

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs June 21, 2016

STATE OF TENNESSEE v. CARLTON PATRICK BLANTON

Appeal from the Circuit Court for Marshall County
No. 14-CR-72 Franklin L. Russell, Judge

No. M2015-02311-CCA-R3-CD – Filed August 22, 2016

The defendant, Carlton Patrick Blanton, was convicted of four counts of rape, Class B felonies; two counts of aggravated assault, Class C felonies; one count of aggravated burglary, a Class C felony; one count of sexual battery, a Class E felony; and one count of simple assault, a Class A misdemeanor. The trial court merged the four rape convictions into two convictions and imposed an effective sentence of twenty-four years. On appeal, the defendant argues that the evidence was insufficient to sustain his convictions and that the trial court erred when it imposed a twenty-four-year sentence. Following 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 EVERETT WILLIAMS, J., delivered the opinion of the court, in which NORMA MCGEE OGLE and TIMOTHY L. EASTER, JJ., joined.

Donna L. Hargrove, District Public Defender; and William J. Harold (on appeal and at trial) and Michael J. Collins (at trial), Assistant District Public Defenders, for the appellant, Carlton Patrick Blanton.

Herbert H. Slatery III, Attorney General and Reporter; Caitlin Smith, Assistant Attorney General; Robert Carter, District Attorney General; and Weakley E. Barnard and Andrew Wright, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

FACTS AND PROCEDURAL HISTORY

This case arose after the defendant broke into the victim's home, assaulted, and raped her. The victim and the defendant were married, but separated. They had two children together, a son and a daughter. At the time of the attack, the victim had moved into a new residence. The children stayed with the victim for the first week that she lived in her new home, and she made efforts to conceal the location of her new home from the defendant. On June 6, 2014, the defendant picked up the children from a summer program. After he picked up the children, he and the victim argued by telephone and text message. The defendant asked the victim to come pick up the children from his home, and the victim picked up the children between 9:30 and 9:45 p.m.

The victim returned to her home with the children, and they got ready for bed. Before going to sleep, the victim locked her front and back doors and placed her car keys in her purse in the living room. She turned on the front porch light and a lamp in her bedroom, and she placed her cell phone on her bedside table. The victim and her daughter slept in the same bedroom, and the victim's son slept in his own bedroom.

At some point early the next morning, the victim awoke because someone was touching her vagina and buttocks. The victim noticed that her daughter was no longer in the bed and that her bedroom lamp and porch light were turned off. She identified photographs showing that two screens to windows to her home were bent. She testified that her underwear was ripped and that her assailant was touching the skin of her vagina and buttocks. She was lying on her back, and her attacker was "straddled" on top of her. She identified the defendant as her attacker after she felt his shaved head and immediately recognized his voice. She testified that the defendant was the only person that she knew with a shaved head. The defendant choked her, saying, "You want to see me on 'Snapped,' didn't you, b***h?" The victim explained that "Snapped" was a television program "about women who snap and eventually kill somebody." Once she recognized the defendant, she "started kicking and fighting immediately." The victim testified that the defendant had both hands wrapped around her neck, and he was pressing his thumbs into her Adam's apple. The victim's air supply was cut off, and she was gasping for breath. The victim began to scream, and the defendant placed his hands over the victim's nose and mouth to muffle her screams. The victim testified that she could not breathe "at all" and that she began to panic.

The defendant eventually got off of the victim, and she went to her closet and put on a new set of pajama pants. The defendant called the victim "turtle," referencing a nickname that someone else had used with the victim in a text conversation. When the

defendant used the nickname, the victim realized that he had accessed her phone and “had read everything” on her phone. The victim also realized that the defendant was in possession of her phone and that she had no way to contact anyone.

The victim went into the living room to retrieve her keys, and she and the defendant continued to fight. The defendant was “slinging” the victim around the room, and she was “hitting and clawing” him. The victim managed to obtain her keys, and she and the defendant were arguing. The victim’s black Honda was parked in her driveway, and the defendant informed her that he had the car registration and that the title was not in her name. He threatened to call the police and report the vehicle as stolen if she left in it. As they continued to argue, the victim hit the defendant in the face, which she said only made him angrier.

The victim left through the front door of her home and hit the unlock button on her car keys. She testified that the defendant approached her from behind, picked her up, and threw her to the ground. The defendant straddled the victim and began to choke her again, placing his thumbs around her Adam’s apple. She testified that he applied more pressure to her throat than he did in her bedroom. She stated that she “could not breathe at all” and that her airflow was completely cut off. The victim believed that the defendant was going to kill her. He asked her where she wanted to be buried while pointing to different locations in her yard. Later, the defendant told her “that he had to kill [her], because he had [gone] too far this time.”

The defendant eventually removed his hands from the victim’s neck, and she fumbled on the ground in search of her keys so that she could drive away and seek help. The defendant “jerk[ed]” her up, and he placed the crook of his elbow around her neck in a “chokehold.” The victim said that her airflow was restricted but that the episode was not as severe as the previous times that the defendant choked her. The defendant found the victim’s keys on the ground and grabbed them. The victim testified that during the struggle, she did not see the defendant’s car, a Chrysler 300, in the driveway.

The victim fled back into her house, intending to lock herself in the bathroom. Before she could shut the front door, the defendant pushed it open, striking her on the right side of her head. The victim and the defendant were “running through the house and fighting,” and the victim went back outside to call for help, which only angered the defendant. She went back inside the home and went to the children’s room in hopes that it would stop the defendant from hitting her. She saw that her son “was laying up in the bed,” and her daughter was at the foot of the bed, “like somebody had placed her there.” The defendant “jerked” her out of the room by her shirt, and they went to the living room.

Once in the living room, the victim testified that she became “compliant” and agreed “with everything” the defendant said in order to calm him down. The defendant told her that he had “gone too far” and could not let the victim “get away this time.” The defendant told the victim that if she gave him oral sex he would return her phone, keys, and car title and leave the residence. The victim felt that she had no choice but to comply, believing that if she did not, the defendant would become angry and they would continue to fight. The defendant and the victim went to the bedroom, and she started to perform oral sex on the defendant. She testified that she felt as though she “had to do it or he wasn’t going to leave.” The victim was still concerned for her safety and her life at this point based on the defendant’s previous words and abuse.

The defendant became upset with the victim while she was performing oral sex because she could not stop crying. He ordered her to get onto the bed and lie on her back so that he could have sexual intercourse with her. The victim complied, feeling like she had no other choice. The defendant penetrated her vagina with his penis and ejaculated onto her face and chest.

The victim and the defendant returned to the living room, but the defendant did not leave the house. He repeatedly told the victim that he was a “good guy” and that she should not have left him. The victim agreed in an effort to get the defendant out of the house. The defendant told the victim that he would leave if the victim had sexual intercourse with him a second time. The defendant penetrated the victim’s vagina with his penis, and the victim was crying during the attack. The defendant did not ejaculate and told the victim that he could not because she was crying. He returned her car keys, but he did not give her back her cell phone.

The defendant went outside, and the victim believed that he was leaving. She discovered that the defendant had unscrewed the porch light, and she screwed the light back in and locked the door. She was not sure where the defendant parked his car, so she “paced” around the home to give the defendant time to get to his vehicle and leave. After a period of time, she went to the children’s room and prepared to leave the house with them. She brought both children into the living room, and she saw the defendant standing at the front door. She asked him to leave, and he agreed on the condition that the victim let him take the children with him. The victim asked the children if they wanted to go with the defendant, and her son went with the defendant while her daughter stayed with the victim. The victim testified that she was willing to let the children leave with the defendant because he loved them and had never done anything to hurt them. The victim did not see the defendant get into his car or hear a car start.

The victim continued to pace around the home to give the defendant time to get to his vehicle. After a period of time, she got into her car and drove toward the Chapel Hill

police station. She saw Deputy Aaron Huitt at a red traffic light, and she started flashing her lights and honking her horn. She performed “a U-turn” in the middle of the street, and Deputy Huitt pulled into a nearby parking lot. The victim exited the vehicle, and Deputy Huitt described her as “screaming hysterically and crying, to the point where she could barely talk.” The victim told Deputy Huitt that the defendant was going to kill her. Based on his conversation with the victim, Deputy Huitt contacted dispatch to initiate an investigation.

Prior to his encounter with the victim, Deputy Huitt saw a Chrysler 300 at 2:43 a.m. in the parking lot of a horse stable, which he thought was unusual because cars typically were not parked there. He ran the license plate and touched the grill of the car, which was still warm. Deputy Huitt believed that the car had been recently parked. He estimated that the car was parked “a football field, maybe a football field and a half” from the victim’s residence. He learned that the Chrysler 300 belonged to the defendant. He went back almost thirty minutes later to check on the vehicle, and he discovered that it was gone. The parties stipulated that the car was registered in the defendant’s name.

Officers took the victim to the police station, and she gave a written statement describing the events of that evening. She gave officers a description of the defendant, along with his home address and the keys to her residence.

Detective Chad Bass of the Marshall County Sheriff’s Department received calls from Deputy Todd Knois and Officer Travis Childers asking him to come to the Chapel Hill police station. When he arrived, he spoke with several officers and the victim. Detective Bass sent out a “BOLO,” or “be on the look out for” the defendant, and it included a description and license plate number of the defendant’s vehicle. Detective Bass, Officer Childers, and a third officer drove to the defendant’s residence to serve a warrant, and they arrived at 5:15 a.m. Detective Bass knocked on the door and loudly announced that he was with the sheriff’s department, but no one answered the door. Both Detective Bass and Officer Childers testified that the home appeared to be empty.

Around 6:00 a.m., Detective Bass returned to the police station and met with the victim. Detective Bass noticed that the victim “had red marks and what appeared to be bruising starting to occur on her neck.” Later that morning, officers transported the victim to a hospital in Lewisburg, where a rape kit was administered. A DNA sample was taken from the victim’s left cheek and chest area, and the parties stipulated that the swab indicated the presence of semen but not spermatozoa. The major contributor in the profile matched the victim, and the minor contributor was consistent with the profile of the defendant. The probability of the DNA matching a randomly selected individual was 1 in 57 for the African-American population, 1 in 19 for the Caucasian population, and 1 in 68 for the Southwestern Hispanic population. The victim testified that when she was

in the hospital, her eyes hurt from where the defendant had choked her. She saw that her neck “was really red,” and she had bruising on her neck. The victim “could hardly walk,” and she testified that she missed three days of work due to her injuries.

Around 12:35 p.m., officers contacted Detective Bass and informed him that they had the defendant in custody. Detective Bass contacted Officer Strayley Holton and asked him to pick up the defendant and transport him to jail. Officer Holton testified that the defendant initiated a brief conversation with him during the transport. The defendant told Officer Holton that his wife called him at 3:00 a.m. and asked him to pick up their children because she had to be at work at 5:00 a.m. He said that he picked up his son, his daughter was asleep at the time, and his wife said she would drop off the daughter on her way to work. The defendant stated “that she had set him up or something to that effect.” He described an altercation and said that she had bitten him on his arm.

Detective Bass and Deputy Drew Binkley interviewed the defendant at the station. The defendant signed a waiver of rights form, and Detective Bass took several photographs of the defendant. The defendant had a mark on his left cheek, a scrape on the top of his head, a scrape on his left elbow, and what appeared to Detective Bass to be a bite mark on his left arm. The defendant told Detective Bass that he had exchanged text messages with the victim the previous evening. Sometime between 11:00 p.m. and 3:30 a.m., the victim told the defendant that she had to work in the morning and asked him to pick up the children. The defendant said that he drove directly to the victim’s home and parked in her driveway, five to seven feet from the house. Detective Bass testified that he knew this statement was false because he knew what time Deputy Huitt had seen the defendant’s vehicle. The defendant said he never went inside the residence, that the son wanted to go with him but the daughter did not, and that there was not an altercation between him and the victim. The defendant told Detective Bass that he returned to his residence and remained there with his son until 6:30 or 7:00 a.m., when he left with his son to go see if there was a movie playing in Murfreesboro. Detective Bass testified that he knew this statement was also false because he was at the residence at 5:15 a.m. and no one was there.

The victim contacted Detective Bass on August 10, 2014, and reported that the defendant had continuously called and text messaged her. At this time, the victim lived in a home separate from the defendant. Christian Dean, a Marshall County Sheriff’s Department Deputy, responded to the victim’s complaint call. Deputy Dean examined the victim’s cell phone and saw that there were “at least a dozen calls starting at 4:02 a.m.” from the defendant. The defendant called four or five times within the first twenty minutes of Deputy Dean’s arrival at the home, and the victim answered one of the calls and put it on speaker phone. The defendant asked why the victim would not let him speak to his children and said the victim was “just doing this to get back at” the

defendant. The victim, who Deputy Dean said was visibly upset, told the defendant that he broke into her home, beat her up, and raped her. The defendant responded, "Well, what did you expect me to do? You're trying to break this family up." The victim angrily told the defendant that he had a protection order, and she hung up the phone. The victim testified that the defendant moved into her home with her in October because the defendant was continually contacting her and she felt that if she "knew where he was, it wasn't the fear of the unknown." Detective Bass stated that he was aware that the victim and the defendant were living together.

On October 16, Detective Bass received text messages from the victim that "were of a somewhat, inviting sexual nature" around 1:15 to 1:30 a.m. Detective Bass found this suspicious, and he sent Deputy Dean to the victim's home to investigate. Detective Bass then received a phone call from a blocked number, and he recognized the voice of the defendant. The defendant asked Detective Bass who he was and why his phone number and text messages were in the victim's phone. Detective Bass said that he kept the defendant on the phone long enough for Deputy Dean to arrive at the victim's home. Deputy Dean knocked on the door when he arrived, but the victim did not answer. Deputy Dean called Detective Bass, and the victim came to the door while he was on the phone with Detective Bass. She told Deputy Dean that the defendant was not in the home. At trial, the victim agreed that she lied to police when she said that the defendant was not at the residence.

The victim explained that the defendant had been "bothering" her in the months after the attack. He told her the contents of her text messages, appeared unexpectedly, and continuously telephoned and text messaged her. The victim testified that she informed law enforcement of the harassment but that they were not able to stop it. She stated that allowing the defendant to move back in with her was better than "the fear of the unknown." The victim believed that if she lived with the defendant and knew where he was, she would not have to worry about his showing up unexpectedly and could keep him from getting angry. The victim filed for divorce on June 9, 2014, and she did not withdraw the filing after the defendant moved back in with her. She testified that she had sexual intercourse with the defendant after he moved back into her home.

Amy Blanton testified for the defense. She was married to the defendant's brother, and she was the victim's cousin. She had known the defendant for eighteen years, and she said that he had difficulty hearing. In June of 2014, she lived in an apartment beneath the victim's mother's apartment. She frequently saw the victim bring the children to the apartment, and the defendant was present during some of these visits. She saw the defendant and the victim frequently exit the victim's mother's apartment together. She testified that she saw the defendant and the victim leave the apartment together on June 8.

At the conclusion of the proof, the jury convicted the defendant of one count of aggravated burglary, one count of sexual battery, two counts of aggravated assault by strangulation, one count of simple assault as a lesser included offense of aggravated assault, two counts of rape by force or coercion, and two counts of rape without the consent of the victim. The trial court held a sentencing hearing to determine the length of the defendant's sentences.

At the sentencing hearing, the State admitted the defendant's presentence report into evidence, and it contained a felony conviction for aggravated assault and numerous misdemeanor convictions. The defendant received probation for several of his prior convictions, and the presentence report indicated that he violated his probation several times. The defendant called four character witnesses on his behalf.

Jeremy Warren testified that he had known the defendant since the defendant was seventeen years old. He stated that the defendant formerly lived with him and worked for him. He said that the defendant was an excellent employee who was very hardworking. He testified that the defendant was "a good man that had a rough life." He said that the defendant was an excellent father who was very involved in the lives of his children. Mr. Warren was aware that the defendant had been convicted of numerous offenses since Mr. Warren had met him.

Joan Huggins testified that she had known the defendant since he was twelve years old and had been like a mother to him after his biological mother passed away. Ms. Huggins testified that the defendant was "an honest, honorable man" and that she could not "say anything bad about him." She stated that the defendant was an excellent father. Ms. Huggins opined that while a jury may have convicted the defendant, he was not convicted in her heart. She testified that she was aware of his prior criminal history.

Ricky Huggins testified that the defendant was his best friend and surrogate brother. He testified that the defendant was one of the best fathers that he had ever seen, and he said that the defendant was "a great guy." He said that he would welcome the defendant into his home with his wife and daughter without a second thought. Mr. Huggins admitted that he had smoked marijuana with the defendant.

Terri McCoy testified that she had known the defendant since he was sixteen and was a sort of surrogate mother to the defendant. She described the defendant as "a very decent young man" who was honest, hard-working, and caring. Ms. McCoy testified that she was aware of the defendant's criminal history and that his newest convictions did not change her opinion of him.

The trial court found that the facts of the offenses were “horrifying.” The court found that several enhancement factors applied. The court found that the defendant had a previous history of criminal convictions based upon the defendant’s numerous felony and misdemeanor convictions. The court found that the defendant treated the victim with exceptional cruelty, noting that the defendant’s statements to the victim and threats to kill her during the commission of the offenses were particularly cruel. The court noted that while the victim suffered the physical pain of the attacks, she also believed the defendant was going to kill her, as he asked her to choose where she would like to be buried and said he would have to kill her. The court found that the defendant had failed to comply with the terms of release into the community because he violated his probation multiple times. The court found that no mitigating factors applied. The trial court merged the defendant’s two convictions for rape without the consent of the victim into his two convictions for rape with the use of force or coercion. The court imposed the maximum Range I sentence, twelve years, for each of the defendant’s rape convictions. The trial court sentenced the defendant to serve six years for the aggravated burglary conviction; two years for the sexual battery conviction; six years for each aggravated assault conviction; and eleven months and twenty-nine days for the misdemeanor assault conviction.

The court found that the defendant’s extensive criminal history and little regard for human life and lack of hesitation in committing an offense where the risk to life was high warranted consecutive sentencing. The court ordered the sentences for the two rape convictions to be served consecutively and the remaining convictions to be served concurrently with the rape convictions, for an effective sentence of twenty-four years.

ANALYSIS

On appeal, the defendant argues that the evidence was insufficient to sustain his convictions. He also contends that the trial court erred by imposing a twenty-four-year sentence.

I. Sufficiency of the Evidence

The defendant argues that the evidence is insufficient to sustain his convictions. He contends that the evidence did not show that the victim suffered bodily injury and that there was not any corroborating evidence that the defendant committed the crimes of aggravated assault or sexual battery. He also contends that there was no evidence that force or coercion accompanied the sexual penetration of the victim. The State responds that the evidence is sufficient.

When a defendant challenges the sufficiency of the evidence, the relevant question for this court is “whether, after viewing the evidence in the light most favorable to the State, 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). On appeal, “the State is entitled to the strongest legitimate view of the evidence and to all reasonable and legitimate inferences that may be drawn therefrom.” *State v. Elkins*, 102 S.W.3d 578, 581 (Tenn. 2003) (quoting *State v. Smith*, 24 S.W.3d 274, 279 (Tenn. 2000)). Therefore, this court will not re-weigh or reevaluate the evidence. *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Instead, it is the trier of fact, not this court, who resolves any 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.” *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). “[A]lthough inconsistencies or inaccuracies may make the witness a less credible witness, the jury’s verdict will not be disturbed unless the inaccuracies or inconsistencies are so improbable or unsatisfactory as to create a reasonable doubt of the appellant’s guilt.” *State v. Radley*, 29 S.W.3d 532, 537 (Tenn. Crim. App. 1999).

A guilty verdict removes the presumption of innocence and replaces it with a presumption of guilt. *State v. Evans*, 838 S.W.2d 185, 191 (Tenn. 1992). The burden is then shifted to the defendant on appeal to demonstrate why the evidence is insufficient to support the conviction. *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). This court applies the same standard of review regardless of whether the conviction was predicated on direct or circumstantial evidence. *State v. Dorantes*, 331 S.W.3d 370, 381 (Tenn. 2011). “Circumstantial evidence alone is sufficient to support a conviction, and the circumstantial evidence need not exclude every reasonable hypothesis except that of guilt.” *State v. Wagner*, 382 S.W.3d 289, 297 (Tenn. 2012).

Tennessee Code Annotated section 39-14-403(a) defines aggravated burglary as the entry of a habitation with intent to commit a felony, theft, or assault. “Habitation” is defined as “any structure . . . which is designed or adapted for the overnight accommodations of persons.” T.C.A. § 39-14-401(1)(A).

Tennessee Code Annotated section 39-13-505(a)(2) provides that “[s]exual battery is the unlawful sexual contact with a victim by the defendant or the defendant by the victim” when “[t]he sexual contact is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the contact that the victim did not consent.” “Sexual contact” includes the intentional touching of the victim’s, the defendant’s, or any other person’s intimate parts, or the intentional touching of the clothing covering the immediate area of the victim’s, the defendant’s, or any other person’s intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification.” T.C.A. § 39-13-501(6). The phrase

“intimate parts” includes the primary genital area, groin, inner thigh, buttock, or breast. T.C.A. § 39-13-501(2).

The version of Tennessee Code Annotated section 39-13-102 in effect at the time of the crime provided that a person commits aggravated assault who intentionally or knowingly causes bodily injury to another and the assault was intended to cause bodily injury to another by strangulation or bodily injury by strangulation was attempted. “‘Strangulation’ means intentionally impeding normal breathing or circulation of the blood by applying pressure to the throat or neck or by blocking the nose and mouth of another person.” T.C.A. § 39-13-102(a)(2). Bodily injury includes “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.” T.C.A. § 39-11-106(a)(2). The defendant argues that the victim did not sustain bodily injury.

Rape “is unlawful sexual penetration of a victim by the defendant or of the defendant by a victim” where “[f]orce or coercion is used to accomplish the act.” T.C.A. § 39-13-503(a)(1). “‘Sexual penetration’ means sexual intercourse, cunnilingus, fellatio, anal 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, the defendant’s, or any other person’s body, but emission of semen is not required.” T.C.A. § 39-13-501(7).

Viewing the evidence in the light most favorable to the State, the victim had concealed her address from the defendant, and she made sure all of the doors to the home were locked before she went to sleep. She awoke to find the defendant on top of her. Two window screens were bent, indicating that the defendant used them to gain entry into the home. When she awoke, her underwear was ripped, and the defendant was touching her vagina and buttocks. The defendant then placed his hands around the victim’s throat, and the victim testified that she could not breathe. The defendant told the victim that he had her car title and that he would call the police and report the vehicle as stolen if she tried to leave. When the victim attempted to flee the home, the defendant followed her outside and again started to choke her. The victim testified that she could not breathe and that the defendant applied even more force than he did while choking her in the bedroom. The defendant repeatedly threatened to kill the victim and asked her where she wanted to be buried. He then placed the victim in “a headlock,” putting her neck in the crook of his elbow. The victim testified that she feared for her life and believed the defendant was going to kill her.

The victim and the defendant returned to the home, where the defendant continued to assault her. The victim testified that she feared for her life and agreed to comply with all of the defendant’s requests in order to get him to leave and to protect herself. The defendant stated that he would leave and return the victim’s belongings if she gave him

oral sex, and she complied. When she was crying, the defendant demanded that she lie on the bed so that he could have sexual intercourse, and she complied. The defendant penetrated the victim's vagina with his penis, and he ejaculated onto her face and chest. After penetrating the victim, the defendant refused to leave, and he demanded that the victim have sexual intercourse with him a second time. The victim complied, but the defendant did not ejaculate because the victim was crying.

The trial court charged the jury that the defendant's touching of the victim's intimate parts on June 7, 2014 was the basis of the sexual battery charge. The jury was charged that the aggravated assault charged in Count 3 was based on the victim's testimony that the defendant strangled her with his hands in the bedroom; that the aggravated assault charged in Count 4 was based on the victim's testimony that the defendant strangled her with his hands in her yard; and that the aggravated assault charged in Count 5 was based on the victim's testimony that the defendant strangled her by means of his forearm in her yard. The trial court instructed the jury that the rape charged in Count 6 was based on testimony that the defendant forced the victim to perform fellatio in the bedroom; that the rape in Count 7 was based on testimony that the defendant vaginally penetrated the victim in the bedroom; and that the Counts 8 and 9 were alternative theories for the vaginal penetration of the victim on the couch.

The victim testified that she had bruises and marks on her throat, and Detective Bass observed marks on the victim's throat as well. A DNA swab of the victim's cheek and chest returned a sample of semen that was consistent with the defendant's DNA profile. While the defendant denied that he had been in an altercation with the victim, officers observed a bite mark on his left forearm, marks on his cheeks, and scrapes on his head and elbow. The defendant told police he parked in the victim's driveway to pick up the children and that he was home at 5:15 a.m., but law enforcement observed his car in a stable parking lot and testified that he was not home at 5:15 a.m. We conclude that the evidence was sufficient to sustain the defendant's convictions for aggravated burglary, sexual battery, aggravated assault, assault, and rape. The defendant is not entitled to any relief.

II. Sentencing

The defendant argues that the trial court imposed an excessive sentence. He contends that the trial court inaccurately weighed enhancement factors and that his crimes did not warrant a twenty-four-year sentence. The State responds that the trial court properly sentenced the defendant.

A trial court's sentencing decisions are generally reviewed for abuse of discretion, with a presumption of reasonableness granted to within-range sentences that reflect a

proper application of the purposes and principles of sentencing. *State v. Bise*, 380 S.W.3d 682, 707 (Tenn. 2012). “[A] trial court’s misapplication of an enhancement or mitigating factor does not invalidate the sentence imposed unless the trial court wholly departed from the 1989 Act, as amended in 2005.” *Id.* at 706. The court will uphold the sentence “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.” *Id.* at 709-10.

In determining “the specific sentence and the appropriate combination of sentencing alternatives,” the trial court must consider: (1) the evidence 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 the applicable mitigating and enhancement factors; (6) any statistical information provided by the administrative office of the courts as to sentencing practices for similar offenses in Tennessee; and (7) any statement the defendant wishes to make in the defendant’s own behalf about sentencing. T.C.A. § 40-35-210(b).

We conclude that the trial court properly sentenced the defendant. The court found that the defendant had a previous history of criminal convictions, and the presentence report reflects that the defendant had prior convictions for reckless endangerment, assault, possession of marijuana, aggravated assault, and driving under the influence. The court found that the defendant treated the victim with exceptional cruelty and that the facts of the offenses were “horrifying.” The testimony at trial showed that the defendant threatened to kill the victim several times, and she believed that she was going to die. The defendant coerced her into having oral and vaginal intercourse, and the victim was crying throughout these encounters. The court also found that the defendant had failed to comply with a sentence involving release into the community, and the presentence report shows that he was previously released on probation and parole and violated them several times. Based on these enhancement factors, the court imposed the maximum sentence for each conviction. The court ordered the defendant to serve his convictions for rape consecutively after finding that the defendant had an extensive criminal record and that he had little regard for human life and no hesitation in committing a crime where the risk to human life was high. The record supports the findings of the trial court, and we conclude that the trial court did not abuse its discretion in imposing a twenty-four-year sentence. The defendant is not entitled to any relief.

CONCLUSION

Based on the foregoing analysis, we affirm the judgments of the trial court.

JOHN EVERETT WILLIAMS, JUDGE