IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
January 7, 2014 Session

STATE OF TENNESSEE v. XAVIER CRAWFORD

Appeal from the Criminal Court for Shelby County
No. 09-05368 W. Mark Ward, Judge

No. W2012-01870-CCA-R3-CD - Filed March 4, 2014

Appellant, Xavier Crawford, stands convicted of aggravated rape and aggravated robbery. The trial court sentenced him to an effective sentence of thirty-seven years in the Tennessee Department of Correction. On appeal, appellant submits that the State failed to establish a sufficient chain of custody, that the evidence was insufficient to support his convictions, and that the trial court erred by admitting hearsay evidence. Following our review, we affirm the judgments of the trial court.

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

ROGER A. PAGE, J., delivered the opinion of the court, in which ALAN E. GLENN and D. KELLY THOMAS, JR., JJ., joined.

Stephen C. Bush, District Public Defender; and Tony N. Brayton (on appeal), Michael Johnson (at trial), and Jennifer Case (at trial), Assistant District Public Defenders, Memphis, Tennessee, for the appellant, Xavier Crawford.

Robert E. Cooper, Jr., Attorney General and Reporter; J. Ross Dyer, Senior Counsel; Amy P. Weirich, District Attorney General; and Reginald Henderson and Karen Cook, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

I. Facts

This case concerns the February 17, 2009 aggravated rape and aggravated robbery of the victim, J.R.[1] A Shelby County grand jury indicted appellant, and the matter proceeded to trial in May 2012.

F.R. testified that he and his wife, the victim, worked together at his dental practice. On February 17, 2009, they left their office separately, and he planned to pick up dinner for them before he went home. When he arrived home, neither the victim nor her car were at their house. He began to worry about her, so he called people they knew to see whether she was visiting someone. He then heard a tap on the front door, and when he opened the door, he discovered the victim sitting on the walk. F.R. said that the victim was clothed except that she was not wearing pants and that "she looked like somebody hit her in the face with a skillet." The victim was not able to speak while en route to the hospital. F.R. testified that her lower jaw was broken and that her upper jaw was also fractured. He further testified that the victim remained in the hospital for eighteen days. Subsequently, she required reconstructive dental treatment.

Malcolm P. Astor testified that he knew J.R. and her husband, F.R., because F.R. was his family's dentist and their children went to school together. He recalled that on February 17, 2009, he received a telephone call at 7:10 or 7:15 p.m. from F.R., who asked whether the victim had visited Mr. Astor's family that evening because she was not home. F.R. called again at 7:30 and asked Mr. Astor for help. F.R. told Mr. Astor that he had heard a "peck on the door" and found his wife lying outside. Mr. Astor arrived at the victim's house five minutes later, and upon seeing the victim, he recognized immediately that she needed hospitalization. Mr. Astor testified that the victim "was bloody from head to toe. She had a hole in the back of her head . . . . Her eyes were swollen shut. . . . [H]er lip was split completely open . . . . She had some teeth knocked out." Mr. Astor said that the victim could neither talk nor stand. Mr. Astor called 9-1-1, and paramedics arrived shortly thereafter to transport the victim to the hospital.

Memphis Police Officer Brandon Wherry testified that he responded to a call of a suspected carjacking at the victim's address at 7:45 p.m. on February 17, 2009. When he arrived, F.R. apprised him of the situation, and Officer Wherry observed the victim lying in

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[1] It is the policy of this court to refer to victims of sexual crimes by their initials alone. In an attempt to further conceal the victim's identity, we will refer to her husband by his initials as well.

the floor. She was wearing a white jacket that was covered in blood and was not wearing pants. Officer Wherry said that her face was swollen and bloody. F.R. reported that the missing vehicle was a Nissan Maxima.

Jeremy Durkee, a paramedic with the Memphis Fire Department, testified that on February 17, 2009, he responded to an emergency at the victim's address and was responsible for transporting the victim to the Regional Medical Center ("the Med"). He described the victim as "badly beaten." He recalled that her pants were pulled down when he arrived. He also remembered that her blood pressure dropped while en route to the Med.

The victim testified that she was sixty-seven years old in 2009. At the time, she worked for her husband in his dental practice, and they lived in Memphis, Tennessee. She drove a "whitish-tan" Nissan, but she could not remember the model. On February 17, 2009, she left work just after 5:00 p.m. and went directly home. She recalled that it was still light outside when she arrived home. The victim said that she left her car running in the driveway while she retrieved her mail and her neighbor's mail. When she returned to her car, a large black man was standing by her car. She said that she had never seen him before that evening. She later identified appellant in a photographic lineup as the man she saw that night, and she also identified appellant in the courtroom. Appellant told her that he had a gun, and he approached her. The last thing she recalled was appellant's hitting or pushing her into the car. The victim said that when she awoke briefly, she was behind her house, and it was dark.

The victim testified that she had been carrying $700, credit cards, and an eyeglasses case in her purse, which was inside a tote bag. She later clarified that the tote bag was in the backseat of her car. She said that she spent eighteen days in the hospital and that she was unconscious for ten days. When asked whether she had been in a lot of pain, she responded, "Very much so." Her mouth had to be wired together, and she lost six teeth. She had nerve damage that still affected her as of the time of trial. The victim said that she could no longer feel her lips and that her lips were "full of lumps and scar tissue." She had to undergo several procedures, which included operations to repair her jaw; to remove a cyst from her nose, which had been broken in the attack; and to repair her left eye.

James E. Beaver testified that in 2009, he lived on Leighton Lane. He recalled that on February 17, 2009, Joyce Perry and a man who identified himself as "Tony" visited his house and spent the night there. They smoked crack cocaine together. Mr. Beaver had met Ms. Perry before but met Tony for the first time that evening. He did not notice Tony's vehicle on the 17th, but he saw Tony driving a "cinnamon color Maxima" on the 18th. Also on the 18th, the police came to Mr. Beaver's house. He spoke with the police about Tony

and learned from the police that Tony was actually named Xavier Crawford.[2] Mr. Beaver identified the man he knew as Tony in a photographic lineup. When asked whether he saw the man who came to his house on February 17 in the courtroom, he said that he did not.

Memphis Police Officer Jeffrey Garey testified that he was assigned to the Crime Scene Investigation Unit. He processed the scene at the victim's house by photographing and collecting evidence. He said that when he was dispatched, the scene was described as a carjacking and possible sexual assault. Officer Garey testified that he found a pair of eyeglasses by the garage that had what appeared to be blood on the lenses. Behind the house, he found a pair of ladies pants. He also found several pieces of tissue paper with a red substance on them around the outside of the house. Officer Garey testified that he found what he believed to be blood going from the garage to the back of the house and in the front entrance of the house. There was more blood inside the house and on a white jacket found in the living room.

Memphis Police Officer Walter Doty testified that the police department received a tip that appellant was at an address on Leighton Lane. The caller provided the police department with appellant's name, date of birth, and a description of a vehicle that had been involved in a carjacking. On February 18, 2009, just after 8:00 p.m., Officer Doty went to the Leighton Lane address to apprehend appellant. He observed a Nissan Maxima in the driveway that matched the description of the vehicle taken from the victim. The license tag number also matched. Mr. Beaver invited Officer Doty inside, and when asked whether appellant was inside the house, Mr. Beaver responded affirmatively. Officer Doty located appellant in Mr. Beaver's living room, sitting on a couch. Officer Doty directed appellant to lie on the floor, and when appellant complied, a set of keys fell from his lap onto the floor. Officer Doty testified that the keys were collected and were verified as being those for the Nissan Maxima.

Memphis Police Officer Newton Morgan testified that he was responsible for processing a 1997 Nissan Maxima on February 20, 2009. He dusted the vehicle for fingerprints and swabbed the steering wheel and some items found in the vehicle for DNA samples. He did not locate any fingerprints. The DNA samples were taken to the Tennessee Bureau of Investigation ("TBI") for testing. He also took photographs of the vehicle.

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[2] Throughout direct examination, Mr. Beaver referred to the man who visited his house as Xavier Crawford. However, on cross-examination, he clarified that he heard that name from the police and that he knew the man as "Tony." Because Mr. Beaver did not identify appellant in the courtroom as the man who visited his house, we have used the name Mr. Beaver provided. However, we note that the photograph Mr. Beaver circled in the lineup is the same as the photograph circled by the victim when she identified her attacker.

Officer Morgan testified that he found "a plastic bag full of personal items" in the backseat of the vehicle. He further testified that he recovered an eyeglasses case that had the victim's information written on its interior and credit cards that were in the name of the victim or her husband. Officer Morgan inventoried the items in the plastic bag, which held Dollar General bags, clothing, and hygiene items. He listed the clothing as a yellow shirt, size XXL; blue jogging pants, size XXL; a red, black, and grey jacket, size XXXL; and a blue jacket, size XL.

Memphis Police Officer Michael Hill testified that he was responsible for photographing appellant while appellant was at the sex crimes bureau of the police department and for "tagging" the clothing that appellant was wearing at the time. The clothing included a pair of black shoes. Officer Hill also collected a receipt found in the pocket of appellant's pants. The State introduced the photographs and the receipt into evidence.

On cross-examination, Officer Hill testified that he placed each item of clothing in a separate bag and then placed all of the small bags into a larger bag. He submitted the large bag to the property room. He did not believe that he sealed the bag before submitting it to the property room attendants.

Amanda Taylor, a sexual assault nurse examiner with the Rape Crisis Center, was accepted by the court as an expert in sexual assault examinations. Ms. Taylor testified that she examined the victim at the Med on February 17, 2009. She was unable to perform the interview that typically precedes such examinations because the victim was intubated and unconscious. Ms. Taylor stated that the victim had "complete thickness laceration[s]" to her upper and lower lips, meaning that her lips were split all the way through. Her face was swollen, and her eyes were swollen shut and bleeding. She had bruises on her face, and the back of her head was bleeding. The victim had debris and leaves covering her legs and genitalia, and she had abrasions on both hips. She had a linear laceration in her genital area, specifically the fossa navicularis, and her labia majora were red and swollen. The victim also had "multiple circular oval bruising" on both thighs. Ms. Taylor testified that she was unable to examine the interior of the victim's vagina due to her condition but that she was able to examine the external area and collect swabs. Ms. Taylor opined that the abrasions to the victim's body were consistent with dragging injuries, and the injury to her vagina was consistent with penetration. Ms. Taylor said that there was dried blood on the victim's legs but no actively bleeding injuries. Ms. Taylor collected a rape kit from the victim, which included pubic hair combings, vaginal and anal swabs, a swab of a "shiny substance" found on the victim's thigh, the victim's underwear, and samples of the debris found on her body. Ms. Taylor testified that each sample was packaged individually. She took the entire kit to the Memphis Sexual Assault Resource Center ("MSARC"), and she dried the swabs in a

specialized dryer. She placed the kit in MSARC's locked evidence room. Ms. Taylor testified that she was not able to collect a buccal swab at the time of her initial examination but that she later collected one from the victim. She explained that the buccal swab provided a DNA standard.

Memphis Police Officer David Sloan testified that on February 18, 2009, he went to the Med to visit the victim because a nurse had called the police department to inform them that the victim was attempting to communicate. He prepared a photographic lineup to show to the victim, but he said that when he arrived, it was clear that she would not be able to see the lineup due to the swelling of her eyes. A nurse informed him that the victim had written notes, one of which said, "[W]as I raped[?]" and "He was black."

Memphis Police Sergeant Clyde Jefferson testified that he was present at the sex crimes bureau when a nurse from MSARC collected buccal and penile swabs from appellant. He further testified that "the nurse packaged [the samples] up and kept [them] with her." He assumed that she took them to her office.

Memphis Police Lieutenant Wilton Cleveland testified that he was present when the MSARC nurse took samples from appellant. He said that he was familiar with MSARC's policy on storing such samples. Lieutenant Cleveland explained that typically MSARC stored samples in a locked room until someone, most often the Memphis Police Department's criminalist Hyun Kim, checked them out from MSARC and transported them to the TBI. Lieutenant Cleveland testified that Mr. Kim was responsible for checking out appellant's samples from MSARC. Mr. Kim was deceased at the time of the trial. On cross-examination, Lieutenant Cleveland testified that he observed the MSARC nurse package the swabs and label the packaging according to the location from which each swab was taken.

TBI forensic scientist Jessica Marquez[3] testified that she tested clothing taken from appellant, specifically his shoes; the rape kit taken from the victim; and the swabs taken from the victim's car against DNA standards from appellant and the victim. Ms. Marquez stated that she found the victim's DNA on appellant's shoes. She opined that "[t]he probability of an unrelated individual having the same DNA profile from either an African[-]American, Caucasian, southeastern Hispanic[,] or southwestern Hispanic population[] exceeds the current world population." Ms. Marquez developed a partial DNA profile from the steering wheel of the victim's vehicle, and she testified that appellant could not be excluded as a contributor to that DNA but that the victim and her husband could be excluded. Ms. Marquez testified that her examination of the victim's vaginal slide revealed the presence of

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[3] At the time of the DNA testing, Ms. Marquez was a commissioned special agent for the TBI, but at the time of trial, she was a part-time forensic scientist working on a contract basis.

semen and that she developed a partial DNA profile from the victim's vaginal slide. She stated that the major contributor to this partial DNA profile matched appellant's DNA in seven out of nine loci and that the minor contributor was consistent with the victim's DNA. Ms. Marquez provided the following statistics with regard to the probability of an unrelated individual having the same DNA as the major contributor: from the African-American population — one in 17,690,000; from the Caucasian population — one in 265,700,000; from the southeastern Hispanic population — one in 156,400,000; and from the southwestern Hispanic population — one in 395,400,000. Ms. Marquez said that she detected spermatozoa in two areas of the victim's underwear. In area A, the partial DNA profile she developed matched appellant's DNA at six out of nine loci, and in area B, the partial DNA profile matched appellant's DNA at four out of nine loci. Ms. Marquez testified that the victim's anal swab, vaginal swab, and thigh swab all revealed the presence of semen. With regard to chain of custody, Ms. Marquez testified that all items arrived to her in a sealed condition.

On cross-examination, Ms. Marquez repeated that the probability of an individual unrelated to the victim having the same DNA profile as that found on appellant's shoes exceeded the world population. She explained that she meant that "[i]t's very unlikely that a random person would have her DNA."

Following Ms. Marquez's testimony, the State rested its case. Appellant presented no proof. The jury convicted appellant as charged of aggravated rape and aggravated robbery. The trial court sentenced appellant to twenty-five years as a violent offender for the aggravated rape conviction and twelve years as a standard offender for the aggravated robbery conviction, to be served consecutively in the Tennessee Department of Correction. The trial court denied appellant's motion for new trial. This appeal follows.

II. Analysis

A. Chain of Custody

Appellant argues that the State did not sufficiently prove the chain of custody for appellant's DNA samples and clothing. Regarding the DNA samples, appellant contends that there was a complete break in the chain of custody because no MSARC personnel testified about their role in collecting and storing the DNA samples. He also submits that the trial court erred by allowing Lieutenant Cleveland to testify about MSARC's procedure. Appellant further argues that the trial court abused its discretion by ruling that the State provided a sufficient chain of custody with regard to appellant's shoes when an officer testified that the bag containing the shoes was unsealed when he gave it to the property room attendants, yet the bag was sealed when it arrived at the TBI. The State maintains that it

proved the chain of custody of these evidentiary items sufficiently to show the items' identity and integrity. We agree with the State.

The determination of whether the State has properly established the chain of custody of evidence is a matter left to the sound discretion of the trial court and will not be reversed absent an abuse of that discretion. *See State v. Cannon*, 254 S.W.3d 287, 295 (Tenn. 2008). Generally, "[a] trial court abuses its discretion when it applies incorrect legal standards, reaches an illogical conclusion, bases its ruling on a clearly erroneous assessment of the proof, or applies reasoning that causes an injustice to the complaining party." *State v. Phelps*, 329 S.W.3d 436, 443 (Tenn. 2010). Tennessee Rule of Evidence 901(a) provides: "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to the court to support a finding by the trier of fact that the matter in question is what its proponent claims." As our supreme court has held, "'[A]s a condition precedent to the introduction of tangible evidence, a witness must be able to identify the evidence or establish an unbroken chain of custody.'" *Cannon*, 254 S.W.3d at 296 (quoting *State v. Scott*, 33 S.W.3d 746, 760 (Tenn. 2000)). "The purpose of the chain of custody is to 'demonstrate that there has been no tampering, loss, substitution, or mistake with respect to the evidence.'" *Scott*, 33 S.W.3d at 760 (quoting *State v. Braden*, 867 S.W.2d 750, 759 (Tenn. Crim. App. 1993)). The State should sufficiently prove each link in the chain of custody, but the State is not required to prove the identity of tangible evidence beyond all possibility of doubt nor must it exclude every possibility of tampering. *Cannon*, 254 S.W.3d at 296. In addition, the State's failure to call as a witness each person who handled an item does not necessarily preclude the admission of the evidence. *Id.* "Accordingly, when the facts and circumstances that surround tangible evidence reasonably establish the identity and integrity of the evidence, the trial court should admit the item into evidence." *Id.* The trial court should not admit an item into evidence if the State fails to provide sufficient proof of the chain of custody, unless the identity and integrity of the item can be established by other means. *Id.*

With regard to appellant's DNA samples, two police officers testified that they observed the MSARC nurse take and store the samples. Lieutenant Cleveland testified that he was familiar enough with MSARC procedure to know that in general samples were stored in a locked room until a member of the Memphis Police Department checked them out for transportation to the TBI. In addition, Amanda Taylor testified about the procedure she used at MSARC for handling and storing the samples taken from the victim. Ms. Marquez testified that the samples were sealed when she received them. The trial court reasoned that in a case such as this, when the perpetrator's DNA is found on the victim, the odds of someone tampering with a sample taken from a suspect in such a way that the suspect's DNA matched the perpetrator's DNA were "astronomical."

Appellant claims that the trial court's logic was flawed, but we disagree. The integrity of the samples taken from the victim was not questioned. Ms. Marquez developed a partial profile from the victim's samples that matched appellant's DNA in seven of nine loci. As the State claims on appeal, for that result to occur if appellant was not in fact the perpetrator, someone would have needed to know the identity of the perpetrator, obtain a DNA sample from the perpetrator, and replace appellant's DNA — which the proof at trial suggests but did not prove was stored inside a sealed container in a locked storage room — with that of the actual perpetrator. Between the proof presented at trial with regard to the condition of appellant's DNA samples when the MSARC nurse took them and their condition when they arrived at the TBI along with the incredibly slim possibility of successfully tampering with the evidence, we conclude that the trial court did not abuse its discretion in finding that the State sufficiently proved the chain of custody.

Appellant's claim that the chain of custody for appellant's shoes was insufficient is also without merit. He asserts that because Officer Hill submitted the large bag containing appellant's clothing and shoes to the property room in an unsealed condition and the same bag was submitted to the TBI in a sealed condition, someone must have tampered with the items in the bag. However, Officer Hill testified that he did not seal the bag himself because the property room attendants had to look at the items inside. While he said that he did not know who exactly sealed the bag, the implication from his testimony was that the property room attendants were responsible for doing so. Furthermore, he identified the shoes that were admitted into evidence as the same shoes he photographed and collected from appellant on February 18, 2009. From his testimony, we conclude that the State sufficiently established that the shoes were what it claimed them to be by having a witness identify the evidence. *See Cannon*, 254 S.W.3d at 296; Tenn. R. Evid. 901(a). Therefore, the trial court did not abuse its discretion in admitting the evidence. Appellant is without relief as to this issue.

B. Sufficiency of the Evidence

Appellant contends that the evidence was insufficient to support his convictions. He relies on his argument presented in subsection II.A., *supra*, that the DNA evidence should not have been admitted, to assert that the State's case against him was insufficient without the DNA evidence. He further argues that Ms. Marquez's presentation of her statistical findings regarding the victim's DNA found on appellant's shoes was incompetent evidence. The State responds that the evidence was sufficient to support appellant's convictions for aggravated rape and aggravated robbery. We agree with the State.

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

prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (citing *Johnson v. Louisiana*, 406 U.S. 356, 362 (1972)); *see* Tenn. R. App. P. 13(e); *State v. Davis*, 354 S.W.3d 718, 729 (Tenn. 2011). To obtain relief on a claim of insufficient evidence, appellant must demonstrate that no reasonable trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *See Jackson*, 443 U.S. at 319. This standard of review is identical whether the conviction is predicated on direct or circumstantial evidence, or a combination of both. *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011); *State v. Brown*, 551 S.W.2d 329, 331 (Tenn. 1977).

On appellate review, "'we afford the prosecution the strongest legitimate view of the evidence as well as all reasonable and legitimate inferences which may be drawn therefrom.'" *Davis*, 354 S.W.3d at 729 (quoting *State v. Majors*, 318 S.W.3d 850, 857 (Tenn. 2010)); *State v. Williams*, 657 S.W.2d 405, 410 (Tenn. 1983); *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978). In a jury trial, questions involving the credibility of witnesses and the weight and value to be given the evidence, as well as all factual disputes raised by the evidence, are resolved by the jury as trier of fact. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997); *State v. Pruett*, 788 S.W.2d 559, 561 (Tenn. 1990). This court presumes that the jury has afforded the State all reasonable inferences from the evidence and resolved all conflicts in the testimony in favor of the State; as such, we will not substitute our own inferences drawn from the evidence for those drawn by the jury, nor will we re-weigh or re-evaluate the evidence. *Dorantes*, 331 S.W.3d at 379; *Cabbage*, 571 S.W.2d at 835; *see State v. Sheffield*, 676 S.W.2d 542, 547 (Tenn. 1984). Because a jury conviction removes the presumption of innocence that appellant enjoyed at trial and replaces it with one of guilt at the appellate level, the burden of proof shifts from the State to the convicted appellant, who must demonstrate to this court that the evidence is insufficient to support the jury's findings. *Davis*, 354 S.W.3d at 729 (citing *State v. Sisk*, 343 S.W.3d 60, 65 (Tenn. 2011)).

To sustain appellant's conviction for aggravated rape, the State had to prove beyond a reasonable doubt that appellant unlawfully sexually penetrated the victim and caused bodily injury to her. *See* Tenn. Code Ann. § 39-13-502(a)(2). Tennessee Code Annotated section 39-13-501(7) defines sexual penetration as "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." '"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." Tenn. Code Ann. § 39-11-106(a)(2).

To sustain appellant's conviction for aggravated robbery, the State had to prove beyond a reasonable doubt that appellant intentionally or knowingly took property from the

victim by violence or putting the victim in fear and that the victim suffered serious bodily injury. *See* Tenn. Code Ann. §§ 39-13-401, -402(a)(2). As applicable to this case, "'[s]erious bodily injury' means bodily injury that involves: (A) A substantial risk of death; (B) Protracted unconsciousness; (C) Extreme physical pain; (D) Protracted or obvious disfigurement; [or] (E) Protracted loss or substantial impairment of a function of a bodily member, organ or mental faculty." Tenn. Code Ann. § 39-11-106(a)(34).

Viewed in the light most favorable to the State, the evidence at trial revealed that appellant, as identified by the victim in a photographic lineup, accosted the victim by her car and either pushed or hit her. The victim lost consciousness and remained unconscious for much of the next ten days. Both of her jaws were broken and had to be wired together. Her nose was broken. She lost six teeth and had deep lacerations to her lips. A sexual assault examination revealed a laceration to the interior of the victim's vagina that was consistent with penetration, and Ms. Marquez discovered semen on the items submitted in the victim's rape kit. Appellant was discovered at Mr. Beaver's house the following day. The victim's car was parked outside of Mr. Beaver's house, and appellant had the keys to the vehicle in his possession when he was detained. The victim's blood was found on appellant's shoes when he was taken into custody, and a partial profile of DNA that matched appellant's DNA in seven out of nine loci was found on the victim's vaginal slide. Taking all of this evidence into consideration, we conclude that any rational jury could have found appellant guilty of aggravated rape and aggravated robbery.

Appellant's challenge to the DNA evidence is without merit as we have already concluded that the DNA evidence was properly admitted. We further conclude that appellant's claim regarding Ms. Marquez's statistical findings is not meritorious. She stated that the chances of someone unrelated to the victim having the same DNA as the victim exceeded the world's population, and she explained that such a statistic meant that it was "very unlikely that a random person would have her DNA." Ms. Marquez's findings were stated in the common parlance used by forensic scientists, and as we view the evidence in the light most favorable to the State, we accept her explanation of her statistical findings.

C. Inadmissible Hearsay

Appellant argues that the trial court erred by admitting into evidence the receipt found on his person after his detention. He maintains that the receipt was hearsay and that the State did not prove that an exception to the hearsay rule applied. Appellant further argues that the trial court's error was not harmless because in his view, the receipt was the only link between appellant and the victim's car. The State submits that the receipt was not admitted for the truth of the matter asserted.

Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Tenn. R. Evid. 801(c). Generally, hearsay is not admissible at trial unless it falls within an exception to the exclusionary rule. Tenn. R. Evid. 802. We are aware of the disagreement among panels of this court regarding the appropriate standard of review of the admissibility of hearsay evidence;[4] however, for purposes of this case, the result is the same whether reviewed for abuse of discretion or de novo.

Appellant claims that the receipt could only be admitted for the truth of the matter asserted, *i.e.,* that certain items were purchased at a certain date and time from a certain store. The State responds that the receipt was not admitted for the truth of the matter asserted because it did not matter to its case whether what the receipt stated was truth or falsehood. The State submits that the purpose of admitting the receipt was merely to link appellant with the items found in the vehicle, many of which were listed on the receipt.

The record shows that at trial, the State presented two theories to the trial court to support the admission of the receipt: (1) that the receipt showed appellant bought clothes so that he could change out of what he wore during the attack on the victim and (2) that the receipt linked him to the vehicle because the receipt found in his pocket was essentially a list of the items found in the victim's vehicle. The trial court ruled that the receipt was admissible for the limited purpose of showing that the receipt was in appellant's possession when he was arrested, not for the truth of the matter asserted. When the State introduced the receipt into evidence, the trial court gave the jury a limiting instruction reflecting its evidentiary ruling. However, during the State's closing argument, the State contended that the importance of the receipt was that appellant purchased clothing *on February 17th*, implying that he did so to change clothes after the attack.

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[4] *See State v. Dotson*, 254 S.W.3d 378, 392 (Tenn. 2008) (in considering an issue involving hearsay, holding that "questions concerning the admissibility of evidence rest within the sound discretion of the trial court, and this Court will not interfere in the absence of abuse appearing on the face of the record"); *Pylant v. State*, 263 S.W.3d 864, 871 n.26 (Tenn. 2008) (maintaining that the standard of review for hearsay issues is abuse of discretion); *Willie Perry, Jr. v. State*, No. W2011-01818-CCA-R3-PC, 2012 WL 2849510, at *3 (Tenn. Crim. App. July 11, 2012) (stating that standard of review for admissibility of evidence is abuse of discretion). *But see State v. Gilley*, 297 S.W.3d 739, 760 (Tenn. Crim. App. 2008) (stating that whether a statement is offered to prove the truth of the matter asserted is "necessarily a question of law" and is not subject to review under abuse of discretion standard); *State v. Schiefelbein*, 230 S.W.3d 88, 128 (Tenn. Crim. App. 2007) (holding that appellate review of hearsay issues is de novo with no presumption of correctness); *Willie Perry, Jr.,* 2012 WL 2849510, at *7 (Bivins, J., concurring) (applying de novo standard of review to hearsay issues).

By stressing that appellant purchased the clothing on a particular date, the State changed the purpose of admitting the receipt from the mere fact that appellant possessed it to an attempt to prove the truth of the matter asserted by the receipt — the purchase of particular items on a particular date. Thus, the receipt essentially became a hearsay statement due to the State's closing argument, and no exception to the hearsay rule was presented to allow its admission. Nonetheless, we conclude that the error with regard to the admission of the receipt was harmless because considering the whole record, the admission of the receipt did not affect the judgment. *See* Tenn. R. Evid. 36(b).

CONCLUSION

Based on our review of the record, the parties' arguments, and the applicable law, we affirm the judgments of the trial court.

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ROGER A. PAGE, JUDGE