

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON
APRIL 1996 SESSION

FILED

May 24, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
) C.C.A. No. 02C01-9508-CC-00212
 Appellee,)
) Haywood County
 V.)
) Honorable Dick Jerman, Jr., Judge
)
 GREGORY TURNER,) (Rape)
)
 Appellant.)

FOR THE APPELLANT:

Tom W. Crider
District Public Defender

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FOR THE APPELLEE:

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OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
Judge

OPINION

A jury found the appellant, Gregory Turner, guilty of rape. He was sentenced to ten years confinement. On appeal, he argues: (1) that the evidence was insufficient to sustain his conviction, (2) that there was no medical proof of penetration, and (3) the jury's finding was contrary to scientific evidence. We affirm the trial court's judgment.

At trial, testimony showed that the appellant went to Michelle Sangster's house to smoke "crack." The victim was asleep in Sangster's living room when the appellant arrived. The appellant and Sangster went into the kitchen and began smoking "crack." Initially, they used a can as a smoking apparatus. The appellant complained about the can so Sangster left to get a pipe. After she left, the appellant went into the living room and raped the victim.

The victim testified. She stated that the appellant jumped on top of her and choked her. He instructed her to do as he requested or he would "eliminate her." She attempted to resist, but he hit her and told her not to make a sound. He ripped her jumpsuit apart and carried her into a bedroom. He forced her to have sexual intercourse with him. She stated that he slapped her whenever she made a sound. When Sangster returned to the house, the appellant stopped. He told the victim "[i]f you scream, I'll break your jaw." The victim did not know whether the appellant had reached climax.

Michelle Sangster testified that she was gone approximately three minutes. However, she stated that she left her house and went across the railroad tracks, to a house about ten houses down from hers, to borrow a "crack" pipe. When she returned, the appellant was zipping up his pants and the victim was crying. She asked the appellant what he was doing. The appellant replied, "I'm getting me some."

Officer Johnny Blackburn testified. He stated that when he arrived, the victim was crying and her clothes were torn. She stated that she had been raped. After the appellant was arrested, he admitted to having been at Sangster's but could not recall what transpired after smoking the "crack."

A TBI forensic scientist testified that he received a rape kit containing samples of the victim's blood, saliva, and a vaginal swab. The vaginal swab contained a mixture of semen and vaginal fluid which indicated that sexual intercourse had occurred. From the sample, the expert stated that intercourse likely occurred with a type O male. However, due to the small amount of semen and spermatozoa present, testing was inconclusive. The appellant is type O.

The appellant's three issues go to the sufficiency of the evidence. The appellant's argument is based on the premise that a rape did not occur because: (1) the victim and the appellant were only alone for three minutes, (2) the state failed to offer sufficient proof to establish that penetration had occurred, and (3) the DNA testing precluded the possibility that certain semen stains on Michelle Sangster's bedding came from the appellant.

Appellant's arguments are misguided. Although Michelle Sangster may have testified that she was gone for approximately three minutes, the jury could have inferred from Sangster's description of her venture, that she was gone for a longer period of time. The jury may have also inferred that Sangster's use of crack cocaine impaired her sense of time. As to the bedding stain, the mere fact that an apparently old dry semen stain on the bedding was inconsistent with the appellant's DNA structure did not preclude the jury from finding that the appellant raped the victim.

Great weight is accorded jury verdicts in criminal trials. Jury verdicts accredit state's witnesses and resolve all evidentiary conflicts in the state's favor.

State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983); State v. Banes, 874 S.W.2d 73, 78 (Tenn. Crim. App. 1993). On appeal, the state is entitled to both the strongest legitimate view of the evidence and all reasonable inferences which may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832 (Tenn. 1978). Moreover, guilty verdicts remove the presumption of innocence, enjoyed by defendants at trial, and replace it with a presumption of guilt. State v. Grace, 493 S.W.2d 474 (Tenn. 1973). Appellants, therefore, carry the burden of overcoming a presumption of guilt when appealing jury convictions. Id.

When appellants challenge the sufficiency of the evidence, this Court must determine whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of a crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307 (1979); State v. Duncan, 698 S.W.2d 63 (Tenn. 1985); Tenn. R. App. P. 13(e). The weight and credibility of a witness' testimony are matters entrusted exclusively to the jury as the triers of fact. State v. Sheffield, 676 S.W.2d 542 (Tenn. 1984); Byrge v. State, 575 S.W.2d 292 (Tenn. Crim. App. 1978).

We find that victim's testimony at trial set forth the essential elements of rape. Her testimony graphically indicated that penetration occurred. The victim's testimony was corroborated by medical evidence. Assessing witness credibility is exclusively "the purview of the jury." State v. Barnes, 874 S.W.2d 73, 78 (Tenn. Crim. App. 1993). That the jury accepted the veracity of the victim's testimony is not a basis for relief.

AFFIRMED.

PAUL G. SUMMERS, Judge

CONCUR:

JOSEPH M. TIPTON, Judge

JERRY L. SMITH, Judge