

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs April 25, 2023

FILED

06/12/2023

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. FRANK DELMAR RAINES, JR.

**Appeal from the Circuit Court for Blount County
No. C-26249 David Reed Duggan, Judge**

No. E2022-01045-CCA-R3-CD

Frank Delmar Raines, Jr., Defendant, was indicted for rape, aggravated kidnapping, and violating the sex offender registry. The third count of the indictment, charging Defendant for violating the sex offender registry was severed prior to trial. After a jury trial, Defendant was convicted of attempted rape and attempted aggravated kidnapping. The trial court sentenced Defendant to 15 years on each offense and ordered the sentences to be served consecutively. Defendant's motion for new trial was denied and this appeal followed. On appeal, Defendant challenges the sufficiency of the evidence and his sentence. Because we determine that the evidence was sufficient and the trial court did not abuse its discretion in sentencing Defendant to an effective sentence of 30 years, we affirm the judgments of the trial court. However, because there is no judgment form in the record for the charge for violation of the sex offender registry, we remand to the trial court for entry of the same.

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

TIMOTHY L. EASTER, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., P.J., and TOM GREENHOLTZ, J., joined.

Dillon E. Zinser, Knoxville, Tennessee, for the appellant, Frank Delmar Raines, Jr.

Jonathan Skrmetti, Attorney General and Reporter; Brooke A. Huppenthal, Assistant Attorney General; Ryan K. Desmond, District Attorney General; and Tyler Parks, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Defendant was indicted by the Blount County Grand Jury in December of 2018 for one count of rape, one count of aggravated kidnapping, and one count of violating the sex offender registry for “plac[ing] himself in a private area alone with a minor.” Though it is not entirely clear from the record, Defendant’s motion for new trial indicates that the third count of the indictment charging him with violating the sex offender registry was severed prior to trial. There is no judgment form for this count of the indictment in the technical record.

At trial, the victim¹ testified that she was 17 years of age in the spring of 2017. The victim’s mother asked Defendant, a family friend, to teach the victim how to drive. When the driving lessons began in late spring, the victim’s mother requested that someone accompany Defendant and the victim during the lessons because she did not want Defendant alone with the victim. Defendant’s son Cody Raines joined Defendant and the victim. Mr. Raines was 17 or 18 years of age at the time.

On September 23, 2017, Defendant and Mr. Raines picked the victim up from her grandmother’s house for a driving lesson. It started to rain heavily during the drive. Defendant told the victim that her mother did not want her to drive in the rain, so she should drive to his parent’s trailer at Thornhill Trailer Park in Blount County to wait out the rain. The three arrived at the trailer around 3:30 p.m. When they first arrived, Mr. Raines and the victim sat on a couch in the living room inside the trailer while Defendant smoked a cigarette outside.

When Defendant came inside after smoking, he sat on the couch with the victim and Mr. Raines. A few minutes later, Defendant told the victim that he wanted to show her the rest of the trailer. Defendant gave the victim a tour of the trailer, and they returned to the couch. A few minutes later, Defendant asked the victim to accompany him to the bedroom to talk.

The bedroom was located right next to the living room. There was no door on the bedroom. Mr. Raines remained on the couch. Defendant and the victim went into the bedroom and sat on the bed.

There was a window located above the head of the bed in the bedroom. Defendant asked the victim to move in that direction because there was a bird outside he thought she would like to see. Defendant picked the victim up, placing her in a standing position on the bed so that she could look out the window.

¹ It is the policy of this Court to protect the identity of victims of sexual offenses.

According to the victim, Defendant told the victim that he “wanted to do something” but that he was uncertain if she would “be okay with it or not.” Defendant asked the victim to lie down and relax. The victim told Defendant that she “was not okay with it” and “didn’t want whatever was fixing to happen.” Defendant reassured her it would be ok and pulled her leggings and underwear down and took them off. The victim told Defendant “no,” that she “didn’t want it to happen,” and instructed that Defendant let her go. The victim twisted her arms and body trying to get away, but Defendant held the victim’s arms down so that she could not move. The victim yelled for help while Defendant unbuttoned his pants and took his shirt off. Defendant told the victim to “lay there and relax” and that she “needed to know what it felt like to have a real man inside” of her. The victim continued to tell Defendant she “didn’t want it to happen” and to yell for Mr. Raines but Defendant “forcefully” inserted his penis into her vagina. The victim managed to headbutt Defendant, but he held her wrists tighter. Defendant eventually placed his hand over the victim’s mouth because she kept yelling for help. The victim eventually stopped yelling. She “figured if [she] just kept [her] mouth shut it would be over with soon.” Defendant continued laying on top of her with his penis in her vagina for about 15-20 minutes. He did not use a condom.

Defendant told the victim that if she got pregnant, he would make her mother take her to get an abortion because she would not “be a good mother.” Defendant also threatened to hurt the victim’s mom, nephews, and nieces if she told anyone what happened between the two of them. “Once [Defendant] was done[,]” Defendant let the victim get up. The victim put her clothes back on and walked into the living room area of the trailer where she laid down on the couch. The victim told Mr. Raines that she wanted to go home. Eventually, Defendant let the victim drive home. When they left the trailer, Mr. Raines sat in the passenger seat and Defendant sat in the back seat. They drove to a Marathon gas station to drop off Mr. Raines before returning to the victim’s house.

When the victim returned home, her mother described her as “emotionally distraught.” The victim was crying and had a “pump knot” on her forehead. The victim refused to tell anyone what happened. In the days after the incident, the victim’s mother stated that the victim withdrew, often staying in her room, refusing to eat or socialize.

The victim contacted Defendant one time after the incident to ask for assistance with her boyfriend’s truck. The victim tried to get in touch with multiple family members before she called Defendant but stated that Defendant was the “only person [she] knew that could come and help.”

At some point after the incident but prior to Defendant’s arrest, Defendant told the victim’s mother that he had feelings for the victim. The victim’s mother informed

Defendant he was no longer welcome in their home and that he could no longer contact the victim.

The victim eventually told her mother about what happened, and her mother reported it to the police in October. The victim spoke with police and was interviewed by New Hope Advocacy Center. Defendant was arrested after the victim's interview.

At trial, the victim was questioned about her inconsistencies in reporting the incident. She admitted that she first reported that the incident took place in September and then reported that the incident took place in October of 2017. The victim stated that she "was just confused and [she] was scared." The victim also admitted that she gave inconsistent versions of where she went with Defendant and Mr. Raines prior to the incident. The victim also testified that she told the person at the Advocacy Center that Defendant had tried to make romantic overtures to her prior to the incident but that she denied this allegation at the preliminary hearing. The victim was also questioned about a memo she wrote on her phone and showed to Mr. Raines at the trailer. The victim admitted that she told the Advocacy Center employee that she showed Mr. Raines writing on her phone while they were sitting on the couch at the trailer. In the writing, the victim expressed fear and asked Mr. Raines to "walk back" to the bedroom if he heard her "scream" or heard "something that sounds like he's intentionally hurting [her]." At the preliminary hearing, however, the victim agreed that she denied expressing fear to Mr. Raines. Despite these inconsistencies, the victim testified that she told the truth each time she was questioned about the incident.

Mr. Raines was brought to the police station for an interview. At the time of trial, he did not remember speaking to an investigator but agreed that he watched the video of his interview and that it took place. Mr. Raines agreed that in the video interview he told an investigator that Defendant "wanted to talk to [the victim] alone" at the trailer so he went outside. Mr. Raines reported that he "guess[ed] he did hear her scream for help and [he] went back to check on it . . . but [Defendant] didn't have his hand over her mouth but he did s[ay] go away, I believe." Though he could not remember the interview at the time of trial, Mr. Raines agreed that what he told the officer was "[t]he truth."

On cross-examination, Mr. Raines reported that he was receiving treatment for schizoaffective disorder and had been hospitalized in a psychiatric hospital several times between 2012 and 2017. Mr. Raines agreed that his condition affected his memory. Mr. Raines recalled that he denied knowing what happened at the trailer until officers told him he could be charged for his role in what took place that day. Mr. Raines repeatedly denied having a memory of the interview or what he said during the interview. After a jury-out hearing, the video of Mr. Raines's interview was introduced to the jury pursuant to Rule 613(b) of the Tennessee Rules of Evidence as a prior inconsistent statement.

At the conclusion of the State's proof, Defendant sought a motion for judgment of acquittal. The trial court denied the motion. The defense did not offer any proof.

The jury found Defendant guilty of the lesser included offenses of attempted rape and attempted aggravated kidnapping. After a thorough sentencing hearing, the trial court sentenced Defendant to 15 years on each conviction to be served at 45% as a Range III persistent offender. The trial court ordered the sentences to be served consecutively and ordered Defendant to be placed on the sex offender registry.

Defendant filed a timely motion for new trial. In the motion, Defendant challenged the sufficiency of the evidence, the trial court's decision to sentence him "to the max of his sentencing range," and the trial court's decision to order the sentences to run consecutively. The trial court denied the motion for new trial and Defendant filed a timely notice of appeal. On appeal, he again challenges the sufficiency of the evidence and his sentences.

Analysis

Sufficiency of the Evidence

On appeal, Defendant argues that the evidence was insufficient to support the convictions for attempted rape and attempted aggravated kidnapping. Defendant contends his convictions are not supported by DNA evidence or other physical evidence. He also argues that the victim's inconsistent statements about the incident and the fact that Mr. Raines did not testify that anything happened in the trailer that day until he was threatened with prosecution do not support the convictions. The State disagrees.

When a defendant challenges the sufficiency of the evidence, this Court is obliged to review that claim according to certain well-settled principles. The relevant question the reviewing court must answer is whether any rational trier of fact could have found the accused guilty of every element of the offense beyond a reasonable doubt. *See* Tenn. R. App. P. 13(e); *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). The jury's verdict replaces the presumption of innocence with one of guilt; therefore, the burden is shifted onto the defendant to show that the evidence introduced at trial was insufficient to support such a verdict. *State v. Reid*, 91 S.W.3d 247, 277 (Tenn. 2002). The prosecution is entitled to the "strongest legitimate view of the evidence and to all reasonable and legitimate inferences that may be drawn therefrom." *State v. Goodwin*, 143 S.W.3d 771, 775 (Tenn. 2004) (quoting *State v. Smith*, 24 S.W.3d 274, 279 (Tenn. 2000)). It is not the role of this Court to reweigh or reevaluate the evidence, nor to substitute our own inferences for those drawn from the evidence by the trier of fact. *Reid*, 91 S.W.3d at 277. Questions concerning the "credibility of the witnesses, the weight to be given their testimony, and the reconciliation

of conflicts in the proof are matters entrusted to the jury as the trier of fact.” *State v. Wagner*, 382 S.W.3d 289, 297 (Tenn. 2012) (quoting *State v. Campbell*, 245 S.W.3d 331, 335 (Tenn. 2008)). “A guilty verdict by the jury, approved by the trial court, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the prosecution’s theory.” *Reid*, 91 S.W.3d at 277 (quoting *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997)). The standard of review is the same whether the conviction is based upon direct evidence, circumstantial evidence, or a combination of the two. *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011); *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009).

Rape is the “unlawful sexual penetration of a victim by the defendant or of the defendant by a victim.” T.C.A. § 39-13-503(a). The offense of rape can be committed where the defendant accomplishes the sexual penetration “without the consent of the victim and the defendant knows or has reason to know at the time of the penetration that the victim did not consent.” *Id.* at (a)(2). “Sexual penetration” is defined as “sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of the victim’s, the defendant’s, or any other person’s body, but emission of semen is not required.” T.C.A. § 39-13-501(7). A person commits criminal attempt when he acts with the intent to complete a course of action and the conduct constitutes a substantial step toward the commission of the offense. T.C.A. § 39-12-101(a)(3).

Aggravated kidnapping is false imprisonment committed to facilitate the commission of a felony or flight thereafter, among other factors. T.C.A. § 39-13-304(a)(1). False imprisonment is the substantial interference with another’s liberty through knowing removal or confinement. *Id.* § 39-13-302(a). Whether the evidence presented establishes each and every element of kidnapping, including whether the interference was substantial or merely trivial, is a question for the jury. *State v. White*, 362 S.W.3d 559, 577 (Tenn. 2012). Relevant factors include whether the removal or confinement (1) occurred during the separate offense, (2) was inherent in the separate offense, (3) prevented the victim from summoning assistance, (4) reduced the defendant’s risk of detection, and (5) created danger or increased the victim’s risk of harm independent of the separate offense. *Id.* at 580-81. Again, a defendant commits criminal attempt when he, acting with the kind of culpability otherwise required for the offense:

(1) Intentionally engages in action or causes a result that would constitute an offense, if the circumstances surrounding the conduct were as the person believes them to be;

(2) Acts with intent to cause a result that is an element of the offense, and believes the conduct will cause the result without further conduct on the person's part; or

(3) Acts with intent to complete a course of action or cause a result that would constitute the offense, under the circumstances surrounding the conduct as the person believes them to be, and the conduct constitutes a substantial step toward the commission of the offense.

(b) Conduct does not constitute a substantial step under subdivision (a)(3), unless the person's entire course of action is corroborative of the intent to commit the offense.

(c) It is no defense to prosecution for criminal attempt that the offense attempted was actually committed.

T.C.A. § 39-12-101.

Viewing the evidence in the light most favorable to the State, the jury had sufficient evidence to support the convictions. The victim testified that Defendant "forcefully" inserted his penis into her vagina. Defendant held her down and prevented her from leaving, despite her struggling to get free and yelling for help. The victim got a "pump knot" on her head when she tried to get away from Defendant by headbutting him. Mr. Raines admitted in an interview that he heard the victim's cries for help and that Defendant told him to go away. According to the victim's testimony, Defendant restrained her above and beyond what was necessary to accomplish the attempted rape. He held the victim by her hands and placed a hand over her mouth. The victim's mother testified that the victim came home with a knot on her head and that she was distraught after the incident, withdrawing from family members and refusing to talk to people. Despite Defendant's argument that there was no physical evidence and no eyewitnesses, and that the testimony of the victim was inconsistent, the jury heard the evidence and resolved the inconsistencies, as was their prerogative. *Wagner*, 382 S.W.3d at 297. Moreover, a victim's testimony need not be corroborated to sustain a conviction for a sex offense. *State v. Collier*, 411 S.W.3d 886, 896 n.8 (Tenn. 2013). Defendant is not entitled to relief on this issue.

Sentencing

Defendant complains that the trial court abused its discretion by sentencing him to the maximum sentences in his range and running the sentences consecutively. Defendant insists that rehabilitation is possible and that consecutive sentencing was not mandatory in his case. The State contends the trial court did not abuse its discretion.

When a defendant challenges the length or manner of service of a within-range sentence, this Court reviews the trial court's sentencing decision under an abuse of discretion standard with a presumption of reasonableness. *State v. Caudle*, 388 S.W.3d 273, 278-79 (Tenn. 2012); *State v. Bise*, 380 S.W.3d 682, 708 (Tenn. 2012). This presumption applies to "within-range sentencing decisions that reflect a proper application of the purposes and principles of the Sentencing Act." *Bise*, 380 S.W.3d at 707. A trial court abuses its discretion in sentencing when it "applie[s] an incorrect legal standard, or reache[s] a decision which is against logic or reasoning that cause[s] an injustice to the party complaining." *State v. Shuck*, 953 S.W.2d 662, 669 (Tenn. 1997) (citing *Ballard v. Herzke*, 924 S.W.2d 652, 661 (Tenn. 1996)).

In reaching its decision, the trial court must consider the following factors: (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 enhancement and mitigating factors; (6) any statistical information provided by the administrative office of the courts as to sentencing practices for similar offenses in Tennessee; (7) any statement by the appellant in his own behalf; and (8) the result of the validated risk and needs assessment conducted by the department and contained in the presentence report. *See* T.C.A. § 40-35-102, -103, -210(b); *see also Bise*, 380 S.W.3d at 697-98. Additionally, the sentence imposed "should be no greater than that deserved for the offense committed" and also "should be the least severe measure necessary to achieve the purposes for which the sentence is imposed." T.C.A. § 40-35-103(2), (4).

If a trial court finds by a preponderance of the evidence that a defendant fits into at least one of the seven categories in Tennessee Code Annotated section 40-35-115(b), it may order multiple offenses to be served consecutively. T.C.A. § 40-35-115(b). This Court must give "deference to the trial court's exercise of its discretionary authority to impose consecutive sentences if it has provided reasons on the record establishing at least one of the seven grounds listed in Tennessee Code Annotated section 40-35-115(b)." *State v. Pollard*, 432 S.W.3d 851, 861 (Tenn. 2013). An order of consecutive sentencing must be "justly deserved in relation to the seriousness of the offense." T.C.A. § 40-35-102(1); *see State v. Imfeld*, 70 S.W.3d 698, 708 (Tenn. 2002). In addition, the length of a sentence must be "no greater than that deserved for the offense committed." T.C.A. § 40-35-103(2); *see Imfeld*, 70 S.W.3d at 708. If a trial court finds by a preponderance of the evidence that even one factor from Tennessee Code Annotated section 40-35-115(b) applies, the trial court may order sentences to run consecutively. T.C.A. § 40-35-115(b).

The record and transcript from the sentencing hearing reflect that the trial court properly considered all of the factors set out in Tennessee Code Annotated section 40-35-

210 prior to fashioning Defendant's sentences. Here, the trial court noted that the parties agreed to Defendant's status as a Range III persistent offender. It observed that Defendant was subject to a sentence between ten to fifteen years at 45% for each offense. The trial court determined that several enhancement factors applied: (1) that Defendant had a previous history of criminal convictions or criminal behavior in addition to those necessary to establish the appropriate range; (2) the offense involved a victim and was committed to gratify the Defendant's desire for pleasure or excitement; (3) Defendant had previously failed to comply with the conditions of a sentence involving release into the community; and (4) Defendant abused a position of private trust. T.C.A. § 40-35-114(1), (7), (8), (14). The trial court found no mitigating factors applicable.

The trial court determined that an alternative sentence was not appropriate where Defendant had an "extensive, very extensive criminal history" of "at least nine felonies" and "perhaps . . . the most extensive misdemeanor history [the trial court had] ever seen" of at least 14 misdemeanors. Defendant was assessed at a "high risk" to reoffend and for aggression, and the psychosexual evaluation indicated that Defendant's "primary or only interest in people is sexual." The physician performing the evaluation reported Defendant was "not honest in his assessment or treatment concerning the extent and nature of his sexual offending" but that a jail call from Defendant to his mother expressed Defendant's lack of remorse. The trial court noted it was "suggested" that [Defendant] admitted to the physician that he had sex with the victim and had "taken responsibility" in the call to his mother. The trial court was "deeply" offended by this assertion as the trial court's review of the phone call where Defendant spoke about "F'ing a GD slut" did "not suggest . . . one bit of responsibility or remorse." The trial court found that Defendant lacked potential for rehabilitation, was at a high risk to reoffend, that the interests of society in being protected from possible future criminal conduct of Defendant were great, and that measures less restrictive than confinement had been applied to Defendant and failed. The trial court further found that probation would depreciate the seriousness of the offense.

With respect to consecutive sentencing, the trial court ordered the sentences be served consecutively based on the requirements of Tennessee Code Annotated section 40-35-114(b)(2), that Defendant was an offender whose record of criminal activity is "very extensive." As a result, the trial court sentenced Defendant to 15 years on each offense to be served consecutively and ordered Defendant to community supervision for life. In our view, the trial court methodically reviewed the sentencing principles and did not abuse its discretion in sentencing Defendant. Accordingly, he is not entitled to relief on this issue.

Conclusion

For the foregoing reasons, the judgments of the trial court are affirmed. However, the matter is remanded to the trial court for entry of a judgment form reflecting the

disposition for the count of the indictment charging Defendant with a violation of the sex offender registry.

TIMOTHY L. EASTER, JUDGE