

FILED
Jan. 15, 1997
Cecil Crowson, Jr.
Appellate Court Clerk

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

NOVEMBER 1996 SESSION

STATE OF TENNESSEE,	*	C.C.A. # 02C01-9406-CR-00132
Appellee,	*	SHELBY COUNTY
VS.	*	Hon. H.T. Lockard, Judge, and Hon. Carolyn Wade Blackett, Judge
KEITH U. TATE and WILLIE F. TATE,	*	(Aggravated Sexual Battery and
Appellants.	*	Aggravated Assault)

For Appellants:

For defendant Keith U. Tate:
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(on appeal)

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(at trial)

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For defendant Willie F. Tate:	
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OPINION FILED: _____

AFFIRMED

GARY R. WADE, JUDGE

OPINION

The defendant, Keith U. Tate, was convicted of aggravated sexual battery. The trial court imposed a Range II, seventeen-year sentence. The defendant, Willie F. Tate, was convicted of aggravated assault. The trial court imposed a Range II, eight-year sentence.

In these appeals of right, each of the defendants complain that the evidence was insufficient to support their convictions. We find no error and affirm each of the judgments.

The defendants were tried jointly. Shortly after midnight on June 4, 1992, the victim, Deborah Paige, went with the defendants to the residence of Steven Watkins. She said the defendants had offered her crack cocaine. Upon their arrival, the victim smoked some of the cocaine she acquired in exchange for sex. She performed sex (the victim claimed no recollection of what, if any, consensual sex she had performed) with the defendant Willie Tate; when asked whether he had forced sex, the victim answered, "Not then." There was, however, an apparent disagreement about whether the victim had fulfilled her part of the bargain. She testified that after her encounter with Willie Tate, the two defendants kicked her, smacked her, and then raped her. The victim described her vagina as having been penetrated by one of the defendant's hands and fingers. She remembered that one of the defendants had a knife, which she identified at trial, that had caused a small cut to her hand. She claimed that she was required against her will to have sexual intercourse on the kitchen floor with the defendant, Keith Tate. She testified that she was allowed to leave the Watkins' residence at approximately 2:00 A.M. and then ran across the street to have neighbors contact the police.

The victim recalled at trial that "Keith and Willie" struck her, "hollering at me, fussing, telling me to take my clothes off, kicking me." She identified the defendant Willie Tate as having kicked her. On cross-examination by defense counsel for Keith Tate, the victim reiterated that she had agreed to have sex in exchange for cocaine; she acknowledged having testified at the preliminary hearing that she had consented to have oral sex with the Tates. The victim admitted being upset by the fact that a video tape had been taken of the incident. The victim identified a video tape of the incident taken by Watkins, who was present during the entire course of events. On cross-examination, the victim acknowledged that initially she told officers that she did not want to prosecute the defendants and had signed a document to that effect.

On re-direct examination by the state, the victim testified that one of the men "spread my legs open while the other one got on top of me." She testified that when she told them to stop, "they started kicking me and dragged me through the house." She said, "Keith got on me" and "they throwed me down and that's when the raping occurred."

Steven Watkins, a witness for the state, testified that shortly after the victim and the defendants arrived at his residence, the victim and Willie Tate went into the guest bedroom; during that time, he talked with Keith Tate. Watkins stated that eventually the victim came out of the bedroom without any clothes on; the defendant Willie Tate complained that "he wasn't satisfied" and that "she didn't go through with the deal":

I guess he was real upset that he wasn't satisfied and Ms. Paige then ... made the statement that they told her they would give her two rocks, one before she did both of them and one after. And she at that time wanted--she had done whatever she was going to do to Mr. [Willie] Tate and she wanted her other rock, and they told her

that wasn't the deal that she had made. She would supposedly do both of them and then after she completed both of them, she would receive her second rock.... At this point ... Keith Tate was ready for his end of the bargain. She was not willing to participate any further at that point, and ... that's when everything went wrong ... I remember [Keith] walking over, smacking her up beside the head. She ... start[ed] to run away ... and they cornered her off in the kitchen.

Watkins testified that the Tates beat her and kicked her until the victim fell to the floor. He said that Keith Tate had sexual intercourse with the victim while "she was screaming and hollering 'no'"; meanwhile, Willie Tate was "holding her down." Watkins specifically recalled that the defendant Keith Tate touched the vaginal area of the victim. Watkins denied ever seeing a knife. Watkins admitted, however, that the knife the victim identified came from the kitchen of his residence.

Watkins, who had originally been charged with aggravated rape, entered into a plea agreement with the state on the promise of a reduced charge. The agreement was conditioned upon his testimony at the trial of the defendants. No plea had been made, however, at the time of this trial. Watkins testified that he videotaped the incident. The tape was placed into evidence and played for the jury.

Officer Garland Shull of the Memphis Police Department saw the victim at about 2:10 A.M.; she was missing some clothing, was crying, and obviously upset. Officer Shull stated that the victim could "barely talk" and was "gasping for air," claiming that she had been raped; he noticed some small punctures and a cut on the victim's hand near the thumb.

Officer Dana Stine took a photograph of a knife found in an open drawer; it had a ten-inch blade. She stated that the drawer was open when she arrived at the scene. She also photographed a cut on the victim's right hand.

Among those circumstances which might cause a sexual battery to become aggravated are "[f]orce or coercion ... and the defendant is armed with a weapon"; "[t]he defendant causes bodily injury to the victim;" or "the defendant is aided or abetted by one or more other persons." Tenn. Code Ann. § 39-13-504; Tenn. Code Ann. § 39-13-502(a)(1), (2), and (3). The defendant Keith Tate, convicted of aggravated sexual battery, argues that the evidence is insufficient because it was based upon the testimony of a "woman of dubious moral character who admitted that she had consented to have sex ... in exchange for cocaine" and the testimony of a codefendant who agreed to testify in exchange for leniency by the state.

One may be guilty of assault when he "[i]ntentionally, knowingly or recklessly causes bodily injury to another," "[i]ntentionally or knowingly causes another to reasonably fear imminent bodily injury, or "[i]ntentionally or knowingly causes physical contact with another and a reasonable person would regard the contact as extremely offensive or provocative." Tenn. Code Ann. § 39-13-101. That assault may be aggravated when the assailant either "[c]auses serious bodily injury to another" or "[u]ses or displays a deadly weapon...." Tenn. Code Ann. § 39-13-102(a)(1). The defendant Willie Tate argues that the state failed to establish the aggravated assault "beyond a reasonable doubt." He contends that in assessing the sufficiency of the evidence, this court should consider that a jury rejected the victim's allegation that he had been guilty of aggravated rape.

On appeal, the state is entitled to the strongest legitimate view of the evidence and all reasonable inferences which might be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). The credibility of the witnesses, the weight given their testimony, and the reconciliation of conflicts in the evidence are

matters entrusted exclusively to the jury as the trier of fact. Byrge v. State, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978). A conviction may be set aside only when the reviewing court finds that the "evidence is insufficient to support the finding by the trier of fact of guilt beyond a reasonable doubt." Tenn. R. App. P. 13(e).

In our view, a rational trier of fact could have found the defendant Keith U. Tate guilty of aggravated sexual battery and the defendant Willie F. Tate guilty of aggravated assault. While it may be true that neither the victim nor Watkins made ideal witnesses for the state, the content of the tape is not only corroborative of their testimony but particularly compelling as to the degree of resistance by the victim. The jury had a sound basis to conclude that the victim was fearful and had been subjected to force and coercion. There was evidence that the defendants were armed with a weapon. It was the jury's prerogative to accredit that assertion. The assault was clearly a joint undertaking by the defendants. There is no requirement that jury verdicts be consistent. State v. Hamrick, 688 S.W.2d 477 (Tenn. Crim. App. 1985). Thus, an argument that the jury failed to convict the defendants on the more serious charges set out in the indictment has no effect on the propriety of these convictions. That the jury gave each of the defendants the benefit of the doubt in returning verdicts on lesser included charges is no basis for complaint so long as each of the elements of the offense have been established by the proof.

The judgments of conviction are affirmed.

Gary R. Wade, Judge

CONCUR:

David G. Hayes, Judge

William M. Barker, Judge