Smith*, 42 S.W.3d 101, 106 (Tenn. Crim. App. 2000), the State introduced other evidence to corroborate her testimony. For example, Detective Hammonds testified that he witnessed and photographed R.F.'s injuries. He opined that the injuries were consistent with R.F.'s testimony, and the photographs of those injuries were shown to the jurors. Special Agent Kennedy also testified that she tested the jogging suit that R.F. was wearing that night and found the presence of semen whose DNA profile matched that of the Defendant.

When viewed in a light most favorable to the State, the evidence plainly is sufficient to support the Defendant's convictions for domestic assault and sexual battery. The evidence establishes that the Defendant intentionally caused bodily injury to R.F., who was a domestic assault victim. It also shows that R.F. came into contact with the Defendant's semen without her consent and that the Defendant had reason to know of her lack of consent from her protests and struggles. Finally, the proof also shows that the Defendant's masturbation, emission of semen, and his attempted placing of his "genital" in R.F.'s mouth, could be reasonably construed as being for the purpose of sexual arousal or gratification.

In response, the Defendant argues that, because of contradictory testimony from the State's witnesses, no rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. He argues that the forensic evidence and the testimony of the Defendant's mother directly contradict R.F.'s testimony and that the State deprived him of evidence by not testing other stains on the jogging suit.

Although the Defendant asks this Court to reassess the credibility of the witnesses and the weight of the evidence presented at trial, this Court "does not reweigh or reevaluate

the evidence.” *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). On the contrary, juries, and not this Court, are “tasked with assessing the credibility of trial witnesses and are generally free to reject, in whole or in part, the testimony of any witnesses. It is the province of the jury to assess the credibility of the witnesses, weigh the evidence, and resolve disputed issues of fact.” *State v. Parvin*, No. E2016-01196-CCA-R3-CD, 2017 WL 3429137, at *5 (Tenn. Crim. App. Aug. 10, 2017); *State v. Daniels*, 656 S.W.3d 378, 392 (Tenn. Crim. App. 2022).

As to the Defendant’s complaints that the State failed to test other stains on the jogging suit, the law is well-settled that “the State has no duty to investigate in a certain way, including conducting scientific testing.” *State v. Primm*, No. M2021-00976-CCA-R3-CD, 2023 WL 179345, at *34 (Tenn. Crim. App. Jan. 13, 2023). Indeed, we have specifically recognized that

the State is not required to investigate cases in any particular way: Due process does not require the police to conduct a particular type of investigation. Rather, the reliability of the evidence gathered by the police is tested in the crucible of a trial at which the defendant receives due process. Moreover, [i]t is not the duty of this Court to pass judgment regarding the investigative techniques used by law enforcement unless they violate specific statutory or constitutional mandates.

State v. Franklin, 585 S.W.3d 431, 461 (Tenn. Crim. App. 2019) (internal quotation marks and citations omitted).

At the trial, the Defendant thoroughly cross-examined the State’s expert as to her not testing other stains on the jogging suit, and he argued these issues in his closing argument. This opportunity is the proper remedy to show alleged failures in the State’s investigation. *Cf. State v. Turner*, No. 01C01-9503-CR-00078, 1995 WL 504801, at *3 (Tenn. Crim. App. Aug. 25, 1995) (“The appellant contends that the failure of the [S]tate to perform DNA testing on blood samples and the failure to preserve blood samples violated his right to due process. . . . However, the failure to perform a material test may be shown through the cross-examination of the appropriate [S]tate witness since it reflects upon the quality of the [S]tate’s case.”). We conclude that the evidence is sufficient to sustain the Defendant’s convictions for domestic assault and sexual battery.

B. SENTENCING

The Defendant next argues that the trial court's four-year sentence for his sexual battery conviction is excessive. Although he concedes that he is a Range II, multiple offender, the Defendant asserts that his sentence at the top of the sentencing range was erroneous. He argues that the maximum sentence made no allowance for mitigating factors, was based on a clearly erroneous assessment of the proof developed at trial, and applied reasoning that caused him injustice. Although the Defendant does not challenge the trial court's denial of an alternative sentence, he asks that we vacate his sentence and remand the case for a new sentencing hearing.

For its part, the State argues that the trial court properly weighed the enhancement factors pursuant to Tennessee Code Annotated section 40-35-114. It also argues that the trial court did not abuse its discretion by sentencing the Defendant to the statutory maximum sentence of four years. We agree with the State.

Our supreme court has recognized that "sentences imposed by the trial court within the appropriate statutory range are to be reviewed under an abuse of discretion standard with a 'presumption of reasonableness.'" *State v. Bise*, 380 S.W.3d 682, 708 (Tenn. 2012). As such, this Court is "bound by a trial court's decision as to the length of the sentence imposed so long as it is imposed in a manner consistent with the purposes and principles set out" in the Sentencing Act. *State v. Carter*, 254 S.W.3d 335, 346 (Tenn. 2008); Tenn. Code Ann. §§ 40-35-101 and -102 (2018). 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.

The Defendant is a Range II, multiple offender, and his conviction offense, sexual battery, is a Class E felony. Tenn. Code Ann. § 39-15-505(d) (2018). As such, the applicable sentencing range is between two and four years. Tenn. Code Ann. § 40-35-112(b)(5) (2018). Because the trial court's four-year sentence is within the applicable statutory range, we accord the trial court's sentence a presumption of reasonableness. *Bise*, 380 S.W.3d at 708.

1. Mitigating Factors

In this case, the Defendant argues that the trial court "made no allowance" for several mitigating factors related to his sexual battery conviction. Taking each of these factors in turn, the Defendant first argues that the trial court should have considered that his criminal conduct neither caused nor threatened serious bodily injury. *See* Tenn. Code

Ann. § 40-35-113(1) (2018). At trial, the victim testified that she suffered broken ribs, a fractured hip, a severed pituitary gland, a black eye, a broken nose, and missing teeth as a result of the assault and that he threatened to kill her if she refused to engage in sexual acts with him before masturbating all over her. The trial court found that the offense was “pretty violent.” The trial court did not abuse its discretion by refusing to apply mitigating factor (1).

Next, the Defendant argues that the trial court should have considered his voluntary intoxication under mitigating factors (11) and (13). *See* Tenn. Code Ann. § 40-35-113(11), (13). More specifically, the Defendant asserts that his voluntary intoxication could be considered under factor (11) because, although the Defendant was guilty of the crime, he “committed the offense under such unusual circumstances [his intoxication] that it is unlikely that a sustained intent to violate the law motivated the criminal conduct.” *Id.* § 40-35-113(11). In addition, while he acknowledges that his voluntary intoxication cannot be considered as a mitigating factor under factor (8), it should have been considered under the so-called “catch-all” factor (13).

The trial court considered each of these arguments in imposing its sentence. Concerning mitigating factor (8), the court concluded that the factor does not apply when the Defendant voluntarily uses the intoxicants. The trial court expressly rejected applying mitigating factor (11), and we conclude that the record does not otherwise support a finding that the Defendant’s criminal conduct resulting from intoxication was an unusual event.

Finally, as to mitigating factor (13), which allows for consideration of “[a]ny other factor consistent with the purposes of this chapter,” the trial court noted as follows: “I listened to Defense’s argument, and I appreciate it. I understand to some degree what the argument is, but I don’t find any mitigating factors at all that apply to this case, none that apply.” The record shows that the trial court considered the Defendant’s arguments as to factor (13) and that it acted within its discretion in rejecting them.

It is true that a trial court cannot ignore or refuse to consider mitigating factors due to a disagreement with the principles behind those factors. *State v. Bonilla*, No. M2019-01193-CCA-R3-CD, 2020 WL 3791677, at *15 (Tenn. Crim. App. July 7, 2020), *no perm. app.* That said, the law does not require the trial court to “explicitly discuss” each mitigating factor; it only requires that the trial court “consider” them. *State v. Dunn*, No. E2021-00343-CCA-R3-CD, 2022 WL 2433687, at *19 (Tenn. Crim. App. July 5, 2022), *perm. app. denied*, (Tenn. Dec. 14, 2022). In this case, the trial court expressly considered each factor argued by the Defendant, and it concluded that none of the factors applied. The trial court complied with its obligations under the Sentencing Act to consider possible mitigating factors.

2. Enhancement Factors

As to the enhancement factors, the trial court correctly found that the Defendant had a previous history of criminal convictions in addition to those necessary to establish the appropriate range, Tenn. Code Ann. § 40-35-114(1) (2018), and that the Defendant was on probation at the time the offense occurred, *id.* § 40-35-114(13)(C). The trial court detailed its findings and the weight attributed to the enhancement factors, and it identified the reasons for imposing the sentence that it did. Of course, the “mere disagreement with the trial court’s weighing of the properly assigned enhancement and mitigating factors is no longer a ground for appeal.” *Bise*, 380 S.W.3d at 706.

Although the Defendant argues that the sentence was based on a clearly erroneous assessment of the evidence, we respectfully disagree. The evidence presented at trial established that the Defendant, who was unprovoked, brutally assaulted and sexually abused his roommate while in a drunken stupor. His assault left the victim covered in bleach with bone fractures, a black eye, and a broken nose, among other injuries. He then forcibly detained her while he sexually abused her. We agree with the trial court that “what was described at trial . . . was a pretty violent offense.”

Further, the evidence from the sentencing hearing established that the Defendant had a lengthy criminal history. Although the Defendant argues that his criminal record consists mainly of “nonserious” misdemeanor offenses, the argument respectfully misses the mark for several reasons. First, the Defendant’s criminal history is extensive. Not counting the convictions needed to establish the range, the Defendant’s presentence investigation report identifies more than thirty felony and misdemeanor convictions, including prior convictions for domestic violence, reckless endangerment, felony DUI, misdemeanor DUI, hit and run with bodily injury, evading arrest, disorderly conduct, and public intoxication. His criminal history spans decades, and his activity occurred in several Tennessee counties and in multiple states. Significantly, many of these offenses involved the excessive use of alcohol, just as the crimes against R.F. did.

The trial court observed that this criminal history “just shows little or no regard whatsoever for the rules in the society that we live in.” We agree and conclude that enhancement factor (1) alone supports the sentence imposed by the trial court. Accordingly, the trial court’s decision to sentence the Defendant to the statutory maximum sentence of four years, after considering all relevant mitigating and enhancement factors and the principles of sentencing, was not an abuse of discretion.

CONCLUSION

In summary, we hold that the evidence presented at trial was sufficient to sustain the Defendant's convictions for sexual battery and domestic assault. We also hold that the trial court acted within its discretion in sentencing the Defendant to the statutory maximum of four years. Accordingly, we respectfully affirm the judgments of the trial court.

TOM GREENHOLTZ, JUDGE