

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON

Assigned on Briefs July 08, 2014

**STATE OF TENNESSEE v. JOHN VALENTINE**

**Appeal from the Criminal Court for Shelby County  
No. 1102890 Carolyn W. Blackett, Judge**

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**No. W2013-01002-CCA-R3-CD - Filed September 25, 2014**

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The defendant, John Valentine, was convicted of rape of a child, a Class A felony, and aggravated sexual battery, a Class B felony. On appeal, the defendant contends that: (1) the State's election of an undated offense failed to ensure a unanimous jury verdict as to the rape of a child charge and that the evidence was insufficient to support a conviction for the elected offense; (2) the trial court abused its discretion by permitting certain witnesses to testify; (3) the trial court abused its discretion by allowing photographs of the victim into evidence; (4) the trial court abused its discretion by prohibiting counsel from questioning witnesses about the victim's prior allegations of sexual abuse; and (5) the cumulative errors of the trial court warrant a reversal of the defendant's conviction. We affirm the judgment of the trial court.

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

JOHN EVERETT WILLIAMS, J., delivered the opinion of the Court, in which CAMILLE R. MCMULLEN, J., joined and JERRY L. SMITH, J., not participating.

Jeff Woods, Memphis, Tennessee, for the appellant, John Valentine.

Robert E. Cooper, Jr., Attorney General and Reporter; Clark B. Thornton, Senior Counsel; Amy P. Weirich, District Attorney General; and Terre Fratesi and Mark Erskine, Assistant District Attorneys General, for the appellee, State of Tennessee.

**OPINION**

**Facts and Procedural History**

This case arose from the defendant's convictions for rape of a child and aggravated sexual battery. According to the proof at trial, the defendant penetrated the victim with his penis and forced the victim to masturbate him.

Audrean Bond-Jones was the principal at Bethel Grove Elementary School in November of 2010, where the victim was a first-grade student. On November 17, 2010, the victim was brought to Ms. Bond-Jones' office for inappropriate behavior towards another student. While in line in the cafeteria, the victim was "hunching" on another student. The victim placed the front part of her body against the back of another student and "would just do a little front back motion." Ms. Bond-Jones testified that the victim "shared quite a bit of information about some things" that occurred in her home. When the victim spoke about certain sex acts, Ms. Bond-Jones asked her where she learned about the acts, and the victim "began to demonstrate . . . what her experiences were with her father." In response to the victim's statements, Ms. Bond-Jones called the Department of Children's Services ("DCS"), and law enforcement officers came to the school.

Marion Woods had been the victim's foster mother since the end of November 2010. Ms. Woods was a teacher and testified that the victim's performance in school was somewhat deficient. She indicated that the victim sometimes struggled with the concepts of dates and times, as the victim might say that she was with her mother or sister the previous evening when she actually was with Ms. Woods. Ms. Woods testified that the victim's accounts of her interactions with the defendant remained consistent.

Angelique Roshea Horace was a foster care counselor with Youth Villages and served as the victim's foster care counselor. She worked with the victim on developing "social skills[,] such as communication, listening skills, and "making friends." Ms. Horace's overall goal with counseling was to assist the victim and Ms. Woods in achieving the victim's permanency goal of adoption. Ms. Horace testified that when the victim was nervous, she would giggle, place her hands in front of her face, and lower her head.

The victim testified that she was currently ten years old and in the third grade. She stated that her father's name was "[t]ighten up" and that she had seen him when she went to bed on the evening before she spoke with Ms. Bond-Jones. The victim slept in the same room as her mother and the defendant. On the evening of the incident, the victim was asleep in a bed with her mother and the defendant, and she awoke to see the defendant "feeling on" her mother. The defendant then touched the victim's front private part with his penis. He placed his penis inside her front private part and moved "in a circle[,] and the victim testified that it "[h]urt." The defendant also placed his penis inside the victim's bottom, and the victim testified that "[i]t hurt when it [was] in me." He touched her breast private part,

and the victim testified that “[w]hen he touched it, it hurt me. He touched it and I feel [sic] uncomfortable.” The defendant told the victim to touch his penis with her hand, and he placed her hand on his penis. The victim demonstrated for the jury how the touching occurred. The victim “told [the defendant] to stop, but he didn’t stop.” The victim testified that she could feel “pee” come out of the defendant’s penis. She stated that the penetration only occurred one time and that it was on the same night that she placed her hand on the defendant’s penis. The victim recalled telling Ms. Bond-Jones the next day that her “hand was smell [sic] like pee[,]” and the victim believed it was because her hand was on the defendant’s penis.

Mary Daley, a pediatric nurse practitioner, performed a sexual assault examination on the victim. Ms. Daley acknowledged that there was some confusion in her report as to the date of the assault. The victim told Ms. Daley that the assault occurred the night before the exam, but the victim’s mother said that the assault occurred the week before the exam. Ms. Daley also wrote on her report that the victim stated that “Daddy stuck his stuff up my booty last night, then he peed on my hands.” The victim told Ms. Daley that she got into trouble at school when she “[a]ccidentally freaked” another student. The victim demonstrated to Ms. Daley that “freaking” meant forward pelvic thrusts against another person.

When Ms. Daley examined the victim, she noticed that the victim had “two very, very red deep scratched areas around the perihymeneal area.” The tissue around the hymen was very bright red and “extremely tender” during the exam. She stated that there were no tears or abrasions on the hymen itself. She noticed “fairly deep” scratch marks on the victim’s external genitalia area. Ms. Daley also observed a bruised area between the victim’s “front private and her back private.” Several photographs of these injuries were shown to the jury.

The first photograph depicted the victim’s external genital area. Ms. Daley identified five scratches on the genital area that she noted as abnormal during the exam. She testified that the scratches were “fairly deep” and had grooves that were deeper than a normal scratch of the skin would be. The second photograph showed the victim’s internal genitalia and illustrated a “deep[,] dark grooved area” on the perihymenal band. The third photograph was of the victim’s annular hymen, where a darkened area was visible on the right side. The fourth photograph showed several scratches, redness, and part of the hymen wall. The fifth photograph depicted the scratch marks and the deep red coloration on either side of the hymen and illustrated a small area of bruising. The sixth photograph again showed the redness around the hymen and showed a darker area. Ms. Daley opined that the area was darkened due to a bruise. The seventh photograph showed scratch areas with a “deep bloody looking groove,” irritation, and a darkened area. The eighth photograph showed the victim’s anal opening, and Ms. Daley testified that it appeared “normal[,]” as there were no tears or fissures. The eighth photograph also depicted the area earlier described as bruised and the

perineal area. The ninth photograph showed the victim's anal opening. Ms. Daley testified that the darkened area was visible, and there appeared to be bruising between her front private and back private.

Ms. Daley classified the victim's injuries as "indeterminate," as "[i]ndeterminate physical examination findings may support the patient's disclosure of abuse." She testified that "indeterminate" was used to categorize something "not normally seen on a regular, normal, physical exam." Ms. Daley stated that the scratches and bruises on the victim's perihymeneal area, the small external bruise area, and the small, bruised area directly behind the vaginal area were not normally present during an exam. She testified that her findings were consistent with the victim's statement that "Daddy put his stuff up my booty," as children do not always understand the concept of a vaginal opening. She testified that nothing in the victim's physical history indicated that there had ever been any kind of injury in the genital area that would have left the marks that she observed. She agreed that whether the time frame of the abuse was a day or a week before the exam, her findings were still consistent with the victim's disclosure of abuse.

Letitia Cole was a forensic interviewer with the Memphis Child Advocacy Center who conducted a forensic interview with the victim. She testified that during the interview, the victim made an "active disclosure" of abuse using both anatomical drawings and anatomical dolls. She stated that an "active disclosure" was a full disclosure made by a victim during a forensic interview. A video recording of the victim's interview was then played in open court.

Lieutenant Carl J. Ray was a sergeant in the Memphis Police Department's juvenile squad for sex crimes and child abuse cases at the time of the incident. He interviewed the defendant, who voluntarily gave a statement after waiving his *Miranda* rights. The defendant told police that his favorite saying was "tighten up." He stated that the victim's mother placed the victim in bed with her and the defendant. As the defendant and the victim's mother "got intimate," he asked her, "Why not put [the victim] on a pallet or something[.]" and she replied that the victim would "be alright." He stated that the victim awoke while he and the victim's mother were "making love" and that the victim's mother was shocked when the victim awoke. He said that he briefly had sex with the victim's mother but that "she was not into it" because she had cancer and sexual intercourse "burn[ed]" for her.

Once the victim's mother told the defendant to stop, he "turned over and lay [sic] behind [the victim's mother] for a little while." The victim then awoke, "stretched her arms out backwards where [the defendant] was at," felt his penis, and "started playing with it." The defendant stated that the victim was "jacking [him] off" while lying in bed with him and her mother. He said he ejaculated after about "five minutes" and that some of the ejaculate

landed on him. He was not sure if any landed on the victim. The defendant stated that he had never done anything like that before and that it was the only time he permitted the victim to masturbate him. He did not tell the victim to stop.

The jury found the defendant guilty of rape of a child and aggravated sexual battery. The trial judge sentenced him to an effective term of thirty-three years. The defendant filed a timely notice of appeal, and we proceed to consider his claims.

## ANALYSIS

### I. Election of offense and sufficiency of the evidence

The defendant argues that the State's election of an undated act of penetration failed to ensure a unanimous jury verdict and, in the alternative, that the evidence was insufficient to sustain his conviction for rape of a child.<sup>1</sup> Specifically, he contends that the State's election failed to distinguish a particular act of abuse and that the evidence was insufficient to support a conviction for the elected offense.

The doctrine of election requires the State to elect a set of facts when it charges a defendant with one offense, but there is evidence of multiple offenses. *State v. Brown*, 992 S.W.2d 389, 391 (Tenn. 1999). This doctrine is applied to ensure that the defendant can prepare for the specific charge, to protect the defendant from double jeopardy, and to allow an appellate court to review the legal sufficiency of the evidence. *Id.* Most importantly, election ensures that some jurors do not convict on one offense and other jurors on another. *State v. Shelton*, 851 S.W.2d 134, 137 (Tenn. 1993).

The application of the election doctrine to child sex abuse cases can present practical difficulties, as victims of child abuse may not be able to testify as to the specific date of the abuse or provide extensive details regarding the abuse. *Brown*, 992 S.W.2d at 391. Election does not require the State “to identify the particular date of the chosen offense[,]” as an offense can often be identified without a date when, for example, the victim “may be able to describe unique surroundings or circumstances that help identify an incident.” *Shelton*, 851 S.W.2d at 137-38. The State is required to prove the date of the commission of an offense only when “the date is an element of the crime or essential to proving the offense.” *Brown*, 992 S.W.2d at 392. Because the essential purpose of election is to ensure that jurors consider the same incident, “[a]ny description that will identify the prosecuted offense for the jury is

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<sup>1</sup>On appeal, the defendant challenges the election and sufficiency of the evidence only in regards to the rape of a child conviction. The defendant does not challenge his conviction for sexual battery, and we focus our analysis only on the conviction for rape of a child.

sufficient.” *Shelton*, 851 S.W.2d at 138.

In this case, the trial court gave the following instruction to the jury regarding the State’s election of offenses:

In this case, the State has elected to submit for your consideration of Count One of the Indictment the act of penile [sic]/vaginal penetration described by the victim during her testimony as occurring the same night defendant peed on her hand while in the bed with the defendant in her mother’s bedroom at the victim’s home on Vern Street.

The victim testified that the defendant penetrated her vagina with his penis while she was in bed with him and her mother and that this incident occurred on the same evening that the defendant placed the victim’s hand on his penis. Her testimony referenced and identified acts that occurred on a single night, and the election instruction specifically referred to the evening in question and a specific act. We conclude that the election sufficiently distinguished a particular act to ensure “unanimity among the jury members as to the specific act which constituted the offense.” *See State v. Hodge*, 989 S.W.2d 717, 720 (Tenn. Crim. App. 1998).

The defendant next contends that even if the election was sufficient, the evidence is insufficient to support a conviction for the elected offense of rape of a child. When a defendant challenges the sufficiency of the evidence, the relevant question for this court is “whether, after reviewing the evidence in the light most favorable to the State, *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). On appeal, “the State is entitled to the strongest legitimate view of the evidence and to all reasonable and legitimate inferences that may be drawn therefrom.” *State v. Elkins*, 102 S.W.3d 578, 581 (2003). Therefore, this court will not re-weigh or reevaluate the evidence. *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978). Instead, it is the trier of fact, not this court, who resolves any questions concerning “the credibility of witnesses, the weight and value to be given the evidence, as well as all factual issues raised by the evidence.” *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). A guilty verdict removes the presumption of innocence and replaces it with a presumption of guilt. *State v. Evans*, 838 S.W.2d 185, 191 (Tenn. 1992). The burden is then shifted to the defendant on appeal to demonstrate why the evidence is insufficient to support the conviction. *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982).

Tennessee Code Annotated section 39-13-522(a) provides that “[r]ape of a child is the unlawful sexual penetration of a victim by the defendant . . . if the victim is more than three (3) years of age but less than thirteen (13) years of age.” Viewing the evidence in the light

most favorable to the State, the proof at trial showed that the defendant penetrated the victim's vagina with his penis. The victim testified that the defendant placed his penis inside her front private part. Ms. Daley examined the victim and testified that she had injuries to her vagina that were consistent with her disclosure of abuse. The election designated one specific instance of penile/vaginal penetration. We conclude that the evidence was sufficient to convict the defendant of the elected instance of penile/vaginal penetration. Accordingly, the defendant is not entitled to any relief as to this claim.

## **II. Testimony of Certain Witnesses**

The defendant argues that the trial court erred in admitting the testimony of Ms. Bond-Jones, Ms. Woods, and Ms. Horace. He contends that the testimony of Ms. Bond-Jones was inadmissible hearsay and that the testimony of Ms. Woods and Ms. Horace was offered only to garner the sympathy of the jury and bolster the belief that the incident of abuse occurred.

### **A. Ms. Bond-Jones**

The defendant argues that Ms. Bond-Jones' testimony as to what the victim told her regarding sexual activities with the defendant constituted "rank hearsay." The State responds that the testimony was not offered to prove the truth of the matter asserted, but instead to explain why Ms. Bond-Jones contacted the authorities. Tennessee Rule of Evidence 801(c) defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Generally, hearsay statements are inadmissible unless an exception to the rule against hearsay applies. *See* Tenn. R. Evid. 802. A trial court's decision regarding evidentiary matters will be upheld on appeal so long as the trial court did not abuse its discretion. *State v. Dotson*, 254 S.W.3d 378, 392 (Tenn. 2008).

Ms. Bond-Jones testified that a teacher informed her that the victim "kept asking to wash her hands." She also testified that the victim shared "quite a bit of information about some things that happened at home" and when the victim "talked about certain sex acts, . . . she began to demonstrate what she, what her experiences were with her father." She referenced the hand movements and body gestures that the victim made.

We agree with the State that these statements were not offered "to prove the truth of the matter asserted." The statements were not offered to provide substantive evidence that the defendant sexually abused the victim but rather to illustrate why Ms. Bond-Jones believed it was necessary to contact DCS. Ms. Bond-Jones did not testify to any specific acts that the victim described or discuss the body gestures that the victim made. Further, any error in admitting the testimony that a teacher informed Ms. Bond-Jones that the victim "kept asking

to wash her hands[.]” is harmless, as the victim later testified that she told Ms. Bond-Jones that her hand “smell[ed] like pee.” There is no evidence in the record that the statement “more probably than not affected the judgment[.]” See Tenn. R. App. P. 36(b). The defendant is not entitled to relief as to this issue.

### **B. Ms. Woods**

The defendant argues that the testimony of Ms. Woods was not relevant and served only to gain the sympathy of the jury and to reinforce the belief that the incident occurred. Specifically, he contends that the trial court applied an incorrect legal standard in ruling that the victim’s parents would have testified similarly if circumstances permitted them to take the stand.

Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Tenn. R. Evid. 401. Once the court concludes the evidence is relevant, the court should exclude the evidence if its probative value is substantially outweighed by its prejudicial effect. Tenn. R. Evid. 403; *State v. James*, 81 S.W.3d 751, 757 (Tenn. 2002). A trial court’s decision as to the relevance of evidence under Rule 401 will be reversed only upon a showing of abuse of discretion. *State v. Powers*, 101 S.W.3d 383, 395 (Tenn. 2003).

We conclude that the trial court did not abuse its discretion in allowing the testimony of Ms. Woods. The trial court found that the questions were not focused on whether the incident occurred but were questions that would have been asked of a parent. Here, the victim was removed from her mother’s custody, and her father figure was on trial, meaning that Ms. Woods was in the best position to provide background information on the victim. Ms. Woods’ testimony was offered to show that the victim struggled to remember specific dates and times but that her recollections of her interactions with the defendant remained consistent. We conclude that the evidence was relevant to help explain the difference in Ms. Daley’s report regarding the date of the offense and that the probative value was not outweighed by the danger of unfair prejudice. The defendant is not entitled to relief as to this claim.

### **C. Ms. Horace**

The defendant argues that the testimony of Ms. Horace “was not relevant to the determination of the action.” He contends that because she “was not privy to the alleged incident[.]” the sole purpose of her testimony was to engender sympathy from the jury and prove that the incident occurred. The State concedes that the testimony was “of doubtful



relevance” but argues that the testimony could not have substantially affected the jury, making its admission harmless.

The trial court found that Ms. Horace’s testimony dealt with general counseling for children in long-term foster care rather than specific counseling for the alleged incident. The court cautioned the State to avoid any mention of “sexual issues,” as “nothing [had] been proved yet[.]” The court agreed that presenting evidence to the jury that the victim was in counseling specifically for the alleged incident could bolster a presupposition by the jury that the incident did occur. The court also found that the testimony would be beneficial in explaining some of the behaviors the victim would exhibit while testifying.

Ms. Horace testified that she was the victim’s foster care counselor and that the overall goal of her counseling was to assist the victim in targeting her goal of permanent adoption. Ms. Horace also testified that when the victim was nervous, she would giggle, place her hands on her face, and put her head down. Ms. Horace stated that these were normal reactions for a child to have in response to nervousness. We conclude that the testimony was relevant to provide further background information about the victim and to explain some of the victim’s behavior that otherwise could indicate that she was being untruthful or did not grasp the seriousness of the situation. Any prejudicial effect did not substantially outweigh the probative value, as Ms. Horace testified only to the long-term goals of counseling for the victim and did not mention the specific allegations that led to the victim’s receiving counseling. Therefore, the defendant is not entitled to any relief as to this issue.

### **III. Photographs**

The defendant argues that the trial court erred in admitting photographs of the victim’s genital area. Specifically, he contends that the photographs were unnecessary and unfairly prejudicial and that the trial court applied an incorrect legal standard when it ruled that the photographs were admissible.

The admissibility of photographs lies within the sound discretion of the trial court, whose ruling will not be overturned on appeal except upon a clear showing of an abuse of discretion. *State v. Banks*, 564 S.W.2d 947, 949 (Tenn. 1978); *State v. Lacy*, 983 S.W.2d 686, 694 (Tenn. Crim. App. 1997). In order to be admissible, the photograph must be relevant to an issue at trial with its probative value not substantially outweighed by any prejudicial effect that it may have upon the trier of fact. *See* Tenn. R. Evid. 401, 403; *State v. Vann*, 976 S.W.2d 93, 102 (Tenn. 1998).

The trial court found that the testimony of a nurse was not as “demonstrative” as the

photographs regarding the bruises on the victim. The court stated that it did not understand where the bruising was that Ms. Daley referred to until viewing the photographs. The court found that the photographs would be “demonstrative” and that the photographs were not distasteful or explicit. The court found that the probative value of the photographs “clearly outweigh[ed]” the prejudicial impact because the victim suffered bruising and was a child who attempted to explain what happened to her.

We conclude that the trial court applied the correct legal standard and did not abuse its discretion in admitting the photographs. Ms. Daley used the photographs to illustrate and to explain the victim’s injuries. The photographs were relevant in demonstrating that the victim had been sexually penetrated, and the probative value of the photographs was not outweighed by a danger of unfair prejudice. The defendant is not entitled to relief as to this issue.

#### **IV. Limitation of Cross-Examination**

The defendant argues that the trial court erred when it prohibited the cross-examination of Lieutenant Ray and Ms. Daley regarding the victim’s prior allegations of sexual acts performed by other family members. He contends that Tennessee Rule of Evidence 412 is not controlling because a false allegation of abuse does not constitute “sexual behavior” as defined by Rule 412. *See State v. Wyrick*, 62 S.W.3d 751 (Tenn. Crim. App. 2001).

Prior to trial, the State filed a motion in limine to prohibit the defendant from referring to or questioning witnesses about any alleged sexual behavior of the victim with individuals other than the defendant. At a jury-out conference before the cross-examination of Ms. Daley, the parties made reference to the trial court’s ruling the previous day about the admissibility of testimony from Ms. Daley and Lieutenant Ray. The transcript of the original ruling is not included in the record. From the record before us, the trial court ruled that the defendant could ask Lieutenant Ray about allegations of prior abuse but could not pose the same question to Ms. Daley. It appears that the victim made a statement that her cousin asked her to perform a sex act, and Ms. Daley included this in her report. Trial counsel referenced Ms. Daley’s report, which apparently contained the language “[g]enital to mouth” and had the word “cousin” next to the phrase.

The trial court ruled that the allegation against the cousin was inadmissible because the defendant did not offer any corroborating proof that the allegation occurred. The court further noted that whether the victim made allegations to Ms. Daley was not relevant because Ms. Daley’s testimony was relevant only to her examination of the victim. The court stated, “And I did not rule against you in terms that you could not do it, but you don’t have anything

to go with it.” The trial court permitted trial counsel to address the “freaking” incident and to ask Lieutenant Ray about the victim’s prior allegations of abuse. Defense counsel asked Lieutenant Ray about prior allegations of abuse.

The defendant relies on *State v. Wyrick* to argue that a prior false allegation of sexual abuse is not governed by Tennessee Rule of Evidence 412. In *Wyrick*, this court held that a victim’s prior false accusation of rape did not constitute “sexual behavior” as defined under Rule 412. *Id.* at 771. However, the court emphasized that “[i]n the absence of proof that [the victim] falsified the other allegation,” the prior allegation is immaterial and inadmissible at trial. *Id.* at 780 (quoting *State v. Willis*, 735 S.W.2d 818, 822 (Tenn. Crim. App. 1987)). The trial court possesses the sound discretion regarding decisions to admit evidence, and the decision will be upheld on appeal unless there is a clear showing that the trial court abused its discretion. *State v. Young*, 196 S.W.3d 85, 105 (Tenn. 2006).

Here, there was no clear and convincing evidence that the prior false accusation occurred, as the defendant failed to make an offer of proof regarding the prior allegations of abuse about which he wished to question Lieutenant Ray and Ms. Daley. He referenced Ms. Daley’s report, but this report was not admitted into evidence, and a copy of the report was not included in the record on appeal. Further, the cousin was not called to testify to confirm the validity of the accusation. Without proof that the allegation was false, we conclude that the trial court did not abuse its discretion in limiting the scope of cross-examination. The defendant is entitled to no relief as to this claim.

## **V. Cumulative Errors**

The defendant argues that the cumulative effect of the trial court’s errors operated to deprive him of his right to a fair trial. Specifically, he claims that each individual error of the trial court was interrelated and contends that because Count 1 of the indictment rested solely on the credibility of the victim, the cumulative errors of the trial court improperly bolstered her credibility.

Both the United States Constitution and Tennessee Constitution protect a defendant’s right to a fair trial but not to a perfect trial. *See Delaware v. Van Arsdall*, 475 U.S. 673, 681 (1986); *State v. Gilliland*, 22 S.W.3d 266, 273 (Tenn. 2000). The cumulative error doctrine recognizes that multiple errors may be committed during trial proceedings that individually are harmless but “when aggregated, have a cumulative effect on the proceedings so great as to require reversal in order to preserve a defendant’s right to a fair trial.” *State v. Hester*, 324 S.W.3d 1, 76-77 (Tenn. 2010) (citations omitted). In order for the cumulative error doctrine to apply, more than one actual error must have been committed during the trial. *Id.* at 77.

The defendant has not shown that more than one actual error existed, as we concluded that each of the defendant's individually assigned issues were without merit. We note that the conviction for Count 1 of the indictment did not rest solely on the victim's credibility, as the defendant claims. Ms. Daley examined the victim, and evidence was presented that supported the victim's claim that the defendant vaginally penetrated her. Therefore, the defendant's claim of cumulative error is also without merit, and the defendant is not entitled to relief.

### **CONCLUSION**

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

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JUDGE JOHN EVERETT WILLIAMS