IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
December 3, 2013 Session

STATE OF TENNESSEE v. JAMES PRINDLE

Appeal from the Criminal Court for Shelby County
No. 11-02180 J. Robert Carter, Jr., Judge

No. W2012-02285-CCA-R3-CD - Filed February 19, 2014

A jury convicted James Prindle ("the Defendant") of aggravated sexual battery, aggravated child abuse, aggravated child neglect, and filing a false offense report. After a sentencing hearing, the trial court ordered the Defendant to serve an effective term of twenty-two years' incarceration. In this direct appeal, the Defendant contends that (1) the trial court erred in admitting certain evidence; (2) the trial court's jury charge was erroneous; (3) the evidence was not sufficient to support his convictions; (4) the trial court should have remanded the case to juvenile court; and (5) his sentence is excessive. Upon our thorough review of the record and applicable law, we reverse the Defendant's conviction of aggravated child neglect for lack of sufficient evidence. We affirm the remaining judgments of the trial court.

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

JEFFREY S. BIVINS, J., delivered the opinion of the Court, in which THOMAS T. WOODALL and JOHN EVERETT WILLIAMS, JJ., joined.

Michael E. Scholl (on appeal) and Claiborne Ferguson and Bridgett Stigger (at trial), Memphis, Tennessee, for the appellant, James Prindle.

Robert E. Cooper, Jr., Attorney General and Reporter; David H. Findley, Senior Counsel; Amy Weirich, District Attorney General; and Terre Fratesi and Jennifer Nichols, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Factual and Procedural Background

The Defendant was fifteen years old at the time he committed the instant offenses against his younger sister ("the victim") in August 2010. He was transferred to criminal court after the juvenile court, following a hearing, determined that there were reasonable grounds to believe that he committed rape of a child. See Tenn. Code Ann. § 37-1-134(a) (2010). The Defendant thereafter was indicted for aggravated rape of a child, aggravated child abuse, aggravated child neglect or endangerment, and filing a false offense report. At the Defendant's ensuing jury trial, conducted in June 2012, the following proof was adduced:

M. S.,[1] the Defendant's and the victim's mother ("Mother"), testified that the victim was born on September 12, 2008. In August 2010, the victim was twenty-three months old. Mother's other son, H., was four years old in August 2010. At that time, Mother and her three children lived in the Cordova Creek Apartments. Mother was separated from her husband, who was the victim's and H.'s father and the Defendant's stepfather ("Father"). Mother worked as a cashier at a gas station, and she usually worked the four p.m. to midnight shift.

On August 16, 2010, Mother left the apartment at about 3:45 p.m. to go to work. Mother's mother ("Grandmother") arrived at about 2:45 p.m. to take care of the younger children until the Defendant was due home from school. When Mother left to go to work, the victim was "[g]reat, happy" and uninjured. H. also was fine.

At about 10:00 p.m. that night, Mother got a phone call at work from the police. The police told her that her daughter was hurt and that she needed to go home. When Mother arrived at the apartment, she saw police cars and an ambulance. Mother found the victim in the ambulance. Mother described the victim's appearance: "Her – one side of her face was purple, but there was no skin color that I could see. Her ear was swollen up red, purple, blue. She had a butterfly earring that was missing and she was crying. Her eye, it was – it was really bad." The victim was transported to the hospital. Father, who also had arrived at the scene, rode in the ambulance with the victim.

Mother saw the Defendant in a police car but did not recall speaking with him at that time. Mother accompanied the Defendant to the police station and was present when the

[1] To protect the identity of the minor victim, we refer to the victim's family members by their initials or relationship.

Defendant was advised of his rights. The Defendant agreed to speak with the police. Mother was present during part of the Defendant's statement, but the Defendant then asked her to leave the room. Mother waited at the police station until the Defendant was finished speaking with the police, and then she went to the hospital to check on the victim.

Mother testified that she and the Defendant drew cartoons together. She would draw a character in one of six separate frames, then the Defendant would continue the story with a drawing in the next frame, and they would alternate until the end of the story. Because Mother and the Defendant engaged in this activity repeatedly, she was familiar with his cartoon characters. When shown a page with six drawings on it, each enclosed in a drawn square frame, she identified the drawings as the Defendant's. This page was admitted into evidence as Exhibit 2. Mother then testified about her interpretation of the drawings, describing the first one as a baby being spanked with a paddle. This first drawing contains the words "babi bio." She described another drawing as depicting a baby "behind bars." This drawing contains the words "babi locked up." Another drawing depicted, according to Mother, a baby and a penis. This drawing contains the words "best times." Mother stated that she and the Defendant did not draw these types of pictures when they were together.

Mother identified another sheet of paper containing six drawings in six frames that she stated were the Defendant's. This sheet of paper also contained drawings of the baby character and was admitted into evidence as Exhibit 3. One of the drawings, according to Mother, showed "the baby from the back, walking down the street." Another drawing showed "a baby bear with a bat." The drawing with the bear holding the bat included a figure lying in front of the bear and the words, "almost dead." The next drawing depicted a baby wrapped in bandages, in traction, with the word "recovery." The next drawing was of a baby bear with the words "things are good." The final drawing showed a baby crying tears.

Mother testified that, during the summer of 2010, she worked five to six days a week for forty or more hours. She left rules for the people who babysat for her, including rules for the Defendant. The rules for the Defendant were "don't go anywhere, don't take the kids anywhere, don't have any company, don't eat up everything in the house." The Defendant also was supposed to put the younger children to bed between 8:00 p.m. and 8:30 p.m. and do some household chores. She left the Defendant to take care of the younger children three to four times a week. The Defendant sometimes complained about having to babysit.

Mother testified that she bathed the younger children and did not ask the Defendant to bathe them. As far as she knew, the Defendant followed the rules.

On cross-examination, Mother stated that, as of the time of the trial, it had been almost two years since she had seen the Defendant. She stated that the Defendant told her that if she was going to be mad at him, to just leave. She acknowledged that she had been mad at him.

Mother maintained that it was not unusual for her to leave the younger children with the Defendant, that she did not have any problems with his babysitting them, and that she did not know that he was using drugs. She did not know that the Defendant was leaving the children alone in the apartment. She did not know that the Defendant was having friends over to the apartment while she was gone.

On redirect examination, Mother stated that, when she left for work on that evening, everything at home was "perfect." She stated that the Defendant had a cell phone. He also had an Xbox. Both of those items were in the apartment when she left for work. Mother testified that the Defendant "never refused" to babysit.

On recross examination, Mother stated that she never saw the Xbox or the Defendant's cell phone after that night.

Grandmother testified that she arrived at Mother's apartment at about 2:45 p.m. on August 16, 2010. Mother, the victim, and H. were there, and everything appeared normal. Mother had prepared the children's meals and left them to be warmed up and eaten later. Mother told Grandmother that the Defendant should be home soon, and then Mother left. The Defendant arrived at about 3:30 p.m. He took the trash out while Grandmother stayed with the children. She stayed for a while longer so that the Defendant could do his homework undisturbed. She fed the victim and H. at about 4:30 p.m. She left the apartment at about 5:00 p.m. and went home.

At about 10:00 that evening, Grandmother got a phone call from Mother. Grandmother and her husband drove to the apartment. She saw the Defendant being escorted into a police car. She did not speak with the Defendant. She did not see the victim.

On cross-examination, Grandmother stated that Father arrived about fifteen minutes after she did. H. had been with Grandmother but went to Father when Father walked over to them.

Father testified that he was living in Millington with his grandmother in August 2010. Mother called him on the night of August 16, 2010, and told him that he needed to come to Mother's apartment. She told him that there had been a home invasion and that his children had been hurt. He traveled to the apartment as fast as possible and, when he arrived, saw "[p]olice cars everywhere, ambulances, fire trucks, policemen everywhere, investigators running in and out. It was just mass chaos." The first family members he located were his

in-laws, Grandmother and her husband. As he walked to where they were standing, he passed a police car in which the Defendant was sitting. Father testified that, as he passed the police car, the Defendant "looked at [him] and smiled at [him] as [he] walked by."

When he got to his in-laws, who had H. with them, Father picked H. up and asked him if he was okay. Father described H.'s demeanor as "[v]ery, very shaken" and stated that H. was crying. Father testified that, as he was holding H., he asked, "[A]re you okay, buddy[?]" Father continued: "He said yeah, daddy, I'm okay, but Bubba hurt sister." When asked who "Bubba" was, Father answered that it was the Defendant. Father handed H. back to his in-laws and went to the ambulance to see about his daughter, the victim. Father stated that the victim looked "[b]ad." He stayed in the ambulance with her and rode with her to the hospital. There, he waited while the victim was examined outside of his presence but with his permission.

On cross-examination, Father acknowledged that he did not repeat to the police what H. had told him. Nor did he tell the social workers he spoke with. He acknowledged that he first told "the State" about what H. had said two days prior to trial. He recalled being at the juvenile court hearing but did not recall H. testifying there that the Defendant did not hurt the victim. He acknowledged that he did not want the Defendant back in his house.

On redirect examination, Father stated that, when he passed the Defendant sitting in the back of the police car, the Defendant was not crying and did not appear upset. Father testified that, in August 2010, H. was four years old. Father added that H. had developmental delays. Father stated that no one asked him (Father) to testify at juvenile court, and no one had asked him if H. had said anything to him. During the investigation, Father was told not to speak with H. about what had happened because H. was going to be interviewed at a later time by professional interviewers. Father testified that he followed those instructions and stated that he had not questioned H. about the incident.

Nick May, sixteen years old at the time of trial, testified that he met the Defendant through school about two weeks prior to August 16, 2010. They "hung out" together at the Defendant's apartment two or three times playing video games. After school on August 16, 2010, May walked from his house to the Defendant's apartment to retrieve a video game. While he was at the Defendant's home, he saw the Defendant change the victim's diaper. May noticed nothing wrong with the victim at that time. After the Defendant changed the victim's diaper, May and the Defendant resumed playing video games. May left after spending about forty-five minutes at the apartment. They did not leave the apartment during that time, and no one else came over. He did not recall the Defendant receiving any phone calls or doing anything unusual. He did not see the Defendant's grandmother while he was at the apartment.

On cross-examination, May stated that, when he left the Defendant's apartment, he took his video game with him. The Defendant still had the Xbox.

Adam Mathews, sixteen years old at the time of trial, testified that he met the Defendant at the pool at the Defendant's apartment complex in July 2010. He and the Defendant "hung out" at the pool and at the Defendant's apartment more than five times between their initial meeting and August 16, 2010. Sometimes, Noah Scheulin, Micah Scheulin, and Nick May were also with them. Mathews had known the Scheulin brothers for about one year. Mathews was also friends with Montrell Baldwin.

On August 16, 2010, Baldwin came over to Mathews' house after school. It was Baldwin's birthday. After Mathews' parents came home, Mathews and Baldwin went to a grocery store with Mathews' father to get some birthday cupcakes. After they returned home, Mathews and Baldwin went over to the Defendant's apartment. They stayed at the Defendant's apartment from about 5:30 p.m. to 7:30 p.m. Also at the Defendant's apartment were the Defendant and the Scheulin brothers. During his visit, Mathews saw H. who was "[b]eing hyper, running around the house." Mathews did not see May during his visit.

While the boys were playing Xbox in the living room, Mathews heard the Defendant's sister start crying. He told the Defendant to go check on her, but the Defendant did not do so. Mathews testified:

> [S]o I walked back to the bedroom where I heard her crying from and she was in the bedroom in the bigger bed, not her crib, laying there. And I asked her what was wrong and she said that her head hurt. She didn't really say it, but she was pointing at her head, baby talking.

After telling the Defendant again that he needed to check on his sister, the Defendant "came to the door, looked at her, said she'll be fine." Mathews told the victim to go back to sleep and left the bedroom.

Mathews added that he felt the victim's head to check for fever. She did not feel like she had a fever. Mathews did not notice anything wrong with the victim's face. Mathews denied that he inflicted any injuries to the victim and added that he had not picked her up.

Mathews returned to the living room. A "black male" came to the apartment but Mathews did not know who he was. This person appeared to know the Scheulin brothers. This person did not kick the door of the apartment in, did not have a gun, and was not wearing a mask. He stayed fifteen to twenty minutes. He did not go into the victim's room.

Mathews testified that, while he was at the Defendant's apartment, the Defendant and the Scheulin brothers took Xanax. Asked how he knew what the pills were, Mathews stated that the other boys told him that it was Xanax. The Scheulin brothers had the pills. He did not know how many pills the other boys took. Neither he nor Baldwin took any of the pills.

Mathews and Baldwin left together. The Scheulin brothers were still at the Defendant's apartment. Mathews and Baldwin returned to Mathews' house, and Baldwin stayed there until about 9:00 p.m. At that time, Baldwin's mother came and picked him up.

Mathews acknowledged that, during his visit to the Defendant's apartment, the other boys, including Baldwin, left the apartment for about ten or fifteen minutes, leaving Mathews to babysit. Mathews denied knowing where the other boys went. He denied harming the victim while the other boys were gone.

On cross-examination, Mathews stated that he liked hanging out at the Defendant's apartment because the Defendant had an Xbox. He stated that, to the best of his knowledge, the victim was uninjured at the time he left the Defendant's apartment on August 16, 2010. He acknowledged that the black male that came over was older than the rest of the boys. He denied seeing the Defendant inflict any injuries on his sister. He stated that, when Baldwin and the Scheulin brothers left the apartment for ten or twenty minutes, the Defendant did not go with them. He did not see anyone smoking marijuana that night. The Xbox was in the Defendant's apartment when Mathews left that evening.

On redirect examination, Mathews stated that he and Baldwin left the Defendant's apartment after Mathews' mother called and told him to come home for dinner.

Montrell Baldwin, fourteen years old at the time of trial, testified that August 16, 2010, was his thirteenth birthday. He met Mathews in 2008. Mathews' mother offered to get him some cupcakes and drinks to have at Mathews' house for his birthday. Baldwin went to Mathews' house that day after school. After they went to the store for the cupcakes, Baldwin and Mathews walked to the Defendant's apartment. The Scheulin brothers were already there. Also there were the Defendant and the Defendant's younger brother. Baldwin did not see or hear the victim that day.

The boys played Xbox in the living room. Baldwin acknowledged that the boys, including him, were "[c]oming in and out of the apartment" during his visit. He recalled two additional people coming over while he was there, but he did not know their names. He and Mathews left before these two people did. Baldwin stated that he and Mathews stayed a total of thirty minutes at the Defendant's apartment.

While he was at the apartment, Baldwin saw one of the Scheulin brothers with pills. He saw the Defendant take one of the pills. Baldwin did not take any of the pills.

Asked to describe the two persons that he did not know who were at the apartment when he left, Baldwin testified that one of the persons was short and black and younger than him. The other person was also black but tall and "looked 17." He did not see either of these persons kick in the door, wear a mask, brandish a gun, or steal the Xbox. They seemed to know Noah Scheulin, who had brought the pills.

On cross-examination, Baldwin stated that he left the apartment with Noah Scheulin and went to "the green box" where Noah sold his computer. The buyer of the computer came over to the apartment. David McDuffee also came over to the apartment. When Baldwin and Noah left the apartment, Mathews and the Defendant stayed behind. Baldwin acknowledged having seen, on some other day, the Defendant give to the police a marijuana pipe that belonged to Noah. He acknowledged that this had angered Noah.

On redirect, Baldwin stated that he was guessing that one of the persons he saw that night but he did not know was named David McDuffee. The two persons that he did not know appeared to be friends with the Scheulins but not with the Defendant. He clarified that the older of the two black males that he did not know was the person who bought the computer from Noah. He also stated that Noah's apartment was in the building across the street from the Defendant's apartment.

William Mathews, Mathews' father ("Wm. Mathews"), testified that Mathews and Baldwin were supposed to be home that night by 8:00 for the birthday celebration. He stated that, after his wife called them, they were home "right at eight." The next day, Wm. Mathews learned from the news that something had happened at the Defendant's apartment. About a week later, his son was asked to give a statement. Wm. Mathews took his son to give a statement and also took him to juvenile court. When Wm. Mathews understood that drugs had been used at the apartment that night, he had his son tested for drugs. The test came back negative.

Nathalia Baldwin, Baldwin's mother, testified that she picked Baldwin up at Mathew's house between 8:45 p.m. and 9:15 p.m. on August 16, 2010.

Brandon Wilkins testified that he lived in the Cordova Creek Apartments with his wife in August 2010. The Defendant and his family lived in the apartment next door. Wilkins had encounters with the Defendant and Mother during their comings and goings from their apartments.

On August 16, 2010, Wilkins was coming home from church between 10:00 p.m. and 10:30 p.m. He had not seen the Defendant earlier that evening. Wilkins testified about what happened upon his arrival home from church:

> When I arrived at my parking space, [the Defendant] was outside holding his sister. He was crying, screaming, and he was knocking on doors. When I got out the car [sic] he said can you help me and he told me that someone had broken into his apartment and put a gun to his head, stole his Xbox, some games, some money, and he said and I think they raped my sister. Look at her. And his baby sister was in his arms with her face puffed up, cheeks, eye, and she had some bruises and her lip was busted.

When Wilkins asked about the attacker, the Defendant told him that the attacker was black and wearing a mask. The Defendant asked Wilkins to call his mother, but Wilkins called 911. Wilkins relayed what the Defendant had told him, and the dispatcher asked to speak with the Defendant. However, the Defendant was crying so hard that the dispatcher could not understand what the Defendant was saying. Wilkins resumed speaking with the dispatcher.

Wilkins testified that, a couple of minutes into the phone call, Noah joined them. As Wilkins asked questions of the Defendant, Noah answered. Wilkins stated that he had listened to a recording of the 911 call and identified Noah's voice. Wilkins identified the recording of the 911 tape and also a transcript of the call that he had read and verified as accurate. Both items were admitted into evidence. On the transcript, the voice identified as "third male voice" was Noah's. The Defendant, who provided his name to the dispatcher, was identified on the transcript as "Second Male."

The transcript reflects that, while he was crying and talking to the dispatcher, the Defendant stated, "[T]hey pulled a gun on me and told me to give them something so I gave them my Xbox," and "then they went in [the] bedroom." The Defendant added, "and they, I think they raped my sister cause it looks like someone busted her in the face and her head is messed up, and her vagi . . . ." At that point, the dispatcher requested to speak again with Wilkins, telling Wilkins, "I can't understand nothing [sic] he's saying." Wilkins then told the dispatcher, "Okay, he said they came in with a gun and pointed it at him, they took his Xbox, they took his friend's money, he said he thinks they raped his little sister cause her face is all beaten up on one side and then her vagina was bleeding when he got back to her." The Defendant then was recorded as saying, "They took my phone so I wouldn't call police." When the dispatcher asked for a description of the assailant, Wilkins stated, "He [sic] just saying, he was dressed in all black and had a mask on." When the dispatcher was attempting to verify that there was only one attacker, Noah was recorded as saying, "Yea, no I think one was behind and trying to get through, I saw two people run off." Asked if they were black

or white, Noah responded, "I saw . . . white one." Wilkins then stated, "One kid thinks he was white the other kid thinks he was black." The phone call ended with the dispatcher telling Wilkins that the dispatcher was going to try to contact the Defendant's mother and would call Wilkins back. When the police arrived, Wilkins repeated to them what the Defendant had told him.

On cross-examination, Wilkins testified that the Defendant never calmed down in his presence.

Officer Shaun Tucker of the Memphis Police Department ("MPD") testified that he responded to the scene. He found the Defendant sitting on a curb holding a baby. Sitting next to the Defendant was Noah Scheulin. At Officer Tucker's approach, the Defendant got up and started crying and pacing. Officer Tucker testified,

> He told me that a male, black came in, six feet with a mask, armed with a gun. He said he came in the apartment, said give me what you got. He said he had nothing but an Xbox and he said the male proceeded to get the Xbox, the games, and the controllers, and then went to the back master bedroom and locked the door.

According to the Defendant, the man left the apartment a short time later.

While the Defendant was talking to Officer Tucker, Noah was standing nearby. Noah did not interrupt the Defendant's narration. After Officer Tucker finished speaking with the Defendant, he turned to get Noah's account. Officer Tucker testified that Noah told him

> that he was visiting [the Defendant] and there was a knock at the door. [The Defendant] told him to answer the door. When he answered the door, it was a male, white with a bandanna around his face who tried to push his way into the apartment. Noah said he pushed the guy and the guy ran off and he gave chase. He said then a male, black had went into the apartment.

After the two boys were separated, Officer Tucker again questioned the Defendant. He testified:

> He told me about the male again and told me about how the Walmart bag came into play. He put stuff in – the suspect put the stuff in the Walmart bag.
>
> And at the beginning, he started saying his friend answering the door, that he told him to go answer the door and there was a male, white who tried

to push his way and that Noah pushed him away and he ran out the door and Noah ran out the door.

Officer Tucker added that Micah Scheulin arrived on the scene and "advised he was on the scene when everything had occurred."

Officer Tucker stated that he looked at the door into the Defendant's apartment but did not see any signs of forced entry. He also added that the Defendant told him that he had given the baby a bath, but Officer Tucker did not remember whether this occurred before or after the alleged home invasion.

Officer Demar Wells of the MPD testified that he investigated the scene as a crime scene officer. He noticed that the living room was "cluttered" and that there were some things "knocked over on the floor like a disturbance had taken place." He continued to the bathroom where he "saw things on the floor." He went into the bedroom and "observed in the bedroom possible blood on a baby sheet in a crib and the room appeared as if someone had been on the bed in there." Officer Wells identified photographs he took of the scene, and they were admitted into evidence.

Officer Wells testified that he observed what appeared to be blood on the side of the bathtub and on the sink. He collected two towels, one of which appeared to him to have been hidden at the bottom of the clothes hamper under other items. This hidden towel appeared to him to "have possible feces and blood" on it. He found a used diaper in the bathroom. He collected swabs from the bathtub and the sink.

In the bedroom, he used a special light to identify possible bodily fluids. He found a suspect spot on the carpet and cut the spot out. He also collected the sheet from the crib.

Sergeant Carl Ray of the MPD also responded to the scene, arriving at about 12:45 a.m. When he got there, the Defendant, Noah Scheulin, and Micah Scheulin were being held in separate squad cars. Sgt. Ray did not speak with any of them at the scene. After the three boys were transported to the police station and placed in separate rooms, Sgt. Ray spoke with the Defendant with Mother present. Sgt. Ray advised the Defendant of his rights, and the Defendant agreed to make a statement. The Defendant's statement was recorded and transcribed, and the recording and transcript were admitted into evidence.

In his statement, the Defendant averred that "[s]omeone broke in and stole my X Box, stole my phone and did something to my sister." Asked how the break-in occurred, the Defendant replied, "They kicked the door open." He did not know who the assailant was. He stated that he did not see what happened to the victim, but he thought "she was raped and beat up." He based this conclusion on her appearance: "Cause her face was all bruised right

there, her ear was swollen. And her vagina was bleeding." He saw the blood when he opened her diaper. He was sitting in the living room when the attack on his sister occurred. H. was with him. He described the attacker as black and wearing a mask. He added that the attacker "pulled a gun." He said that Noah and Micah were not in the apartment at the time. Asked for further descriptions, he described the gun as a big black automatic pistol. The assailant was "really big, muscular" and was wearing a black ski mask, a black shirt, jean and Nike Air Ports. He said that the man pointed the gun at him and said, "Give me your stuff." The Defendant told him "here's an X Box," and the man "said to give him my phone so I wouldn't call the police."

After Sgt. Ray told the Defendant that he did not believe the story, the Defendant indicated that he wanted Mother to leave the room. The Defendant then said,

> Uh, it was me, H[.], Noah, Micah, Adam, Trell. (Inaudible) in her room sleeping. And, uh, I tried to get her up for dinner. And she was crying so I put her back to bed. And then Micah ran in there a few times. And Adam was in there a few times. She was screaming and screaming.

The Defendant added that Micah was smoking "weed" and that the Defendant was smoking cigarettes. He heard what sounded like "slap, slap" while Micah was in the victim's room. He checked on the victim and did not see any marks. He told Micah not to spank the victim, and Micah told him that he had not spanked the victim, he just jumped on the bed, and she started crying.

The Defendant said that Jay, one of Noah's friends, came and took the Xbox. Jay took the Xbox for Noah because Noah claimed that the Defendant owed Noah money. The Defendant explained that, after Jay got the Xbox, the Defendant

> went to the bedroom. I don't know how . . . her face was just messed up. Messed up. And she had her diaper off, and her vagina was bleeding. And I thought . . . I thought Adam or somebody . . . it was either Adam or Micah, they did something to her. Because she . . . they said oh, no, she just fell. I don't think she would just fall and get her face so messed up.

He clarified that Micah was the last one in the bedroom, and Micah told him that the victim had fallen out of bed.

Asked what happened to his cell phone, the Defendant said, "[T]his other dude, his name is David, Noah had forty dollars and I had a phone, and I think he took it from us." The Defendant added, "David is just some black dude." He also added that Jay was Noah's drug dealer.

Asked who ran the water in the bathtub, the Defendant stated, "Micah tried to clean her up first." The Defendant said that Micah put the victim in the bathtub. The Defendant then said that he, the Defendant, ran the bathwater and placed the victim in the tub. Asked to explain the discrepancy, the Defendant stated, "I'm sorry. I'm half awake but I'm telling you the truth." The Defendant stated that, when he first saw the victim after hearing her crying, her diaper was on. Asked how he knew her vagina was bleeding, he replied, "Um, I think I was changing her diaper or something." When he saw the bleeding, he said to Micah, "[S]omeone's raped her." Micah said, "[D]ude, no, I don't know." The Defendant stated that he (the Defendant) "started freaking out. I said (Unintelligible) I'm gonna kill him. Y'all better tell me now." Micah told him, "I think Adam did it. I see [sic] next time I see Adam I'm gonna beat the mess out of him." The Defendant added, "Then Noah was freaking out because he lost his forty dollars." Adam had already left by this time. The Defendant stated that, when Adam left, the baby was "all right."

Asked if he was afraid of Micah and Noah, the Defendant said, "No."

The Defendant stated that, after he, the Defendant, put the victim in the bathwater, he let Micah wash her. Asked why he would let Micah wash her if he thought Micah raped her, the Defendant replied, "I didn't think he did it." The Defendant indicated that the attack on his sister occurred at around 10:00 p.m.

Sgt. Ray testified that, after they took statements from the Defendant, Noah, and Micah, they charged all three boys. They did not charge Adam. Sgt. Ray obtained Mother's consent to search the house. He searched the house on August 20, 2010, for objects that may have been used on the victim. He did not find any. He collected the drawing that had been admitted as Exhibit 2.

The parties stipulated that the following items were submitted to the Tennessee Bureau of Investigation for examination and did not reveal the presence of semen: "one swab from the edge of the bath tub, one swab from the edge of the bathroom sink, a carpet sample, a diaper, a green towel, striped towel, a pink sheet from a baby crib, and a white laundry bag." The parties also stipulated that several of these items indicated the presence of human blood.

Merrick Lee, a detention officer with the juvenile court, testified that he was present with a number of detainees, including the Defendant, in a classroom. He "noticed the kids kept passing a piece of paper around and everyone was laughing, [the Defendant] included, and [Lee] was wondering what it was, so [Lee] confiscated the paper." When he looked at the paper, he found it "kind of disturbing." Lee called his supervisor about it and "basically did a report on it." Lee identified the drawing admitted as Exhibit 3 as the paper that he

confiscated. After Lee took the sheet of paper in the classroom, the Defendant asked for it back.

Dr. Nina Sublette, a family nurse practitioner, testified that she was "certified as a sexual assault nurse examiner with a specialty in pediatrics and adolescents." She examined the victim in the trauma assessment room, a part of the emergency room, after the victim was transported from the crime scene. Dr. Sublette recalled that the victim's father was present. While examining the victim, she noted bruising and a laceration to the victim's face and head resulting from trauma. The victim was crying and saying, "no, no." When Dr. Sublette removed the victim's diaper, she noticed active bleeding. Because the victim was resisting the examination, Dr. Sublette inquired about sedation. She learned that the victim already had received the maximum dose of morphine allowable for her body weight. Nevertheless, the victim was "resisting and twisting and trying to turn."

Dr. Sublette also noted bruising on the side of the victim's abdomen, on her back, on the inside of her left thigh, and on her left arm and shoulder. Dr. Sublette added that the bruise to the victim's thigh was circular and approximately the size of Dr. Sublette's thumb. She testified that the victim "had a large amount of blood in her diaper and she had a large amount of blood on the external part of her genitals and on her perianal skin around the anus." Dr. Sublette clarified that there was no bleeding around the victim's anal area but that there was "some bright redness" there that was "consistent with a bruise." The victim also had "some swelling and some bruising to her tissue around the hymen."

Dr. Sublette testified in more detail about the injuries to the victim's genital area:

> [The victim] had active bleeding from her vagina. And when I applied labial traction in order to visualize the laceration, I could see a huge amount of blood in her vaginal, exiting her vagina, and I could not visualize where the laceration ended.
>
> I could visualize her hymen was damaged severely. And I did not know at that time if she needed surgery to repair her injuries, so I felt like it was in my best interest to contact a pediatric gynecologist to come in and examine [the victim].

Dr. Shepheard arrived and "flushed the vaginal vault and just the general genital area with a saline solution." As a result of the flushing, Dr. Sublette "was able to completely see [the victim's] lacerations and to notice that her hymenal tissue was completely transected and broken through severely. . . . The tissue there was severely damaged." In addition to this transection injury, the victim also suffered "an acute laceration to the posterior fourchette."

Nevertheless, Dr. Shepheard determined that surgery was not necessary. Dr. Sublette took photographs of the victim's injuries, which were admitted into evidence.

Asked for her opinion about the nature of the victim's injuries, Dr. Sublette responded, "I could tell you without a doubt that she had blunt penetrating trauma to her vagina" and "blunt trauma to her head, to her left ear, a possible blunt trauma to the area around her rectum." Asked to clarify what she meant by "penetrating," Dr. Sublette answered, "I mean something had gone into her orphis [sic] to create damage. I don't know what that was, but something went in her vagina to cause that kind of damage to her tissue."

On cross-examination, Dr. Sublette testified that, on the back of the victim's left arm, "[t]here appeared to be a hand-shaped bruise," and what she suspected was "a thumbprint bruise to the inside of her leg, like holding her legs apart."

The parties stipulated that swabs collected by Dr. Sublette from the victim during her examination "were examined and failed to reveal the presence of semen."

Dr. Karen Lakin, a pediatrician certified in child maltreatment, testified that she treated the victim at about 9:00 a.m. on August 17, 2010. She described the victim's demeanor: "Well, she was very irritable and of course pushing us away. She was just very irritable. . . . She's a toddler and so she kicks, she pushes, moves." The victim also was crying. She added that the victim weighed about twenty-five pounds.

Asked for her opinion as to the cause of the victim's injuries, Dr. Lakin testified,

> Well, her injury to the hymen is very specific. It is a penetrating injury. We don't see injuries to the hymen without penetration, for the most part. She most definitely had certainly the head trauma as well with the amount of bruising and swelling that was present as well.
>
> None of these would be what we would typically see from accidental trauma. And most certainly, this is more consistent with abusive head trauma as well as a sexual assault.

Asked whether she had an opinion about whether the victim's injuries were caused by more than one person, Dr. Lakin testified:

> As I stated before, at 23 months and certainly aware and awake and alert, [the victim's hymen and surrounding area is] a really small target to hit. And so with the areas of bruising that she has on her upper arms and her inner thigh, to me suggest – and also because of her age and development she would

have had to have been held down, which would be difficult to do and then also somehow injure the hymenal area, either by penetration – I don't know with what, but some type of penetration.

It would, I would think, take a lot to hold down a 23-month-old and only – or not only injure, but to injure specifically the hymen itself.

After Dr. Lakin's testimony, the victim was brought to the witness stand and introduced to the jury. No questions were asked of her. The State then rested its case in chief.

The defense called Anthony Beasley, who lived in the Cordova Creek apartment complex. Beasley testified that, on the night in question, he got home from work at about 9:30 p.m. He heard a commotion outside and saw "a group of teenage, pre teenage boys arguing, cursing, yelling." Beasley recognized the Defendant in the group. Beasley was familiar with the Defendant because the Defendant had come to his door on several occasions.

Beasley described the group of boys:

I saw [the Defendant] . . . kind of leaning on a handrail at the very bottom of the steps in front of his apartment. It was a young boy on a bicycle and another one standing with a skateboard. . . . And there was another teenager, young black male, short, stocky build, black male, and [the Defendant's] little brother.

He clarified that he saw this group of boys between 9:30 p.m. and 9:45 p.m. He later saw either the boy on the bike or the boy on the skateboard in the back of a police car.

Beasley told the group of boys "to clear out." He saw the Defendant and the Defendant's little brother head toward the Defendant's apartment. About thirty to forty-five minutes after the boys dispersed, a police officer knocked on his door and asked if he had "noticed anything strange that happened earlier." Beasley later saw the Defendant in the back of a police car.

Neither party put on any more proof. After deliberating, the jury found the Defendant guilty of one count of aggravated sexual battery (charged as a lesser-included offense of aggravated rape of a child), one count of aggravated child abuse, one count of aggravated child neglect or endangerment, and one count of making a false offense report. After a sentencing hearing, the trial court sentenced the Defendant as a Range I offender to twelve years for the aggravated sexual battery; to twenty-two years for the aggravated child abuse;

to twenty-two years for the aggravated child neglect or endangerment; and to four years for the false report offense. The trial court ordered the Defendant to serve these sentences concurrently for an effective term of twenty-two years, to be served at 100%.

The Defendant timely filed a motion for new trial, which the trial court denied. In this direct appeal, the Defendant raises the following issues: (1) the trial court erred in admitting the Defendant's drawings; (2) the trial court erred in admitting proof of H.'s excited utterance; (3) the trial court issued erroneous jury instructions; (4) the evidence was not sufficient to support his convictions; (5) the trial court should have remanded the case to juvenile court when the jury acquitted him of rape of a child; and (6) the trial court erred in considering certain enhancement factors at sentencing, resulting in an excessive sentence. We will address each of these issues in turn.

Analysis

Admission of Drawings

The Defendant contends that the trial court erred by admitting the drawings identified by Mother as the Defendant's because they were (1) unfairly prejudicial and (2) inadmissible propensity evidence. We generally review issues regarding the admissibility of evidence under an abuse of discretion standard. State v. Looper, 118 S.W.3d 386, 422-23 (Tenn. Crim. App. 2003) (quoting State v. James, 81 S.W.3d 751, 760 (Tenn. 2002)). An abuse of discretion is made out "when the trial court applied incorrect legal standards, reached an illogical conclusion, based its decision on a clearly erroneous assessment of the evidence, or employed reasoning that causes an injustice to the complaining party." State v. Banks, 271 S.W.3d 90, 116 (Tenn. 2008) (citing Konvalinka v. Chattanooga-Hamilton Cnty. Hosp. Auth., 249 S.W.3d 346, 358 (Tenn. 2008)); see also Looper, 118 S.W.3d at 422.

Initially, we note that the Defendant concedes in his brief that the drawings were relevant. Relevant evidence may be excluded, however, when "its probative value is *substantially* outweighed by the danger of unfair prejudice." Tenn. R. Evid. 403 (emphasis added). As to the drawings, the trial court determined that this balancing test weighed in favor of the State:

> I really don't see that [the drawings are] prejudicial in that if the jury finds that this evidence [indicates] that he meant to injure this child, well then they should be able to consider that.
>
> If they don't find that or if they find that they don't know what it means, I don't see who that can harm or I don't see any prejudice.

The Defendant argues that the trial court's ruling runs afoul of this Court's holding in State v. James Albert Adams, No. M1998-00468-CCA-R3-CD, 1999 WL 1179580, at *8-9 (Tenn. Crim. App. Dec. 15, 1999), perm. app. denied (Tenn. Sept. 25, 2000).

In Adams, the defendant was charged with attempted first degree premeditated murder and several other offenses. The attempted murder charge arose from the defendant's attack on his girlfriend in which he stabbed her several times in the chest. As proof of the defendant's culpable mental state, the State introduced a picture that he had drawn after he was placed in jail and that he mailed to the victim forty-six days after the attack. The drawing was "of a woman with a knife through her eye and depicting blood spurting out of the knife wound, entitled 'Blooded [sic] Tears.'" Id. at *7. This Court held that the trial court erred in admitting the picture because "a picture drawn over a month after the attack . . . is [not] probative of the [d]efendant's premeditation and intent on the date of the offense." Id. at *8; but see State v. Elkins, 102 S.W.3d 578, 584 (Tenn. 2003) (recognizing that Rule 404(b) permits "the introduction of evidence of subsequent acts to establish one's intent during a prior act in appropriate cases").

The State does not refer to Adams in its brief but refers us to State v. John Jason Bakenhus, No. 01C01-9705-CC-00165, 1998 WL 258468 (Tenn. Crim. App. May 22, 1998), perm. app. denied (Tenn. Jan. 11, 1999). In Bakenhus, the defendant was charged with three counts of civil rights intimidation and several other offenses. The State introduced a photograph of a painting found in the defendant's bedroom, described by this Court as "[a] poster-size, rectangular painting of a black swastika in a white circle on a red background resembling the Nazi flag." Id. at *5. The State also introduced a drawing from a notebook provided by the defendant, described by this Court as "[a] crude 5 x 7 inch sketch in red ink depicting a Klu Klux Klan member in hood and robe gesturing toward a man hanging by a noose from a tree." Id. This Court held that the trial court did not err in admitting these items because they were "valuable to prove the defendant's intent to intimidate his victims because of their race." Id. This Court further noted that, "[w]hile . . . the exhibits may be offensive and crude, any prejudice is outweighed by their significant probative value as to the charged offense [of civil rights intimidation]." Id.

We hold that the trial court did not err in the exercise of its discretion in determining that the probative value of the two pages of drawings by the Defendant was not substantially outweighed by the danger of unfair prejudice. We agree with the State that the drawings were probative of the Defendant's "animosity toward the victim for having to babysit her." Because the Defendant was charged with aggravated child abuse, which required the jury to

find that the Defendant acted with at least a knowing state of mind,[2] this proof was highly relevant. Moreover, the drawing admitted as Exhibit 2 was found in the Defendant's residence after he had been taken into custody. Clearly, this drawing was created prior to the attack on the victim. Therefore, it is not within the scope of this Court's holding in Adams. Thus, we conclude that the highly probative nature of this evidence was not substantially outweighed by the *unfair* prejudice of the evidence. See Tenn. R. Evid. 403. Although the question is closer regarding the drawing created by the Defendant after he had been taken into custody, even if the trial court erred in admitting this evidence, we deem any such error to be harmless. See Tenn. R. App. P. 36(b); State v. Rodriguez, 254 S.W.3d 361, 371-72 (Tenn. 2008).

The Defendant also contends that the drawings should have been excluded under Tennessee Rule of Evidence 404(b), which prohibits the admission of evidence of "other crimes, wrongs, or acts . . . to prove *the character* of a person in order to show action in conformity with *the character trait*." Tenn. R. Evid. 404(b) (emphases added). The effect of this provision is that, "[a]s a general rule, evidence of a defendant's character is inadmissible for the purpose of proving his or her propensity to commit crime." W. Mark Ward, Tennessee Criminal Trial Practice § 22.22, at 624 (2010-2011 ed.). Importantly, however, Rule 404(b) permits the admission of proof of other acts "for other purposes." Tenn. R. Evid. 404(b). Other purposes for which "other acts" evidence may be admissible include identity, intent, and motive. Tenn. R. Evid. 404, Advisory Comm'n Cmts; State v. McCary, 119 S.W.3d 226, 243 (Tenn. Crim. App. 2003).

Rule 404(b) also sets forth procedural criteria for the admission of other acts:

> (1) The court upon request must hold a hearing outside the jury's presence;
>
> (2) The court must determine that a material issue exists other than conduct conforming with a character trait and must upon request state on the record the material issue, the ruling, and the reasons for admitting the evidence;
>
> (3) The court must find proof of the other crime, wrong, or act to be clear and convincing; and
>
> (4) The court must exclude the evidence if its probative value is outweighed by the danger of unfair prejudice.

[2] See Tenn. Code Ann. §§ 39-15-402(a), 39-15-401(a) (2010).

Tenn. R. Evid. 404(b). In this case, the trial court held a pre-trial hearing and examined the two sheets of drawings that were later admitted into evidence. The trial court found that the first sheet was relevant to prove the Defendant's mental state at the time he allegedly committed the charged offenses against the victim. The trial court found that the second sheet was relevant to prove the Defendant's identity as the perpetrator. The trial court ruled that the drawings were admissible. In this appeal, the Defendant does not contend that the trial court failed to comply with Rule 404(b)'s procedural requirements.

We hold that Rule 404(b) did not prohibit the admission of the drawings and that the trial court did not err in exercising its discretion to admit the two sheets of drawings. First, we disagree that the Defendant's drawings were offered as proof of his "character." "While it is difficult to define 'character,' one often-cited definition is 'a generalized description of a person's disposition, or of the disposition in respect to a general trait, such as honesty, temperance or peacefulness.'" Neil P. Cohen et al., Tennessee Law of Evidence, § 4.04[2], at 4-76 (5th ed. 2005) (quoting McCormick on Evidence 291 (John W. Strong 5th ed. 1999)). The Defendant's drawings were not introduced to establish that his character was violent or cruel and that he acted in conformity with that character trait. Rather, the drawings were offered to demonstrate the Defendant's specific state of mind regarding the victim, that is, his animosity toward her. Thus, the drawings were not offered as prohibited propensity evidence.

Second, proof of the Defendant's "other acts" in creating the drawings was relevant to proving his intent, his motive, and his identity as the perpetrator of the crimes against the victim. As set forth above, proof of other acts is admissible for these purposes. Accordingly, the Defendant is entitled to no relief on this basis.

Admission of Excited Utterance

Over the Defendant's objection, the trial court permitted Father to testify about H.'s statement to him that "Bubba hurt sister." The defense objected to the admissibility of this testimony on the basis that there was no proof that H. had personal knowledge of the attack on the victim. The Defendant now argues, on the same basis, that the trial court erred in allowing this testimony.

H.'s out-of-court declaration was admitted as an excited utterance, an exception to the general rule against hearsay. See Tenn. R. Evid. 802, 803(2). An excited utterance is "[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." Tenn. R. Evid. 803(2). This Court previously has recognized that "one of the requirements for the admission of an excited utterance is that the declarant appear to have had an opportunity to personally observe the matter of which he or she speaks." State v. Land, 34 S.W.3d 516, 529 (Tenn. Crim. App.

2000) (citations omitted); see Tenn. R. Evid. 602 ("A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter."). "Thus, the party offering the testimony must introduce sufficient evidence to support a jury finding that the [declarant] had personal knowledge of the matter." Land, 34 S.W.3d at 529 (citing Neil P. Cohen et al., Tennessee Law of Evid. § 602.4, p. 313 (3d. ed. 1995)). However, "that knowledge may be inferred from . . . the surrounding facts and circumstances." Id. (citation omitted).

The Defendant argues in his brief that there was no proof that H. "had personal knowledge or witnessed the attack of the [victim]." We disagree. Multiple witnesses testified that H. was present in the apartment on the night in question. Indeed, the Defendant told the police that H. was in the living room with him during the attack on the victim. Even if there was no specific proof that H. saw the Defendant attacking the victim, the proof was sufficient for the jury to infer that H. heard the victim crying and that H. was aware of who was with the victim while she was crying. Accordingly, we hold that the foundational requirement of personal knowledge was satisfied, and the trial court did not err in ruling that Father's testimony about H.'s out-of-court statement was admissible as an excited utterance.[3] The Defendant is entitled to no relief on this basis.

Jury Instructions

The Defendant argues that the trial court committed three errors in its instructions to the jury: (1) charging the jury that the Defendant could be found criminally responsible for the conduct of another; (2) charging the jury with the Dorantes[4] instruction on circumstantial evidence instead of with the pre-Dorantes instruction; and (3) failing to charge the jury with a proper instruction on "neglect." The State contends that the trial court properly instructed the jury.

Criminal Responsibility

With respect to criminal responsibility for the conduct of another, the trial court instructed the jury as follows:

> The defendant is criminally responsible as a party to the offense of aggravated rape of a child or aggravated child abuse or aggravated child neglect if the offenses were committed by the defendant's own conduct, by the conduct of

[3] The record supports the trial court's conclusion that H.'s statement related to a startling event and that H. was stressed or excited by the event when he made the statement. See Tenn. R. Evid. 803(2).

[4] See State v. Dorantes, 331 S.W.3d 370, 381 (Tenn. 2011).

another for which the defendant is criminally responsible, or by both. Each party to the offense may be charged with the commission of the offense.

The defendant is criminally responsible for an offense committed by the conduct of another if, having a duty imposed by law or voluntarily undertaken to prevent commission of the offense and acting with intent to benefit in the proceeds or results of the offense or to promote or assist its commission, the defendant failed to make a reasonable effort to prevent commission of the offense.

The Defendant complains that by allowing the jury to impose criminal liability on this basis, the trial court "plac[ed] a large burden on the shoulders of a teenage boy with mental health problems" and that the trial court "incorrectly decided that Defendant was babysitting, and therefore he had a duty to prevent the crime from occurring." Initially, we note that there was no proof introduced at trial that the Defendant suffered from "mental health problems."

The trial court did not err in delivering this charge if the proof at trial fairly raised three issues: (1) the Defendant was legally required, or voluntarily undertook, to prevent the attack on the victim; (2) the Defendant failed to make a reasonable effort to prevent the attack on the victim; and (3) the Defendant acted with the intent to promote or assist the attack on the victim. See Tenn. Code Ann. § 39-11-402(3) (2010). As to the first of these issues, this Court has opined that a person entrusted by a child's legal guardian to watch over the child on a daily basis has "a 'duty imposed by law' within the meaning of § 39-11-402(3)" to protect the child from harm. State v. Hodges, 7 S.W.3d 609, 623 (Tenn. Crim. App. 1998) (citations omitted). Mother testified that she left the Defendant to babysit his younger siblings several times a week and had been doing so over the summer. She testified that, to the best of her knowledge, the Defendant had undertaken this responsibility and followed the rules she set for him. The Defendant has cited us to no authority for the proposition that his age ameliorated his legally imposed duty to protect the victim from harm. We hold that the proof fairly raised the first issue necessary for the charge of criminal responsibility.

As to the second issue, the proof fairly raised the inference that the Defendant was present in the apartment during the attack on the victim. Additionally, Dr. Sublette testified about her difficulties in examining the victim because of the victim's vigorous resistance and attempts to avoid being examined, even after having been given morphine. In addition to her physical resistance, the victim was crying and saying, "no, no." Dr. Lakin also described the victim as crying, turning away, pushing, and kicking while Dr. Lakin was examining her the next morning. Therefore, the proof was sufficient to fairly raise the inference that the victim loudly protested during the attack upon her and that the Defendant was aware that the victim was being harmed, even if he was sitting in the living room at the time. While the Defendant

claimed that an unknown assailant had broken into the apartment and threatened him with a gun before attacking the victim, other proof in the record fairly raised the inference that, if the Defendant himself was not participating in the attack on the victim, he was aware that it was being committed by one of his companions but made no reasonable effort to prevent or stop the attack. Thus, the proof at trial fairly raised the second issue necessary for the criminal responsibility instruction.

Finally, proof fairly raising the inference that the Defendant intended to promote or assist the attack on his sister included his drawings, the medical proof that more than one person likely participated in the attack, and the Defendant's attempt to bathe the victim after the attack rather than to seek medical assistance immediately. Accordingly, we hold that the proof at trial fairly raised the issue that the Defendant was criminally responsible for the crimes committed against the victim as charged by the trial court. The Defendant is entitled to no relief on this basis.

Circumstantial Evidence

The trial court charged the jury about circumstantial evidence as follows:

> Circumstantial evidence consists of proof of collateral facts and circumstances which do not directly prove a fact at issue, but from which that fact may be logically inferred.
>
> It is not necessary that each particular fact should be proved beyond a reasonable doubt if enough facts are proved to satisfy the jury beyond a reasonable doubt of all the facts necessary to constitute the crime charged.
>
> Before a verdict of guilty is justified, the circumstances taken together must be of a conclusive nature and tendency leading on the whole for the satisfactory conclusion and producing an effect or moral certainty that the defendant, and no one else, committed the offense.[5]

The Defendant contends that the trial court should have instructed the jury as follows:

> When the evidence is made up entirely of circumstantial evidence, then before you would be justified in finding the defendant guilty, you must find

[5] We quote from the charge as transcribed by the court reporter. In the trial court's written instructions, this final paragraph provides, "Before a verdict of guilty is justified, the circumstances, taken together, must be of a conclusive nature and tendency, leading on the whole to a satisfactory conclusion and producing in effect a moral certainty that the defendant, and no one else, committed the offense."

> that all the essential facts are consistent with the hypothesis of guilt, as that is to be compared with all the facts proved; the facts must exclude every other reasonable theory or hypothesis except that of guilt; and the facts must establish such a certainty of guilt of the defendant as to convince the mind beyond a reasonable doubt that the defendant is the one who committed the offense. It is not necessary that each particular fact should be proved beyond a reasonable doubt if enough facts are proved to satisfy the jury beyond a reasonable doubt of all the facts necessary to constitute the crime charged. Before a verdict of guilty is justified, the circumstances, taken together, must be of a conclusive nature and tendency, leading on the whole to a satisfactory conclusion and producing in effect a moral certainty that the defendant, and no one else, committed the offense.

T.P.I.-Crim. 37.06 (2d ed.).

The Defendant's suggested jury instruction was rejected by our supreme court as unnecessary in State v. Dorantes, 331 S.W.3d 370, 380-81 (Tenn. 2011). Accordingly, the Defendant is entitled to no relief on this basis.

Neglect

As to the Defendant's charge of aggravated child neglect or endangerment, the trial court charged the jury as follows:

> For you to find the defendant guilty of this offense, the State must have proven beyond a reasonable doubt the existence of the following essential elements: One, that the defendant knowingly neglected or endangered a child under 18 years of age so as to adversely affect the child's health and welfare. And two, that the act of neglect or endangerment resulted in serious bodily injury to the child.
>
> Child means a person under 18 years of age.
>
> To constitute neglect, the State must have proven beyond a reasonable doubt that there was an actual adverse effect to the child's health and welfare. A mere risk of harm is not sufficient.
>
> Neglect is a continuing course of conduct, beginning with the first act or omission that causes adverse effect to a child's health and welfare and can be an act of commission or omission.

The Defendant contends that the trial court's definition of "neglect" was inadequate.

For the reasons set forth below, we have determined that the Defendant's conviction of aggravated child neglect must be reversed and the charge dismissed. Accordingly, we deem this issue to be moot and, therefore, we decline to address it.

Sufficiency of the Evidence

The Defendant contends that the evidence is not sufficient to support his convictions. The State disagrees.

Our standard of review regarding sufficiency of the 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); see also Tenn. R. App. P. 13(e). After a jury finds a defendant guilty, the presumption of innocence is removed and replaced with a presumption of guilt. State v. Evans, 838 S.W.2d 185, 191 (Tenn. 1992). Consequently, the defendant has the burden on appeal of demonstrating why the evidence was insufficient to support the jury's verdict. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

The appellate court does not weigh the evidence anew; rather, "a jury verdict, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts" in the testimony and all reasonably drawn inferences in favor of the State. State v. Harris, 839 S.W.2d 54, 75 (Tenn. 1992). Thus, "the State is entitled to the strongest legitimate view of the evidence and all reasonable or legitimate inferences which may be drawn therefrom." Id. (citation omitted). This standard of review applies to guilty verdicts based upon direct or circumstantial evidence. Dorantes, 331 S.W.3d at 379 (citing State v. Hanson, 279 S.W.3d 265, 275 (Tenn. 2009)). In Dorantes, our Supreme Court adopted the United States Supreme Court standard that "direct and circumstantial evidence should be treated the same when weighing the sufficiency of such evidence." Id. at 381. Accordingly, the evidence need not exclude every other reasonable hypothesis except that of the defendant's guilt, provided the defendant's guilt is established beyond a reasonable doubt. Id.

The weight and credibility given to the testimony of witnesses, and the reconciliation of conflicts in that testimony, are questions of fact. State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). Furthermore, it is not the role of this Court to reevaluate the evidence or substitute its own inferences for those drawn by the jury. State v. Winters, 137 S.W.3d 641, 655 (Tenn. Crim. App. 2003) (citations omitted).

Aggravated Sexual Battery

Although the Defendant was charged with aggravated rape of a child, the jury convicted him of aggravated sexual battery, charged as a lesser-included offense.[6] Aggravated sexual battery is committed upon the intentional touching of the victim's intimate parts if the touching can be reasonably construed as being for the purpose of sexual arousal or gratification, and the victim is less than thirteen years old. Tenn. Code Ann. §§ 39-13-504(a)(4) (2010), 39-13-501(6) (2010). The Defendant does not argue that an aggravated sexual battery was not committed upon the victim; rather, he contends only that the proof was not sufficient to identify him as the perpetrator.

We disagree. The proof at trial established that there were eight potential suspects at the scene of the crime: the Defendant; May; Mathews; Baldwin; Noah Scheulin; Micah Scheulin; and two unidentified black youths. May testified that he left the Defendant's apartment before Mathews and Baldwin arrived. May also testified that, when he saw the Defendant change the victim's diaper, he noticed nothing wrong with her. Mathews testified that he did not see May at the Defendant's apartment that night. Mathews and Baldwin both testified that they left the Defendant's apartment at about 8:00 that evening. Both testified that they were unaware of any injuries to the victim at the time they left. Mathews' father and Baldwin's mother testified consistently with the boys' having left the apartment before the victim was injured, and the victim's fresh bleeding observed by medical personnel much later that night supports the inference that the victim's injuries were inflicted after Mathews and Baldwin left the apartment. The only proof supporting the inference that Mathews participated in the assault on the victim was contained in the Defendant's statement to the police after Mother had left the interrogation room. At that point in his conversation with the police, the Defendant said, "it was either [Mathews] or Micah, they did something to her." The Defendant also told the police, however, that the victim had been "all right" at the time Mathews left the apartment.

There is some proof in the record supporting the inference that one or both of the Scheulin brothers participated in the attack of the victim. The medical testimony established that there were bruises on the victim consistent with her being held down and also supported the inference that it would have been difficult for one person to simultaneously hold the victim down and penetrate her vagina. The Defendant also implied in his statement that

[6] We note that another panel of this Court has determined that aggravated sexual battery is not a lesser-included offense of rape of a child for double jeopardy purposes. See State v. Dallas Jay Stewart, No. M2011-01994-CCA-R3-CD, 2013 WL 3820992, at *37 (Tenn. Crim. App. July 22, 2013). Nevertheless, the double jeopardy issue addressed in Stewart has not been presented in this case. Moreover, in this case, the defense specifically requested that the jury be charged with aggravated sexual battery as a lesser-included offense of aggravated rape of a child.

Micah harmed the victim but, similarly to his statements about Mathews, his statements concerning Micah were inconsistent. The Defendant primarily attempted to place the blame for the attack on the victim on an unidentified black male who, he alleged, broke into the apartment by kicking in the door. Police officers testified that there was no evidence that the door had been kicked in. Clearly, the Defendant's statements were subject to skepticism.

This Court previously has recognized the probative value of words and actions by a defendant that evince a "consciousness of guilt":

> [a]t least insofar as they tend to connect [a defendant] with the crime and are not merely self-serving, and are inconsistent with a theory of innocence, and tend to show consciousness of guilt, the conduct and general demeanor of an accused after the crime, his language, oral and written, his attitude and relations toward the crime, and his actions in the presence of those engaged in endeavoring to detect the criminal act are relevant [and admissible].

State v. William Pierre Torres, E1999-00866-CCA-R3-DD, 2001 WL 245137, at *38 (Tenn. Crim. App. Mar. 13, 2001) (quoting 22A C.J.S. Criminal Law § 742(a), at 387 (footnotes omitted)), aff'd in part, rev'd in part on other grounds, State v. Torres, 82 S.W.3d 236 (Tenn. 2002). "Consciousness of guilt" evidence includes actions by the accused reflecting a desire to evade prosecution, see Marable v. State, 313 S.W.2d 451, 459 (Tenn. 1958), such as the accused's attempts to conceal or destroy evidence, Tillery v. State, 565 S.W.2d 509, 511 (Tenn. Crim. App. 1978), and inconsistent statements after the offense. Hackney v. State, 551 S.W.2d 335, 339 (Tenn. Crim. App. 1977); Otha Bomar v. State, No. 01C01-9808-CR-00342, 2000 WL 19763, at *3 (Tenn. Crim. App. Jan. 13, 2000), perm. app. denied (Tenn. Oct. 9, 2000).

In this case, the Defendant attempted to conceal or destroy evidence by bathing the victim after she was injured and hiding a cloth used to clean her. The proof also supports the inference that the Defendant either washed, concealed, or destroyed the object used to sexually penetrate the victim because the police were unable to find it in the apartment during their search. The Defendant also gave multiple inconsistent statements about what happened. This proof supports the inference that the Defendant was guilty of the attack on the victim, either directly or through failing to prevent the attack. Additional proof supporting the Defendant's guilt included H.'s statement to Father that the Defendant "hurt sister" and the Defendant's drawings, indicative of his animosity toward the victim.

While the proof demonstrated that there were multiple persons who may have been responsible for the victim's injuries, the proof was more than sufficient to establish the Defendant as either an actual perpetrator or criminally responsible for the actions of the

friends he allowed into his apartment against Mother's rules. Accordingly, the Defendant is entitled to no relief on this basis from his conviction of aggravated sexual battery.

Aggravated Child Abuse

Our criminal code provides that

> [a] person commits the offense of aggravated child abuse, aggravated child neglect *or* aggravated child endangerment, who commits child abuse, as defined in § 39-15-401(a); child neglect, as defined in § 39-15-401(b); or child endangerment, as defined in § 39-15-401(c) and:
>
> (1) The act of abuse, neglect or endangerment results in serious bodily injury to the child[.]

Tenn. Code Ann. § 39-15-402(a) (2010) (emphasis added). Child abuse is defined in section 39-15-401(a) as "knowingly, other than by accidental means, treat[ing] a child under eighteen (18) years of age in such a manner as to inflict injury." Tenn. Code Ann. § 39-15-401(a) (2010). Serious bodily injury is defined as bodily injury involving extreme physical pain and/or "substantial impairment of a function of a bodily member, organ or mental faculty." Id. § 39-11-106(a)(34)(C), (E) (2010).

In this case, the Defendant concedes that the crime of aggravated child abuse was committed against the victim, but he argues that the proof was not sufficient to establish him as the perpetrator. For the same reasons set forth above, we hold that the evidence was sufficient to support the Defendant's conviction of this offense. Accordingly, the Defendant is entitled to no relief from his conviction of aggravated child abuse on this basis.

Aggravated Child Neglect

As set forth above, a person commits aggravated child neglect when he commits child neglect and the child suffers serious bodily injury as a result. Tenn. Code Ann. § 39-15-402(a)(1). A person commits child neglect when he "knowingly . . . neglects a child under eighteen (18) years of age, so as to adversely affect the child's health and welfare." Id. § 39-15-401(b). As indicated in the text of the statute proscribing aggravated child neglect, supra, aggravated child abuse and aggravated child neglect resulting in serious bodily injury to the child are alternative means of committing a single offense. See also State v. Vernita Freeman, No. W2005-02904-CCA-R3-CD, 2007 WL 426710, at *9 (Tenn. Crim. App. Feb. 6, 2007) ("The offense of 'child abuse and neglect' is a single offense that may be committed by alternative courses of conduct.") (citations omitted).

In Vernita Freeman, this Court considered a case in which the defendant was convicted of first degree felony murder in the perpetration of aggravated child abuse, aggravated child abuse, and aggravated child neglect, all stemming from the defendant's shaking her eleven-month old daughter and then throwing the child on her bed, causing the child to strike her head against the adjacent wall. Medical proof established that the child suffered multiple injuries, including blunt trauma to the head and shaken baby syndrome. This Court held that the proof was sufficient to support the convictions of first degree felony murder and aggravated child abuse. Id. at *8. As to the conviction of aggravated child neglect, however, this Court held that "the proof does not demonstrate that it was the act of neglect which caused the serious bodily injury. Rather, the proof established that it was the [defendant's] acts of abuse which produced the serious bodily injury to the minor victim." Id. Because the proof did not establish that the victim's serious bodily injuries were caused by the defendant's neglect, this Court held that the proof did not satisfy one of the elements of the crime of aggravated child neglect. Id. The Court also noted that the State had made no attempt "to distinguish the separate counts of child abuse and child neglect based upon spatial or factual differences." Id. at *9. Accordingly, this Court reversed the defendant's conviction of aggravated child neglect for insufficient evidence. Id.

In this case, the State adduced proof that the Defendant caused serious bodily injury to the victim either through participating in the attack upon her himself or by failing to satisfy his legal duty to protect her from an attack by one or more others, so as to render him criminally responsible for the offense. This proof established the crime of aggravated child abuse. Because the State did not adduce proof of other serious bodily injury to the victim arising out of the Defendant's alleged aggravated neglect of the victim, we hold that the proof was not sufficient to support the Defendant's conviction of aggravated child neglect.[7] Accordingly, we are constrained to reverse the Defendant's conviction of aggravated child neglect and to dismiss that charge.[8]

Filing a False Offense Report

Although the Defendant asserts generally in his brief that the evidence was not sufficient to support his convictions, he offers no argument, citations, or references to the record specific to his conviction of filing a false report. See Tenn. Code Ann. § 39-16-

[7] We note that, similarly to the Vernita Freeman case, the State in the instant case did not attempt to distinguish the counts of aggravated child abuse and aggravated child neglect based on spatial or factual differences.

[8] Although the Defendant was charged with aggravated child neglect or endangerment, the trial court did not instruct the jury on the elements of the crime of aggravated child endangerment. See Tenn. Code Ann. §§ 39-15-402(a)(1), 39-15-401(c)(1).

502(a)(1)(C) (2010) (providing that it is "unlawful for any person to . . . [i]nitiate a report or statement to a law enforcement officer concerning an offense or incident within the officer's concern knowing that . . . [t]he information relating to the offense reported is false"). Therefore, the Defendant has waived the issue of the sufficiency of the evidence regarding his conviction of filing a false report. See Tenn. Ct. Crim. App. R. 10(b).

Remand to Juvenile Court

Because the Defendant was a juvenile when he committed the instant offenses, he was transferred to criminal court to be tried as an adult after a hearing in juvenile court. See Tenn. Code Ann. § 37-1-134 (2010). A juvenile under the age of sixteen may be transferred to criminal court if he "was charged with the offense of first degree murder, second degree murder, rape, aggravated rape, rape of a child, aggravated rape of a child, aggravated robbery, especially aggravated robbery, kidnapping, aggravated kidnapping or especially aggravated kidnapping or an attempt to commit any such offenses." Id. § 37-1-134(a)(1). The predicate charge in this case was rape of a child.

The Defendant contends that, because the jury did not convict him of rape of a child, choosing instead to convict him of the lesser-included offense of aggravated sexual battery, the trial court should have remanded this matter to the juvenile court. He bases this argument on subsection (c) of the juvenile transfer statute:

> The transfer pursuant to subsection (a) terminates jurisdiction of the juvenile court with respect to any and all delinquent acts with which the child may then or thereafter be charged, and the child shall thereafter be dealt with as an adult as to all pending and subsequent criminal charges; *provided, that if a child transferred pursuant to this section is acquitted in criminal court on the charge or charges resulting in such transfer, or if such charge or charges are dismissed in such court, this subsection (c) shall not apply and the juvenile court shall retain jurisdiction over such child.*

Id. § 37-1-134(c) (emphasis added).

We disagree. This Court previously has considered the Defendant's argument and determined it to lead to "an absurd result." State v. Freddie Morrow, No. 01C01-9612-CC-00512, 1998 WL 917802, at *6 (Tenn. Crim. App. Dec. 22, 1998), perm. app. granted (Tenn. June 7, 1999), perm. app. dismissed (Tenn. May 15, 2000). In Morrow, the two juvenile defendants, Morrow and Darden, had been transferred from juvenile court on the charge of first degree premeditated murder. Id. at *2. The defendants were subsequently indicted for one count of first degree premeditated murder, one count of first degree felony murder, one count of civil rights intimidation, and one count of attempted aggravated kidnapping. The

State subsequently dismissed the premeditated murder charge against Darden, and the trial court, after a bench trial, acquitted Morrow of premeditated murder. The trial court convicted the defendants each of one count of felony murder, one count of attempted aggravated kidnapping, and one count of civil rights intimidation. The defendants argued that the trial court lacked jurisdiction of the charges resulting in these convictions on the basis that they were "transferred on the charge of premeditated first degree murder only, and there was no determination made in the juvenile court whether [they] were subject to be tried as adults on the charges of civil rights intimidation, felony murder and attempted aggravated kidnapping." Id. at *4. This Court disposed of the defendants' argument as follows:

> [T]his Court notes that the state dismissed the premeditated first degree murder count against Darden, and Morrow was acquitted of that offense. At first glance, this would appear to trigger the second clause of Tenn. Code Ann. § 37-1-134(c) which provides, "if a child transferred pursuant to this section is acquitted in criminal court on the charge or charges resulting in such transfer, or if such charge or charges are dismissed in such court, this subsection shall not apply and the juvenile court shall retain jurisdiction over such child." Because neither [defendant] was convicted of premeditated first degree murder, the delinquent act alleged in juvenile court, a strict reading of that clause could arguably require that the juvenile court assume jurisdiction over the [defendants]. However, as the state points out, a literal interpretation of the statute would also require the juvenile court to retain jurisdiction in instances where the juvenile was acquitted of the charged offense, but convicted of a lesser included offense. We do not believe that the legislature intended such an absurd result.
>
> . . . .
>
> Once a juvenile has been transferred out of juvenile court pursuant to Tenn. Code Ann. § 37-1-134(a), the criminal court has jurisdiction to indict and try that juvenile as an adult. The criminal court thereafter has jurisdiction over the child, unless the transfer proceedings are, in effect, reversed by reason of acquittal or dismissal of all the charges in the criminal court. Tenn. Code Ann. § 37-1-134(c). If the child is completely absolved of all criminal charges, and the transfer proceedings are rendered invalid as a result, the juvenile court then retains jurisdiction over the child. Id.
>
> We think that the second clause in Tenn. Code Ann. § 37-1-134(c) applies only when the juvenile is fully exonerated on the charges brought against him or her in criminal court. We think this to be a more sensible interpretation of the phrase, "charge or charges resulting in such transfer."

> Principles of double jeopardy might be implicated if [defendants] were forced to endure a delinquency hearing after having been found guilty of these crimes beyond a reasonable doubt. However, if the juvenile court were to retain jurisdiction over the [defendants] and a delinquency hearing were barred by double jeopardy, [defendants] would effectively receive no penalty for these very serious crimes. Indeed, such a result would contravene the principles and purposes of the penal laws of this state.

Id. at *6.

The Tennessee Supreme Court granted Darden's application for permission to appeal.[9] Our high court affirmed Darden's conviction of first degree felony murder on slightly different grounds, concluding that first degree felony murder was simply an alternative means of committing first degree murder and that the juvenile court's disposition of the first degree murder charge encompassed both of the alternative charges of first degree premeditated murder and first degree felony murder. See State v. Darden, 12 S.W.3d 455, 458 (Tenn. 2000). Significantly, the Darden court did not address the issue of lesser offenses included in the offense considered by the juvenile court.

We agree with the analysis set forth by this Court in Morrow. As required by the transfer statute, the juvenile court found "reasonable grounds to believe" that the Defendant committed rape of a child. Tenn. Code Ann. § 37-1-134(a)(4)(A). Accordingly, the juvenile court transferred jurisdiction to the criminal court.[10] Thereafter, the Defendant was indicted for, and became subject to being tried as an adult for, aggravated rape of a child, as well as the other offenses with which he was charged. The jury convicted the Defendant of aggravated sexual battery, charged as a lesser-included offense of aggravated rape of a child. We hold that, when the jury convicted the Defendant of aggravated sexual battery, charged as a lesser-included offense of aggravated rape of a child, the Defendant was not acquitted "on the charge or charges resulting in" his transfer from juvenile court to criminal court. Accordingly, the trial court did not err in refusing to remand this matter back to juvenile court after the jury rendered its verdicts. The Defendant is entitled to no relief on this basis.

Sentencing

In his final issue, the Defendant contends that the trial court erroneously considered several enhancement factors, resulting in an excessive sentence. The State disagrees.

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[9] The Tennessee Supreme Court did not grant Morrow's application for permission to appeal.

[10] Apparently, the juvenile court also found reasonable grounds to believe the additional criteria set forth in section 37-1-134(a)(4).

Prior to imposing sentence, a trial court is required to consider the following:

> (1) The evidence, if any, received 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 mitigating and enhancement factors set out in [Tennessee Code Annotated sections] 40-35-113 and 40-35-114;
>
> (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.

Tenn. Code Ann. § 40-35-210(b) (2010).

The referenced "principles of sentencing" include the following: "the imposition of a sentence justly deserved in relation to the seriousness of the offense" and "[e]ncouraging effective rehabilitation of those defendants, where reasonably feasible, by promoting the use of alternative sentencing and correctional programs." Tenn. Code Ann. § 40-35-102(1), (3)(C) (2010). "The sentence imposed should be the least severe measure necessary to achieve the purposes for which the sentence is imposed," and "[t]he potential or lack of potential for the rehabilitation or treatment of the defendant should be considered in determining the sentence alternative or length of a term to be imposed." Id. § 40-35-103(4), (5) (2010).

Our Sentencing Act also mandates as follows:

> In imposing a specific sentence within the range of punishment, the court shall consider, but is not bound by, the following advisory sentencing guidelines:
>
> (1) The minimum sentence within the range of punishment is the sentence that should be imposed, because the general assembly set the minimum length of sentence for each felony class to reflect the relative seriousness of each criminal offense in the felony classifications; and

> (2) The sentence length within the range should be adjusted, as appropriate, by the presence or absence of mitigating and enhancement factors set out in [Tennessee Code Annotated sections] 40-35-113 and 40-35-114.

Tenn. Code Ann. § 40-35-210(c) (2010).

Additionally, a sentence including confinement should be based on the following considerations:

> (A) Confinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct;
>
> (B) Confinement is necessary to avoid depreciating the seriousness of the offense or confinement is particularly suited to provide an effective deterrence to others likely to commit similar offenses; or
>
> (C) Measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant.

Tenn. Code Ann. § 40-35-103(1).

When the record establishes that the trial court imposed a sentence within the appropriate range that reflects a "proper application of the purposes and principles of our Sentencing Act," this Court reviews the trial court's sentencing decision under an abuse of discretion standard with a presumption of reasonableness. State v. Bise, 380 S.W.3d 682, 707 (Tenn. 2012). "[A] trial court's misapplication of an enhancement or mitigating factor does not remove the presumption of reasonableness from its sentencing decision." Id. at 709. This Court will uphold the trial court's sentencing decision "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. Moreover, under those circumstances, we may not disturb the sentence even if we had preferred a different result. See State v. Carter, 254 S.W.3d 335, 346 (Tenn. 2008). The party appealing the sentence has the burden of demonstrating its impropriety. Tenn. Code Ann. § 40-35-401 (2010), Sent'g Comm'n Cmts.; see also State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991).

After a hearing, the trial court sentenced the Defendant as a Range I offender. The Range I sentencing range is eight to twelve years for aggravated sexual battery, a Class B

felony;[11] fifteen to twenty-five years for aggravated child abuse, a Class A felony;[12] and two to four years for filing a false report, a Class D felony.[13] See Tenn. Code Ann. § 40-35-112(a)(2), (a)(1), (a)(4) (2010). As to the aggravated sexual battery and aggravated child abuse, the trial court considered as enhancement factors the victim's particular vulnerability due to her age and that the Defendant violated a position of trust. See id. § 40-35-114(4), (14) (2010). As to the false report, the trial court appeared to consider as an enhancement factor that the Defendant filed the false report in an effort to avoid prosecution. This is not an available enhancement factor, however. See id. § 40-35-114. In mitigation, the trial court considered the Defendant's age at the time he committed the offenses. See id. § 40-35-113(6) (2010). The trial court sentenced the Defendant to the maximum term of twelve years for the aggravated sexual battery; to a mid-range term of twenty-two years for the aggravated child abuse; and to the maximum term of four years for the false report offense. The trial court declined the State's request to run the Defendant's sentences consecutively. Accordingly, the Defendant received an effective sentence of twenty-two years, to be served at one hundred percent. See id. § 40-35-501(i)(1), (i)(2)(K) (2010) (providing for one hundred percent service of sentences imposed for aggravated child abuse).

The Defendant contends in his brief that the trial court also considered as enhancement factors that the victim's injuries were particularly great and that the Defendant had no hesitation about committing the crime when the risk to human life was high. See id. § 40-35-114(6), (10). However, our review of the record indicates that, while the trial court mentioned these two enhancement factors, the trial court did not rely on them. Moreover, even if the trial court considered inappropriate enhancement factors, the Defendant is not entitled to relief if the record demonstrates that the trial court imposed its sentences "in a manner consistent with the purposes and principles set out in sections -102 and -103 of the Sentencing Act." Carter, 254 S.W.3d at 346. The record in this case demonstrates that the trial court was thoughtful and thorough in its analysis of the proper sentences to impose on the Defendant. The record also demonstrates that the trial court imposed the Defendant's sentences in a manner consistent with the purposes and principles set out in the Sentencing Act. Accordingly, we hold that the Defendant is not entitled to relief from the length of his sentences.

[11] Tenn. Code Ann. § 39-13-504(b).

[12] Tenn. Code Ann. § 39-15-402(b).

[13] Tenn. Code Ann. § 39-16-502(b)(1).

Conclusion

For the reasons set forth above, we reverse the Defendant's conviction of aggravated child neglect and dismiss the charge. We affirm the remaining judgments of the trial court.

_____
JEFFREY S. BIVINS, JUDGE