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

STATE OF TENNESSEE v. WILLIE TAYLOR

Appeal from the Criminal Court for Shelby County
No. 19-01065 Chris Craft, Judge

No. W2022-00465-CCA-R3-CD

The Defendant, Willie Taylor, was convicted of rape, assault, and promoting prostitution. The Defendant appeals, contending that the trial court erred by not suppressing his statement to the police and that the evidence was insufficient to support his convictions for rape and assault. We affirm the trial court's judgments.

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

KYLE A. HIXSON, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and TIMOTHY L. EASTER, JJ., joined.

Sharon A. Morales (on appeal and at trial) and J. Jeffery Lee (at trial), Memphis, Tennessee, for the appellant, Willie Taylor.

Jonathan Skrmetti, Attorney General and Reporter; Zachary T. Hinkle, Associate Solicitor General; Amy P. Weirich, District Attorney General; and Alyssa Hennig and Jamie Kidd, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

I. FACTUAL AND PROCEDURAL HISTORY

In September 2018, C.F.[1] reported to Memphis police that she had been raped by a man after he and his female companion picked her up from her University of Memphis dormitory and drove her to their hotel room. Following an investigation, a Shelby County grand jury indicted the Defendant and his girlfriend at the time, Malonasia Cobbins, charging them each with two alternate counts of trafficking for a commercial sex act. *See* Tenn. Code Ann. § 39-13-309. The grand jury also charged the Defendant individually

[1] We utilize initials in keeping with the court's policy regarding cases of sexual assault.

with rape and aggravated assault by attempted strangulation. *See id*. §§ 39-13-102, -503. Following an unsuccessful attempt to suppress his statement to police, the Defendant proceeded to trial. Ms. Cobbins testified at the Defendant's trial on behalf of the State.

A. Suppression Hearing

Prior to trial, the Defendant filed a motion seeking to suppress the statement that he gave to law enforcement officers during the investigation of this case. In his motion, the Defendant claimed that the typed statement prepared by the police did not accurately reflect his oral statement to the officers and that the typed statement, therefore, "was not a knowing, intelligent and voluntary statement made in response to *Miranda* warnings[.]"[2]

At the suppression hearing, the only testifying witnesses were Memphis Police Department ("MPD") Sergeant Milton Bonds, Jr., and the Defendant. Sgt. Bonds testified that he had served at MPD since 1997, and since 2017, he had been assigned to the sex crimes bureau and was a member of the Internet Crimes Against Children Human Trafficking Task Force. Following the complaint by C.F., he commenced an investigation of the Defendant and Ms. Cobbins by calling them on the telephone and asking them to come to the police station to give a statement. Sgt. Bonds informed both individuals of the nature of the allegations during these telephone conversations. The Defendant and Ms. Cobbins voluntarily came to the station for this purpose. The Defendant was calm when he arrived at the station and had a friendly demeanor, telling jokes to the officers. He was cooperative and nonconfrontational, and he indicated that he just wanted to clear himself of the allegations. Sgt. Bonds indicated that the Defendant's good demeanor never changed throughout their interaction.

Sgt. Bonds decided to interview the Defendant first, as he was the "prime suspect." Sgt. Bonds did not consider the Defendant to be under arrest at this point, nor did he ever indicate to the Defendant that he was, in fact, under arrest. MPD Sgt. Darrin Seitz joined Sgt. Bonds in the interview room with the Defendant. Sgt. Bonds initiated the interview by restating the nature of the investigation and by informing the Defendant that, because he was a suspect, he must be advised of his rights not to give a statement. Sgt. Bonds did this by presenting the Defendant with MPD's Advice of Rights form. Sgt. Bonds allowed the Defendant to read the form himself, and then Sgt. Bonds read the form to him. Sgt. Bonds asked the Defendant to place his initials next to each individual right, indicating that he understood each right. The Defendant then signed the bottom of the form. The Advice of Rights form was entered as an exhibit to the hearing. The date and time listed at the top

[2] *See Miranda v. Arizona*, 384 U.S. 436 (1966).

of the form were September 12, 2018, at 6:10 p.m. The bottom of the form was signed by Sgt. Bonds and Sgt. Seitz with a listed time of 6:11 p.m.

At the time of the Defendant's interview, it was not MPD policy to create recordings of suspect interviews. Instead, policy dictated that the interviewing officer would type the questions asked and the answers provided as the interview took place. This was the practice utilized by Sgt. Bonds during the Defendant's interview. Sgt. Bonds testified that he typed the words actually used by the Defendant, instead of writing it in his "own words." Sgt. Bonds indicated that, when typing the statement, he did not mischaracterize anything that the Defendant said, nor did he omit any portion of the Defendant's statement. The last question on the statement read,

> You will now be asked to read your statement and if you find it to be true and correct you will be asked to initial the bottom right hand corner of the pages, and to sign, date, and give the time on the last page. Do you agree to this?

The statement indicated that the Defendant responded, "Yes[.]" Once the interview concluded, Sgt. Bonds printed the typed statement and gave the Defendant an opportunity to review its contents. Sgt. Bonds advised the Defendant to review the statement and gave him a pen to mark any inaccuracies. The Defendant reviewed the statement and then placed his signature on the last page. The Defendant did not place his initials on every page of the statement. The Defendant made no corrections to the statement following his review, nor did he verbally indicate to the officers that there were any inaccuracies therein.

The typed statement was entered as an exhibit to Sgt. Bonds' testimony. The document indicated on page four that the statement ended at 7:10 p.m. The statement was signed by the Defendant, with a listed date and time of September 12, 2018, at 7:16 p.m.

On cross-examination, Sgt. Bonds stated that he had attended two interview schools and that he had conducted hundreds of interviews during his career. He testified that he was not hurried or in a rush on the evening of the Defendant's interview. The statement took about an hour, and Sgt. Bonds reaffirmed that he provided the Defendant with *Miranda* warnings prior to the commencement of questioning. Sgt. Bonds testified that he made no promises to the Defendant during the course of their interaction, that he never informed the Defendant that he was not in trouble, and that he never told the Defendant that he did not believe C.F.'s allegations. Sgt. Bonds stated that the only time he left the room was to print the statement, at which time the Defendant was left alone in the room with Sgt. Seitz.

Sgt. Bonds maintained that it was not possible that he forgot to ask the Defendant to review his statement before signing it. He could not remember how long the Defendant took to review his statement. While he believed that he checked to see if each page was initialed, he maintained that he would not "force a suspect, witness, victim, anybody to initial or not initial." He conceded that C.F. initialed every page of her statement and that she made changes to her statement, which were also initialed. C.F.'s statement was entered as an exhibit to the hearing.

Sgt. Bonds did not arrest the Defendant following his statement. Instead, he walked the Defendant out of the police station so that he could leave in his car.

Following Sgt. Bonds' testimony, the Defendant took the stand and testified that he was thirty-eight years old and that he had completed two years of college classes. He indicated that he had no trouble reading or writing. He learned that Sgt. Bonds wanted to talk with him because Sgt. Bonds had called the Defendant's mother. Once his mother informed him of this, the Defendant immediately called Sgt. Bonds. Sgt. Bonds wanted the Defendant to come to the police station the next day. The Defendant maintained that Sgt. Bonds would not tell him why he wanted to speak with him. The Defendant wanted to speak with Sgt. Bonds immediately "because [he] was concerned about why [Sgt. Bonds] wanted to talk to [him]." The Defendant told Sgt. Bonds that he was only five minutes from downtown, so Sgt. Bonds agreed to speak with him that evening.

The Defendant did not believe that he was under arrest at the time that he arrived at the police station. The Defendant was taken into an interview room with Sgt. Bonds and another officer. The Defendant testified that the officers did not inform him of his rights prior to questioning him. According to the Defendant, the officers never asked him if he wanted an attorney to be present during his questioning, nor did they ask him if he wanted to talk with them. He conceded that the officers never promised him anything during the course of the interview. He further conceded that he never told the officers that he did not want to talk with them.

The officers asked the Defendant if he knew C.F., and he responded that he did not know her by that name. It was not until this point, the Defendant testified, that he realized why he was being questioned. When asked by his attorney, "Was Sergeant Bonds asking you questions, or were you just volunteering information?[,]" the Defendant responded, "In the beginning when he told me why I was there, I was telling what had happened." He continued, "And then as I was telling him, he started asking me questions, and I just started answering his questions."

Once the interview concluded, the Defendant testified that the officers provided him the rights waiver form and the typed statement at the same time. The Defendant stated that he read, initialed, and signed the rights waiver form. When the Defendant started to read the first page of the typed statement, Sgt. Bonds rushed him. The Defendant testified that Sgt. Bonds told him, "[D]on't worry about it, just go on and sign this page[.]" The Defendant stated that Sgt. Bonds was in a hurry because he still had to talk with Ms. Cobbins, and he wanted to get home. The Defendant continued trying to read the statement, but Sgt. Bonds urged him "to go on and sign that page." The Defendant testified that he signed the document at that point out of "fear" and "trust" and based upon Sgt. Bonds' representation that he was not going to jail that evening.

The Defendant maintained that he did not read any of the statement prior to signing it. The Defendant had since read the statement and testified, without specificity, that there were points that he would have corrected or changed if he had the opportunity. He then testified, "[H]onestly, if I would have read the statements and the first thing I seen that I didn't say, I would have never even signed the back of it." The Defendant conceded that he was allowed to leave the station following his interview.

On cross-examination, the Defendant maintained that he did not initially know why the police wanted to speak with him. He stated that Ms. Cobbins came with him to the station only because she was his girlfriend, and they were driving around in the same car when he spoke to Sgt. Bonds on the telephone. The Defendant testified that Ms. Cobbins would be lying if she said that he tried to tell her what to say to the police on their way to the station.

The Defendant conceded that he had spoken with the police multiple times in his life and that he came to the station voluntarily in this instance. Sgt. Bonds told him that he was not under arrest when he arrived and that he would not be going to jail that evening. He further conceded that the time listed on the rights waiver form was 6:10 p.m., while the time listed on his statement was 7:16 p.m. He maintained, however, that the rights waiver form was presented to him at the same time as the typed statement at the end of the interview. He stated that Sgt. Bonds never told him to read the statement and that when he tried to read the statement, Sgt. Bonds rushed him to sign the statement. He reiterated that he signed the statement out of fear and trust[3] and the belief that Sgt. Bonds might change his mind about arresting him if he did not sign it. He conceded that Sgt. Bonds never told him that he would be arrested if he did not sign the statement, nor did Sgt. Bonds force him to sign the statement.

[3] The Defendant stated that in his prior interactions with the police, officers had never done "anything wrong to [him] or out of the ordinary[.]" He continued, "[S]o I kind of trusted and at the same time was kind of scared."

On redirect examination, the Defendant stated that he was unaware of who wrote the time on the rights waiver form, but it was not him. The Defendant testified that he wrote the time of 7:16 p.m. on the typed statement but did not recall how he knew the time. He testified that he was wearing a watch during the interview.

The hearing concluded, and the trial court issued a written order denying the Defendant's motion. The trial court found that the Defendant had completed two years of college and that he had "no trouble reading." It found that the Defendant had had "several interactions" with the police prior to the instant case. The trial court noted that at the hearing, the Defendant "never stated at any time that he did not wish to make a statement to Sgt. Bonds, or that his statement was ever given other than voluntarily." The trial court accredited Sgt. Bonds' testimony "that the [D]efendant understandingly, knowingly and voluntarily" signed the rights waiver form at 6:11 p.m. and "that the statement itself was voluntarily signed by the [D]efendant at 7:16[.]" The trial court found that the Defendant's testimony that he signed the documents at the same time was "simply not credible." The trial court declined to suppress the Defendant's oral statement to police, finding that it "was freely and voluntarily given, after [the Defendant was] properly advised of his rights and knowingly and freely waiv[ed] those rights[.]" It concluded, "Whether or not the actual statement that the [D]efendant gave orally to Sgt. Bonds was accurately reflected by Sgt. Bonds in the typed statement, and whether or not the [D]efendant reviewed it prior to signing, is a jury question, not a constitutional one."

B. Trial

The Defendant's trial commenced on July 26, 2021. Ms. Cobbins testified that she met the Defendant online through the "Tagged" app. The Defendant told her that she could make money for him working as a prostitute. When they later talked on the telephone, the Defendant explained that all of her earnings would go to him and that he would provide her with "love and care" in return. Ms. Cobbins agreed to this arrangement, explaining that she was "going through a hard time" in her life.

By September 2018, Ms. Cobbins had become the Defendant's "bottom girl," or "leader" of his prostitutes. Despite their business arrangement, Ms. Cobbins considered the Defendant to be her boyfriend. They were affectionate towards one another and often spent time with each other's families. As promised, the Defendant provided Ms. Cobbins with "love and care," and the two often went on dates. The prostitution business was a means to an end for the couple. Ms. Cobbins explained, "We had a plan to build ourselves up so we could move out of Memphis and live our lives."

In September 2018, the Defendant sought to add another girl to his business, and the couple discovered C.F. on the online app "Plenty of Fish." Using Ms. Cobbins' online profile, the couple reached out to C.F. and asked if she would like to meet Ms. Cobbins. C.F. agreed, and the couple proceeded to C.F.'s dormitory. According to Ms. Cobbins, C.F. was unaware at this point that the Defendant was involved in the rendezvous, that he would be present when she and Ms. Cobbins met, or that the purpose of the meeting was to recruit her for prostitution. To Ms. Cobbins' knowledge, C.F. was only aware that she was meeting Ms. Cobbins to "chill" and "have fun"—or, as Ms. Cobbins presumed, sex—with her.

Once inside the Defendant's car, however, the Defendant asked Ms. Cobbins to introduce him to C.F. and to explain that he was Ms. Cobbins' pimp. C.F. did not verbally respond to receiving this information but appeared uncomfortable. After picking up some alcohol along the way, the trio entered the hotel room where Ms. Cobbins lived. Ms. Cobbins and C.F. drank alcohol and smoked marijuana as Ms. Cobbins and the Defendant explained their business to C.F. The Defendant then instructed C.F. and Ms. Cobbins to disrobe and for Ms. Cobbins to take nude pictures of C.F. Ms. Cobbins thought that C.F. appeared confused as these pictures were being taken. At the Defendant's request, Ms. Cobbins posted the pictures to Plenty of Fish to "try and see if anything would come through."

The Defendant then instructed C.F. to perform oral sex on Ms. Cobbins, and she complied. Because Ms. Cobbins had feelings for the Defendant, however, she halted the encounter and walked into the bathroom. This apparently upset the Defendant, as he followed Ms. Cobbins into the bathroom, admonished her for making C.F. nervous, and strangled her against the wall. Following this episode, the couple rejoined C.F. in the bedroom, and Ms. Cobbins sat by the window.

As the Defendant returned to the bedroom, he told "[C.F.] what he wanted her to do[,]" beginning with performing fellatio on him. C.F. did not speak but did as instructed. Ms. Cobbins sensed that C.F. was nervous. After fellatio, the Defendant positioned himself behind C.F. and grabbed her by the neck. Ms. Cobbins testified, "[C.F.] was squirming, I don't believe she wanted that." As the Defendant engaged in intercourse with her, C.F. said that she was ready to go home because she had class in the morning. The Defendant continued to have sex with her, however, and Ms. Cobbins presumed that C.F. "gave up trying to tell him that she wanted to go home[,]" adding, "[S]he just let it happen." After the Defendant finished, C.F. left the room, and Ms. Cobbins presumed that she found her way home.

Ms. Cobbins testified that the Defendant drove her to the police station when she gave her statement but maintained that she had not talked with the Defendant about her statement. The Defendant was in the waiting room while Ms. Cobbins gave her statement and drove her home after they finished. Ms. Cobbins acknowledged that she was charged in the same indictment as the Defendant and that the charges were still pending at the time of her testimony. She said, however, that she had not been promised anything in exchange for her testimony.

On cross-examination, Ms. Cobbins testified that she had numerous online ads for herself, including one from 2017 on the app "Listcrawler" using her screenname, "Hennessy." She testified that she did not engage in prostitution before meeting the Defendant. Since she met the Defendant, it was not unusual for them to engage in "threesomes" with other women. Nevertheless, the Defendant and Ms. Cobbins told each other that they loved each other often during this time. She reiterated that they spent time with each other's families and added that they spent holidays together.

Ms. Cobbins testified that she was the one who actually made online contact with C.F. She agreed that she told the police in her statement that she was a prostitute because it was "easy money" and that C.F. was "down to get some money[.]" According to Ms. Cobbins, C.F. was in the hotel with her and the Defendant for "several hours" on the day in question, and Ms. Cobbins stayed in the same hotel for weeks after the incident. She conceded that she told the police that the Defendant did not force C.F. to have sex with him and that the Defendant did not strangle C.F. Ms. Cobbins acknowledged that she told the police that C.F. brought a vibrator to the room, used that vibrator on Ms. Cobbins, and left the vibrator in the room when she left.

Ms. Cobbins acknowledged that she was jealous as she observed the Defendant having sex with C.F. Ms. Cobbins stated that the Defendant was her pimp and that he forced her to do this work, although she acknowledged that she had told her sister in a recorded jail telephone call that he did not force her to be a prostitute. She told her sister that she was a prostitute because she liked the money. Ms. Cobbins stated that she smoked marijuana and that she used her prostitution money to buy drugs. Ms. Cobbins further testified that one of the Defendant's arms was shorter than the other, making tasks such as texting and having sex difficult for him.

Ms. Cobbins spent eight months in pretrial custody on a $100,000 bond before being released without posting a bond on October 10, 2019. She acknowledged that she gave a recorded statement to prosecutors on July 2, 2019, but maintained that she did not give the statement to get out of jail. She acknowledged having told her sister and the Defendant's mother, Sally Whitfield, that she would not be charged for these offenses if she testified

against the Defendant. To her understanding, she was facing over fifteen years in prison if convicted of the charges against her.

On redirect examination and following a jury-out hearing, the State played portions of Ms. Cobbins' recorded interview with a prosecutor and investigator from July 2, 2019. Upon hearing the recordings, Ms. Cobbins corrected her earlier testimony that she had only met the Defendant a month or two prior to September 2018 and instead testified that she had met him two years prior. She also clarified that it was the Defendant's idea to recruit C.F. for prostitution and that he was one who actually communicated with C.F. online using Ms. Cobbins' screenname. Ms. Cobbins maintained that she did not become personally involved in C.F.'s recruitment until she actually met C.F. Ms. Cobbins stated that the Defendant told her that he intended to "initiate" C.F., which meant that he would perform a sexual act with her to confirm that she would be working for him.

In the third recording, Ms. Cobbins described to the interviewers the Defendant's interactions with C.F. in the hotel room. Ms. Cobbins told them that the Defendant kept telling C.F. that he wanted her to work for him, but she repeatedly refused, explaining that she was in school. Ms. Cobbins said that the Defendant made C.F. perform oral sex on him, which Ms. Cobbins described as nonconsensual. She described C.F. as being nervous. Regarding the sexual intercourse between the Defendant and C.F., Ms. Cobbins stated, "She was squirming and stuff like he was hurting her but he kept on doing it, and she was like, 'No, I'm ready to go. I gotta go 'cause I gotta go to class in the morning.' He was like, 'You're gonna have to wait until I finish.'" After hearing this recording, Ms. Cobbins testified that her account to the interviewers accurately reflected what happened in the hotel room.

In another recording, Ms. Cobbins indicated that the Defendant physically overpowered C.F. and grabbed her by the neck so that she would not move. In the final recording, Ms. Cobbins described an incident from a prior court date when she and the Defendant were in the courtroom together. She told the interviewers that the Defendant was "harassing" her by asking her questions. After hearing this recording, Ms. Cobbins explained that, during this incident, the Defendant was asking about her discussions with the prosecutors and whether she was "going to have his back."

On recross-examination, Ms. Cobbins acknowledged that she had provided two separate statements to law enforcement regarding this incident, and she further acknowledged that there were differences in the statements. She also acknowledged that she had received C.F.'s statement as part of the discovery in her case and that she was therefore aware of what C.F. had said about the incident. She maintained that she had not contacted the Defendant since being charged but admitted that she had communicated via

text message with his mother and asked her to provide him with Ms. Cobbins' phone number.

Attorney Brent Walker was appointed to represent Ms. Cobbins in her criminal case related to this incident on March 18, 2019. Mr. Walker desired to obtain Ms. Cobbins' pretrial release but knew that it was not the practice of the district attorney's office to trade release or favorable plea offers for testimony. Nevertheless, he encouraged Ms. Cobbins to provide a statement to prosecutors, and he also sought to obtain a bed for her at Restore Corps, a treatment facility.

After the treatment was procured and Ms. Cobbins provided a statement to prosecutors, Mr. Walker asked the prosecutor assigned to the case to join his motion to reduce Ms. Cobbins' bond. She declined. Thus, Mr. Walker filed the motion alone on behalf of Ms. Cobbins, which was granted by the trial court.

When asked if the prosecutor had promised him or Ms. Cobbins anything in exchange for Ms. Cobbins' statement, Mr. Walker responded, "I can say without a doubt, no, she did not." Mr. Walker testified that no one from the State told Ms. Cobbins what to say in her statement and that he personally did not tell her to lie to the State.

On cross-examination, Mr. Walker testified that he had received no guarantee or promise that Ms. Cobbins would be released from custody but admitted that he hoped that his efforts would lead to that result. He advised Ms. Cobbins that he thought her testifying against the Defendant would benefit her. He noted that it was unusual for prosecutors in Shelby County to sever the trials of codefendants and acknowledged that Ms. Cobbins was not on trial with the Defendant.

C.F. testified that she was eighteen years old in September 2018. She had just enrolled at the University of Memphis. She met someone on Plenty of Fish with a screenname of Hennessy Carolina. Hennessy and C.F. engaged in a text-message conversation, wherein Hennessy informed C.F. that she was an escort, or someone who went on dates with others in exchange for money. Hennessy expressed that she wanted to meet C.F. to discuss the possibility of her becoming an escort. C.F. did not want to become an escort, but she agreed to meet Hennessy because she felt like she should "hear her out" and because she wanted to smoke marijuana. She clarified that her "sole purpose" for meeting Hennessy was to smoke marijuana.

When the time arrived for Hennessy to pick C.F. up at her dormitory, C.F. went outside to find a male sitting in a gold car. Hennessy texted C.F. to let her know that she was in the passenger's seat of this car. C.F. later identified this man and woman as the

Defendant and Ms. Cobbins. During their ride from the dormitory, Ms. Cobbins explained that the Defendant was her "daddy," but C.F. was unsure of what that meant. The trio arrived at an extended-stay hotel around mid-afternoon.

When they entered Ms. Cobbins' hotel room, Ms. Cobbins asked the Defendant to get them wine coolers, and Ms. Cobbins and C.F. proceeded to drink and smoke marijuana. Nothing inappropriate happened at first, but C.F. started to feel uncomfortable. Later, the Defendant made C.F. take off all of her clothes so that Ms. Cobbins could take nude pictures of her. When asked why she complied, C.F. responded, "Just the tone of voice that he was using was really intimidating and I was already uncomfortable, so I didn't really want to stir anything up." C.F. took off all of her clothes and was provided panties to wear for the topless pictures. The Defendant attempted to pose C.F., who was intoxicated at this point from the marijuana and alcohol, while Ms. Cobbins took the pictures. Initially, C.F. did not comply with the Defendant's attempts to pose her, but she complied after she noticed the Defendant's becoming frustrated.

After the pictures, the Defendant and Ms. Cobbins went into the bathroom, leaving C.F. alone in the bedroom. C.F. heard loud noises in the bathroom, which sounded like someone was knocked against a wall. This made C.F. feel "[u]ncomfortable even more." She continued, "I started to get scared and feared that I could possibly be next." The Defendant exited the bathroom and stated, "Cover that [s---] up."

C.F. testified that she was forced to perform oral sex on both Ms. Cobbins and the Defendant. After the Defendant forced C.F. to perform oral sex on him, C.F. was told what was "about to happen[.]" She responded to the Defendant, "I didn't want it to happen" and "I wanted to go home." The Defendant then "bent [C.F.] over the bed and started to sexually assault" her. C.F. testified that she was "forced to take it." She continued, "I was choked and during it, I was being called names." She described the attack as "very aggressive." C.F. could not breathe as she was being choked and thought that she might die. Once the Defendant finished, C.F. put her clothes on and sat on the end of the bed.

The Defendant indicated that he would give C.F. a ride back to her dormitory, but after they both walked outside, the Defendant returned upstairs to the room. Once C.F. realized that the Defendant was not returning, she ran across the street to a Taco Bell to call the police, but the dining room was closed. At this point, a couple exiting the drive-through saw C.F. sitting on the steps crying. They stopped to check on her and agreed to give her a ride home.

When asked why she did not leave the hotel room earlier, C.F. responded that she had looked around for the car keys but could not find them. She explained that she was in

an unfamiliar part of town and feared that something worse could happen to her if she tried to run.

Once C.F. arrived back at her dormitory, she saw a friend who was a resident assistant. C.F. disclosed to her friend what had happened to her, and the friend said that she needed to call the police. They called campus security, who in turn notified MPD. Officers responded to the dormitory, but C.F. would not talk with them because they were men. She explained that she "didn't want to even look at a man" at that time. At C.F.'s request, a female officer responded, and this officer escorted C.F. to the Rape Crisis Center, where the staff collected a rape kit. Later, at the police station, C.F. gave a formal statement to police and identified both the Defendant and Ms. Cobbins from photographic lineups.

On cross-examination, C.F. acknowledged that she met Hennessy on a dating website and that she was aware that Hennessy was a prostitute. C.F. agreed that she got into the car outside her dormitory, even after she saw that the Defendant was driving. She agreed that she talked with the Defendant inside the car when they stopped at a store on the way to the hotel. She conceded that she went to the hotel to smoke marijuana and to "hear her out" regarding becoming an escort. C.F. acknowledged that a vibrator fell out of her purse while she was in the hotel room, but she maintained that she did not intentionally bring it there. She testified that the Defendant did not wear a condom during intercourse. C.F. stated that she did not call her friends to pick her up after the encounter because her phone was dead. She acknowledged that she did not ask the people who gave her a ride from Taco Bell to call the police.

During cross-examination, C.F. used her right hand to indicate how the Defendant choked her. On redirect examination, she testified that she was unsure which hand the Defendant actually used.

MPD Lieutenant Prentice Tate was assigned to the Felony Response Team in 2018. He was dispatched to the Rape Crisis Center in relation to this case. After gathering information there, he asked patrol officers to contact hotel management with a description of the Defendant's car. The Defendant became a suspect when officers discovered that this car was registered to him.

University of Memphis Police Detective Tina Crowe responded to C.F.'s dormitory after she received a dispatch requesting a female officer. Det. Crowe described C.F. as being quiet, soft-spoken, and embarrassed about what had happened. C.F. informed Det. Crowe that she had been raped at an off-campus location. Det. Crowe escorted C.F. to the Rape Crisis Center, where a rape kit was collected. Det. Crowe received the rape kit from the clinicians and placed it in MPD's evidence room. On cross-examination, Det. Crowe

acknowledged that she was not trained to look for visible injuries on rape victims and that she did not view any footage from campus security videos regarding this incident.

Amanda Taylor with the Shelby County Crime Victim and Rape Crisis Center was recognized as an expert in forensic sexual assault examinations. She conducted the sexual assault examination on C.F. on September 5, 2018. Ms. Taylor described C.F. as being cooperative, quiet, and tense. C.F. was not agitated or crying, nor did she appear to be intoxicated. Ms. Taylor's written report was received as an exhibit, wherein she documented C.F.'s account of the incident. In addition to the facts previously set forth, C.F. told Ms. Taylor that she had been raped by an approximately forty-year-old Black male at the Inland Suites on Elvis Presley Boulevard. C.F. was unsure if he ejaculated but stated that she noticed a "white-ish" substance when she later went to the restroom. Ms. Taylor located a superficial laceration near the entrance of C.F.'s vagina that was consistent with blunt-force trauma, but she could not determine if the injury occurred during consensual or nonconsensual sex. Ms. Taylor collected a rape kit from the victim and provided it to law enforcement. The parties stipulated that DNA from sperm located in C.F.'s vagina matched the Defendant's DNA.

Sgt. Bonds[4] testified that he was an investigator in the MPD Sex Crimes Division in September 2018 and was assigned to handle C.F.'s complaint. He explained the meaning of the terms "bottom girl" and "daddy," stating that prostitutes generally use the latter term to refer to their pimp. Sgt. Bonds took a formal statement from C.F. on September 10, 2018, wherein she identified the Defendant and Ms. Cobbins in separate photographic lineups.

Sgt. Bonds took statements from the Defendant and Ms. Cobbins on September 12, 2018. Pursuant to MPD policy at the time, statements were typed by the investigators as the interviews were being conducted. The interviewee was then given an opportunity to review the typed statement, make any corrections, and sign the statement. The Defendant's typed statement, which was entered into evidence, indicated that he told Sgt. Bonds that he drove a 1995 champagne gold Cadillac sedan. He stated that he and Ms. Cobbins picked up C.F. from her dormitory to talk to her about "joining our team." After stopping to buy power steering fluid, they brought C.F. to Ms. Cobbins' room at the Inland Suites. Ms. Cobbins had stayed there for about a month at the time, and the Defendant was there every day. The Defendant said that the purpose of the meeting was to recruit C.F. for his and Ms. Cobbins' business, which he described as "pimping and whoring."

[4] By the time of trial, the witness had been promoted to the rank of lieutenant. For consistency, we will continue to refer to his previous rank of sergeant.

The Defendant stated that, once inside the hotel, C.F. and Ms. Cobbins were "into each other" and that C.F. began performing oral sex on Ms. Cobbins. The Defendant stated that C.F. produced an orange vibrator and used it on Ms. Cobbins. The Defendant indicated that it was Ms. Cobbins' decision to halt the encounter and that C.F. "didn't have no problem."

The Defendant said in his statement that, upon his request, C.F. performed oral sex on him. He stated that he then engaged in sexual intercourse with her from the rear. When C.F. told him that this position was painful, he stated, "I took it upon myself to f--- her side." The Defendant stated that he ejaculated during intercourse. The Defendant denied forcing C.F. to have sex with him, saying, "[S]he never said stop." He emphatically denied strangling C.F. Despite his earlier admission, the Defendant denied that he was a pimp, and he denied telling C.F. that if she worked for him, she would have sex for money and then give him the money.

The Defendant told Sgt. Bonds that C.F. mentioned that she had to write a paper for school but that she could stay with them until 2 a.m. The Defendant told C.F. that she was "playing around," as she had drunk all of their alcohol and smoked all of their marijuana. The Defendant walked C.F. out of the room and left her at the bottom of the stairs. The Defendant indicated that C.F. left her vibrator in the room.

On cross-examination, Sgt. Bonds conceded that the Defendant had not initialed each page of his typed statement, even though he was instructed to and this was MPD policy. He acknowledged that both Ms. Cobbins and C.F. had initialed each page of their respective statements and that C.F. had made several corrections to hers. He agreed that typed statements can contain errors and acknowledged that Ms. Cobbins was listed as a male in her statement. Sgt. Bonds maintained, however, that the Defendant reviewed his statement long enough to go over each page and to sign the last page. Sgt. Bonds testified that the Defendant called him to let him know that C.F.'s vibrator was still in their room and that he went to the room days later to collect the item. He agreed that the Defendant voluntarily provided a DNA sample to him.

Sgt. Darrin Seitz worked with Sgt. Bonds in the Sex Crimes Division in September 2018. He was present for the Defendant's entire statement to Sgt. Bonds and was also present when the Defendant reviewed his statement. He testified that the Defendant signed the statement and never expressed any concerns about its content. To his recollection, the typed statement accurately reflected what was said by the Defendant orally to Sgt. Bonds. On cross-examination, Sgt. Seitz agreed that the Defendant had not initialed any of the pages of his typed statement.

At the conclusion of the proof and prior to deliberations, the trial court instructed the jury as follows regarding a prior statement of the Defendant:

> The Court instructs the Jury that if an oral or written statement given by the [D]efendant has been proven in this case, you may take it into consideration with all the other facts and circumstances proven in the case. In considering the statement, it is for you, the Jury, to say what weight you will give the statement.
>
> You may believe any part of the statement or disbelieve any part of it, and you may believe the whole statement, or disbelieve it in its entirety.

The jurors were also instructed that they were "the sole judges of the facts" of the case.

The jury convicted the Defendant in counts one and two of promoting prostitution as lesser-included offenses of trafficking for a commercial sex act; in count three of rape, as charged; and in count four of assault by fear of bodily injury as a lesser-included offense of aggravated assault by attempted strangulation. Following a sentencing hearing, the trial court merged counts one and two and counts three and four and imposed an effective sentence of twenty-one years' incarceration. The trial court denied the Defendant's motion for new trial. This appeal followed.

II. ANALYSIS

A. Suppression of the Defendant's Statement

The Defendant argues on appeal that the trial court erred by denying his motion to suppress his statement to the police. The Defendant argues that, because the typed statement submitted into evidence did not accurately reflect his oral statement provided to police, his typed statement was not a knowing, intelligent, and voluntary statement made in response to *Miranda* warnings. He further argues that the typed statement was obtained as a result of police coercion and "twisting" of his actual oral statement, and thus was not made knowingly, intelligently, and voluntarily. The State responds that the trial court properly concluded that the accuracy of the written statement was a question of fact for the jury and that the record otherwise demonstrates that the Defendant knowingly and intelligently waived his *Miranda* rights and provided a voluntary statement. We agree with the State.

1. Standard of Review

The trial court's findings of fact following a suppression hearing should be upheld unless the evidence preponderates to the contrary. *State v. Hanning*, 296 S.W.3d 44, 48 (Tenn. 2009). The prevailing party "is entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from that evidence." *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996). "Questions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." *Id.* We review the trial court's application of the law to the facts de novo with no presumption of correctness. *State v. Stanfield*, 554 S.W.3d 1, 8 (Tenn. 2018) (citations omitted).

2. The *Miranda* Waiver

"No person . . . shall be compelled in any criminal case to be a witness against himself[.]" U.S. Const. amend. V. The Fifth Amendment privilege against self-incrimination is applicable in state prosecutions by virtue of incorporation through the Fourteenth Amendment. *Malloy v. Hogan*, 378 U.S. 1, 6 (1964). Additionally, in Tennessee, "the accused . . . shall not be compelled to give evidence against himself." Tenn. Const. art. I, § 9.

To protect the right to remain silent and in order "to dispel the compulsion inherent in custodial surroundings," an in-custody suspect

> must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

Miranda v. Arizona, 384 U.S. at 458, 479. After these warnings are given and an opportunity for exercising the rights afforded, a suspect may "knowingly and intelligently" waive the rights. *State v. Climer*, 400 S.W.3d 537, 557 (Tenn. 2013) (quoting *Miranda*, 384 U.S. at 479). A valid *Miranda* waiver has two distinct dimensions:

> First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the "totality of the circumstances surrounding the interrogation" reveal both an uncoerced

> choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived.

Moran v. Burbine, 475 U.S. 412, 421 (1986) (citations omitted); *Climer*, 400 S.W.3d at 564-65. The State bears the burden of proving a waiver of *Miranda* rights by a preponderance of the evidence. *Climer*, 400 S.W.3d at 564 (citing *Berghuis v. Thompkins*, 560 U.S. 370, 384 (2010)).

As a preliminary matter, we note that neither party has raised, either in the trial court or on appeal, the question of whether the Defendant was actually in custody during his statement so as to necessitate *Miranda* warnings. *See State v. Bush*, 942 S.W.2d 489, 499-500 (Tenn. 1997) (suspect was not in custody for *Miranda* purposes where he voluntarily went to the police station to provide a statement while not under formal arrest). Because that question is not dispositive of our determination of the issue presented, we will assume *arguendo*, without so holding, that the Defendant was in custody and that the police were, therefore, required to provide *Miranda* warnings prior to taking his statement.

The Defendant argues that the trial court erred by admitting his written statement in light of his claim that it varied from what he actually said during the interview. The Defendant extrapolates that "[i]n this sense, the statement was not a knowing, intelligent and voluntary statement made in response to *Miranda* warnings[.]"

Notably, the Defendant did not identify, either at the suppression hearing or at trial, any specific discrepancies between his oral and written statements. In any event, this is simply not a basis for suppression of the statement under *Miranda*. Prior cases from this court demonstrate that the "[t]he accuracy of a statement is not a ground on which to make a motion to suppress[,]" but rather "speaks to the weight of the evidence[.]" *State v. Michael A. Virga*, No. M2008-00209-CCA-R3-CD, 2009 WL 537560, at *11 (Tenn. Crim. App. Mar. 3, 2009); *see also State v. Daniel Ward*, No. E2012-01419-CCA-R3-CD, 2013 WL 4767189, at *8 (Tenn. Crim. App. Sept. 4, 2013) (inaccuracies between the defendant's oral statement and the statement as written by the interviewing officer go to the weight of the statement rather than its admissibility). Thus, the trial court correctly described the issue as "a jury question, not a constitutional one" and appropriately instructed the jury that it was their prerogative to determine what weight to give the statement and that they could believe, or disbelieve, the statement in part or in its entirety.

Aside from alleged inaccuracies in his written statement, the trial court otherwise found that the Defendant "knowingly and freely" waived his *Miranda* rights prior to giving his statement to police. The trial court specifically accredited the testimony of Sgt. Bonds that the rights waiver was presented to and signed by the Defendant prior to the interview.

It found the Defendant's testimony that the rights waiver form was presented to him after the interview to be "simply not credible." Nothing in the record preponderates against the trial court's findings on these points. To the contrary, the gap between the times listed on the rights waiver form and the written statement strengthens this conclusion. There is no dispute in the record that the Defendant read the rights waiver form, placed his initials next to each right, and voluntarily signed the form. We agree with the trial court's conclusion that the Defendant knowingly and intelligently waived his *Miranda* rights prior to being questioned by police.

3. Voluntariness of the Statement

The voluntariness test is grounded in both the Self-Incrimination Clause of the Fifth Amendment and the Due Process Clause of the Fourteenth Amendment and recognizes that coerced confessions are inherently unreliable. *Dickerson v. United States*, 530 U.S. 428, 432-33 (2000); *Climer*, 400 S.W.3d at 567. In Tennessee, the voluntariness test is rooted in the right against self-incrimination found in article I, section 9 of our state constitution. *See State v. Crump*, 834 S.W.2d 265, 268 (Tenn. 1992); *see also State v. Smith*, 834 S.W.2d 915 (Tenn. 1992) (determining that the test for voluntariness under article I, section 9 is broader and more protective of individual rights that the test for voluntariness under the Fifth Amendment). The voluntariness test remains distinct from *Miranda*. *Climer*, 400 S.W.3d at 568 (citing *Dickerson*, 530 U.S. at 434-35; *Mincey v. Arizona*, 437 U.S. 385, 397-98 (1978)). The essential inquiry under the voluntariness test is whether a suspect's will was overborne so as to render the confession a product of coercion. *See Dickerson*, 530 U.S. at 433-35; *Climer*, 400 S.W.3d at 568.

A court determining voluntariness must examine the totality of the circumstances surrounding the giving of a confession, "both the characteristics of the accused and the details of the interrogation." *Climer*, 400 S.W.3d at 568 (quoting *Dickerson*, 530 U.S. at 434). Under this analysis, courts are to consider the following:

> [T]he age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured intoxicated or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse.

State v. Huddleston, 924 S.W.2d 666, 671 (Tenn. 1996) (alteration in original) (emphasis omitted) (quoting *People v. Cipriano*, 429 N.W.2d 781, 790 (Mich. 1988)).

The Defendant argues that his statement was not knowing, intelligent, or voluntary because it was "made as a result of police coercion and twisting of [his] statements[.]" As described *supra*, any "twisting" of his statement would go the weight of the statement and not its admissibility under constitutional law. And the Defendant's argument that his statement was given as a result of police coercion is simply not supported by the record. The trial court found that the Defendant had completed two years of college and that he had "no trouble reading." It noted that the Defendant had had "several interactions" with the police prior to the instant case. The record shows that the Defendant was eager to speak with Sgt. Bonds, asking to speak with him immediately rather than the next day as Sgt. Bonds had suggested. The Defendant, by his own admission, voluntarily drove to the police station for the purpose of giving a statement and was never under the impression that he was in custody or going to be arrested that day. Judging from the times listed on the rights waiver form and the typed statement, the interview lasted for approximately one hour and occurred after Sgt. Bonds informed the Defendant of his constitutional rights. There is no indication that the Defendant was intoxicated or sick when he spoke with the police. In fact, the Defendant was in good spirits while at the police station and told jokes to the officers prior to the interview.

Following our review of the totality of the circumstances surrounding the Defendant's statement and an application of the *Huddleston* factors, we conclude that the trial court correctly ruled that the Defendant voluntarily spoke with the officers. The Defendant is not entitled to relief.

B. Sufficiency of the Evidence

The Defendant argues that the evidence was insufficient to support his convictions for rape and assault because the proof offered by the State "focused heavily" on the testimony of Ms. Cobbins and C.F., "who admitted to being a willing participant as an escort." The State argues that the Defendant is challenging the credibility of the State's witnesses, which was a question for the jury, and that proof was sufficient to support his convictions for rape and assault. We agree with the State.

The United States Constitution prohibits the states from depriving "any person of life, liberty, or property, without due process of law[.]" U.S. Const. amend. XIV, § 1. A state shall not deprive a criminal defendant of his liberty "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged."

In re Winship, 397 U.S. 358, 364 (1970). In determining whether a state has met this burden following a finding of guilt, "the relevant question 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) (emphasis in original). Because a guilty verdict removes the presumption of innocence and replaces it with a presumption of guilt, the defendant has the burden on appeal of illustrating why the evidence is insufficient to support the jury's verdict. *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). If a convicted defendant makes this showing, the finding of guilt shall be set aside. Tenn. R. App. P. 13(e).

"Questions concerning the credibility of witnesses, the weight and value to be given the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact." *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). Appellate courts do not "reweigh or reevaluate the evidence." *Id.* (citing *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978)). "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). The law provides this deference to the jury's verdict because

> [t]he jury and the Trial Judge saw the witnesses face to face, heard them testify, and observed their demeanor on the stand, and were in much better position than we are, to determine the weight to be given their testimony. The human atmosphere of the trial and the totality of the evidence before the court below cannot be reproduced in an appellate court, which sees only the written record.

Carroll v. State, 370 S.W.2d 523, 527 (Tenn. 1963) (internal quotations and citations omitted). Therefore, on appellate review, "the State is entitled to the strongest legitimate view of the evidence and to all reasonable and legitimate inferences that may be drawn therefrom." *Cabbage*, 571 S.W.2d at 835.

Rape, as pertinent to this case, "is unlawful sexual penetration of a victim by the defendant . . . [and] [t]he sexual penetration is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the penetration that the victim did not consent." Tenn. Code Ann. § 39-13-503(a)(2). "'Sexual penetration' means sexual intercourse . . . or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of the victim's . . . body, but emission of semen is not required[.]" *Id.* § 39-13-501(7).

As pertinent to this case, a person commits assault who "[i]ntentionally or knowingly causes another to reasonably fear imminent bodily injury[.]" *Id*. § 39-13-101(a)(2). "'Bodily injury' includes a cut, abrasion, bruise, burn or disfigurement, and physical pain or temporary illness or impairment of the function of a bodily member, organ, or mental faculty." *Id*. § 39-11-106(a)(3).

Viewed in the light most favorable to the State, the evidence shows that C.F. was lured to a hotel room under the impression that she would smoke marijuana with Ms. Cobbins and discuss the prostitution business. Once at the hotel, the Defendant forced C.F. to pose for topless photographs and to perform oral sex on both Ms. Cobbins and him. Prior to intercourse, C.F. told the Defendant that she "didn't want it to happen" and that she "wanted to go home." Nevertheless, the Defendant engaged in vaginal intercourse with C.F., who testified that she was "forced to take it." The Defendant strangled C.F. and called her names during this episode, which C.F. described as "very aggressive." C.F. could not breathe while the Defendant strangled her, and she feared that she might die. C.F.'s account was corroborated by Ms. Cobbins' testimony, as well as by portions of the Defendant's statement. The Defendant's DNA matched the semen collected in C.F.'s rape kit. The Defendant asks us to reevaluate the credibility of the witnesses, but such determinations are the exclusive function of the jury. *See Cabbage*, 571 S.W.2d at 835. The evidence is sufficient to sustain the Defendant's convictions for rape and assault.

III. CONCLUSION

Based on the foregoing and the record as a whole, we affirm the judgments of the trial court.

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KYLE A. HIXSON, JUDGE