

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs September 1, 2020

FILED

11/30/2020

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. TARVIS WEATHERLY

Appeal from the Criminal Court for Shelby County
No. 17-01447 Jennifer Johnson Mitchell, Judge

No. W2019-02136-CCA-R3-CD

A Shelby County jury convicted the defendant, Tarvis Weatherly, of aggravated sexual battery for which he received a thirty-year sentence. On appeal, the defendant challenges the sufficiency of the evidence supporting his conviction which we affirm after a thorough review of the record.

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

J. ROSS DYER, J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and CAMILLE R. MCMULLEN, JJ., joined.

Phyllis Aluko, District Public Defender; Tony N. Brayton, Assistant Shelby County Public Defender, Memphis, Tennessee (on appeal) and Amy Mayne, Assistant Shelby County Public Defender, Memphis, Tennessee (at trial), for the appellant, Tarvis Weatherly.

Herbert H. Slatery III, Attorney General and Reporter; Brent C. Cherry, Senior Assistant Attorney General; Amy P. Weirich, District Attorney General; and Cavett Ostner and Devon Dennis, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Facts and Procedural History

A Shelby County grand jury indicted the defendant for one count of aggravated sexual battery committed against his nine-year-old victim, T.C.¹ Tenn. Code Ann. § 39-13-504(a)(4). The crime occurred on June 2, 2016, while the victim was spending the night

¹ It is the policy of this Court to refer to minor victims and their family members by initials only. Therefore, the victim will be referred to as “the victim” or “T.C.” and the victim’s grandmother will be referred to as “S.C.”

at the home of her stepfather. At the time, the victim's stepfather lived with his cousin, "Red," who is also the victim's aunt. Red's boyfriend, the defendant, also lived in the home. That day, the victim's grandmother, S.C., dropped off the victim and her younger brother at their stepfather's home. Though their stepfather was not there, Red and the defendant were home, and Red agreed to watch the children. The victim recalled the defendant and Red were drinking beer before she fell asleep on the couch. The victim woke as the defendant carried her to her stepfather's bedroom and placed her in the bed with her brother. The victim went back to sleep but later woke to the defendant touching her "pie pie," or vagina, with his finger over her clothes. The victim told the defendant to stop, and the defendant exited the room "super-fast." The victim began to cry though her brother remained asleep, and the defendant returned, turned on the lights, and asked the victim what was wrong. The defendant then exited the bedroom, and the victim attempted to go back to sleep. The victim explained this pattern continued throughout the night "like three more times" during which the defendant also touched her buttocks "[l]ike once." As the abuse continued, the victim moved to a different area of the bed and at one point, confronted the defendant, stating, "you touching me," but the defendant denied doing so. Though the victim did not recall how long the abuse lasted, she explained the defendant entered and exited the room "[a]t least four or five times," touching her each time. In photographs entered into evidence, the victim identified the bed where she slept with her brother and where she, her brother, and the defendant were positioned during the night.

The next morning, Red asked the victim why she was upset, and though the victim initially stated nothing was wrong, the victim eventually disclosed that the defendant touched her. As a result, Red contacted S.C. who came to the house followed by the police. The victim disclosed what happened to both her grandmother and the police. She subsequently participated in an examination at the Memphis Rape Crisis Center and a forensic interview at the Memphis Child Advocacy Center. A recording of the forensic interview was entered into evidence.

S.C. testified she received a telephone call from the victim's stepfather on the morning of June 2, 2016. He told S.C. that the defendant had touched the victim and asked S.C. to pick up the victim from his home. As a result, S.C. called the police and drove to the victim's stepfather's home, noting the police arrived approximately five minutes after she did. While on the scene, S.C. saw the defendant though she did not interact with him, the victim disclosed to her what happened, and S.C. spoke with police. S.C. then took the victim to the Memphis Rape Crisis Center for an examination after which she also took the victim to be examined by a doctor. Several weeks later, S.C. took the victim to the Memphis Child Advocacy Center for a forensic interview.

Memphis Police Department (MPD) Officer Chris Murphy responded to the scene where he spoke with the defendant and S.C., noting S.C. made the initial call to law

enforcement. After conducting a preliminary investigation, Officer Murphy contacted the Sex Crimes Unit who took over the investigation. In doing so, MPD Officer Margaret Houston reviewed the victim's forensic interview and obtained approval for indictment of the defendant.

Sally Discenza, an expert in sexual assault in forensic examinations, performed a physical examination of the victim at the Memphis Rape Crisis Center on June 2, 2016. Ms. Discenza obtained a history of the incident from the victim wherein the victim explained the defendant touched her "pie" over her clothes. The victim pointed to her vaginal area in order to clarify where the defendant touched her. The victim continued, stating she told the defendant to stop and that she would tell Red what the defendant did. The victim disclosed, however, that the defendant again touched her vaginal area and buttocks over her clothes. The victim began crying, and the defendant asked her what was wrong. The victim told the defendant, "you were feeling on me." Red heard the victim crying and asked if the defendant touched the victim, and the victim told Red that the defendant touched her. According to Ms. Discenza, the victim denied that the defendant touched her under her clothes or that the defendant had touched her prior to this incident. Based upon this information, Ms. Discenza did not obtain a sexual assault kit and noted she did not expect any injury to the victim. Ms. Discenza described the victim as cooperative, quiet, and "uncomfortable when she was talking about the specifics of the sexual assault."

Teresa Onry of the Memphis Child Advocacy Center performed the forensic interview of the victim on July 14, 2016, which was played for the jury during trial. During the interview, the victim stated the defendant touched her "pie pie." According to Ms. Onry, in describing the defendant's actions, the victim pointed to her vagina and "did kind of like a rubbing motion."

The State rested its case, and the trial court denied the defendant's motion for judgment of acquittal. The defendant then testified on his own behalf.

The defendant explained he lived with Red at her home on June 2, 2016. That evening, the defendant drank beer with his friends before helping put the children to bed at approximately 11 p.m. or 12 a.m. The defendant explained he planned to sleep on the couch and the children were to sleep in the stepfather's bedroom. As such, the defendant picked up the victim and carried her to the bedroom, noting he bumped the victim's head and almost dropped her on the way but she did not wake. The defendant placed the victim in the bed and Red placed the victim's brother in the bed. Before leaving the bedroom, the defendant checked the victim's head for an injury but did not notice anything significant.

Around 3:00 or 4:00 a.m. while the defendant was asleep on the couch, he saw the victim enter the living room and attempt to wake Red. When Red did not wake, the victim approached the defendant, and he asked the victim what was wrong. The victim indicated she wanted to sleep with Red but the defendant told her to go back and sleep with her brother. In response, the victim said, “you ain’t want us over here no way” followed by, “I’m going to tell [] Red you touched me.” The victim then returned to the bedroom. After considering what the victim said, the defendant went to the bedroom and confronted her, stating “I know I heard what you said, you said you going to tell [] Red I touched you.” The victim denied making the statement, and the defendant told the victim to “sit [her] butt in that bed” and stay there or he would “beat [her] butt.” The defendant then went back to sleep.

At approximately 7:00 a.m., Red woke the defendant, stating the victim claimed he touched her. The defendant denied touching the victim but asked the victim where he touched her. The victim stated, “you touched me on my booty pie” and indicated he touched the left side of her “booty.” The defendant asked where else he touched the victim, and she stated “nowhere else.” The defendant asked the victim if he touched her with his hand or finger, and the victim stated the defendant used his finger. In response, the defendant told Red to contact the victim’s stepfather.

The defendant then went to work before receiving a phone call from his cousin around 2:00 p.m. The defendant’s cousin indicated S.C. was at the home because the victim claimed the defendant touched her. The defendant told his cousin what happened and stated he would be home in about thirty minutes to an hour. He also asked that S.C. leave her phone number and take the victim to the hospital if he did not return home before they left. When the defendant returned home around 4:00 or 5:00 p.m., he continued to deny touching the victim. S.C. also returned, and the defendant stated she was carrying a baseball bat and was accompanied by “some more guys.” According to the defendant, a neighbor warned him one of the men with S.C. had a gun. The defendant stated he was not armed. S.C. then accused the defendant of touching the victim. The defendant claimed the victim was lying and denied the allegations. According to the defendant, S.C. “wanted to get aggressive,” so he suggested they contact the police. S.C., however, wanted to “handle it” herself and began arguing with Red. According to the defendant, Red threw a chair at S.C., and S.C. “came at [Red] with the bat.” As a result, the defendant called 9-1-1 around 6:00 p.m., and the police arrived around 6:15 or 6:30 p.m. The men who came with S.C. left when the police arrived. The defendant noted he did not see a gun on the men. The defendant denied the victim’s allegations to the responding officers but cooperated with the investigation.

During cross-examination, the defendant stated that as he carried the victim to bed, she tried to wrap her legs around him. The defendant moved her legs together, and the

victim did not wake. After hitting the victim's head "pretty hard" against the wall and almost dropping her, the defendant stated the victim started snoring but again, did not wake. The defendant explained he likely bumped the victim's head against the wall because he "was off balance" from drinking. After placing the victim in the bed, the defendant checked her head for knots while both Red and the victim's brother were in the room.

The defendant continued, explaining the victim entered the living room around 3:00 or 4:00 a.m. because she wanted to sleep with Red. When Red did not wake up, the defendant sent the victim back to the bedroom. In response, the victim told the defendant she would tell Red that the defendant touched her. The defendant soon confronted the victim about her statement and told her he would "beat [her] butt" if she got up again. The defendant did not think to check the victim's head for an injury at that time as it had "slipped my mind that I even had bumped her head." The defendant stated the victim's brother did not wake up during their interaction.

The defendant further stated he was detained on the scene and later provided a statement to police after being advised of his rights. The defendant confirmed his trial testimony mirrored the statement provided to law enforcement, including that he told police he bumped the victim's head and checked it before putting her to bed, the victim told him she would tell Red that he touched her, and he made the 9-1-1 call that prompted a police response. The defendant, however, could not recall if he told police that S.C. had a baseball bat while at the home. He also stated he did not tell police that he saw a gun on the men who were with S.C. because the police did not ask. The defendant could not recall if the police asked him if he was ever alone with the victim. The defendant also admitted to numerous prior felony convictions which included several aggravated robberies and theft of property.

Finally, the State presented rebuttal proof from MPD Sergeant Donald Cummings who interviewed the defendant on June 2, 2016. After the defendant waived his *Miranda* rights, Sergeant Cummings took a statement from the defendant. Sergeant Cummings pointed out that within the statement, the defendant did not indicate that he bumped the victim's head while carrying her, that he checked the victim's head for blood while in the bedroom, that the victim entered the living room wanting to sleep with Red, that the victim stated she would tell Red the defendant touched her, that the defendant told the victim he would beat her butt if she got out of bed again, that S.C. confronted him with a baseball bat, or that the two men who accompanied S.C. were armed with a gun on the day after the incident. Sergeant Cummings also noted he twice asked the defendant if he had been alone with the victim which the defendant denied. Sergeant Cummings acknowledged the defendant's statement was given over three years ago during which the defendant denied touching the victim.

At the close of proof, the defendant renewed his motion for a judgment of acquittal which was denied by the trial court, and the jury returned a verdict of guilty for aggravated sexual battery, as charged. The trial court sentenced the defendant to thirty years in the Tennessee Department of Correction and denied his motion for a new trial. This timely appeal followed.

Analysis

The defendant argues the evidence is insufficient to support his conviction for aggravated sexual battery because it is based solely on “the uncorroborated testimony” of the victim. In response, the State asserts the defendant has waived this issue for failing to include the victim’s forensic interview or a transcript of the interview as part of the record on appeal. Regardless, the State contends the evidence is sufficient to sustain the defendant’s conviction even if it is based solely on the victim’s testimony. Upon our review, we conclude the evidence is sufficient to sustain the defendant’s conviction.

When the sufficiency of the evidence is challenged, the relevant question for the reviewing court 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) (“Findings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt.”); *State v. Evans*, 838 S.W.2d 185, 190-92 (Tenn. 1992); *State v. Anderson*, 835 S.W.2d 600, 604 (Tenn. Crim. App. 1992). All questions involving the credibility of witnesses, the weight and value to be given the evidence, and all factual issues are resolved by the trier of fact. *See State v. Pappas*, 754 S.W.2d 620, 623 (Tenn. Crim. App. 1987). “A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State.” *State v. Grace*, 493 S.W.2d 474, 476 (Tenn. 1973). Our supreme court has stated the rationale for this rule:

This well-settled rule rests on a sound foundation. The trial judge and the jury see the witnesses face to face, hear their testimony and observe their demeanor on the stand. Thus the trial judge and jury are the primary instrumentality of justice to determine the weight and credibility to be given to the testimony of witnesses. In the trial forum alone is there human atmosphere and the totality of the evidence cannot be reproduced with a written record in this Court.

Bolin v. State, 405 S.W.2d 768, 771 (Tenn. 1966) (citing *Carroll v. State*, 370 S.W.2d 523 (1963)). “A jury conviction removes the presumption of innocence with which a defendant

is initially cloaked and replaces it with one of guilt, so that on appeal a convicted defendant has the burden of demonstrating that the evidence is insufficient.” *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982).

Guilt may be found beyond a reasonable doubt where there is direct evidence, circumstantial evidence, or a combination of the two. *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990) (citing *State v. Brown*, 551 S.W.2d 329, 331 (Tenn. 1977); *Farmer v. State*, 343 S.W.2d 895, 897 (Tenn. 1961)). The standard of review for sufficiency of the evidence “is the same whether the conviction is based upon direct or circumstantial evidence.” *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011) (quoting *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009)). The jury as the trier of fact must evaluate the credibility of the witnesses, determine the weight given to witnesses’ testimony, and reconcile all conflicts in the evidence. *State v. Campbell*, 245 S.W.3d 331, 335 (Tenn. 2008) (citing *Byrge v. State*, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978)). Moreover, the jury determines the weight to be given to circumstantial evidence and the inferences to be drawn from this evidence and the extent to which the circumstances are consistent with guilt and inconsistent with innocence are questions primarily for the jury. *Dorantes*, 331 S.W.3d at 379 (citing *State v. Rice*, 184 S.W.3d 646, 662 (Tenn. 2006)). This Court, when considering the sufficiency of the evidence, shall not reweigh the evidence or substitute its inferences for those drawn by the trier of fact. *Id.*

The defendant was convicted of aggravated sexual battery. “Aggravated sexual battery is unlawful sexual contact with a victim by the defendant” where “the victim is less than thirteen years of age.” Tenn. Code Ann. § 39-13-504(a)(4). “Sexual contact” includes the intentional touching of the victim’s, the defendant’s, or any other person’s intimate parts, or the intentional touching of the clothing covering the immediate area of the victim’s, the defendant’s, or any other person’s intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification.” Tenn. Code Ann. § 39-13-501(6). “Intimate parts” includes . . . the primary genital area, groin, inner thigh, buttock or breast of a human being.” Tenn. Code Ann. § 39-13-501(2).

The defendant challenges the sufficiency of the evidence supporting his conviction for aggravated sexual battery. The State contends the defendant has waived this challenge for failing to include a recording or transcript of the victim’s forensic interview as part of the record on appeal in violation of Rule 24 of the Tennessee Rules of Appellate Procedure. Tenn. R. App. P. 24. We, however, conclude the record conveys a complete and accurate account of what happened during trial despite the absence of a recording or transcript of the victim’s forensic interview. As such, we will address the merits of the defendant’s claim.

At trial, the victim detailed the defendant's actions supporting his conviction for aggravated sexual battery. The testimony established on June 2, 2016, the victim was nine years old, and she and her younger brother spent the night with the defendant and Red at Red's home. During the visit, the victim fell asleep on the couch and woke to the defendant carrying her to the bedroom where she slept in the bed with her brother. The victim testified that after the defendant put her to bed, he came back into the room and put his finger over her clothes on her "pie pie," or vagina. Though the defendant left the room, he returned throughout the night and continued to touch her vagina approximately three or four more times. The victim also stated the defendant touched her buttocks once.

The following morning, the victim disclosed the defendant's actions to Red, her grandmother, and the police which launched an investigation by the MPD Sex Crimes Unit. As the investigation progressed, the record indicates the victim provided consistent accounts of the defendant's abuse to both Ms. Discenza at the Memphis Rape Crisis Center and Ms. Onry at the Memphis Child Advocacy Center. In addition, the jury viewed the victim's forensic interview. Though the defendant denied the victim's accusations during trial, the jury was not persuaded as evidenced by their verdict, and this Court will not reweigh the evidence or substitute its inferences for those drawn by the trier of fact. *Dorantes*, 331 S.W.3d at 379.

The defendant argues the evidence is insufficient to sustain his conviction because the victim's testimony was not corroborated. However, "there is no requirement that the victim's testimony be corroborated," and as previously explained, we disagree with this contention as the victim provided a consistent description of the defendant's abuse throughout the investigation which was described at trial by Ms. Discenza and Ms. Onry. *State v. Smith*, 42 S.W.3d 101, 106 (Tenn. Crim. App. 2000); *see also State v. Joseph Lester Haven*, No. W2018-01204-CCA-R3-CD, 2020 WL 3410242, at *9 (Tenn. Crim. App. June 19, 2020) (holding even absent physical evidence of a crime, a victim's testimony need not be corroborated to sustain convictions for rape of a child and aggravated sexual battery). Furthermore, though the defendant denied the victim's allegations during his testimony, he also detailed a conversation he had with the victim on June 2, 2016, during which the victim again provided a similar description of his abuse. Accordingly, sufficient evidence exists to show the defendant committed aggravated sexual battery against the victim, and the defendant is not entitled to relief.

Conclusion

Based upon the foregoing authorities and reasoning, the judgment of the trial court is affirmed.

J. ROSS DYER, JUDGE