IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs September 12, 2023

**STATE OF TENNESSEE v. RICO REED**

**Appeal from the Criminal Court for Shelby County**
**No. 20-04009 Carolyn Wade Blackett, Judge**

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**No. W2022-01072-CCA-R3-CD**

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A Shelby County jury convicted Defendant, Rico Reed, of one count of aggravated sexual battery. The trial court sentenced Defendant to twenty years in prison. On appeal, Defendant argues that the evidence was insufficient to support his conviction because there was no evidence produced at trial that the contact was for sexual arousal or gratification. After review, we affirm the judgment of the trial court.

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

MATTHEW J. WILSON, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and KYLE A. HIXSON, JJ., joined.

Phyllis Aluko, District Public Defender, and Mark Renken, Assistant District Public Defender, for the appellant, Rico Reed.

Jonathan Skrmetti, Attorney General and Reporter; Garrett D. Ward, Senior Assistant Attorney General; Steven J. Mulroy, District Attorney General; and Dru Carpenter and Robert Steele, Assistant District Attorneys General, for the appellee, State of Tennessee.

## OPINION

### I. Factual and Procedural History

On October 10, 2020, the then eleven-year-old victim stayed the night at her aunt's house so that she could spend time with her twelve-year-old and eight-year-old cousins. The three cousins slept in the living room, with the victim on a couch by herself and the two other cousins together on a separate couch. Defendant, a family friend who was thirty-nine years old, was also staying at the house and slept on the floor near the victim. The

victim's mother did not know Defendant was there because he "was supposed to catch the train to go back home that day." The victim did not meet Defendant until the week before October 10, and had never slept at her aunt's house when Defendant was also there.

Around 7:00 the next morning, the victim woke up to Defendant "just rubbing [her] private part. . . . On top of [her] clothes." She "pushed his hand back" and told him "no." She felt "[s]cared" and wanted her mother. The victim "was taught that if something ever happened in a situation like that, to text a trusted adult or tell somebody," so she did. Her twelve-year-old cousin woke up and saw the victim "crying and [the victim] said he tried to touch her." While the victim was crying, Defendant remained on the floor in the same room. The victim, who had a cell phone, texted her mother seven messages: (1) "MOMMA," (2) "MOMMY," (3) "!!!," (4) "Please answer," (5) "Please," (6) "Don't call me but text," and (7) "Please." After these messages, the victim's mother responded by text, and the victim explained to her mother what happened in a string of messages:

| | |
|---|---|
| VICTIM: | Reko or how ever you spell his name touched my private part |
| MOTHER: | Wen |
| MOTHER: | What he do |
| VICTIM: | Just a few min ago |
| VICTIM: | He was touching it |
| MOTHER: | On my way! At you |
| VICTIM: | Ok hurry mama |
| MOTHER: | I'm telling ur dad |
| VICTIM: | Ok |
| MOTHER: | Go in Rena room |
| VICTIM: | Ok |

The victim's mother testified she "immediately got up and threw a dress over [her] gown and told [her husband]," and they "rushed out of the house and went over there." She also called the police during the fifteen-minute drive.

The victim then went to the bedroom of her nineteen-year-old cousin, Makayla Beamon, who had known the victim "all of her life." The victim woke her up, and showed her the text messages the victim sent to her mother. Ms. Beamon testified that the victim was "hysterical and crying," which was unusual because the victim did not cry often. This made Ms. Beamon "jump up" and ask the victim what was wrong, but the victim was "just shoving the phone in my face." While "reading the text messages [Ms. Beamon] put together what was happening." Ms. Beamon explained to the victim the "seriousness of the situation" and went to confront Defendant, but the victim "grabbed" her and said, "'No, no. Don't go say anything. I'm scared.'" Ms. Beamon told the victim there was "no reason to be scared . . . you know you're okay now" and told her "just wait in my room." Undeterred, Ms. Beamon walked to the living room and found Defendant who appeared to be asleep. After repeating Defendant's name three times, he responded. Ms. Beamon asked Defendant, "'You ain't here touching on these kids, are you?'" Defendant asked if she meant "'my little cousin right here,'" referring to the victim. Defendant's response confirmed Ms. Beamon's belief that he had touched the victim because she "didn't even have to say a name," and Defendant already knew "what little cousin [she was] talking about." Defendant "jumped up" and "looked to see that [the victim] wasn't there."

The commotion eventually woke everyone else in the house, including the victim's aunt. Defendant tried to plead with the victim's aunt that he did not do anything. When Defendant realized that his pleas were falling on deaf ears and that the victim's parents were on the way, he scrambled to gather his things and ran out the front door.

When the victim's father arrived to the house, he saw Defendant was not there, but he asked his nephew "'Which way did he go?'" Once he learned which direction Defendant had fled, the victim's father went after him. When the victim's father found Defendant, Defendant ran into a convenience store. The victim's dad "wanted to do something to [Defendant,]" such as "beat him up," but he instead called the police with Defendant's location and decided to "hold him there until the police got there" and "not let him leave."

When officers from the Memphis Police Department ("MPD") arrived at the store, they had a description of Defendant from the victim's father. Defendant approached them and "immediately started talking about . . . he didn't do it." Officer Teresa Jefferson took Defendant into custody and brought him back to the victim's aunt's house. There, Officer Jefferson spoke with the victim and her parents. Officer Jefferson then took Defendant to the police bureau for further questioning.

MPD Sergeant Malvin Jones was assigned to the Child Abuse Bureau in October 2020, and was the lead investigator in the case. Sergeant Jones interviewed several

witnesses, including the victim's mother and Ms. Beamon. Sergeant Jones decided not to interview the victim "to protect the integrity of the case" but arranged for specialists at the Child Advocacy Center ("CAC") to conduct the victim's interview. On October 21, 2020, Letitia Cole, a forensic interviewer, interviewed the victim at the Memphis CAC.[1] Sergeant Jones watched from a separate room on a closed-circuit TV monitor, while Ms. Cole and the victim were alone. Ms. Cole testified the she had received revised child sexual forensic interviewing training, worked at the CAC for eleven years, and estimated that she had conducted about 3,000 interviews. In the interviews, Ms. Cole tried "to ask the questions in a way that wouldn't be leading." During the victim's interview, Ms. Cole used a female anatomical diagram and asked the victim to point out where Defendant touched her. The victim pointed to an area on the diagram and called it "'the private part.'" Ms. Cole circled the area on the diagram and notated it. Ms. Cole testified that the area the victim pointed to was "[t]he vagina." A recording of Ms. Cole's interview with the victim was exhibited and published to the jury.

Defendant elected not to testify or call any witnesses.

The jury found Defendant guilty of aggravated sexual battery. At a subsequent sentencing hearing, the State argued for the trial court to apply two enhancement factors under Tennessee Code Annotated section 40-35-114. As to subsection (1), the State relied on Defendant's prior Ohio convictions for gross sexual imposition, and aggravated burglary. As to subsection (13), the State argued Defendant was under court supervision at the time he committed the instant offense because he was required to register as a sex offender. The State also introduced a victim impact statement from the victim. The trial judge sentenced Defendant to the statutory maximum of twenty years in prison to be served at a rate of 100 percent. *See* Tenn. Code Ann. § 40-35-112(b)(2). Defendant timely moved for a new trial and raised sufficiency of the evidence as one of his grounds. The trial court denied Defendant's motion, and he now timely appeals.

## II. Analysis

Defendant's sole argument on appeal is that "no evidence was presented at trial that any contact between [Defendant] and [the victim] was for the purpose of sexual arousal or gratification." The State counters that a "rational jury could reasonably construe Defendant's intentional rubbing of [the victim's] vagina while she was sleeping as being for the purpose of sexual arousal or gratification."

The standard of review for a claim challenging the sufficiency of the evidence is "whether, after viewing the evidence in the light most favorable to the

[1] The interview was video recorded.

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) (citing *Johnson v. Louisiana*, 406 U.S. 356, 362 (1972)); *see* Tenn. R. App. P. 13(e); *State v. Davis*, 354 S.W.3d 718, 729 (Tenn. 2011). This standard of review is identical whether the conviction relies on direct evidence or circumstantial evidence, or a combination of both. *State v. Williams*, 558 S.W.3d 633, 638 (Tenn. 2018) (citing *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011)).

A guilty verdict removes the presumption of innocence and replaces it with one of guilt on appeal, therefore, the burden is shifted to the defendant to prove why the evidence is insufficient to support the conviction. *Davis*, 354 S.W.3d at 729 (citing *State v. Sisk*, 343 S.W.3d 60, 65 (Tenn. 2011)). On appeal, "we afford the prosecution the strongest legitimate view of the evidence as well as all reasonable and legitimate inferences which may be drawn therefrom." *Id*. at 729 (quoting *State v. Majors*, 318 S.W.3d 850, 857 (Tenn. 2010)); *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978). In a jury trial, questions involving the credibility of the witnesses and the weight and value to be given to evidence, as well as all factual disputes raised by such evidence, are resolved by the jury as the trier of fact. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997); *State v. Pruett*, 788 S.W.2d 405, 410 (Tenn. 1990). Consequently, we are precluded from re-weighing or reconsidering the evidence when evaluating the convicting proof. *State v. Stephens*, 521 S.W.3d 718, 724 (Tenn. 2017).

Here, the jury convicted Defendant of aggravated sexual battery under Tennessee Code Annotated sections 39-13-501 and -504. In relevant part, "Aggravated sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim" when the "victim is less than thirteen (13) years of age." Tenn. Code Ann. § 39-13-504(a)(4). "Sexual contact" is defined as "the intentional touching of the victim's . . . intimate parts, or the intentional touching of the clothing covering the immediate area of the victim'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). "'Intimate parts' includes the primary genital areas, groin, inner thigh, buttock, or breast of a human being." *Id.* § 39-13-501(2). Thus, the elements of aggravated sexual battery, in relevant part, are: (1) the intentional touching of the clothing covering a victim's intimate parts; (2) the intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification; and (3) the victim is less than thirteen years old. *Id.* §§ 39-13-501(2), (6), -504(a)(4).

On appeal, Defendant only argues there was insufficient evidence for a rational jury to conclude that element two was met—the sexual gratification element. He argues that there was no evidence presented at trial that shows any contact was for sexual arousal or gratification. Regardless, a "jury may infer intent from" a defendant's actions. *State v.*

*Johnson*, No. W2011-01786-CCA-R3-CD, 2013 WL 501779, at *10 (Tenn. Crim. App. Feb. 7, 2013) (citing *State v. Leach*, 148 S.W.3d 42, 54 (Tenn. 2004)). Jurors may also "draw upon their common knowledge to infer that an accused forced intimate contact for the purpose of sexual arousal or gratification." *Id.* (citing *State v. Vermeal*, No. M2005-00568-CCA-R3-CD, 2005 WL 3543417, at *3 (Tenn. Crim. App. Dec. 28, 2005)). It is only required that the jury "*reasonably construe[s]*" the touching "as being for the purpose of sexual arousal or gratification"—there is no requirement that the jury must find that a defendant was actually aroused or gratified. *State v. Chisenhall*, No. M2003-00956-CCA-R3-CD, 2004 WL 1217118, at *3 (Tenn. Crim. App. June 3, 2004) (emphasis added) (citations omitted). Ultimately, the "determination of whether the contact was for the purpose of sexual arousal or gratification is a question" for the trier of fact to resolve. *State v. Walton*, No. M2014-01337-CCA-R3-CD, 2015 WL 2257130, at *3 (Tenn. Crim. App. May 12, 2015); *see also State v. Hill*, No. E2003-02998-CCA-R3-CD, 2005 WL 623244, at *5 (Tenn. Crim. App. Mar. 17, 2005). We have also "repeatedly held that a minor's testimony, alone, is sufficient to uphold a conviction of sexual offenses." *State v. Qualls*, No. W2019-01083-CCA-R3-CD, 2020 WL 4346803, at *3 (Tenn. Crim. App. July 28, 2020) (citing *State v. Elkins*, 102 S.W.3d 578, 582-83 (Tenn. 2003)).

The evidence here was sufficient for a rational jury to conclude that the contact was for sexual arousal or gratification. The victim testified that while she was sleeping, she woke up to Defendant "rubbing [her] private part" over her clothes. In the forensic interview, when asked to point out where Defendant touched her, the victim pointed to an area on a female anatomical diagram and again called it "'the private part.'" The interviewer testified that the area the victim pointed to was "[t]he vagina." The victim knew Defendant's touching was wrong. The victim "pushed his hand back" and told him "no." She frantically texted her mother seven times and went to her older cousin's room to explain what happened. Ms. Beamon testified that the victim was "hysterical and crying." Ms. Beamon also knew the touching was wrong, which is why she confronted Defendant, asking, "'You ain't here touching on these kids, are you?'" When Defendant was confronted, he specifically denied touching the victim even though there were three children in the living room. Defendant knew his actions were wrong too—when the rest of the family confronted him, Defendant fled. When the victim's father later confronted Defendant, he fled again into a convenience store.

In sum, Defendant, a thirty-nine-year-old man, touched the eleven-year-old victim's vagina while she was asleep and unable to resist. When the victim awoke, she did resist and told him "no." The jury, when presented with this evidence, was able to "draw upon its common knowledge" to "reasonably construe" that Defendant's actions were for sexual arousal or gratification. *See* Tenn. Code Ann. §§ 39-13-501(2), (6), -504(a)(4). We find no reason in the record to say otherwise. Because this determination is a question for the jury, we conclude that the evidence was sufficient, and will not disturb the jury's sound

finding. *See Walton*, 2015 WL 2257130, at *3. Accordingly, Defendant is not entitled to relief.

## III. Conclusion

For the reasons above, we affirm the judgment of the trial court.

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MATTHEW J. WILSON, JUDGE