

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs March 3, 2026

FILED 05/06/2026 Clerk of the Appellate Courts
--

STATE OF TENNESSEE v. GERRY STITTS

Appeal from the Criminal Court for Shelby County
No. 22-00218 James Jones, Jr., Judge

No. W2025-00731-CCA-R3-CD

Defendant, Gerry Stitts, appeals from his jury convictions for rape of a child and aggravated sexual battery, for which he is serving an effective sentence of thirty-five years. On appeal, he argues that the evidence is insufficient to support his convictions and that the trial court erred by denying his motion for new trial based upon newly discovered evidence. After a thorough review of the record and applicable law, we affirm.

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

ROBERT L. HOLLOWAY, JR., J., delivered the opinion of the court, in which ROBERT H. MONTGOMERY, JR., and KYLE A. HIXSON, JJ., joined.

Jerri Green, District Public Defender; Phyllis Aluko, Of Counsel; and Barry W. Kuhn (on appeal) and Charles Brent Walker (at trial), Assistant District Public Defenders, for the appellant, Gerry Stitts.

Jonathan Skrmetti, Attorney General and Reporter; Park A. Huff, Assistant Attorney General; Steven J. Mulroy, District Attorney General; and Venecia M. Patterson and Nicole C. Germain, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Factual and Procedural Background

This case arises from Defendant’s sexually abusing his six-year-old stepdaughter, (“the victim”¹) on two occasions between 2018 and 2019. The January 2022 term of the Shelby County Grand Jury issued an indictment charging Defendant with rape of a child,

¹ It is the policy of this court to protect the identity of minors and victims of sexual offenses by omitting their names from the opinion.

a Class A felony, and aggravated sexual battery, a Class B felony. *See* Tenn. Code Ann. §§ 39-13-504, -522.

At trial, the victim testified that she was thirteen years old. She stated that she lived with her mother, L.C.,² and her younger sister. The victim identified Defendant as L.C.'s spouse. The victim stated that she met Defendant when she was five years old and that her family, Defendant, and her uncle, T.C., lived together in a house on Willett Street ("the Willett Street house"). When asked what it was like living with Defendant, the victim responded, "He was awful." The victim explained that Defendant was nice around L.C. but that he was "mean" to her when L.C. was not present.

The victim stated that, when she was six years old, Defendant touched her "vagina" and "butt." The victim testified that, the first time it happened, she was in her bedroom when Defendant called her into L.C.'s bedroom. The victim did not remember the time of day this occurred, but she recalled that L.C. had left for work and that it was time for the children to go to bed. The victim did not remember what she was wearing. When the victim came into L.C.'s bedroom, Defendant shut the door, pulled down her pants, and began touching her while she was standing up. She recalled that she was standing near the bed. The victim stated that Defendant pushed her, put his fingers inside her vagina and anus, and showed her his penis. The victim said that it felt "weird."

The victim testified that, the following day, Defendant called her into her L.C.'s bedroom again. The victim stated that she did not want to go, but she had to obey Defendant. The victim said that the same sequence of events occurred and that Defendant digitally penetrated her vagina and anus. The victim stated that she tried to fight Defendant by pushing him onto the ground and running away, but he got up, grabbed her, and said, "Get back here you little b--ch a-- hoe." The victim noted that, when Defendant touched her, "it was like he got something out of it." She elaborated that it seemed like "he felt some type of relief, like, he wasn't getting enough attention or something . . . Like, he likes to touch on little kids or something." The victim demonstrated that Defendant used two fingers to penetrate her, and she stated that she could feel that his fingertips were rough and that it hurt. The victim stated that, after the digital penetration, she was "leaking blood" and that it dripped down her legs onto the floor. She was unsure whether the blood came from her vagina or anus.

The victim testified that, after the second incident, Defendant wrapped her in a blanket and put her on the sofa. The victim stated that L.C. came home and found her in the blanket with her underwear and pants pulled down. The victim said that, when L.C.

² The victim's mother and uncle testified at trial. Because the victim, her mother, and her uncle share a surname, we will refer to the victim's mother and uncle using their initials.

questioned her, the victim said that she “did it [her]self” but that L.C. knew she was lying. The victim said that L.C. yelled at her for lying and that she got a “whooping.” The victim testified that she did not tell L.C. what happened because she was afraid and because Defendant said that “he would hurt people.” The victim stated that Defendant also gave her Barbie dolls so that she would not tell anyone about the abuse.

The victim testified that, during one of the incidents, T.C. burst into the bedroom, told the victim to run, and fought Defendant, giving him a black eye. The victim stated that T.C. did not remember the fight because he “had a problem.” She stated that T.C. also fought Defendant on a second occasion. The victim recalled discussing the abuse with T.C. when she was eight years old; T.C. told her that she needed to tell L.C. or he would. The victim reiterated that she did not tell L.C. because Defendant threatened her.

The victim testified that, on New Year’s Day 2020, she disclosed the abuse to L.C. Defendant was not present; the victim did not remember the last time she had seen him, but it had been a “little while.” The victim stated that she went with her mother to the hospital, where they examined her but did not find anything. She agreed that the abuse occurred in 2018. The victim said that she also told a cousin about the abuse.

The victim testified that she gave a forensic interview when she was eight years old. The victim testified that, at both the time of the interview and the time of trial, she knew the difference between the truth and a lie, and she averred that her interview and trial testimony were truthful. The victim noted that, during the forensic interview, she had referred to three incidents of abuse; she clarified that the abuse had occurred twice but that she had previously counted waking up to L.C.’s questioning her about her pants as a third incident.

The recorded January 22, 2020 forensic interview was received as an exhibit. In the recording, when asked why she came in that day, the victim responded, “This happened in 2018.” The victim paused for a long interval. The forensic interviewer asked if she had told anyone what had happened in 2018, and the victim stated that she had told L.C. The victim stated that Defendant was L.C.’s ex-husband and that he had “manipulated” the victim. When questioned, the victim did not know what the word manipulate meant, and she said that L.C. told her to use the word because she did not want the victim saying “the real word.” When asked to say the real word, the victim stated that Defendant had “tried to rape” her.

In the recording, the victim recounted that, when she was six-and-a-half years old, an incident occurred at the Willett Street house while L.C. was at work and her younger sister was asleep in bed. The victim stated that she was in her bedroom, which she shared with her sister, when Defendant called her into L.C.’s bedroom. The victim noted that she

thought Defendant wanted a cup of water but that Defendant pulled down her pants and “kept sticking his hand in” her “private part” and “behind.” The victim denied that Defendant said anything to her. She said that she tried to run away but that Defendant said, “Get your a-word back here.”

In the recording, the victim stated that, “the third day he was trying to do it,” T.C. came into the room, saw Defendant sticking his hand in her, and choked Defendant; she noted that Defendant had a “purple eye.” The victim said that T.C. told her to run, and she went to her room and locked the door. The victim stated that she did not know why T.C. did not tell anyone what he saw. The victim said that, on the same day, L.C. came home from work after a night shift and saw that the victim’s pants were down while the victim was sleeping; L.C. asked the victim why her pants were down, but she did not tell L.C. what happened because she was scared. The victim testified that Defendant threatened to kill everyone in the house if the victim told anyone.

In the recording, the victim stated that Defendant put his hand inside of her private part and behind. She stated that her private part hurt and bled and that Defendant hurried to clean it up before L.C. got home. The victim said that she told Defendant to get away from her and called him a “rapist” and that Defendant called her a “B-A-H.” The victim stated that she also told Defendant that she would tell L.C.

In the recording, the victim denied that Defendant touched her private part or her behind with anything other than his hand. She stated that Defendant pulled down his pants and pulled out his penis twice, although it never touched her. The victim stated that, on one occasion, she pushed him onto the ground and kicked him, and Defendant pulled her back.

In the recording, the victim denied that anyone else had done something similar to her. The victim said that she last saw Defendant in 2018. The victim stated that, the day prior to New Year’s Eve in 2019, T.C. came over to the house and told her to tell L.C. what had happened. The victim stated that she told L.C. about the abuse on New Year’s Eve.

On cross-examination, the victim testified that Defendant moved in with her family when she was about to turn six years old. The victim stated that L.C.’s father visited but would not stay overnight. The victim stated that Defendant “would try to do things to get [her] a whooping or . . . in trouble” and that he told her things like, “God don’t like ugly, you gon[na] get what you deserve every time.” She stated that the abuse occurred twice and that it happened before L.C. and Defendant married. She said that she and her sister shared a bedroom. She testified that Defendant was not mean to her sister.

The victim testified that she did not tell anyone at school about the abuse because she was new there. The victim clarified that T.C. “figured . . . out on his own” what was happening because he saw it. She stated that the incident in which T.C. fought Defendant was not the incident after which Defendant wrapped her in a blanket. The victim stated that T.C. did not say anything else to her about the abuse. She noted that he “was quiet.”

The victim testified that Defendant wiped up the blood with a large towel and that she did not know what he did with it. The victim stated that it was a “big puddle” that was enough to make someone “panic to see [it.]”

The victim agreed that, in her forensic interview, she said that her mother told her the word “manipulate” and that she used it despite not knowing what it meant. She further agreed that she did not mention being wrapped in a blanket during the interview; she noted, though, that she discussed her mother’s finding her on the sofa with her pants and underwear pulled down.

L.C. testified that in 2018, she lived in the Willett Street house with the victim, the victim’s younger sister, Defendant, and L.C.’s brother, T.C. L.C. noted that T.C. had schizophrenia and Tourette’s Syndrome and that she did not believe he remembered anything that happened in 2018 and 2019.

L.C. testified that, at the time of the incidents in this case, she and Defendant cohabitated but were not yet married. L.C. stated that she began working a twelve-hour night shift when she and Defendant had been together for two months. L.C. worked the night shift for four or five months, and Defendant watched the children at home. She noted that Defendant “started acting different and moving funny” and that, at the time, she suspected that Defendant was cheating on her.

L.C. testified that the Willett Street house consisted of a “front room” with one bedroom attached to the left side and another attached to the right side. L.C. stated that she and Defendant shared the bedroom to the left and that her brother used the bedroom to the right. L.C. stated that the children slept on a sofa bed in the front room.

L.C. testified that, on one occasion, she left work between midnight and 1:00 a.m., believing that she would catch Defendant at home with another woman. She stated that, when she arrived home, Defendant was “acting like he was asleep” in their bedroom. L.C. said that the victim was awake on the sofa bed and pretending to be asleep. L.C. noticed that the victim was “wrapped up” tightly in blankets, which was unusual. When L.C. pulled off the blankets, she saw that the victim’s pants and underwear were pulled down by her feet. L.C. asked the victim why her pants were down; after the victim answered, L.C. asked Defendant why he was pretending to be asleep and why the victim’s pants were down. She

said that Defendant responded that he did not know what she was talking about, that she was crazy, and that she was “trying to accuse him of something,” although L.C. had not accused him of anything.

L.C. testified that she was going to take the victim to a doctor, but Defendant did not want to go with them. L.C. stated that she did not take the victim to the doctor and that she gave Defendant a ride to his sister’s house. L.C. said that, after she told Defendant’s sister what happened, Defendant told L.C. that his mother’s best friend sexually assaulted him when he was young and that he would never “do [L.C.] like that.” L.C. believed Defendant, and they continued to live together. She said that no further concerning incidents occurred.

L.C. testified that Defendant had begun discussing marriage daily when they had been together for six months; she noted that, although she initially wanted to get married, she became hesitant because she was young. L.C. stated that they married in September 2018 and that she felt Defendant “forced [her] into” it.

L.C. testified that the family moved to a house on Gabay Street in 2019. L.C. stated that, around this time, the victim’s school grades began dropping from straight As to Cs and Ds; that the victim told her teacher that Defendant was “whooping her”; and that the victim was always angry, depressed, and crying. L.C. asked the victim about her behavior, but the victim would not tell her what was wrong. L.C. testified that, in August or September of 2019, she “put [Defendant] out,” but he continued “popping up” at the house. L.C. said that Defendant told her that he “want[ed] his family back” and that he loved and missed them.

L.C. testified that on New Year’s Day 2020, the victim “confirm[ed] [her] fears about what had happened” at the Willett Street house. L.C. stated that she was “shocked” and in “disbelief” because Defendant was protective of his own children and because she was “there for him” when his mother died.

L.C. testified that she took the victim to the doctor and called the police. She stated that, although the victim had seemed relieved after disclosing the abuse, the abuse had changed the victim. L.C. said that the victim had been a happy child but that she now struggled to get along with others.

On cross-examination, L.C. testified that she and Defendant cohabitated for five or six months before they married. L.C. denied that she and Defendant argued about other issues or that other adults were the subject of their arguments. L.C. denied that she or Defendant were romantically involved with other people.

L.C. testified that, on one occasion, Defendant drove her car without permission and crashed it. L.C. said that she reported the car stolen before she knew Defendant was the person who took it. L.C. denied that she had been angry with Defendant about the incident and stated that she had been concerned for his safety.

L.C. testified that, at the time of trial, she and Defendant were still married. L.C. said that she asked Defendant for a divorce but that he told her that she would “die being his wife.” L.C. denied that Defendant had tried to get her to sign divorce papers.

L.C. testified that her father also lived at the Willett Street house when Defendant moved in but that Defendant convinced her that her father stole a television, so she kicked her father out of the house. L.C. denied that her father and Defendant argued or that her father’s friends visited the house. L.C. said that her father had moved out by the time L.C. and Defendant married.

L.C. testified that T.C. did not work and that, although he could speak, he did not talk much and stayed in his room. She denied that T.C. ever acted inappropriately around the children. L.C. also denied that the victim had told someone at school that L.C. had hit her.

L.C. testified that she was the only person who did laundry and denied that she saw bloody clothing in the laundry in 2018. L.C. stated that she did not allow anyone to hit her children; she noted, though, that Defendant constantly encouraged her to hit the victim because she was “too grown.” L.C. did not know how Defendant disciplined the victim when he watched her, and she added that the victim told a teacher that Defendant hit her. L.C. denied that T.C. would have hit the victim.

L.C. testified that the victim and her younger sister were very close. L.C. denied telling anyone that she was concerned that the victim was jealous of her sister and was trying to get attention. L.C. denied that she ever taught the victim words like “manipulate.”

On redirect examination, L.C. testified that, during the incident in which the victim’s pants were down, the victim had not said that anyone had touched her and that L.C. had no reason to think that something had happened based upon what the victim had told her. L.C. denied that she had fabricated the allegations out of anger that Defendant had stolen her car.

T.C. testified that he was L.C.’s brother and the victim’s uncle. He stated that he knew Defendant, but he could not identify him in the courtroom. T.C. said that he had medical issues for which he took medication; when asked whether the issues made it hard for him to remember things, he responded, “Nah, not really.” When asked whether he

remembered “things happening in 2018,” T.C. replied, “Nah, I wasn’t there.” T.C. agreed that he took medication in 2018.

Memphis Police Department Sergeant Roderick Watson testified that he had been assigned as the victim’s case officer in August 2021 and that the victim’s forensic interview had already taken place. Sergeant Watson interviewed L.C., and he stated that her account of events was consistent with the victim’s forensic interview statements. Sergeant Watson testified that he did not interview T.C. because L.C. told him that T.C. “wouldn’t be competent” to speak with him.

Sergeant Watson testified that “late disclosure” in sexual offense cases was common and that there were many reasons a child would delay disclosing abuse. He stated that there would not be DNA evidence in a case like the victim’s due to the passage of time. Sergeant Watson said that “grooming” a child to “make [them] comfortable with doing some kind of sexual act” could include giving gifts.

Letitia Cole testified as an expert in forensic interviewing. She stated that she worked at the Memphis Child Advocacy Center and that she conducted the victim’s forensic interview. She stated that the victim was eight years old at the time. Ms. Cole said that it was normal for a child to make a delayed disclosure of abuse and for a child not to know the exact date something happened. Ms. Cole agreed that the victim gave details of what happened to her.

Ms. Cole testified that the victim initially used the word “manipulate” to describe what happened to her; when Ms. Cole asked her if she knew what manipulate meant, the victim said that she heard it from L.C. and that L.C. did not want her to say the word “rape.” Ms. Cole said that she did not notice signs of coaching from the victim, which referred to a child’s being told what to say by an adult. Ms. Cole denied that anything about the interview “gave [her] pause as to being not on [the victim’s] developmental level” or that the victim said anything inappropriate for an eight-year-old child.

On cross-examination, Ms. Cole testified that there was no standard definition of coaching. When asked whether the victim’s beginning her statement with “this happened in 2018” sounded rehearsed or coached, Ms. Cole responded negatively but acknowledged the possibility that it could have been. Ms. Cole stated that the victim’s having used the word “manipulate” could possibly be coaching. Ms. Cole said that the victim told her that T.C. saw something happening to her and that neither she nor T.C. told L.C. about it.

The parties entered a stipulation that L.C. took the victim to the hospital on January 12, 2020.

After the State rested, Defendant chose to present proof. Tracy Stitts testified that she was Defendant's sister and that she knew L.C. and the victim in 2018. Ms. Stitts said that Defendant, L.C., and the children visited her Memphis home. Ms. Stitts did not recall ever having a conversation with L.C. about Defendant's having been sexually abused as a child. Ms. Stitts denied ever hearing that Defendant was sexually abused as a child. Ms. Stitts denied that she would commit perjury on Defendant's behalf.

Defendant testified that he was married to L.C. and that, in 2018, they lived with the two children, T.C., and L.C.'s father. Defendant noted that L.C.'s father was staying with her before Defendant moved into the house. Defendant stated that he and L.C. slept in the bedroom to the left of the living room; T.C.'s bedroom was to the right of the living room; and the children slept in a bedroom in the back of the house. Defendant said that L.C.'s father slept in the children's room "for half the time." Defendant stated that L.C.'s father frequently had guests and that another of L.C.'s brothers visited often and stayed at the house for about three months.

Defendant stated that his relationship with L.C. was "going perfect" but that L.C. had "flaws" such as lying often; he claimed that L.C. cheated on him twice. Defendant described an incident in which L.C.'s father's friends visited late at night, and he and L.C.'s father "had words" about the amount of noise they made. Defendant said that one of the guests was L.C.'s ex-boyfriend, Sam, who was also L.C.'s father's best friend, and that L.C. asked Defendant to make Sam leave. Defendant said that L.C. and Sam were "cursing back and forth in front of the kids." Defendant stated that, after everyone left, L.C. was angry with him and slept in the children's room with her father while wearing only a bra and underwear. Defendant averred that he left the marriage because the family was "real weird."

Defendant testified that the victim did not like him because his children visited him and that the victim told him he was not her father and could not tell her what to do. When asked whether the victim would "stand up for herself," Defendant responded that, before L.C. "started cheating on [him]," they taught the children to go to a neighbor's house and call the police for help if anything happened to L.C. or Defendant. Defendant stated that the victim "knew right from wrong, you know."

Defendant said that he and T.C. got along "fine." When asked whether T.C. could carry on a conversation, Defendant responded, "Sometimes I could understand certain things that c[a]me out of his mouth." Defendant testified that T.C. used to "hump" his bed all the time and that the children watched him do it. Defendant said that he used to tell the children to leave the room but that L.C. let the children do whatever they wanted. Defendant stated that L.C. told Defendant to watch T.C. hump his bed, that he told his family about the behavior, and that Ms. Stitts told him that he needed to leave. Defendant

said that he left one week later and moved in with his brother. He recalled that the weather was warm but that school was still in session. Defendant testified that L.C. allowed him to use her car to drive to work and that he accidentally crashed it, after which the relationship soured. He stated that the relationship was “off-and-on” for a while after this. Defendant averred that he and L.C. broke up in 2018.

Defendant denied that he performed any of the acts the victim described. He further denied that L.C. ever confronted him about the victim’s pants being pulled down, that she asked him to go with them to the doctor, or that he ever told L.C. he was sexually abused as a child. Defendant stated that he was not sexually abused as a child.

On cross-examination, Defendant testified that he and L.C. had been dating for about two months when they moved in together in 2018. Defendant stated that L.C.’s father “ran the house.” Defendant did not know the name of L.C.’s other brother despite his having lived at the Willett Street house for three months. Defendant noted that he and the other brother did not get along and that “something wasn’t right with him.” Defendant said that the other brother slept on the living room sofa. Defendant denied that he and T.C. ever physically fought.

Defendant testified that “someone set [the victim] down and coached her to put these fake charges on [him].” Defendant agreed that the victim had been “keeping this lie up” for four years. When asked for what purpose the victim would lie, Defendant discussed that he told the victim and her sister not to watch T.C.’s sexual behavior in his bedroom; that Defendant told L.C.’s father what they were doing, which resulted in L.C.’s father’s spanking them; and that the victim told Defendant that he was not her father and that she wanted her father. Defendant agreed that he was asserting that the victim was lying even though he had also stated that the victim knew right from wrong.

Defendant averred that “all the problems and the chaos started coming” after he and L.C. married and that, although L.C. begged him to stay, things became worse. Defendant said, though, that the issue with T.C. occurred before they married. Defendant stated that L.C. claimed T.C. was going to move to their mother’s house, that she promised things would change, and that she told him that “if she couldn’t have [Defendant], can’t nobody else have [him].”

Defendant testified that he and L.C. married in 2018 and that they “rushed” into it. He stated that, after that point, Sam began coming to the house to visit L.C.’s father. Defendant said that, on one occasion, Sam came to the house late at night accompanied by two women and cursed and talked about how he could “get anybody” he wanted. Defendant stated that the children, who were then six years old and four years old, were present and “hanging out with the adults at one or two o’clock” in the morning.

Defendant denied that he was mean to the victim. He testified that “she just wanted to be grown . . . before her time and wanted to do what she want[ed.]” Defendant stated that the victim had always been “[m]ad at the world” and denied that the victim’s personality had changed. Defendant said that the victim had told her teacher that L.C. beat her. Defendant stated that L.C. kept a lock on the refrigerator and would not allow the children to eat if she was not at home. Defendant stated that he should have notified someone about the children’s treatment but that he had not wanted L.C.’s children to be taken away from her.

Defendant testified that “everybody knew what was going on” at the house and that it was “like an open party.” He stated that L.C.’s father and his guests smoked marijuana and drank a large quantity of beer. Defendant asserted that he was the only one “trying to do the right thing” and that this was the reason he left. Defendant also stated that he found condoms in L.C.’s car, which they did not use, and that he caught Sam “driving the car over three or four times.” Defendant testified that, after he moved out, he never visited the family house again.

Defendant denied several times having raped the victim, and he averred that none of L.C. and the victim’s testimony was true. Defendant stated that he learned in jail that L.C. had been “putting men[] [in] jail for no reason” and that she had “ruined a whole lot of people’s li[ves].” Defendant noted that L.C. obtained an order of protection against Sam and had him arrested for violating the order, but “went back to him” and began cheating on Defendant with Sam.

Defendant said that he was “the victim” and that L.C.’s father and two brothers were always present at the house, so there was no opportunity for Defendant to rape the victim. Defendant averred that he loved both children but that the victim was “just too grown.”

After the close of the defense’s proof, the State made the following election of offenses:

COUNT ONE — RAPE OF A CHILD

For this charge, the State elects the event described as being when [] Defendant called [the victim] into her mother’s room and inserted his finger into [the victim]’s vagina and anus. His finger was rough and there was pain and blood that [D]efendant wiped up with a towel. [The victim] was 6 years old.

COUNT TWO — AGGRVATED SEXUAL BATTERY

For this charge, the State elects the event described as the first time [] Defendant called [the victim] into her mother's room and then touched and inserted his finger into her vagina and anus. [The victim] was 6 years old.

Upon this evidence, the jury convicted Defendant as charged. At a sentencing hearing, the trial court found that Defendant was a Range I, standard offender and imposed a sentence of thirty-five years in Count 1 and ten years in Count 2, to be served concurrently at 100% service.

Defendant's motion for new trial included an issue related to his discovery of new evidence. Defendant stated that, before his sentencing hearing, he learned that he was housed in the same jail unit as the victim's father, and the victim's father provided him with information that could have changed the result of the trial. Defendant noted that he had diligently presented the evidence to the trial court as part of the motion for new trial.

An affidavit³ dated December 31, 2024 was attached to the motion for new trial and read as follows:

AFFIDAVIT / DECLARATION OF [THE VICTIM'S FATHER]

I, [the victim's father], do hereby make oath, affirm and declare as follows:

1. I am of the age of majority . . . , am a resident of Shelby County, Tennessee, and have personal knowledge of the facts and statements set forth herein.
2. I am the biological father of [the victim].
3. I was in a relationship with her mother, [L.C.], whom I have known since we were 13 or 14 years old.
4. I was separated from [L.C.] from approximately 2011 to 2018, though we stayed in touch with each other.
5. I moved in with [L.C.] at [the Gabay Street home], Memphis, Tennessee on my birthday, 05/10/2018 and [we] lived together through 2024.

³ Defense counsel witnessed the affidavit, but it was not notarized.

6. I did not know [Defendant] and never saw him at the residence during the period of time I lived with [L.C.]

7. I was not aware of any allegation against [Defendant] until a law enforcement officer . . . came to the house in either 2019 or 2020.

The State's response included Defendant's and L.C.'s marriage license, which was dated September 9, 2018.

The trial court found that, if the victim's father testified, the testimony would not be "as beneficial to [D]efendant as he . . . claims" because it would have contradicted Defendant's trial testimony. The trial court found that the victim's father's testimony would either "diminish the credibility of [D]efendant's version of events" or "just fly in the face of all the testimony." The trial court noted that it did not believe the jury would have credited the victim's father when both Defendant and L.C. "testified and agreed to a specific timeline of events [as to] where the parties were," including who was living in the family home at the time. The trial court discussed that Defendant never mentioned that a person with whom he was unfamiliar was living in the home. The trial court found that the proffered evidence would not "have somehow changed or influenced a jury" and denied the motion. Defendant timely appealed.

Analysis

On appeal, Defendant contends that the evidence is insufficient to support his convictions and that the trial court erred by denying his motion for new trial based upon the victim's father's affidavit. We will address each issue in turn.

I. Sufficiency of the Evidence

Defendant argues that the evidence is insufficient to support his convictions. His argument related to each conviction is identical; accordingly, we will recount it once. Defendant asserts that the evidence is insufficient because the victim's testimony was not corroborated by physical evidence, and no explanation was given for her two-year delay in reporting and for why none of the adults present in the house reported the abuse. The State responds that the evidence is sufficient.

Our standard of review for a sufficiency of the evidence challenge is "whether, after viewing 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); *see also* Tenn. R. App. P. 13(e). Questions of fact, the credibility of witnesses, and the weight of the evidence are resolved by the fact

finder. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). This court will not reweigh the evidence. *Id.* Our standard of review “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)) (internal quotation marks omitted).

A guilty verdict removes the presumption of innocence, replacing it with a presumption of guilt. *Bland*, 958 S.W.2d at 659; *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). On appeal, the defendant bears the burden of proving why the evidence was insufficient to support the conviction, *Bland*, 958 S.W.2d at 659, and the “State must be afforded the strongest legitimate view of the evidence and all reasonable inferences that may be drawn therefrom.” *State v. Vasques*, 221 S.W.3d 514, 521 (Tenn. 2007).

Rape of a child, as applicable at the time of the offenses, was defined as “the unlawful sexual penetration of a victim by the defendant or the defendant by a victim, if the victim is more than three (3) years of age but less than thirteen (13) years of age.” Tenn. Code Ann. § 39-13-522(a) (2018). “Sexual penetration,” as relevant here, 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 . . . body[.]” *Id.* § 39-13-501(7) (2018).

As relevant here, aggravated sexual battery is “unlawful sexual contact with a victim by the defendant[.]” and the victim is less than thirteen years old. *Id.* § 39-13-504(a)(4) (2018). “Sexual contact” is defined as “the intentional touching of the victim’s . . . intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification[.]” *Id.* § 39-13-501(6) (2018). “Intimate parts” includes, among other things, “the primary genital area, groin, inner thigh, buttock or breast of a human being[.]” *Id.* § 39-13-501(2) (2018).

In the light most favorable to the State, the victim testified that, the first time the abuse occurred, she was six years old. Defendant called her into L.C.’s room, pulled down her pants and underwear, and inserted his fingers into her vagina and anus. The victim testified that, the following day, Defendant again called her into L.C.’s room, pulled down her pants and underwear, and inserted his fingers into her vagina and anus. She could feel that his fingertips were rough; it hurt; and blood ran down her legs onto the floor. After the incident, Defendant wrapped the victim in a blanket and put her onto the sofa. The victim and L.C. testified that L.C. later found the victim on the sofa with her pants and underwear still pulled down. The victim’s description of the events during her forensic interview in 2018 were generally consistent with her trial testimony. The victim also testified that, during the sexual contact, Defendant appeared as though he “got something out of it” or felt “relief,” which a rational jury could find established sexual gratification.

Relative to the other adults in the home, the trial testimony established that T.C. had significant mental health issues affecting his cognition and communication but that, when T.C. saw the abuse occurring, he fought Defendant. L.C. testified that her father stopped living at the home at some point before she and Defendant married. Relative to the delay in reporting, the victim testified that Defendant had threatened her if she disclosed the abuse, and the victim stated in her forensic interview that Defendant had threatened to kill everyone in the house if she told anyone about it. L.C. noted that the victim's disclosure occurred only after Defendant stopped visiting the family home.

Defendant's arguments relate to the jury's credibility determinations and the weight of the evidence, not its sufficiency. "It is well-settled law in Tennessee that the testimony of a victim, by itself, is sufficient to support a conviction." *State v. Bonds*, 189 S.W.3d 249, 256 (Tenn. Crim. App. 2005) (internal quotation marks omitted) (quoting *State v. Strickland*, 885 S.W.2d 85, 87 (Tenn. Crim. App. 1993)); see *State v. Hooper*, No. W2021-01069-CCA-R3-CD, 2022 WL 2718863, at *4 (Tenn. Crim. App. July 13, 2022) (noting that the victim's testimony regarding sexual contact was sufficient, standing alone, to support the defendant's convictions for rape of a child and aggravated sexual battery), *no perm. app. filed* (citing *State v. Elkins*, 102 S.W.3d 578, 582-83 (Tenn. 2003)). Moreover, "whether [the defendant] touched the victim . . . for the purpose of sexual arousal or gratification [is] a question of fact for the jury to determine." *State v. Welch*, No. M2016-01335-CCA-R3-CD, 2019 WL 495117, at *5 (Tenn. Crim. App. Feb. 8, 2019), *no perm. app. filed*. The jury, by its verdict, credited the victim's testimony and discredited Defendant's testimony, and we will not disturb its findings in this regard. See *Bland*, 958 S.W.2d at 659. Defendant is not entitled to relief on this basis.

II. Newly Discovered Evidence

Defendant contends that the trial court erred by denying him a new trial based upon newly discovered evidence, specifically, an affidavit from the victim's father. Defendant asserts that he diligently presented the evidence to the trial court and that the evidence was material and would likely have changed the result at trial because "it [is] unlikely that the acts of the Defendant could occur without [the victim's father] knowing about it." The State responds that the trial court properly denied the motion.

When a defendant moves for a new trial based upon newly discovered evidence, the defendant must show that he exercised "reasonable diligence in seeking the newly discovered evidence," that the evidence is material, and "that the evidence will likely change the result of the trial." *State v. Nichols*, 877 S.W.2d 722, 737 (Tenn. 1994); see *State v. Goswick*, 656 S.W.2d 355, 358-60 (Tenn. 1983). Evidence that "merely contradicts or attempts to impeach" a witness's testimony is, generally, insufficient to entitle a defendant to a new trial. *State v. Sheffield*, 676 S.W.2d 542, 554 (Tenn. 1984); see also

State v. Mofield, No. M2016-02364-CCA-R3-CD, 2017 WL 4513572, at *8 (Tenn. Crim. App. Oct. 10, 2017), *no perm. app. filed*. However, a trial court may grant the motion for new trial “if the impeaching evidence is so crucial to the defendant’s guilt or innocence that its admission will probably result in an acquittal.” *State v. Singleton*, 853 S.W.2d 490, 496 (Tenn. 1993).

A trial court’s decision to deny a motion for new trial based upon newly discovered evidence is “within the sound discretion of the trial court.” *State v. Caldwell*, 977 S.W.2d 110, 117 (Tenn. Crim. App. 1997) (citing *Hawkins v. State*, 417 S.W.2d 774, 778 (Tenn. 1967)). A court abused its discretion “when it applies an incorrect legal standard, reaches an illogical conclusion, bases its decision on a clearly erroneous assessment of the evidence, or employs reasoning that causes an injustice to the complaining party.” *State v. Davis*, 466 S.W.3d 49, 61 (Tenn. 2015).

We conclude that the trial court did not abuse its discretion by denying the motion for new trial because the proffered evidence was not material nor was it likely to have changed the outcome of the trial. The trial court correctly observed that the timeline presented by the victim’s father conflicted with all the other trial evidence, including Defendant’s testimony. Defendant and L.C. generally agreed that Defendant moved into the Willett Street house in 2018 and that he and L.C. married later that year. The victim specified that the abuse occurred at the Willett Street house before they married. Defendant and L.C. also agreed that T.C. lived with them and that, at least part of the time, L.C.’s father also stayed there. Defendant added that L.C.’s other brother stayed with them for three months, but he never mentioned the victim’s father living in the house. Further, L.C. testified that the family moved to Gabay Street in 2019, not 2018. Thus, the record supports the trial court’s finding that the information in the affidavit was simply not credible and that, in order to accredit the information, the jury would have had to discredit Defendant’s testimony to a larger extent than it otherwise had done.

Moreover, we conclude that the affidavit “merely contradicts or attempts to impeach” L.C.’s testimony and does not make the fact of the sexual abuse impossible or establish the guilt of an alternative perpetrator. Accordingly, its admission probably would not have resulted in an acquittal, and the trial court did not abuse its discretion by denying a new trial. *Singleton*, 853 S.W.2d at 496. Defendant is not entitled to relief on this basis.

Conclusion

In light of the foregoing and the record as a whole, the judgments of the trial court are affirmed.

s/Robert L. Holloway, Jr.
ROBERT L. HOLLOWAY, JR., JUDGE