

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs August 1, 2023

FILED
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Clerk of the
Appellate Courts

STATE OF TENNESSEE v. CHARLES JONATHAN MURPHY

Appeal from the Circuit Court for Henderson County
No. 21-197-3 Kyle C. Atkins, Judge

No. W2022-01682-CCA-R3-CD

The Defendant, Charles Jonathan Murphy, was convicted by a Henderson County Circuit Court jury of two counts of rape, a Class B felony, and was sentenced by the trial court as a Range I, standard offender to ten years for each conviction, with the sentences to be served consecutively, for a total effective sentence of twenty years at 100 % in the Department of Correction. On appeal, the Defendant argues that the evidence is insufficient to sustain the convictions and that the trial court erred in sentencing him by misapplying an enhancement factor and ordering consecutive sentences. Based on our review, we affirm the judgments of the trial court.

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

JOHN W. CAMPBELL, SR., J., delivered the opinion of the court, in which TIMOTHY L. EASTER and MATTHEW J. WILSON, JJ., joined.

Jeremy Epperson, District Public Defender; Hayley F. Johnson, Assistant District Public Defender, Jackson, Tennessee (at trial and on appeal), for the appellant, Charles Jonathan Murphy.

Jonathan Skrmetti, Attorney General and Reporter; Ronald L. Coleman, Assistant Attorney General; Jody S. Pickens, District Attorney General; and Chadwick R. Wood, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS

On August 4, 2021, the Henderson County Grand Jury returned an indictment charging the Defendant with two counts of rape based on his having sexually penetrated the victim by use of force or coercion on two different occasions in the summer of 2018. At the time of the offenses, the victim was thirteen years old, and the twenty-three-year-old Defendant, a close friend of the victim's older brother, was living in the victim's home.

The victim, who was seventeen years old and a high school senior at the time of the August 4, 2022 trial, testified that she had lived in her home in Sardis in Henderson County for the past four years. She identified the Defendant as someone she had known since she was six or seven years old and whom she had thought of as an older brother. She said the Defendant lived in her family's home for approximately two and one-half months, beginning in June 2018 and ending on August 25, 2018. At the time, the victim's mother, two older brothers, William and Waylon, and her two-year-old niece lived in the home as well.

The victim testified that the Defendant raped her twice during the summer of 2018 while he was living in her family's home. She recalled that the first incident occurred early in the summer before July 4 when the Defendant returned home late from a night out drinking with the victim's sister-in-law and the sister-in-law's cousin. The victim said she was sitting on the couch watching television, and that no one else was home at the time. Her mother was at work, William was at work, and Waylon was at a neighbor's house. She stated that she and the Defendant habitually bickered and argued like siblings and that she threw the television remote control at him in response to something he said. He threw it back, and she got up to go to either the kitchen or the bathroom. When she returned, the Defendant "slammed [her] on the couch."

The victim testified that it was normal for her and the Defendant to "play fight" like siblings. She, therefore, was not alarmed until the Defendant grabbed the blanket off the back of the couch, pushed her arms above her head, and wrapped her arms in the blanket so that she could not move. The Defendant then unbuttoned his shorts and pulled them down, pulled her shorts down, and penetrated her vagina with his penis. The victim recalled that the Defendant "reeked of alcohol" but could not recall how long the rape lasted. When the Defendant was finished, he got up. The Defendant left the house shortly afterward. The victim testified that her shorts and underwear were at her ankles. She said she "tried to gather [her]self" and "put together what just happened and then took a shower, cried, and went to bed." She stated that she did not tell anyone what happened.

The victim testified that the second time the Defendant raped her occurred sometime after the Fourth of July holiday, around the time that she dislocated her knee, which was

toward the end of July. She said the younger of her two brothers, Waylon, was home, as was her niece. None of them felt well because all of them had “a stomach bug or something.” She said her brother and niece were asleep and that she had fallen asleep on the couch, dressed only in a t-shirt and underwear. When she awakened, she found that she had been moved from one couch to a different, larger couch and that the Defendant was on the couch with her. She asked the Defendant what he was doing, and he told her that he was watching television and watching her sleep. Although she found his statement odd, she tried to brush it off and go back to sleep. The Defendant, however, kept “touching [her] and, like, trying to do it again.” The Defendant then removed the blanket she had covering her, wrapped it around her head and her arms so that her arms were pinned against her chest, ripped her underwear, and penetrated her vagina with his penis.

The victim testified that she was not a willing participant. She said that when the Defendant was through, he got up and left the home. Afterward, she went to bed, first pushing her bed against the door so that the Defendant could not enter. She stated that she did not tell anyone what happened.

The victim testified that, in January 2021 she finally told her mother what the Defendant had done. She said she waited so long to tell because the Defendant was “like a brother” to her and she did not “want that to blow up as big as it has this past year and a half with [her] family.” After she told her mother, she went to the health department to be “tested[,]” talked to her school counselor, and “talked to Crystal Duke and then Carl Perkins.” She agreed there had been disagreements in her family and that “the everyday activities of [her] life” had changed since she reported what the Defendant had done. She further agreed that it was exactly as she feared and the reason she did not initially report the rapes.

On cross-examination, the victim testified that, at the time of the events at issue, her brother William was approximately twenty three and her brother Waylon was fourteen. She testified that she considered both her mother and her brother-in-law to be individuals that she could safely talk to, but she nonetheless did not disclose anything to either of them until January 2021. She agreed that she told law enforcement that she delayed in reporting the rapes because her brother William and the Defendant were best friends, and she did not want William to be angry with her. When asked if the Defendant made statements at any time during either of the incidents, she responded, “No, but there was a time in between.” She testified that during the first incident, the Defendant held her down with one arm while he pulled down his and her shorts. She said she did not recall initially telling law enforcement that the incidents occurred in March 2018. She testified that she believed the Defendant was wearing a gray shirt and blue shorts during the first incident. After reading the relevant portion of her preliminary hearing testimony, she acknowledged that she testified during the preliminary hearing that the Defendant was wearing a gray t-shirt but

she could not remember what pants he was wearing. She said she did not hit the Defendant or scream for help.

On redirect examination, the victim testified that sometime between the two rapes, the Defendant came into her bedroom, sat on the edge of her bed, and said, “Come on, you know. You know you want to do it again. One more time is not going to hurt.” She said nothing happened that night. She testified that she was thirteen years old at the time of the rapes and agreed that she was much larger at the time of trial than she was at that age. On recross-examination, she acknowledged that she was not afraid at the age of thirteen to physically wrestle and play with her brothers and the Defendant.

The Defendant elected not to testify and rested his case without presenting any witnesses. Following deliberations, the jury convicted him of both counts of rape as charged in the indictment.

At the November 4, 2022 sentencing hearing, the State introduced the Defendant’s presentence report, which reflected that the then-twenty-seven-year-old Defendant had a lengthy criminal history consisting of approximately seventeen misdemeanor and felony convictions that began with a misdemeanor conviction at the age of twenty. Among the convictions were misdemeanor convictions for theft, evading arrest, and criminal trespass, as well as several felony convictions for burglary and theft. The trial court found that the Defendant was a Range I offender and that the following enhancement factors were applicable to the offenses: the Defendant had a history of criminal convictions or criminal behavior in addition to those necessary to establish the appropriate range, and the victim was particularly vulnerable due to her age. *See* Tenn. Code Ann. § 40-35-114 (1), (4). The trial court found that there were no applicable mitigating factors. Accordingly, the trial court sentenced the Defendant as a Range I, standard offender to ten years, the midpoint in the range for a Class B felony.

With respect to the consecutive sentencing factors, the trial court found that the Defendant had been convicted of two or more statutory offenses involving the sexual abuse of a minor and that the circumstances surrounding the offenses were that the Defendant was living in the victim’s family home with the victim. The trial court, therefore, ordered that the ten-year sentences be served consecutively, for a total effective sentence of twenty years at 100 % in the Department of Correction.

Following the denial of his motion for new trial, the Defendant filed a timely notice of appeal to this court.

ANALYSIS

I. Sufficiency of the Evidence

The Defendant contends that the evidence is insufficient to sustain his convictions for rape. Citing the victim's testimony that she regularly roughhoused with the Defendant and that she did not hit the Defendant or call for help, the Defendant argues that he had no reason to know that she did not consent to their sexual activity. The Defendant also asserts that there was no evidence to indicate that the victim was mentally defective or incapacitated such that she could not consent to the sexual encounters. The State responds by arguing that the victim's testimony that the Defendant used a blanket to pin her upper body constituted more than sufficient evidence for the jury to find that the Defendant sexually penetrated the victim by the use of force or coercion. We agree with the State.

When the sufficiency of the evidence is challenged on appeal, the relevant question of the reviewing court 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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *see also* Tenn. R. App. P. 13(e) ("Findings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the finding by the trier of fact of guilt beyond a reasonable doubt."); *State v. Evans*, 838 S.W.2d 185, 190-92 (Tenn. 1992); *State v. Anderson*, 835 S.W.2d 600, 604 (Tenn. Crim. App. 1992).

Therefore, on appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable inferences that may be drawn from it. *See State v. Williams*, 657 S.W.2d 405, 410 (Tenn. 1983). All questions involving the credibility of witnesses, the weight and value to be given the evidence, and all factual issues are resolved by the trier of fact. *See State v. Pruett*, 788 S.W.2d 559, 561 (Tenn. 1990). "A jury conviction removes the presumption of innocence with which a defendant is initially cloaked and replaces it with one of guilt, so that on appeal a convicted defendant has the burden of demonstrating that the evidence is insufficient." *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982).

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). The standard of review for the sufficiency of the evidence is the same whether the conviction is based on direct or circumstantial evidence or a combination of the two. *See State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011).

As charged in the indictment, the State had to prove beyond a reasonable doubt that the Defendant sexually penetrated the victim “by use of force or coercion[.]” *See* Tenn. Code Ann. § 39-13-503 (a)(1). Viewed in the light most favorable to the State, the evidence established that on two different dates in 2018, while living in the victim’s home, the adult male Defendant physically overpowered the thirteen-year-old female victim by slamming her onto the couch in the first episode and moving her sleeping body to another couch in the second, pinning her arms with a blanket in both episodes, pulling down her shorts in the first episode and tearing her underwear in the second, and in both episodes penetrating her vagina with his penis while he held her pinned down. That the victim did not hit the Defendant or cry out for help, or that she may have roughoused with him in the past, does not in any way mean that she implicitly consented to his actions or that the rape was not accomplished by the use of force or coercion. We conclude that the evidence is sufficient to sustain the convictions.

II. Sentencing

The Defendant next contends that the trial court erred in sentencing. Specifically, he argues that the trial court misapplied the enhancement factor of the victim’s vulnerability and erred in ordering consecutive sentences based on the Defendant’s having been convicted of two or more offenses involving sexual abuse of a minor. The State argues that the trial court properly exercised its discretion by imposing within range sentences for each offense and ordering consecutive sentences after finding on the record that the Defendant had been convicted of two crimes involving sexual abuse of a minor considering the aggravating circumstances surrounding the offense. We, again, agree with the State.

This court reviews the length, range, and manner of service of a sentence imposed by the trial court under an abuse of discretion standard with a presumption of reasonableness. *State v. Bise*, 380 S.W.3d 682, 708 (Tenn. 2012). In determining a defendant’s sentence, the trial court considers the following factors: (1) the evidence, if any, received at the trial and the sentencing hearing; (2) the presentence report; (3) the principles of sentencing and arguments as to sentencing alternatives; (4) the nature and characteristics of the criminal conduct involved; (5) evidence and information offered by the parties on enhancement and mitigating factors; (6) any statistical information provided by the Administrative Office of the Courts as to sentencing practices for similar offenses in Tennessee; (7) any statement by the defendant in his own behalf; and (8) the result of the validated risk and needs assessment conducted by the department and contained in the presentence report. *See* Tenn. Code Ann. § 40-35-210(b); *see also Bise*, 380 S.W.3d at 697-98. The burden is on the defendant to demonstrate the impropriety of his sentence. *See* Tenn. Code Ann. § 40-35-401, Sent’g Comm’n Cmts.

The trial court is granted broad discretion to impose a sentence anywhere within the applicable range and the sentencing decision of the trial court will be upheld “so long as it is within the appropriate range and the record demonstrates that the sentence is otherwise in compliance with the purposes and principles listed by statute.” *Bise*, 380 S.W.3d at 709-10. Likewise, we review the trial court’s order of consecutive sentences for abuse of discretion, with a presumption of reasonableness afforded to the trial court's decision. *See State v. Pollard*, 432 S.W.3d 851, 860 (Tenn. 2013).

A trial court may order that multiple sentences run consecutively if it finds by a preponderance of evidence that one or more of the seven factors listed in Tennessee Code Annotated section 40-35-115(b) applies, including that

“[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).

The Defendant first argues that the trial court erred in applying the enhancement factor that the victim was particularly vulnerable due to age, asserting that neither the victim’s age, nor her testimony that she was much larger at the time of trial than at the time of the rapes, demonstrated that she lacked the ability to resist or summon help. The Defendant ignores the aggravating facts in this case. In the first rape, the victim was a thirteen-year-old girl, overpowered by an adult male, and no one else was home. During the second rape the victim was again overpowered by an adult male and the only persons in the home at the time were the victim’s fourteen-year-old brother and toddler niece, both of whom were ill and asleep. Regardless, the Defendant does not challenge the applicability of the first enhancement factor, which was amply supported by the record. We conclude that the trial court acted within its broad discretion in imposing a within-range sentence of ten years for each conviction.

The Defendant next argues that the trial court erred in ordering consecutive sentences based on its finding that criterion (5) of the consecutive sentencing statute applied.¹ In support, the Defendant cites the lack of evidence that the victim suffered physical injury or sought counseling, and the fact that the time span between the two incidents was not great. The Defendant also asserts that the trial court did not make sufficient findings on the record in support of consecutive sentences. We respectfully disagree. The record reflects that the trial court specifically noted the aggravating circumstances surrounding the offenses that consisted of the Defendant, who was treated

¹ Evidence and information offered by the parties on enhancement and mitigating factors.

as a family member, gaining access to the vulnerable victim by his close relationship with her and his having lived in the family home. We therefore conclude that the trial court did not err in ordering that the ten-year sentences be served consecutively, for a total effective sentence of twenty years.

CONCLUSION

Based on our review, we affirm the judgments of the trial court.

JOHN W. CAMPBELL, SR., JUDGE