IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs May 6, 2014

STATE OF TENNESSEE v. BOBBY JOE CROOM

Appeal from the Circuit Court for Madison County
No. 10-65 Honorable Roy B. Morgan, Jr., Judge

No. W2013-01863-CCA-R3-CD - Filed July 11, 2014

A Madison County Circuit Court jury convicted the Defendant-Appellant, Bobby Joe Croom, as charged of three counts of rape of a child, a Class A felony, and three counts of aggravated sexual battery, a Class B felony. See State v. Bobby Joe Croom, No. W2011-00461-CCA-R3-CD, 2012 WL 1656718, at *1 (Tenn. Crim. App. May 10, 2012). In his first direct appeal, Croom argued that the trial court erred in failing to require the State to elect the particular instances of rape and sexual battery on which it was relying for each conviction and that the evidence was insufficient to support his convictions. Id. at *1. In counts 1 through 4, which charged Croom with rape of a child and aggravated sexual battery during the period of July 1-4, 2009, and with rape of a child and aggravated sexual battery during the period of July 5-11, 2009, this court reversed Croom's convictions, dismissed his charges, and vacated his sentences after concluding that there was no proof presented at trial that the offenses occurred within the time periods charged. Id. at *8. The court also reversed Croom's convictions in counts 5 and 6, which charged Croom with rape of a child and aggravated sexual battery during the period of July 12-18, 2009, and remanded the case for a new trial on those counts. Id. Following a retrial on counts 5 and 6, Croom was again convicted as charged, and the trial court imposed consecutive sentences of thirty-five years for the rape of a child conviction and fifteen years for the aggravated sexual battery conviction. In this direct appeal, Croom argues that (1) the trial court erred in allowing a physician to testify about the statements made by the victim and the victim's mother during a medical examination and erred in admitting the physician's medical report containing those statements because the statements were not made for the purposes of medical diagnosis and treatment pursuant to Tennessee Rule of Evidence 803(4), and (2) the evidence is insufficient to sustain his convictions. Upon review, we affirm the judgments of the trial court.

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

CAMILLE R. MCMULLEN, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and ALAN E. GLENN, J., joined.

Lee R. Sparks, Jackson, Tennessee, for the Defendant-Appellant, Bobby Joe Croom.

Robert E. Cooper, Jr., Attorney General and Reporter; Caitlin E. D. Smith, Assistant Attorney General; James G. Woodall, District Attorney General; and Jody S. Pickens, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

State's Proof

S.P.,[1] the minor victim, was twelve years old at the time she testified at trial. The victim stated that in July 2009, when the offenses in this case occurred, she was eight years old and lived with her mother, two brothers, and Croom, the Defendant-Appellant, in Jackson. She stated that she sometimes called Croom "Dad."

The victim stated that her mother worked at McDonald's and Croom, who did not have a job at the time, took care of her while her mother worked. In July 2009, the victim informed her uncle, and later her grandmother, that Croom had been touching her "in a bad way." During trial, the victim explained that boys and girls have a private area between their legs, which she called "[t]heir middle part," that should not be touched and that boys and girls have a private area on their "behind" that should not be touched. She also stated that girls have a private area on their chest that she referred to as "[b]oobs." The victim identified these private areas on diagrams depicting a nude male and female child, which were entered into evidence.

The victim said she was at her grandmother's house when she told her grandmother that Croom had sexually abused her. She said that the abuse occurred at at her mother's house in the morning while her mother was at work. At the time, she and Croom were the only people in the house because her brother was at his paternal grandmother's house and her other brother was at his aunt's house. After she heard Croom come home, he walked into her room. Croom picked her up from her bed and carried her into her mother's bedroom. He placed her on the bed, removed her t-shirt and shorts, and removed his own clothes. Croom got into the bed with the victim and placed her on top of him with her head at his chest. He then began "[r]ubbing" her "middle part" either with his hand or his own "middle part." After several minutes, Croom placed the victim on her back on the bed. He lay on his stomach and licked her "middle part." The victim demonstrated to the jury the position of her body during the incident by lying on her back with her legs spread apart. She also demonstrated how Croom lay on his stomach, propping himself up on his elbows during the

[1] As is the policy of this court, we will refer to the minor victim by her initials.

incident. The victim also stated that Croom spat on her "middle part," although she did not know why he did this. She said that after a few minutes, Croom stuck his "middle part" into her "middle part," which "hurt." The victim referenced the "middle part[s]" she had circled on the diagrams of the male and female children. The victim demonstrated the position of her body at time of penetration by lying on her back with her legs spread apart. She also showed the jury how Croom sat on his knees with his legs folded under him while he rocked back and forth in a thrusting motion. She said that during the rape, Croom told her, "You're the best I ever had."

The victim stated that on Saturday, the day after she was sexually abused, she went to her grandmother's house. When her grandmother returned home from a yard sale, she told her grandmother that Croom had sexually abused her.

The victim said that she knew the difference between a truth and a lie and asserted that she was telling the truth about Croom's abuse. She also said she told the doctor who examined her the truth about Croom sexually abusing her. The victim said she first told her uncle that Croom had sexually abused her because she "felt like [she] was in a safer place to tell someone." She said she did not tell her mother first because her mother "was working all the time."

The victim acknowledged that R.D., her brother's aunt, sometimes babysat her and her brother. She said that she sometimes spent the night at R.D.'s house if her mother was working late but that she usually spent the night at her grandmother's house when her mother was working at night and generally went to her grandmother's house on Friday night or Saturday morning. The victim stated that Croom sexually abused her the day before she went to her grandmother's house and that she went to her grandmother's house on Saturday morning.

L.M.,[2] the victim's maternal grandmother, testified that she called the Jackson Police Department on Friday, July 24, 2009, after the victim told her on Thursday, July 23, 2009, that Croom had sexually abused her. L.M. stated that she did not call the police until the next day because she wanted Croom "dead."

L.M. said that she sometimes took care of the victim and had been taking care of the victim the week that the victim told her about the sexual abuse. She said that she picked up the victim on Saturday, July 18, 2009, with the intent to take her to church the following day.

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[2] To protect the anonymity of the minor victim, we will refer to adult relatives of the minor victim by their initials.

L.M. stated that she kept the victim at her house from Saturday, July 18, 2009, to Friday, July 24, 2009.

L.M. stated that her son had already informed her that Croom had sexually abused the victim before the victim told her about the abuse. During the period from July 18, 2009, to July 24, 2009, L.M. said the victim did not act as if she were hurt or injured, but she noticed that the victim was quiet. L.M. said that when she picked up the victim on July 18, 2009, Croom was present, and the victim did not act differently around him.

L.P., the victim's mother, testified that in July 2009 she was dating Croom, who lived with her and her children. At that time, L.P. was working at McDonald's, and Croom did not have a job. Because it was summer vacation, Croom took care of her children while she worked. L.P. stated that on Friday, July 17, 2009, and Saturday, July 18, 2009, she worked from 7:00 a.m. to 2:00 p.m. She said she did not work on Sunday, July 19, 2009. L.P. could not recall whether she drove herself to work or whether Croom drove her to work on Friday, July 17, 2009.

L.P. said that she initially heard that Croom had sexually abused the victim from her brother and that she later talked with her mother about the abuse. She said she did not contact the police the day she found out about the abuse because she did not know what to do. However, the next day, she called the police to report the abuse. When she learned of the abuse, she informed Croom that the victim had said that he had been "messing with her" and that she needed to talk to him about it. When Croom did not respond, L.P. told him to get his things and leave, which he did. She said Croom never denied the allegations and did not appear upset when she called him a child rapist.

L.P. said that at the preliminary hearing in this case, she heard the victim say Croom had told her, "Ain't you the best I ever had." After the preliminary hearing, Croom wrote her letters to which she did not respond. In one of the letters, Croom wrote, "And who told her to say, 'Ain't this the best you ever had?' B[----], I told you that s[---]." L.P. explained that Croom had used the same phrase with her when they had sexual relations at the time they were dating. In a different letter, Croom wrote, "I love you, Boo. I really f[------] do. I always have and always will. You're the best I ever had." Later, in the same letter, Croom wrote, "N[-----] didn't like me because I f[-----] on their ho's and ho's didn't like me because I f[-----] on b[------]. So that's what's up. That b[----] was broke when I met her and back broke and f[-----] up now since I'm gone. I was the best that b[----] ever had." She stated that Croom was not talking about her or the victim when he used that phrase in the later portion of the letter.

L.P. acknowledged that R.D. sometimes babysat the victim and her other children while she was working but usually kept them at night, sometimes throughout the night. She said Croom sometimes drove her to work and acknowledged that Croom had driven her to work at some point during the period from July 12, 2009, to July 18, 2009. L.P. said that when Croom drove her to work, he would either drop off the children at R.D.'s house or would keep them himself. She admitted that members of Croom's family often visited her home but asserted that there were usually not any guests at her house by the time she got home from work at night. L.P. acknowledged that Croom had a son and a daughter from a prior relationship who sometimes visited her home.

L.P. said she did not notice the victim in any pain during the period from July 12, 2009, to July 18, 2009. However, during that period, she remembered the victim "having more attitude towards people, but other than that she was pretty much okay." She acknowledged that the victim was not trying to avoid Croom during that period. L.P also acknowledged that during the summer of 2009 there was a song by Lil Wayne and Drake that possibly contained the lyric, "B[----], you're the best I ever had."

Danielle Jones, an investigator with the violent crimes unit of the Jackson Police Department, testified that Croom's sexual abuse of the victim was disclosed to the police on July 24, 2009. She stated that on July 25, 2009, she attempted to contact Croom. After several unsuccessful attempts to reach him, Croom finally answered the phone and told her that he was in Memphis with his brother. Investigator Jones told Croom that she needed to speak with him about some allegations that had been made against him, and Croom said he would meet with her. However, Croom never came by the police department to talk with her. Investigator Jones tried to call Croom a few more times but was unable to speak with him until he was taken into custody.

Dr. Lisa Piercey, a pediatric physician, was declared an expert in pediatrics and the maltreatement of children. She stated that she had seen over two thousand children who were believed to be the victims of sexual abuse. On July 24, 2009, Dr. Piercey evaluated, diagnosed, and treated the victim. On that date, she stated that the victim was three feet, ten inches tall and weighed forty-eight pounds, which was small for an eight-year-old girl. Dr. Piercey stated that "the goal of any medical evaluation" was to diagnose and, if necessary, treat the patient. As a part of her evaluation, she obtained a medical history from the victim and her mother. She stated that medical histories are "the most important part of any medical evaluation" because diagnoses are based in large part on a patient's medical history. In addition, she stated that the identity of the individual alleged to have sexually abused a child is important because the child needs to be protected from that person from that point forward. Dr. Piercey explained that if the perpetrator is allowed to have contact with the child, then the child is in continued danger, which also affects the testing and treatment of the child.

Dr. Piercey stated that she intentionally knows nothing about the allegations involving her patients in order to avoid having preconceived notions about what has occurred. At the time of the victim's appointment, she did not know whether the victim was there for physical abuse or sexual abuse. When Dr. Piercey asked the victim why she had been brought in to see her that day, the victim immediately replied, "My mom's boyfriend, Tyson Croom, has been giving me bad touch." When Dr. Piercey asked the victim about when the abuse had occurred in order to determine whether a rape kit was necessary, the victim stated that the most recent abuse occurred a few days earlier. Dr. Piercey explained that children typically do not have a concept of time, so it was appropriate for the eight-year-old victim not to be able to answer her question more specifically than a "few days ago."

Dr. Piercey stated that the victim's description of the abuse was necessary in order for her to diagnose and treat the victim. The victim told her, "[Croom] would feel on my middle part with his hands on the inside and it hurt. He put his mouth on my middle part, and then he would put his middle part in my middle part and it hurt." The victim also told her that "[Croom] put his fingers in my butt."

Dr. Piercey said she also performed a physical examination of the victim. Using a colposcope, she observed that a substantial portion of the victim's hymen was absent. Dr. Piercey stated that the absence of hymenal tissue was indicative of blunt force penetrating trauma and that the victim's injury was consistent with the victim's disclosure that Croom had penetrated her with his penis. She stated that the amount of the victim's absent hymenal tissue was very unusual for an eight-year-old. She explained that because hymens are shaped like a collar with a hole, around ninety to ninety-five percent of females who have been penetrated do not show any abnormality in their hymens when examined. After conducting the physical exam, Dr. Piercey's diagnosis of the victim was "child sexual abuse." She then made the following finding regarding the victim: "The . . . absence of hymenal tissue in the posterior rim of the hymen is definitive evidence for blunt force penetrating trauma. The timing or frequency of the trauma cannot be determined based on examination alone, but there are no acute injuries present."

After completing her evaluation, Dr. Piercey formed a treatment plan for the victim. The first step in this treatment plan was to terminate all contact with the alleged perpetrator to ensure the victim's safety. The second step was to list all of the tests for sexually transmitted diseases that she had done on the victim. The third step was to note that a rape kit was unnecessary because too much time had elapsed from the last incident of abuse to collect DNA evidence. The fourth step was to reassure the victim and her mother that the victim was healthy and would be fine. The fifth step was to recommend long-term counseling for the victim. The sixth and final step was to recommend that the victim follow up with her regular doctor. At the end of the appointment, Dr. Piercey asked the victim if she

wanted to tell her anything else, and the victim replied that Croom often told her, "I was the best he ever had."

Dr. Piercey stated that it would be impossible for the victim's penetrating trauma to result from activities like riding a bike unless the bicycle seat actually penetrated the vagina. She said she did not observe any lacerations, tears, abrasions, or any other injuries to the victim during the physical examination.

Defense's proof

Beverly Croom, the Defendant-Appellant's aunt, testified that she began packing her things to move to a different home in the middle of July 2009. She stated that Croom helped her move during the period from July 17, 2009, to July 20, 2009. Specifically, she stated that on Friday, July 17, 2009, and Saturday, July 18, 2009, Croom arrived at her house at 8:00 a.m. and left at 3:00 or 4:00 p.m. She stated that the victim was not with Croom any of the days he helped her move.

Beverly[3] acknowledged that she had earlier testified that she moved "around about the second week of July" and that she did not know the exact dates of her move. She said that when the allegations regarding the sexual abuse of the victim arose, Croom went out of town for a week or two for a family reunion in Michigan, where his father lived.

R.D., the victim's aunt, testified that in July 2009 she sometimes babysat the victim and her brothers. She said that the time of day that she kept them varied and that they sometimes spent the night at her home.

Gloria Herron, Croom's mother, testified that in July 2009 she often visited Croom at the home he shared with L.P. and L.P's children. She stated that she often visited with the victim and that the victim sometimes came over to her house. Herron stated that she went to Croom's home in the evenings the week of July 12, 2009, through July 18, 2009, although she could not remember the specific dates. During those visits, she said the victim did not appear to be hurt or in pain, and she did not observe any changes in the victim's behavior. She also said the victim did not try to avoid Croom and did not act like she was afraid of him.

Herron acknowledged previously testifying that she did not know exactly when in July 2009 she went to Croom's home. She also acknowledged that she did not know if she visited the victim's home during the period from July 12, 2009, to July 18, 2009. Although Herron

[3] We will refer to certain witnesses with the same last name by their first names to differentiate them from each other.

stated that she went over to Croom's home every evening, she acknowledged that she had previously testified that she visited Croom's home once a week. She acknowledged that her memory of her visits was probably more accurate at the time of her testimony two and a half years earlier than at the current time. She did not dispute her prior testimony in this case.

Latosha Croom, Defendant-Appellant's cousin, testified that she frequently visited Croom in July 2009. She said she played cards and had cookouts with Croom and the children at the time and often stayed late into the night. Latosha admitted she did not remember any specific details from any date that she visited Croom's home in July 2009.

ANALYSIS

I. Rule 803(4). Croom argues that the trial court committed reversible error in allowing Dr. Piercey to testify about the statements made by the victim and the victim's mother during the medical examination and in admitting Dr. Piercey's medical report containing those statements. Although he concedes that the statements were made for the purpose of medical diagnosis, he asserts that they were not made for the purpose of treatment and, therefore, do not fit within the hearsay exception in Tennessee Rule of Evidence 803(4). We conclude that Croom is not entitled to relief.

A trial court's ruling regarding the admissibility of evidence will not be reversed absent an abuse of discretion. State v. Dotson, 254 S.W.3d 378, 392 (Tenn. 2008); State v. Stinnett, 958 S.W.2d 329, 331 (Tenn. 1997) (citing State v. Campbell, 904 S.W.2d 608, 616 (Tenn. Crim. App. 1995); State v. Baker, 785 S.W.2d 132, 134 (Tenn. Crim. App. 1989)); State v. McLeod, 937 S.W.2d 867, 871 (Tenn. 1996). Croom contends that the statements of the victim and the victim's mother were hearsay that do not fit within the exception in Rule 803(4). Hearsay is "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). Rule 802 states that "hearsay is not admissible except as provided by these rules or otherwise by law." Tenn. R. Evid. 802. "'The determination of whether a statement is hearsay and whether it is admissible through an exception to the hearsay rule is left to the sound discretion of the trial court.'" State v. Thomas, 158 S.W.3d 361, 400 (Tenn. 2005) (quoting State v. Stout, 46 S.W.3d 689, 697 (Tenn. 2001)).

Initially, we note that Croom, in his motion for new trial on this issue, argued only that the trial court erred in allowing Dr. Piercey to testify about the victim's statements to her during the examination because these statements were hearsay that did not fall within the exception of Rule 803(4). However, Croom did not argue in his motion for new trial that the trial court erred in allowing Dr. Piercey to testify about the statements from the victim's mother or that the trial court erred in admitting Dr. Piercey's medical report containing the

statements from the victim and the victim's mother. Consequently, Croom has waived plenary review of these additional issues. See Tenn. R. App. P. 3(e) ("[I]n all cases tried by a jury, no issue presented for review shall be predicated upon error in the admission or exclusion of evidence, jury instructions granted or refused, misconduct of jurors, parties or counsel, or other action committed or occurring during the trial of the case, or other ground upon which a new trial is sought, unless the same was specifically stated in a motion for a new trial; otherwise such issues will be treated as waived."); State v. Martin, 940 S.W.2d 567, 569 (Tenn. 1997) (stating that a defendant relinquishes the right to argue on appeal any issues that should have been presented in the motion for new trial but were not included in the motion); State v. Hill, 333 S.W.3d 106, 128 (Tenn. Crim. App. 2010) (holding that the defendant waived his Rule 404(b) issue by failing to include it in his motion for new trial).

Moreover, Croom did not request that this court consider these additional issues under plain error review. The plain error doctrine states that "[w]hen necessary to do substantial justice, an appellate court may consider an error that has affected the substantial rights of a party at any time, even though the error was not raised in the motion for a new trial or assigned as error on appeal." Tenn. R. App. P. 36(b). In order for this court to find plain error,

> "(a) the record must clearly establish what occurred in the trial court; (b) a clear and unequivocal rule of law must have been breached; (c) a substantial right of the accused must have been adversely affected; (d) the accused did not waive the issue for tactical reasons; and (e) consideration of the error is 'necessary to do substantial justice.'"

State v. Smith, 24 S.W.3d 274, 282 (Tenn. 2000) (quoting State v. Adkisson, 899 S.W.2d 626, 641-42 (Tenn. Crim. App. 1994)). "It is the accused's burden to persuade an appellate court that the trial court committed plain error." State v. Bledsoe, 226 S.W.3d 349, 355 (Tenn. 2007) (citing U.S. v. Olano, 507 U.S. 725, 734 (1993)). "[T]he presence of all five factors must be established by the record before this Court will recognize the existence of plain error, and complete consideration of all the factors is not necessary when it is clear from the record that at least one of the factors cannot be established." Smith, 24 S.W.3d at 283.

We have reviewed Dr. Piercey's medical report and conclude, as we will explain below, that the victim's statements in the medical report are admissible for the same reasons that Dr. Piercey's testimony about the victim's statements is admissible. In addition, we have reviewed Dr. Piercey's medical report, which was admitted at trial, and conclude that any statements that could have come from the victim's mother did not affect the outcome of Croom's case. Consequently, as to these omitted issues, we conclude that plain error review

is inappropriate because no clear and unequivocal rule of law was breached, no substantial right of the accused was adversely affected, and because consideration of the error is not necessary to do substantial justice. Croom is not entitled to relief on the issues omitted from his motion for new trial.

We will now consider whether the trial court erred in allowing Dr. Piercey to testify about what the victim said to her during the medical evaluation. Specifically, Croom argues that while the victim's statements were made for the purpose of diagnosis, they are inadmissible because they were not made for the purpose of treatment pursuant to Rule 803(4). He claims that even though Dr. Piercey created a treatment plan, she did not personally administer the treatment, only saw the victim one time, and conceded at the pretrial hearing that she did not know whether the treatment plan was followed. He also argues that because Dr. Piercey was declared an expert in the field of pediatrics and maltreatement of children, her testimony regarding the statements made by the victim was given "excessive weight by the jury, thus depriving [him] of a fair trial." We conclude that the trial court did not abuse its discretion in admitting these statements pursuant to Rule 803(4).

Tennessee Rule of Evidence 803(4) provides: "Statements made for purposes of medical diagnosis and treatment describing medical history; past or present symptoms, pain, or sensations; or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis and treatment." This rule requires either that (1) the statement must have been made for the purposes of diagnosis and treatment, in effect describing medical history, past or present symptoms, or pain or sensations, or (2) the statement must address the cause or source of the problem if reasonably pertinent to diagnosis and treatment. McLeod, 937 S.W.2d at 870. This hearsay exception is justified because "the declarant's motive of obtaining improved health increases the statement's reliability and trustworthiness." State v. Barone, 852 S.W.2d 216, 220 (Tenn. 1993). In addition, "if physicians or other medical personnel rely upon the statement in diagnosing and treating the patient, then the statement should be sufficiently trustworthy to be admissible in a court of law." McLeod, 937 S.W.2d at 870 (citing Barone, 852 S.W.2d at 220; State v. Edwards, 868 S.W.2d 682, 699 (Tenn. Crim. App. 1993)). Moreover, this court has held that a child abuse victim's statement to a physician identifying a perpetrator is reasonably pertinent to diagnosis and treatment when the perpetrator is a member of the victim's immediate household because physicians have a duty to prevent an abused child from being returned to a place where he or she cannot be adequately protected from further abuse and because such statements are relevant in diagnosing and treating the child. State v. Rucker, 847 S.W.2d 512, 518-520 (Tenn. Crim. App. 1992), declined to follow on other grounds by McLeod, 937 S.W.2d. at 870 n.2.

In order to determine the admissibility of a statement made by a child-declarant pursuant to Rule 803(4), the trial court is required to conduct an evidentiary hearing outside the jury's presence. McLeod, 937 S.W.2d at 869. When determining whether a child's statement qualifies as a hearsay exception under Rule 803(4), the trial court "must consider criteria such as the circumstances surrounding the making of the statement[,]" including "the timing of the statement and its contents[,]" whether "the statement was inappropriately influenced by another," whether the statement "was in response to suggestive or leading questions[,]" and whether there were any other factors that might "affect trustworthiness, such as a bitter custody battle or family feud." Id. at 871.

Here, the trial court properly held a pretrial hearing regarding the admissibility of Dr. Piercey's testimony about the victim's statements during the appointment. We note that Dr. Piercey's testimony at the pretrial hearing was substantially the same as her testimony at trial. At the conclusion of this hearing, the court found that the statements by the victim and the victim's mother were given for the purposes of medical diagnosis and treatment and therefore fell within the hearsay exception in Rule 803(4). The court determined that Dr. Piercey, who was board certified in pediatrics with a specialty in child abuse, had not used any improper influence in questioning the victim because the proof showed that Dr. Piercey asked open-ended questions of the victim. The court also found that the medical history and the physical examination of the victim conducted by Dr. Piercey were necessary in order to properly diagnose and treat the victim. Moreover, it noted that Dr. Piercey's appointment with the victim was close in time to the time period for the offenses alleged in the indictment, which increased the trustworthiness of the statements. Finally, the court stated that it considered the age of the victim, the manner in which the questions were presented to the victim, the relevance of the victim's medical history, and the significance of the victim's medical history before finding that these statements were admissible.

The victim in this case was eight years old at the time of her medical examination. The timing of her statements, which was only a few days after the sexual abuse occurred, increased the reliability and trustworthiness of the statements. Dr. Piercey testified that when she asked the victim why she was there, the victim immediately responded, "My mom's boyfriend, Tyson Croom, has been giving me bad touch." The victim also told her, "[Croom] would feel on my middle part with his hands on the inside and it hurt. He put his mouth on my middle part, and then he would put his middle part in my middle part and it hurt." Dr. Piercey then conducted a physical examination, which revealed that the victim had suffered blunt force penetrating trauma to her hymenal tissue that was consistent with the victim's statement. The appellate record shows that Dr. Piercey used the victim's statements to reach her diagnosis of "child sexual abuse" and to treat the victim pursuant to a detailed treatment plan, which included but was not limited to terminating all contact with the alleged perpetrator, testing the victim for sexually transmitted diseases, and determining that a rape

kit was unnecessary because too much time had elapsed since the abuse. Cf. State v. Spratt, 31 S.W.3d 587, 600-01 (Tenn. Crim. App. 2000) (reiterating that even if statements are made to an individual who will not provide treatment, the statement is admissible pursuant to Rule 803(4) if it is made for the purposes of diagnosis and treatment of a medical or physical problem). The record shows that Dr. Piercey did not inappropriately influence the victim because she asked open-ended questions and had no knowledge of the allegations prior to speaking with the victim. Moreover, the record is devoid of any sort of family feud or custody battle that would affect the trustworthiness of the victim's statements. Accordingly, we conclude that the trial court did not abuse its discretion in determining that the victim's statements to Dr. Piercey were admissible under the hearsay exception in Rule 803(4).

II. Sufficiency of the Evidence. Croom also argues that the evidence is insufficient to sustain his convictions for rape of a child and aggravated sexual battery. He claims that he could not have committed the offenses charged in counts 5 and 6 during the period from July 12, 2009, to July 18, 2009, because the proof at trial showed that he did not have "the time and opportunity to do so." We conclude that the evidence is sufficient to support Croom's convictions.

The State, on appeal, is entitled to the strongest legitimate view of the evidence and all reasonable inferences which may be drawn from that evidence. State v. Davis, 354 S.W.3d 718, 729 (Tenn. 2011) (citing State v. Majors, 318 S.W.3d 850, 857 (Tenn. 2010)). When a defendant challenges the sufficiency of the evidence, the standard of review applied by this court is "whether, after reviewing 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). Similarly, Rule 13(e) of the Tennessee Rules of Appellate Procedure states, "Findings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt." Guilt may be found beyond a reasonable doubt where there is direct evidence, circumstantial evidence, or a combination of the two. State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990) (citing State v. Brown, 551 S.W.2d 329, 331 (Tenn. 1977); Farmer v. State, 343 S.W.2d 895, 897 (Tenn. 1961)). The standard of review for sufficiency of the evidence "'is the same whether the conviction is based upon direct or circumstantial evidence.'" State v. Dorantes, 331 S.W.3d 370, 379 (Tenn. 2011) (quoting State v. Hanson, 279 S.W.3d 265, 275 (Tenn. 2009)). The jury as the trier of fact must evaluate the credibility of the witnesses, determine the weight given to witnesses' testimony, and reconcile all conflicts in the evidence. State v. Campbell, 245 S.W.3d 331, 335 (Tenn. 2008) (citing Byrge v. State, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978)). Moreover, the jury determines the weight to be given to circumstantial evidence and the inferences to be drawn from this evidence, and the extent to which the circumstances are consistent with guilt and inconsistent with innocence are

questions primarily for the jury. Dorantes, 331 S.W.3d at 379 (citing State v. Rice, 184 S.W.3d 646, 662 (Tenn. 2006)). Furthermore, the jury may reject an alibi defense. State v. Crawford, 635 S.W.2d 704, 705 (Tenn. Crim. App. 1982). "The defense of alibi presents an issue of fact determinable by the jury, as the exclusive judges of the credibility of the witnesses in support of the defense, and of the weight to be given their testimony." Id. (citing Green v. State, 512 S.W.2d 641, 643 (Tenn. Crim. App. 1974)). When considering the sufficiency of the evidence, this court shall not reweigh the evidence or substitute its inferences for those drawn by the trier of fact. Dorantes, 331 S.W.3d at 379.

Upon retrial in counts 5 and 6, Croom was again convicted of the charged offenses of rape of a child and aggravated sexual battery. Rape of a child is defined as "the unlawful sexual penetration of a victim by the defendant or the defendant by a victim, if the victim is more than three (3) years of age but less than thirteen (13) years of age." T.C.A. § 39-13-522(a) (2010). "'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[.]" Id. § 39-13-501(7) (2010). Aggravated sexual battery is defined as "unlawful sexual contact with a victim by the defendant or the defendant by a victim [where] . . . [t]he victim is less than thirteen (13) years of age." Id. § 39-13-504(a)(4) (2010). "'Sexual contact' includes the intentional touching 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[.]" Id. § 39-13-501(6).

Croom argues that the proof at trial showed that he "lacked the time and opportunity to commit the alleged acts" because he was not with the victim on Friday, July 17, 2009, the day the offenses in counts 5 and 6 occurred. As support for this argument, he cites to the victim's mother's testimony that she worked from 7:00 a.m. to 2:00 p.m. on July 17, 2009, that it was not unusual for Croom to drive her to work, and that R.D. often babysat the children. He also cites to R.D.'s testimony confirming that she sometimes babysat the victim in the mornings while the victim's mother worked. Finally, he cites to Beverly Croom's testimony that he helped her move on July 17, 2009, from 8:00 a.m. until 3:00 or 4:00 p.m. and that the victim was not with him when he helped her move. Croom asserts that the evidence is insufficient to sustain his convictions because the only time he spent with the victim on July 17, 2009, "was the time between when he dropped of[f] [the victim's mother] at work at 7:00 a.m., traveled back to his home, collected [the victim], took her to [R.D.'s] house, and then traveled to [Beverly Croom's] house to assist her in packing and moving."

At trial, the victim testified that at the time of the offenses she and Croom were alone at home. Although the jury heard testimony from Beverly Croom regarding a possible alibi for Croom on the date of the offenses, there was no specific evidence placing Croom at a place other than the scene of the crime at the appropriate date and time. State v. Looper, 118 S.W.3d 386, 416 (Tenn. Crim. App. 2003) (noting that an alibi provides a defense by putting the defendant at a different place than the crime scene at the time the crime occurred). Beverly Croom admitted she had previously testified that she moved "around the second week of July" and that she did not know the exact dates she moved. In addition, despite Croom's assertions to the contrary, there was absolutely no evidence presented at trial indicating that R.D. kept the victim on July 17, 2009. We reiterate that this court will not reweigh or reevaluate credibility determinations made by the jury. See Dorantes, 331 S.W.3d at 379. In this case, the jury accredited the testimony from the victim and the other State's witnesses over the defense witnesses before finding Croom guilty of the offenses in this case. "In the resolution of questions of fact, such as those presented by evidence of alibi or the identity of the perpetrator, 'the jury bears the responsibility of evaluating the conflicting evidence and accrediting the testimony of the most plausible witnesses.'" State v. Pope, 427 S.W.3d 363, 369 (Tenn. 2013) (quoting State v. Hornsby, 858 S.W.2d 892, 897 (Tenn. 1993)). Viewing the evidence in a light most favorable to the State, we conclude that the evidence is sufficient to support Croom's convictions for rape of a child and aggravated sexual battery.

CONCLUSION

Upon review, we affirm the trial court's judgments.

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CAMILLE R. McMULLEN, JUDGE