

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON

Assigned on Briefs October 7, 2014

**STATE OF TENNESSEE v. CHARLES ANDERSON CLARK, JR.**

**Appeal from the Circuit Court for Henderson County  
No. 13001-1 Roy B. Morgan, Jr., Judge**

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**No. W2014-00445-CCA-R3-CD - Filed December 17, 2014**

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The Defendant-Appellant, Charles Anderson Clark, Jr., was convicted by a Henderson County jury as charged of rape, see T.C.A. § 39-13-503, and sentenced as a Range III, persistent offender to a term of twenty-five years' imprisonment. In this direct appeal, the Defendant-Appellant challenges the sufficiency of the evidence and the sentence imposed by the trial court. Following our review, we affirm the judgment of the trial court.

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

CAMILLE R. MCMULLEN, J., delivered the opinion of the court, in which NORMA MCGEE OGLE and TIMOTHY L. EASTER, JJ., joined.

G. W. Sherrod, III, Henderson, Tennessee, for the Defendant-Appellant, Charles Anderson Clark, Jr.

Robert E. Cooper, Jr., Attorney General and Reporter; Jonathan H. Wardle, Assistant Attorney General; Jerry Woodall, District Attorney General; and Angela Scott, Assistant District Attorney General, for the Appellee, State of Tennessee.

**OPINION**

On or about July 10, 2012, two sexual encounters occurred between the victim and the Defendant-Appellant, a friend of the victim's roommate. Early that morning, around 4 a.m., the victim's roommate asked her to allow the Defendant-Appellant to wait inside their home until his ride arrived. Although the victim had previously expressed misgivings about the Defendant-Appellant, she reluctantly agreed. However, she told her roommate that she preferred for the Defendant-Appellant to wait on the front porch. The victim fell asleep on the futon in the living room and was later awakened by the Defendant-Appellant "putting his

hands down [her] pants.” She told him to stop, immediately went to her bedroom, and locked the door behind her.

The victim was awakened again later that morning with the Defendant-Appellant on top of her. She said that the Defendant-Appellant was penetrating her anally with his penis. She was unable to scream for help because he had her pinned down, pushing her face into a pillow with his left arm pressing against her neck. Her face was pressed so deeply into the pillow during the incident that she “chewed a hole through it.” The victim testified that the Defendant-Appellant penetrated her for several hours, both anally and vaginally, and that he ejaculated inside of her repeatedly. After the Defendant-Appellant fell asleep, the victim managed to escape. She ran to the living room and told her two roommates that she had been raped. The Defendant-Appellant fled the home “with his shorts down to his ankles.” The victim then called the police.

The victim went to the Lexington Police Department but was unable to walk inside the building due to her injuries. She said that she was in pain, and an officer met her outside at the sidewalk. Her injuries consisted of “bruising and some lacerations between her vaginal [sic] and [her] behind.” The victim told police that she had had consensual sex with her fiancé within 24 hours prior to the offense. The victim also testified that she attempted to assist the prosecution in locating her roommates but was unable to do so.

On cross-examination, the victim agreed that she had known the Defendant-Appellant for “a few weeks” prior to the offense and considered him an acquaintance.<sup>1</sup> She had previously told her roommate that she did not want the Defendant-Appellant in her home because she considered him to be “aggressive.” The victim did not recall reporting to a nurse the day after the offense that the Defendant-Appellant “needed to leave because her boyfriend would be mad if he knew he was there.” She also denied that there was a prior physical altercation between her fiancé and the Defendant-Appellant and said that the two men did not know each other prior to the offense. The victim also denied telling Officer Brad Wilson that she had been in a relationship with the Defendant-Appellant and ended it because he became physically abusive. She said the officer may have misunderstood her and explained that “the statement was that we were acquaintances and we were talking.” The victim also agreed that she previously testified that the Defendant-Appellant and her roommate arrived at her home at 4:30 or 5:00 that afternoon, rather than early the morning of the offense. She confirmed at trial that they arrived that morning, explained that the offense was “a very traumatic situation,” and said that she was not keeping up with the time.

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<sup>1</sup> We are compelled to note that the victim in this case was subject to extensive cross-examination. Remarkably, 46 pages of the trial transcript are devoted solely to her cross-examination.

Finally, she agreed that her prior statement to law enforcement, which provided that the Defendant-Appellant digitally penetrated her during the first encounter that morning, was inconsistent with her trial testimony, which provided that the Defendant-Appellant put his hands down her pants.

Casey Koza, an agent with the Tennessee Bureau of Investigation (TBI), testified that she examined the rape kit recovered in this case, obtained the vaginal swabs showing biological fluids, and forwarded her findings to a DNA analyst for comparison.<sup>2</sup> Agent Koza's report was admitted into evidence without objection. TBI Agent Mark Dunlap, an expert in forensic serology, testified that he received DNA samples from the victim, the victim's fiancé, and the Defendant-Appellant, which he compared to samples from the victim's vaginal swab. His examination revealed a mixture of genetic material or DNA from the victim, her fiancé, and the Defendant-Appellant. Although DNA from all three individuals was present on the vaginal swab, Agent Dunlap determined that the Defendant-Appellant was the major contributor of DNA. Agent Dunlap's report was admitted into evidence without objection.

Molly Britt, a sexual assault nurse examiner at Jackson-Madison General Hospital, testified that she "triage[d]" and assessed the victim upon her arrival at the hospital on the day of the offense. She described the contents of a "rape kit," prepared slides for lab analysis, and collected a vaginal swab from the victim. On cross-examination, she agreed that the medical records indicated that the victim told another nurse that she had been in a prior relationship with the assailant.

Officer Wendy Nichols of the Lexington Police Department testified that when the victim arrived at the police station, she stated that she had been raped. Officer Nichols testified that the victim had trouble walking and could not sit. She gathered information necessary for her initial report outside on the front bench, with the victim lying on her side. She confirmed the victim's general account of the timeline of events but was unable to obtain a definite timeline because "two other people that had came [sic] with her, they were all three talking" at the same time. Officer Nichols said her main concern was to get the victim to the hospital. She also assisted in the investigation by locating the driver who took the Defendant-Appellant back to Jackson and returned to the crime scene to take photographs.

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<sup>2</sup> DNA is the acronym commonly used for deoxyribonucleic acid, which is a molecule that encodes the genetic instructions used in the development and functioning of all known living organisms and many viruses.

Officer Brad Wilson of the Lexington Police Department testified that the victim appeared “very upset” and “injured” when she reported that she had been raped. The victim said she knew the perpetrator, and Officer Wilson’s report reflected that the victim and the Defendant-Appellant were in a “relationship.” Officer Wilson clarified that the victim did not report that she was in a sexual relationship with the Defendant-Appellant, as implied by his use of the word relationship. He explained that the victim told him that (1) she was “friends” with the Defendant-Appellant; (2) the Defendant-Appellant was physically abusive; and (3) she did not even know the Defendant-Appellant’s real name, only his nickname “Charlie Spoon.” He testified that the victim reported sexual relations with another individual within 24 hours prior to the offense.

Officer Wilson confirmed the Defendant-Appellant’s identity and, along with Madison County police and U.S. Marshalls, went to his home with an arrest warrant. Officers received information that the Defendant-Appellant “would fire on officers if they came to the residence to arrest him for this crime.” Upon their arrival, officers waited several minutes until the Defendant-Appellant’s wife answered the door. She told officers that the Defendant-Appellant was not home. However, the Defendant-Appellant was subsequently arrested by Deputy Stephen Overton, who found the Defendant-Appellant hiding in a small attic space of his home.

Lieutenant Donna Heatherington with the Lexington Police Department testified that she was contacted by Officer Wendy Nichols concerning the investigation of this case. Lieutenant Heatherington went to the crime scene and collected a pillow case, which was admitted into evidence without objection. The pillow case was “hunter green” and torn at the top, which was consistent with the victim’s statement of tearing her pillowcase during the offense. Lieutenant Heatherington also obtained the buccal swab from the Defendant-Appellant. She further testified that she overheard via speaker phone the Defendant-Appellant threaten to kill law enforcement officers if they attempted to come to his home. She later relayed the threat to Officer Wilson.

The Defendant-Appellant did not offer proof. The jury convicted the Defendant-Appellant of rape as charged in the indictment and assessed a \$25,000 fine. On September 20, 2013, the trial court conducted a hearing and sentenced the Defendant-Appellant as a Range III, persistent offender to twenty-five years’ imprisonment. The Defendant-Appellant filed a timely appeal.

## ANALYSIS

**I. Sufficiency of the Evidence.** In this appeal, the Defendant-Appellant raises a general challenge to the sufficiency of the evidence supporting his conviction of rape. He does not specifically attack any of the elements of the offense, and claims, based on the numerous inconsistencies and discrepancies in the victim's testimony, that the trial court failed to act as the thirteenth juror in this case. In response, the State contends that the evidence was sufficient to support his conviction and that the trial court properly exercised its role as thirteenth juror in this case. We agree with the State.

When reviewing challenges to the sufficiency of the evidence supporting a conviction, we are guided by the following well-settled legal framework. The State, on appeal, is entitled to the strongest legitimate view of the evidence and all reasonable inferences which may be drawn from that evidence. State v. Davis, 354 S.W.3d 718, 729 (Tenn. 2011) (citing State v. Majors, 318 S.W.3d 850, 857 (Tenn. 2010)). The standard of review applied by this court is “whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Jackson v. Virginia, 443 U.S. 307, 319 (1979). Similarly, Rule 13(e) of the Tennessee Rules of Appellate Procedure states, “Findings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the finding by the trier of fact of guilt beyond a reasonable doubt.” Guilt may be found beyond a reasonable doubt where there is direct evidence, circumstantial evidence, or a combination of the two. State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990) (citing State v. Brown, 551 S.W.2d 329, 331 (Tenn. 1977); Farmer v. State, 343 S.W.2d 895, 897 (Tenn. 1961)).

The standard of review for sufficiency of the evidence “is the same whether the conviction is based upon direct or circumstantial evidence.” State v. Dorantes, 331 S.W.3d 370, 379 (Tenn. 2011) (quoting State v. Hanson, 279 S.W.3d 265, 275 (Tenn. 2009)). The jury as the trier of fact must evaluate the credibility of the witnesses, determine the weight given to witnesses' testimony, and reconcile all conflicts in the evidence. State v. Campbell, 245 S.W.3d 331, 335 (Tenn. 2008) (citing Byrge v. State, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978)). Moreover, the jury determines the weight to be given to circumstantial evidence and the inferences to be drawn from this evidence, and the extent to which the circumstances are consistent with guilt and inconsistent with innocence are questions primarily for the jury. Dorantes, 331 S.W.3d at 379 (citing State v. Rice, 184 S.W.3d 646, 662 (Tenn. 2006)). When considering the sufficiency of the evidence, this court shall not reweigh the evidence or substitute its inferences for those drawn by the trier of fact. Id.

To sustain a conviction for rape as charged in this case, the State was required to prove beyond a reasonable doubt the unlawful penetration of the victim by the defendant and force was used to accomplish the act. T.C.A. § 39-13-503. “Force” means “compulsion by the use of physical power or violence and shall be broadly construed[.]” T.C.A. § 39-11-106(a)(12).

Viewing the evidence in the light most favorable to the State, the victim was acquainted with the Defendant-Appellant and distanced herself from him because he was physically abusive. Even though she did not want the Defendant-Appellant at her home, in the early morning hours on the day of the offense, her roommate asked her to allow the Defendant-Appellant to wait for a ride inside their home. She preferred for the Defendant-Appellant to stay on the front porch, but she reluctantly agreed. The victim fell asleep in her living room and was awakened by the Defendant-Appellant putting his hands down her pants. She told him to stop, went to her bedroom, and locked the door behind her. She was later awakened again, finding the Defendant-Appellant penetrating her anally with his penis. The victim said the Defendant-Appellant pinned her face down on the bed and pushed her face into a pillow, preventing her from summoning help. The victim chewed a hole through the pillowcase, which was later collected by law enforcement and admitted at trial. The Defendant-Appellant continued to penetrate the victim, anally and vaginally, until he passed out. The victim then ran to tell her roommates and eventually reported the rape to the police. She was unable to walk or sit due to the bruises she received during the rape. A TBI agent testified that the Defendant-Appellant’s DNA was the major contributor to the vaginal swab taken from the victim’s rape kit.

The Defendant-Appellant does not point to any inconsistencies in the victim’s testimony other than the timeline of the events. This victim was repeatedly raped over a period of hours and suffered injuries which inhibited her ability to walk or sit. In light of these circumstances, we conclude that any inconsistency or confusion about the timeline to be extremely minor. Regardless, as stated above, the jury as the trier of fact, not this court, is charged with evaluating the credibility of the witnesses and reconciling all conflicts in the evidence. The jury obviously resolved this inconsistency based on the victim’s explanation that she had been traumatized by the Defendant-Appellant’s actions, as was their prerogative. Based on this evidence, we conclude that any rational trier of fact could have found that the Defendant-Appellant unlawfully penetrated the victim by force, which is sufficient to satisfy the offense of rape. Accordingly, the Defendant-Appellant is not entitled to relief.

In resolving the Defendant-Appellant’s challenge to the trial court’s failure to act as the thirteenth juror in this case, Tennessee Rule of Criminal Procedure 33(d), provides that “[t]he trial court may grant a new trial following a verdict of guilty if it disagrees with the

jury about the weight of the evidence.” Tenn. R. Crim. P. 33(d); State v. Carter, 896 S.W.2d 119, 122 (Tenn. 1995) (holding that the trial court has a duty to serve as the thirteenth juror). An explicit statement of the trial judge’s approval of the verdict is not necessary, and when a trial judge overrules a motion for new trial, this court may presume that trial judge has approved the jury’s verdict as thirteenth juror. Tenn. R. Crim. P. 33(f); State v. Moats, 906 S.W.2d 431, 431 (Tenn. 1995). Only if the record contains statements by the trial judge indicating disagreement with the jury’s verdict or evidencing the trial judge’s refusal to act as the thirteenth juror may an appellate court reverse the trial court’s judgment. Id. Otherwise, our review is limited to sufficiency of the evidence pursuant to Rule 13(e) of the Rules of Appellate Procedure. State v. Burlison, 868 S.W.2d 713, 718-19 (Tenn. Crim. App. 1993). If we determine that the trial judge has failed to fulfill his or her role as thirteenth juror, we must grant a new trial. Moats, 906 S.W.2d at 435.

Here, we are somewhat puzzled by the Defendant-Appellant’s inclusion of this issue. The Defendant-Appellant does not provide any supporting argument other than pointing out inconsistencies in the victim’s testimony. He also fails to identify any statements by the trial court indicating disagreement with the jury verdict. At the motion for new trial hearing,<sup>3</sup> the trial court stated the following:

As to the position of the Defendant that the evidence introduced at the trial in this matter was insufficient to support the verdict or as to the Defendant’s position that as the thirteenth juror the Court should evaluate the credibility of witnesses and make a different decision as far as the outcome, the Court finds those are not proper bases or supported by the record and the motion should be denied as to those two positions.

There were about eight witnesses involved in this case. This was certainly a case where credibility was a factor that the jury had to take into consideration. The jury heard each and every witness. They’re told and properly instructed that they must determine the credibility of the witnesses . . . but ultimately that is the jury’s job . . . and they did their job[.]

By denying the Defendant-Appellant’s motion for new trial, the trial court exercised its role as the thirteenth juror. It explicitly declined defense counsel’s request to overturn the jury verdict based on inconsistencies in the victim’s testimony. The fact that the Defendant-Appellant preferred a different result is not subject to appellate review. There is nothing in

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<sup>3</sup> The Defendant-Appellant’s motion for new trial is not included in the record on appeal.

this record evincing the trial court's failure to act as the thirteenth juror. Accordingly, the Defendant-Appellant is not entitled to relief on this issue.

**II. Length of Sentence.** The Defendant-Appellant next argues that the twenty-five-year sentence imposed by the trial court is excessive. He does not challenge his status as a Range III, persistent offender or the imposition of consecutive sentencing to several other prior, unrelated convictions. Instead, the Defendant-Appellant contends that none of his nineteen prior felony convictions were violent offenses; therefore, he was entitled to the minimum, twenty-year term of imprisonment. The State responds that the trial court properly sentenced the Defendant-Appellant to twenty-five years' confinement. We agree with the State.

We review the length and manner of service of a sentence imposed by the trial court under an abuse of discretion standard with a presumption of reasonableness. State v. Bise, 380 S.W.3d 682, 708 (Tenn. 2012). The misapplication of enhancement or mitigating factors does not invalidate the imposed sentence "unless the trial court wholly departed from the 1989 Act, as amended in 2005." Id. at 706. "So long as there are other reasons consistent with the purposes and principles of sentencing, as provided by statute, a sentence imposed by the trial court within the appropriate range should be upheld." Id. The defendant has the burden of showing the impropriety of the sentence on appeal. T.C.A. § 40-35-401(d), Sentencing Comm'n Cmts.

Pursuant to the 2005 amendments to the Sentencing Act, a trial court must consider the following when determining a defendant's specific sentence:

- (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 §§ 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.

Id. § 40-35-210(b)(1)-(7) (2014). In addition, the court must impose a sentence "no greater than that deserved for the offense committed" and "the least severe measure necessary to achieve the purposes for which the sentence is imposed." Id. §§ 40-35-103(2), (4).



Rape is a Class B felony, T.C.A. § 39-13-503(b), and, as applicable here, the sentencing range for a Range III, persistent offender is twenty to thirty years. Id. §§ 40-35-101, -107. A sentence imposed for a rape conviction must be served at 100%. See T.C.A. § 40-35-501(i)(1), (2)(G), (3) (2006). Finally, after being convicted of a sexual offense such as rape, a defendant must be placed on the sexual offender registry and subjected to community supervision for life. See T.C.A. §§ 39-13-524, 40-39-201.

At the sentencing hearing, the parties stipulated, and the trial court agreed, that the Defendant-Appellant was a Range III, persistent offender. The presentence report and twenty certified copies of the Defendant-Appellant's prior convictions were admitted into evidence.<sup>4</sup> In requesting the maximum sentence of thirty years, the State argued that the following enhancement factors applied: that the Defendant-Appellant had a previous history of criminal convictions in addition to those necessary to establish the appropriate range, T.C.A. § 40-35-114(1); that the offenses were committed to gratify the Defendant-Appellant's desire for pleasure or excitement, id. § 40-35-114(7); and that at the time this crime was committed, the Defendant-Appellant had been released on parole, id. § 40-35-114(13). To mitigate the Defendant-Appellant's sentence, defense counsel argued that the bulk of the Defendant-Appellant's prior convictions were committed within a one-month period and were not violent offenses. The only violent offenses consisted of two misdemeanor assaults, which were over ten years old. Defense counsel also requested that the court reduce the fine imposed by the jury and impose the minimum sentence in this case in light of the fact that it must be served at 100% before the Defendant-Appellant would be eligible for release.

In arriving at the sentence in this case, the record shows that the trial court applied enhancement factors (1) and (13). The trial court declined to apply enhancement factor (7) and determined that no mitigating factors applied. The trial court fully considered defense counsel's arguments including the non-violent nature of the Defendant-Appellant's prior convictions and the release eligibility attendant to the offense rape. The trial court expressly articulated its reasoning in support of imposing a mid-range twenty-five-year sentence, which was well within the applicable sentencing range. The record further reflects that the trial court considered the purposes and principles of the sentencing act. Therefore, the trial court's imposition of the twenty-five-year sentence is presumed reasonable. We fail to see, and the Defendant-Appellant fails to point out, any impropriety with the imposition of a

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<sup>4</sup> The State correctly asserts on appeal that the Defendant-Appellant had twenty prior felony convictions. However, the State incorrectly argues that the Defendant-Appellant had a criminal history including an aggravated robbery. The presentence report reflects that the Defendant-Appellant was charged with this offense; however, he pleaded guilty to the reduced offense of theft of property over \$500.

twenty-five-year sentence in this case. Accordingly, upon our review, we discern no abuse of discretion and affirm the sentence imposed by the trial court.

**CONCLUSION**

Based on the above authority and analysis, we affirm the judgment of the trial court.

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CAMILLE R. McMULLEN, JUDGE