

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs May 2, 2023

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STATE OF TENNESSEE v. MYLES WISEMAN

Appeal from the Criminal Court for Shelby County
No. 16-05476 Lee V. Coffee, Judge

No. W2022-00680-CCA-R3-CD

The Defendant, Myles Wiseman, was convicted by a Shelby County Criminal Court jury of rape, a Class B felony; two counts of incest, a Class C felony; and two counts of statutory rape by an authority figure, a Class C felony. He was sentenced by the trial court to thirty years at 100% as a Range IV, career offender for the Class B felony rape conviction and fifteen years at 45% as a Range III, persistent offender for each of the Class C felony incest and statutory rape convictions. The trial court ordered that the sentences be served consecutively, for a total effective sentence of ninety years in the Department of Correction. The Defendant raises the following issues on appeal: (1) whether the trial court erred by allowing the State to introduce the Defendant’s recorded phone calls from the jail; (2) whether the evidence was sufficient to sustain the convictions; and (3) whether the trial court imposed an excessive sentence. Based on our review, we affirm the judgments of the trial court.

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

JOHN W. CAMPBELL, SR., J., delivered the opinion of the court, in which TIMOTHY L. EASTER and KYLE A. HIXSON, JJ., joined.

Shae Atkinson, Memphis, Tennessee (on appeal), and Lauren Pasley, Memphis, Tennessee (at trial), for the appellant, Myles Wiseman.

Jonathan Skrmetti, Attorney General and Reporter; Caroline Weldon, Assistant Attorney General; Amy Weirich, District Attorney General; and Dru Carpenter and Alyssa Hennig, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

FACTS

On September 15, 2016, the Shelby County Grand Jury returned a five-count indictment charging the Defendant with one count of rape, two counts of incest, and two counts of statutory rape by an authority figure based on acts he committed against his biological daughter over a three-year span beginning when the victim was approximately thirteen years old.

State's Proof

At the December 6-10, 2021 trial, the victim testified that her birthday was May 31, 1999, and that she was currently twenty-two years old. She identified the Defendant as her biological father and said that he was absent for some time but came back into her life in October 2012. When the Defendant reentered her life, he began developing a father-daughter relationship with her, and the two of them grew close. The victim testified that the Defendant attended her talent shows and band recitals, watched television with her, and played football with her and her friends.

The victim testified that she was living with her mother at that time, and the Defendant was living with his sister, the victim's Aunt Sharonda. The victim said that she sometimes had overnight visits with the Defendant at her Aunt Sharonda's house. The Defendant slept in the living room, and she slept in the living room with the Defendant on those overnight visits. Over time, the Defendant "started to get sexually attracted to [her]." The first thing that happened was that the Defendant began "dry humping" her when both of them were clothed. The victim described it as follows:

Well, most times, he would be on top of me, and I would feel his private area against my private area, and he would just grind on top of me, or put me on top of him and move my body on him in a sexual manner.

The victim testified that the dry humping episodes, which went on for "[a] few months" and included kissing, usually occurred at night in the living room of her aunt's house. By the time the dry humping episodes first started, the Defendant had been having conversations with her about sex. The Defendant told her that he did not want her first experience of sexual intercourse to be with a "random person" but instead to be with him because the victim would "never forget . . . the first person [she] slept with." The Defendant also told her "how it was going to be" and that he "was going to try to make sure [that she] could trust him, and it was going to hurt, and everything else like that."

The victim testified that the Defendant first penetrated her in the spring of 2013 in the living room of her aunt's house late at night when everyone else was asleep. She said the Defendant awakened her, telling her that they "were fixing to do it that night" and that she was about to lose her virginity to him. She stated that the Defendant

got him some lotion and got a towel, and [she] didn't understand what the lotion and the towel was for, but, first, he went in [her], actually raw inside of [her], and he had [her] to bite down on the towel so [she] wouldn't scream 'cause he said it was going to hurt, but [she] could trust him.

The victim recalled that she was wearing her purple monkey pajamas and that the Defendant inserted his penis inside her anus as well as her vagina. She testified that the Defendant told her that she could trust him, that no one would understand their relationship, and that they had to keep it "confidential and hidden." She stated that she did not tell anyone about what had happened because she knew from her past experiences of sexual abuse that no one would believe her. In addition, she loved the Defendant and did not want him to get into trouble.

The victim testified that, after that first time, the Defendant had sexual intercourse with her at least once a week. These sexual encounters occurred in several different locations in Memphis: her aunt's "old house"; her aunt's "second old house"; the victim's paternal grandfather's house; the victim's house; and the Defendant's van. The victim recalled that the last time the Defendant penetrated her anally was late at night in the Defendant's bedroom at the victim's grandfather's house. She said the Defendant "was trying to get in [her] anus[,] but she told him that it was very painful and "like torture" for her. She stated that the Defendant initially ignored her, inserting his penis inside her anus "[a] little" but then pulling it out when she told him to stop before she screamed and awakened her grandfather.

The victim testified that the Defendant would take her "to various spots and random places" in his van to have sexual intercourse. One of the most frequent spots was a location between some trees beside the airport. She stated that when the Defendant said, "Let's go see the airplanes[,] she knew it meant that he wanted them "to go and have sex." She testified that the first time it happened at the airport location, she and the Defendant were "just talking" until the Defendant told her to get in the back seat and take her pants off. She said the Defendant took his pants off as well and then put his penis inside her vagina and started having sexual intercourse.

The victim testified that, in addition to penetrating her vaginally and anally, the Defendant also forced her to perform oral sex on him. She recalled one occasion when the

van was parked between two trees near the airport and she was “going down on him” and the Defendant “shoved [her] head down more to where [she] started choking a little, and he said[,] ‘To satisfy your man, you have to learn how to deep throat.’”

The victim recalled the last time she had sexual intercourse with the Defendant was approximately June 2015 when she was sixteen. She stated that she and the Defendant were in his van parked at a basketball court in the Orange Mound neighborhood of Memphis. She told him that she did not want to continue to have sexual intercourse with him, and he agreed, saying that he was supposed to be her father and to protect her from “stuff like this[.]” However, the Defendant wanted to have sexual intercourse with her one last time, and they did. She said the Defendant kissed her and vaginally penetrated her during that last encounter. The Defendant also told her that she was better than her mother and that he was going “to miss it.”

The victim testified that when she was sixteen, her mother took her to be tested for a sexually transmitted disease. Afterward, she divulged the Defendant’s sexual abuse of her to her mother, who did not believe her, and then to her mother’s former boyfriend, Terrance Smith, who lived in Texas and was “like a father figure” to the victim. The victim testified that no one in her own family was supportive. She stated that she had been sexually abused in the past by three different individuals: her aunt’s boyfriend, Sonny; her mother’s brother, Sean; and her mother’s boyfriend, Michael. She said she told the Defendant about the previous instances of sexual abuse. She acknowledged that she later recanted her allegations against Michael. She said she did so at the request of the Defendant, who told her that he did not want her to be removed from her mother’s custody and said that he would “handle it.”

The victim testified that, because her family did not believe her allegations against the Defendant, she recorded a telephone call with the Defendant on October 19, 2015, in which he admitted what he had done. She identified the recording, which was admitted as an exhibit and published to the jury. In the recording, the victim said she had no one to talk to and asked the Defendant why he wanted her to lie about what had happened. The Defendant responded that if the truth came out, he would be incarcerated at least twenty-five or thirty years.

The victim testified that she was interviewed at the Child Advocacy Center on October 21, 2015, after the police were notified of the abuse. She identified two recorded jail conversations she had with the Defendant, which were admitted as exhibits and published to the jury. In those conversations, the Defendant told the victim he loved her, pleaded with the victim to help him, and said that his future was in the victim’s hands. The Defendant also told the victim to go ahead and tell the truth if she did not want him to be

part of anyone's life for the next twenty-five years and reminded the victim she would be "damn near 40" by the time he came home. The victim testified that she talked to the Defendant in those jail phone calls because he was her father and she still loved him.

The victim acknowledged she later told her mother that her allegations against the Defendant were not true. She explained that her mother was continually arguing with her about the allegations and that she recanted to avoid further conflict:

She'll bring up the topic, like, "who gave you that? Who you been sleeping around with?" And every time I told her the truth, she just didn't believe me. So, when I told her, I said, "Never mind. It didn't even happen. Don't worry about it," she was like, "Oh, I knew he couldn't do nothing like that. That's something he couldn't possibly do," and she just left it alone after that.

The victim testified that she at one point wrote a statement recanting the allegations. She said the statement was the idea of the Defendant, her paternal grandfather, and the Defendant's attorney, and that the Defendant's attorney was with her when she wrote it. She testified that she wrote it because she still loved her father, and he "pretty much begged [her] to make that statement for him."

The victim testified that she had a two-year-old child and was currently employed. She acknowledged she had a pending case for stalking and harassment and another pending case for vandalism and said she was ashamed of those pending criminal cases. She testified that her trial testimony was the truth.

On cross-examination, the victim testified that her Uncle Sean molested her from the time she was an infant until she was five. She said she did not tell her mother about the molestation by her Uncle Sean but that her mother learned of it. She stated that Sonny, who was her Aunt Tina's boyfriend, molested her "[a]round 2012." She said she told her mother about the molestation by Sonny, and her mother believed her. She also told the Defendant, but she did not know if her mother and the Defendant had a fight with Sonny about it or if anything occurred as a result.

The victim testified that her mother's boyfriend, Michael, molested her sometime after she was molested by Sonny, but she was unsure of the date. She said she told her mother, and her mother believed her. She stated that, at the time it occurred, she was living with her Aunt Sharonda instead of with her mother. When asked if she told the Defendant about the molestation by Michael, she replied that she did, and that he was the one who informed her mother. She said the Defendant at first told her to report the abuse, but a few

weeks later, the Defendant told her to say that she had made up the allegations and that he would “handle it on his own.” The victim denied that she made up the allegations about Michael or lied to her parents about what Michael had done.

Upon continued cross-examination, the victim testified that she was certain of the place of her last sexual contact with the Defendant but uncertain of the date. She said that after she disclosed the Defendant’s abuse, she and the Defendant had several conversations in which the Defendant told her to lie and say that it had not happened. The victim acknowledged there were a number of different individuals living in her Aunt Sharonda’s house during the time that the alleged living room episodes occurred, including her aunt’s boyfriend, her aunt’s four children, her grandfather, her Uncle Chris, and the Defendant. She testified that for the first few months at her aunt’s house, she and the Defendant slept together in the living room, but her aunt later had her sleep in a bedroom with her female cousin. She said the Defendant lived with her Aunt Sharonda until her aunt “put him out[,]” and he moved into an apartment in North Memphis with the victim’s paternal grandfather. Later, the Defendant lived with her Uncle Chris in a different home.

The victim testified that she told Terrance Smith about the Defendant’s abuse when he called from Texas to talk to her mother and she answered the phone. She said she asked Mr. Smith not to tell her mother because her mother would not believe her, but Mr. Smith told her mother anyway, and “that’s when the court system got involved.” The victim acknowledged having said that she told her mother before she told Mr. Smith. She said it was true and explained that her mother initially did not believe her, but after the victim talked to Mr. Smith, Mr. Smith convinced her mother that the victim was telling the truth. Mr. Smith also convinced the victim’s mother to report the abuse.

The victim denied that the Defendant was angry in their recorded jail phone conversations because she was not telling the truth. She testified that the Defendant instead was angry because she was telling the truth and refused to lie for him. She denied that she wanted to live with Mr. Smith at that time and could not remember ever arguing with the Defendant about her desire to live in Texas. She acknowledged she visited Mr. Smith in Texas for a few weeks while the Defendant was in jail. She denied that she had an aggressive personality or that she was arguing with everyone at the time she raised the allegations against the Defendant. She further denied that she had been promised anything with respect to her own pending criminal charges in exchange for her testimony against the Defendant in the instant case.

On redirect examination, the victim acknowledged that the prosecutor not only never promised her anything in exchange for her testimony, but also told her that they could not talk about her pending criminal cases.

Terrance Smith testified that he lived in Austin, Texas, and formerly dated the victim's mother, with the relationship beginning when the victim was two years old and officially lasting two years but continuing for ten years on an off and on basis. He said he had a very good relationship with the victim and that the victim trusted him. He testified that the victim first disclosed the Defendant's abuse during a phone conversation after he asked her how her day and week were going. He said the victim appeared confused, sad, and uncertain of what to do, and that she did not reveal the full extent of the abuse until they had several additional telephone conversations:

Like, that first night when she told me, we was on the phone for a while, and the next few days, couple of weeks, she started just coming out more with it. You know, it seemed like it was, like, a weight off[f] her shoulders, that she was getting it off, because I don't think she think anybody would believe her. So, through the weeks, she just came out more and more with it.

Mr. Smith testified that he thought the victim was confused because she loved her father and did not want to hurt him. He said the victim liked to please people and did not want anyone to be angry with her. He stated that when the victim first told him, she was not ready to tell anyone else but just wanted to get it "off her chest." He said he told the victim that she had two choices, both of which would be hard: to keep it to herself, in which case she was going to have to deal with it for the rest of her life; or to "tell somebody and get the police involved[.]" At the time, Mr. Smith understood that the victim had not yet talked to her mother about the situation. He testified that he spoke to the victim's mother without directly telling her what had happened with the victim. Instead, he told the victim's mother that there was something "really serious going on" with the victim and that she needed to sit down with the victim and have a "heart-to-heart talk[.]"

Mr. Smith testified that his conversations with the victim about her living with him in Texas occurred years later, after the victim had graduated from high school and had a baby. He stated that the victim visited him in Texas in the summer of 2017 and that he was certain of the date because he was experiencing kidney-related health issues at that time. He said he knew of the sexual abuse involving the victim's Uncle Sean, which occurred when the victim was three or four years old, because he was dating the victim's mother during that time. He stated that he had since heard that there were other instances of sexual abuse. He said he did not know if the victim's family believed the victim with respect to those cases.

On redirect examination, Mr. Smith testified that the victim did not move in with him until several years after her 2017 visit. He said that the matter was reported to the police approximately one week after the victim first disclosed the abuse.

Lieutenant Anthony Lee of the Memphis Police Department testified that he worked in “Sex crimes under juvenile abuse[,]” in 2015 and on October 21, 2015, was assigned the victim’s case. He said he and a Department of Children’s Services worker watched the victim’s forensic interview at the Child Advocacy Center and that he did not request a rape kit due to the length of time since the last reported sexual contact. He stated that he collected into evidence the victim’s cell phone, which contained the October 19, 2015 recorded conversation between the victim and the Defendant. Finally, he testified that he verified that the Defendant’s birthdate was October 18, 1978.

On cross-examination, Lieutenant Lee testified that the victim’s mother gave him the victim’s cell phone on December 15, 2015, approximately two months after the victim’s forensic interview. On redirect examination, he testified that the delay was not unusual; he would not have attempted to collect evidence at the time of the forensic interview unless he had been made aware of its existence at that time.

Detective Michael Harber of the Shelby County Sheriff’s Office identified recordings of phone calls the Defendant placed from the jail on March 7, March 8, March 9, March 24, and March 25, 2015, which were admitted as exhibits and published to the jury. The recordings consist of conversations in which the Defendant urged his father, his sister, and a woman who appeared to be the Defendant’s girlfriend to do whatever they needed to ensure that the victim did not show up to the preliminary hearing. In one of the phone calls, the Defendant instructed the girlfriend to write a recantation statement and have the victim meet her at a neighborhood McDonald’s to sign it. Detective Harber also identified the two previously admitted jail phone calls by the Defendant to the victim, which were placed on March 4, 2015, from jail intake.

Defendant’s Proof

The Defendant’s sister, Sharonda Wiseman, testified that at the time the Defendant lived with her in 2012 and 2013, her house was full of residents, including herself, her boyfriend, her four children, her Uncle Chris, her father, and her father’s girlfriend. She said the victim regularly came to her house for visits, and she never saw or heard of any inappropriate behavior between the Defendant and the victim. She stated that during the approximate year and a half that the Defendant lived with her in that house, the Defendant slept in the living room with her Uncle Chris, her father and his girlfriend slept in the den, she and her boyfriend slept in one bedroom, her three sons slept in a second bedroom, and

her daughter slept in a third bedroom. She said when the victim stayed overnight, the victim always slept with her daughter in the daughter's bedroom.

Ms. Wiseman testified that everyone living with her in her first house accompanied her when she moved to a second house. However, sometime after that move, she and her father had a disagreement, and her father moved out. Afterward, the Defendant sometimes stayed with her and sometimes stayed with their father. She testified that the second house was located close to the airport. She said the Defendant earned money by collecting and selling used furniture and that he drove a van. She stated that the victim continued to visit with her in her home after the Defendant's arrest, that she and the victim had a good relationship, and that the victim had recently talked to her about her allegations against the Defendant.

On cross-examination, Mrs. Wiseman acknowledged that there were times when fewer people were living in her home than the number she mentioned on direct examination. She testified that her bedroom in the first house was located at the end of a hall and that there was a door that could close the living room off from that hall. When asked to describe the victim's demeanor when the victim talked to her about the allegations, she responded, "She cried. That's why I just started crying, 'cause she cried." Ms. Wiseman testified that she did not recall a time when the Defendant called her from the jail to talk to her "about people not coming to court." The prosecutor then played Exhibit 5, which was one of the recorded jail calls admitted into evidence during Detective Harber's testimony. Ms. Wiseman identified the voices on the recording as hers and the Defendant's.

The Defendant elected not to testify and rested his defense without presenting any other evidence.

For count one, which charged the Defendant with rape, the State elected the vaginal penetration that occurred in the spring of 2013 in the living room of Ms. Wiseman's home when the victim was wearing her purple monkey pajamas. For counts two and three, which charged the Defendant with incest, the State elected, respectively: the last episode of anal penetration that occurred in the Defendant's bedroom at his father's house when the victim told him it hurt and to stop; and the last episode of vaginal penetration that occurred in the Defendant's van at the Orange Mound basketball court when the victim was sixteen. For counts four and five, which charged the Defendant with statutory rape by an authority figure, the State elected, respectively: the first time the Defendant vaginally penetrated the victim in the van while parked at the airport; and the oral penetration that occurred in the van when the Defendant pushed the victim's head down so that she choked and told her

that she had to learn to “deep throat.” Following deliberations, the jury convicted the Defendant of the indicted offenses.

At the conclusion of the sentencing hearing, the trial court found the following applicable enhancement factors, all of which it weighed heavily: that the Defendant was an offender with a previous history of criminal convictions or criminal behavior in addition to those necessary to establish the appropriate range; that the rape in count one was committed to gratify the Defendant’s desire for pleasure or excitement; that the Defendant committed the offenses while on supervised release from a federal bank robbery conviction; and that the Defendant abused a position of private trust in the commission of the rape offense. *See* Tenn. Code Ann. § 40-35-114 (1), (7), (13), (14). The trial court found no applicable mitigating factors, and, therefore, sentenced the Defendant to the maximum sentences of thirty years for the rape conviction, fifteen years for each of the incest convictions, and fifteen years for each of the statutory rape convictions. Finding that the Defendant was an offender whose record of criminal activity was extensive, that the Defendant was convicted of two or more statutory offenses involving sexual abuse of a minor with consideration of the aggravating circumstances surrounding the Defendant’s relationship with the victim and the nature of the offenses, and that the Defendant was on supervised release in a federal case at the time he committed the offenses, *see* Tennessee Code Annotated § 40-35-115(b)(2),(5),(6), the trial court ordered that the sentences be served consecutively, for a total effective sentence of ninety years in the Department of Correction.

ANALYSIS

I. Admission of Jail Phone Calls

The Defendant contends that the trial court “erred by allowing the State to introduce recorded jail calls as evidence of past crimes and to introduce consciousness of guilt.” The Defendant argues that “there was no material issue that would warrant this information being presented to the jury” and that any probative value of the evidence was outweighed by the danger of unfair prejudice. The State responds that the trial court properly admitted the evidence after finding that it was relevant to show the Defendant’s consciousness of guilt and that its probative value was not outweighed by the danger of unfair prejudice. We agree with the State.

The record reflects that the State filed a pretrial motion of its intent to introduce through the recorded jail calls 404(b) evidence of the Defendant’s “attempt[ing] to prevent witnesses from coming to court on his preliminary hearing” and “orchestrating the minor victim’s writing of a recantation letter” to show the Defendant’s consciousness of guilt. In

the December 7, 2021 hearing held before the jury was sworn, the trial court first summarized in detail the content of the phone calls before concluding that the Defendant's attempt to destroy evidence and to suppress the testimony of a witness was relevant "as a circumstance from which [the Defendant's] guilt could be inferred[.]" and also relevant to provide a contextual framework to explain any recanted statements the victim may have made.

Although the trial court expressed its opinion that the phone calls did not constitute 404(b) evidence, it made the appropriate findings for the admissibility of the evidence pursuant to the 404(b) standard, finding that the other acts were proven by clear and convincing evidence; that the evidence was relevant and germane to provide a contextual background, to help the State meet its burden of proving force or coercion for the rape, and to show the Defendant's consciousness of guilt; and that the probative value of the evidence was not outweighed by the danger of unfair prejudice. The trial court's ruling states in pertinent part:

And I am finding that the other acts have, in fact, been proven by clear and convincing evidence from the recorded phone calls that I did listen to last night.

And the Court finds, also, [defense counsel] has indicated that, "Judge, even if it is relevant, it should, in fact, be excluded because the probative value is outweighed by the danger of unfair prejudice." And I am finding that the probative value is not outweighed by the danger of unfair prejudice. In fact, I find that the evidence - - absence of this evidence would, in fact, create a conceptual void in the presentation of the State's case, and there are some material issues that, in fact, would not be addressed to the jury. And I am finding that the probative evidence [sic] of this evidence is not outweighed by the danger of unfair prejudice, and this evidence is critical, it is germane, to some of the things that the State of Tennessee has to prove. They have to prove that this conduct was unlawful, that it was - - that it was done as the result of using force or coercion, and that [the Defendant] has conducted a campaign through multiple folks and through multiple means to destroy or to suppress or to influence the testimony of material witnesses.

And, for these reasons, I will grant the State's request to admit these telephone conversations. Again, I am not certain that it's 404(b). I'm finding that it's contextual background information that goes to show a consciousness of guilt.

Tennessee Rule of Evidence 404(b) provides that “evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity with the character trait” but “may . . . be admissible for other purposes.” The conditions that must be satisfied before allowing such evidence are:

- (1) The court upon request must hold a hearing outside the jury’s presence;
- (2) The court must determine that a material issue exists other than conduct conforming with a character trait and must upon request state on the record the material issue, the ruling, and the reasons for admitting the evidence;
- (3) The court must find proof of the other crime, wrong, or act to be clear and convincing; and
- (4) The court must exclude the evidence if its probative value is outweighed by the danger of unfair prejudice.

Tenn. R. Evid. 404(b). Cases in which other “bad act” evidence of an accused will be admissible include those in which the evidence is introduced to show motive, intent, guilty knowledge, identity, absence of mistake or accident, a common scheme or plan, completion of the story, opportunity, and preparation. *See State v. Berry*, 141 S.W.3d 549, 582 (Tenn. 2004); *see also* Neil P. Cohen et al., *Tennessee Law of Evidence* § 4.04[7][a] (6th ed. 2011). When the trial court has substantially complied with procedural requirements, the standard of review for the admission of bad act evidence is abuse of discretion. *State v. DuBose*, 953 S.W.2d 649, 652 (Tenn. 1997).

We need not determine whether the recorded phone calls constituted “prior bad act” evidence in order to conclude that the trial court did not err in admitting the evidence. Despite expressing reservations about whether the evidence required the more stringent 404(b) analysis for admission, the trial court, out of an abundance of caution, went on to analyze the evidence under the 404(b) standard, finding that evidence of the phone calls was clear and convincing, that the evidence was relevant to show the Defendant’s consciousness of guilt, and that the probative value of the evidence was not outweighed by the danger of unfair prejudice. We agree with the trial court that evidence of the Defendant’s efforts to influence the victim and to have his family members and friend cajole and pressure her into signing a written recantation and not appearing at his preliminary hearing was relevant to show the Defendant’s consciousness of guilt. “Any attempt by an accused to conceal or destroy evidence, including an attempt to suppress the testimony of a witness, is relevant as a circumstance from which guilt of the accused may be inferred.” *State v. Maddox*, 957 S.W.2d 547, 552 (Tenn. Crim. App. 1997) (quoting

Tillery v. State, 565 S.W.2d 509, 511 (Tenn. Crim. App. 1978)). It was also relevant to provide a complete picture for the jury of why the victim might have recanted her allegations and to explain the type of manipulative and coercive influence the Defendant exerted over the victim. We also agree that the probative value of the evidence was not outweighed by the danger of unfair prejudice. Accordingly, we conclude that the trial court properly admitted the recorded jail phone calls.

II. Sufficiency of the Evidence

The Defendant contends that the evidence was insufficient to sustain his convictions because there was “essentially nothing showing [the Defendant’s] guilt other than the testimony of [the victim] and the phone calls the State used to argue guilt” and “without any corroborating evidence or anything else to support [the victim’s] testimony there is not enough evidence for a reasonable jury to find him guilty.” The State responds that the evidence, when viewed in the light most favorable to the State, was sufficient for a jury to conclude that the State proved the essential elements of the charged offenses beyond a reasonable doubt. We agree with the State.

When the sufficiency of the evidence is challenged on appeal, the relevant question of the reviewing court 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) (“Findings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the finding by the trier of fact of guilt beyond a reasonable doubt.”); *State v. Evans*, 838 S.W.2d 185, 190-92 (Tenn. 1992); *State v. Anderson*, 835 S.W.2d 600, 604 (Tenn. Crim. App. 1992).

Therefore, on appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable inferences that may be drawn from it. *See State v. Williams*, 657 S.W.2d 405, 410 (Tenn. 1983). All questions involving the credibility of witnesses, the weight and value to be given the evidence, and all factual issues are resolved by the trier of fact. *See State v. Pruett*, 788 S.W.2d 559, 561 (Tenn. 1990). “A jury conviction removes the presumption of innocence with which a defendant is initially cloaked and replaces it with one of guilt, so that on appeal a convicted defendant has the burden of demonstrating that the evidence is insufficient.” *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982).

The guilt of a defendant, including any fact required to be proven, may be predicated upon direct evidence, circumstantial evidence, or a combination of both direct and circumstantial evidence. *See State v. Pendergrass*, 13 S.W.3d 389, 392-93 (Tenn. Crim.

App. 1999). The standard of review for the sufficiency of the evidence is the same whether the conviction is based on direct or circumstantial evidence or a combination of the two. *See State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011). “The standard by which the trial court determines a motion for judgment of acquittal at the end of all the proof is, in essence, the same standard which applies on appeal in determining the sufficiency of the evidence after a conviction.” *State v. Thompson*, 88 S.W.3d 611, 614-15 (Tenn. Crim. App. 2000).

For the purposes of this case, rape is defined as the unlawful sexual penetration of a victim by the defendant or of the defendant by a victim accompanied by force or coercion to accomplish the act. Tenn. Code Ann. § 39-13-503 (a)(1). Statutory rape by an authority figure is defined as unlawful sexual penetration of a victim by the defendant or of the defendant by the victim when the victim is at least thirteen but less than eighteen, the defendant is at least four years older than the victim, and the defendant at the time of the offense used his position of trust with the victim to accomplish the sexual penetration. *Id.* at § 39-13-532(a). A person commits incest who engages in sexual penetration with another person knowing the person to be, without regard to legitimacy, the person’s natural parent, child, grandparent, grandchild, uncle, aunt, nephew, niece, stepparent, stepchild, adoptive parent, or adoptive child. *Id.* at § 39-15-302 (1)(a)

In support of his contention that the evidence was insufficient to sustain the convictions, the Defendant cites his sister’s testimony that she never witnessed any inappropriate behavior, the victim’s written and oral recantations, and the lack of any eyewitnesses or physical evidence of the sexual encounters. However, our courts have repeatedly held that the testimony of a rape victim is sufficient, standing alone, to sustain a conviction. *See State v. Elkins*, 102 S.W.3d 578, 582-83 (Tenn. 2003); *State v. Wyrick*, 62 S.W.3d 751, 767 (Tenn. Crim. App. 2001); *State v. Willis*, 735 S.W.2d 818, 820 (Tenn. Crim. App. 1987). The victim offered detailed testimony with respect to each episode of sexual penetration on which the State relied in support of the convictions. “The jury, as the trier of fact, is empowered to assess the credibility of the witnesses, to address the weight to be given their testimony, and to reconcile any conflicts in the proof.” *State v. Sexton*, 368 S.W.3d 371, 398 (Tenn. 2012). By convicting the Defendant of the indicted offenses, the jury obviously accredited the testimony of the victim, which was within its province. We, therefore, affirm the Defendant’s convictions.

III. Sentencing

The Defendant contends that the trial “court erred by sentencing him to maximum sentences for each charge and also imposing consecutive sentences.” Specifically, he argues that “there were not enough enhancement factors to move his range of punishment

from the minimum range to the absolute maximum for each conviction” and that the effective ninety-year sentence is excessive. The State argues that the trial court acted within its discretion in imposing the effective sentence of ninety years. We, once again, agree with the State.

A trial court is to consider the following when determining a defendant’s sentence and the appropriate combination of sentencing alternatives:

- (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 the mitigating and enhancement factors set out in §§ 40-35-113 and 40-35-114;
- (6) Any statistical information provided by the administrative office of the courts as to sentencing practices for similar offenses in Tennessee; and
- (7) Any statement the defendant wishes to make in the defendant’s own behalf about sentencing; and
- (8) The result of the validated risk and needs assessment conducted by the department and contained in the presentence report.

Tenn. Code Ann. § 40-35-210(b).

In determining if incarceration is appropriate in a given case, a trial court should consider whether:

- (A) Confinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct;
- (B) Confinement is necessary to avoid depreciating the seriousness of the offense or confinement is particularly suited to provide an effective deterrence to others likely to commit similar offenses; or

(C) Measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant.

Id. at § 40-35-103(1). The sentence imposed should be (1) “no greater than that deserved for the offense committed” and (2) “the least severe measure necessary to achieve the purposes for which the sentence is imposed.” *Id.* at § 40-35-103(2), (4).

The trial court is granted broad discretion to impose a sentence anywhere within the applicable range and the sentencing decision of the trial court will be upheld “so long as it is within the appropriate range and the record demonstrates that the sentence is otherwise in compliance with the purposes and principles listed by statute.” *State v. Bise*, 380 S.W.3d 682, 709-10 (Tenn. 2012). We, likewise, review the trial court’s order of consecutive sentencing for abuse of discretion, with a presumption of reasonableness afforded to the trial court’s decision. *See State v. Pollard*, 432 S.W.3d 851, 860 (Tenn. 2013) (applying the same deferential standard announced in *Bise*, 380 S.W.3d at 682, to the trial court’s consecutive sentencing decisions).

A trial court may order multiple sentences to run consecutively upon finding by a preponderance of the evidence the existence of *any* one of several factors, including the following that the trial court found in this case: “[t]he defendant is an offender whose record of criminal activity is extensive”; “[t]he defendant is convicted of two (2) or more statutory offenses involving sexual abuse of a minor with consideration of the aggravating circumstances arising from the relationship between the defendant and victim or victims, the time span of defendant’s undetected sexual activity, the nature and scope of the sexual acts and the extent of the residual, physical and mental damage to the victim or victims”; and “[t]he defendant is sentenced for an offense committed while on probation[.]” Tenn. Code Ann. § 40-35-115 (b)(2), (5), (6).

The Defendant does not challenge the applicability of any of the enhancement or consecutive sentencing factors but instead argues that the trial court erred in finding that the effective ninety-year sentence was reasonably related to the severity of the offenses committed and necessary to protect the public from further criminal acts of the Defendant. However, the record reflects that the trial court thoroughly reviewed the principles and purposes of the Sentencing Act, any applicable enhancement or mitigating factors, the “despicable” circumstances surrounding the offenses, and the Defendant’s presentence report, which included the psychosexual evaluation in which the Defendant was found to be at a high risk to commit another sexual offense, in determining that an extended period of confinement was necessary to protect society from further criminal acts of the Defendant, to avoid depreciating the seriousness of the offenses, and to provide an effective

deterrence for others likely to commit similar offenses. We conclude that the trial court did not abuse its discretion in sentencing the Defendant.

CONCLUSION

Based on our review, we affirm the judgments of the trial court.

JOHN W. CAMPBELL, SR., JUDGE