

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs November 17, 2015

STATE OF TENNESSEE v. CASSIDY JOHNSON

**Appeal from the Criminal Court for Shelby County
No. 1103493 W. Mark Ward, Judge**

No. W2014-02314-CCA-R3-CD - Filed February 10, 2016

The defendant, Cassidy Johnson, was convicted of one count of rape of a child, a Class A felony. On appeal, he argues that the evidence was insufficient to sustain his conviction; that the trial court erred in admitting the forensic interviews of the victim and another witness; and that the trial court improperly excluded evidence. Following our review, we affirm the judgment of the trial court.

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

JOHN EVERETT WILLIAMS, J., delivered the opinion of the Court, in which ROGER A. PAGE and ROBERT H. MONTGOMERY, JR., JJ., joined.

Joseph S. Ozment, Memphis, Tennessee, for the Appellant, Cassidy Johnson.

Herbert H. Slatery III, Attorney General and Reporter; Andrew C. Coulam, Assistant Attorney General; Amy P. Weirich, District Attorney General; and Terre Fratesi and Cavett Ostner, Assistant District Attorneys General, for the Appellee, State of Tennessee.

OPINION

FACTS AND PROCEDURAL HISTORY

The defendant was initially charged with one count of rape of a child against the victim and another count of rape of a child against the victim's cousin. The trial court agreed to sever the offenses, and the defendant went to trial on the charge against the victim in this case.

A. Pretrial Motions

Prior to trial, the trial court held an evidentiary hearing to determine whether the forensic interviews of the victim and the victim's cousin were admissible at trial. The primary issue was whether Letitia Cole, who conducted the forensic interview of the victim, was a "qualified forensic interviewer" for the purposes of Tennessee Code Annotated section 24-7-123 (2010). Pursuant to the statute, a forensic interviewer is "qualified" only if he or she has received forty hours of forensic interview training and eight hours of supervision by a qualified forensic interviewer, in addition to several other requirements. T.C.A. § 24-7-123(b)(3)(D)-(E). Ms. Cole began working for the Memphis Child Advocacy Center ("CAC") in October 2010. She testified that she had received at least forty hours of forensic training prior to beginning her work as a forensic interviewer. She also testified that she was supervised by Kim Campbell, but she was not aware when Ms. Campbell received her forty hours of forensic training.

Vanessa Roberts testified that she worked at the CAC as the Team Services Director and that the CAC kept records of all of the training that its employees completed. Ms. Roberts stated that Ms. Campbell had worked at the CAC for fifteen years. Although Ms. Roberts had not personally reviewed Ms. Campbell's file, Ms. Roberts recalled attending training sessions with Ms. Campbell.

The State introduced Ms. Cole's and Ms. Campbell's training logs. Ms. Cole's training log reflected that she received 51.5 hours of training for the fiscal year of 2010, including 40 hours of forensic interview training. Ms. Campbell's training log reflected that she received 82.25 hours of training for the fiscal year of 2010, including 26 hours of forensic interview training. At trial, the State presented additional training logs for Ms. Campbell that indicated that in July 2009, she received 38.25 hours of forensic interview training. The trial court found that based on all of Ms. Campbell's training, she was a qualified forensic interviewer at the time she supervised Ms. Cole. The trial court also found that Ms. Cole was a qualified forensic interviewer, and the court ruled that the forensic interviews were admissible.

At the hearing, the trial court also considered whether the State could introduce evidence of a confrontation between the defendant and the victim's grandfather during which the defendant fired a pistol into the ground at the victim's grandfather's home. The victim's mother, A.M.,¹ testified that she was still spending time with the defendant after she learned of the allegations against him. She had lied to the victim's grandfather,

¹ In order to protect the privacy of the victim, we will refer to members of her family by their initials.

who was her father, about continuing to see the defendant. When the victim's grandfather learned about A.M.'s dishonesty, he called to confront her in the early morning hours of May 14, 2011. A.M. was with the defendant at the time of the call, and she left to go meet the victim's grandfather, who lived with A.M.'s brother.

When A.M. arrived, she and the victim's grandfather got into his vehicle to discuss the situation. While talking with the victim's grandfather, A.M. saw that the defendant had arrived at the residence. The defendant began walking up the driveway and yelling at the victim's grandfather, and A.M. attempted to restrain the defendant. The defendant retrieved a gun from his pants and began to wave it in the air. A.M. continued to try to get the defendant to leave, and the defendant and the victim's grandfather got into a physical altercation. The victim's grandfather told the defendant that he had lost his wife and children, and the defendant shouted at A.M., "[S]o I'm never going to have -- to get my family back[?]" A.M. responded, "[N]o, not after this. We're done, this is it, get out of here." At that point, the defendant fired his weapon into the ground. The defendant fled the scene, and the victim's grandfather began to complain that he was having difficulty breathing. He became unresponsive, and A.M. attempted to perform CPR to revive him. An ambulance arrived a short time later, and he passed away in the ambulance.

The State argued that the evidence was admissible to show the defendant's guilty knowledge of the abuse of the victim. The trial court found that the evidence was inadmissible in the State's case-in-chief and found that the evidence of the victim's grandfather's death was "so peripheral" that the prejudicial effect outweighed the probative value of the evidence. However, the court stated that it was "[a]bsolutely" open to revisiting the issue if it arose during trial.

B. Trial

State's Proof

A.M. testified that she gave birth to the victim in 2002 and that the defendant was the victim's father.² In addition to the victim, A.M. and the defendant also had two more children together. A.M., the defendant, and their three children lived in several houses on Moon View Road. The family first lived at 2732 Moon View Road, and in 2009 they moved next door into 2738 Moon View Road. Family members of both A.M. and the

² A.M. testified that she became pregnant shortly after beginning a romantic relationship with the defendant, and she was not certain that the defendant was the victim's biological father. She stated that the defendant signed the victim's birth certificate and that the victim had never known any other person to be her father.

defendant frequently lived with the family. Initially, the victim's grandfather, the victim's maternal uncle, his wife, and their three children, including the victim's cousin, all lived with the defendant and A.M. Additionally, the defendant's brother and his girlfriend periodically lived at the residence. A.M. also testified that her aunt and her aunt's boyfriend lived with the family for a period of time. A.M. estimated that between August 2009 and March 2011, there was only a brief period of time when she, the defendant, and their children lived alone.

Between 2009 and 2011, A.M. held several different jobs. From 2010 to the spring of 2011, she worked at Waffle House, and she typically worked from 10:00 p.m. to 6:00 a.m. The defendant's employment history was sporadic, and A.M. testified that he never held a job that required him to work nights. While A.M. was at work, the defendant would care for the children. A.M. testified that there were "a select few times" when the defendant would be alone with the children while she worked.

A.M. testified that the defendant "had a great relationship with" their children. She never saw the defendant hit the children, other than spankings for disciplinary reasons, or curse the children.

A.M. and the defendant had a "[n]ormal" sexual relationship. They owned several pornographic movies, which they kept either in the top drawer of a dresser or on the DVD player. A.M. did not recall a time when the victim or the victim's cousin would have seen these movies. In addition to the movies, A.M. and the defendant used lubricants in their sexual relationship. They kept the lubricants in a cabinet in the headboard on the defendant's side of the bed. A.M. was shown a photograph of the headboard, and she identified the cabinet where the lubricant was kept. A.M. also identified photographs of some of the lubricants that she and the defendant used, and she described others. One was in a "black bottle," and a second was in a "clear bottle with a white top." A.M. could not recall ever seeing the victim open the cabinet where the lubricant was kept.

A.M. recalled an instance when she discovered blood in the victim's underwear. She asked the victim about the blood, and the victim said that "nothing" had happened. A.M. also questioned the defendant, and he told A.M. that the victim had fallen off of her bicycle earlier in the day. He also told A.M. that he had examined the victim and did not see any visible injury. A.M. initially thought that the victim may have been starting her period, and she quickly put the incident out of her mind. She recalled that this incident occurred in 2011. She said that she would not have been surprised if the girlfriend of the defendant's brother was at the residence when the victim fell off of her bicycle. She did not recall if the defendant's brother's girlfriend noticed the blood and helped to clean up

the victim. She testified that she did not recall that the victim had a cut on the top of her private part after the bicycle incident.

A.M. testified that after the allegations were made against the defendant, she was told that her children could be taken from her if she allowed them to have any contact with the defendant. She agreed that there was a court order prohibiting her from allowing the children to be around the defendant. She testified that she obeyed this order.

A.M. testified that she never told Amanda Biggs that in order for her to get away from the defendant she “would have to do something major or drastic.”

A.M. testified that she did not know of any reason why the victim would fabricate the allegations against the defendant. A.M. testified that she had not coached either the victim or the victim’s cousin to make accusations against the defendant. She stated that she had no motivation to encourage either victim to falsely accuse the defendant.

The victim testified that she was eleven years old at the time of the trial and that the defendant was her father. She knew that she was testifying at trial because the defendant touched her “in areas he wasn’t supposed to,” namely her “chest” and her “private” between her legs. The victim testified that the abuse occurred at the 2738 Moon View Road address and that it happened in the defendant’s bedroom and in the living room. The defendant touched her front private and her rear end with his hand, and he placed “[w]hite slickery [sic] stuff” on his hand and rubbed it around her private. The victim testified that the substance was “[a]lmost clear,” and the defendant retrieved the substance from the cabinet behind his side of the bed. The victim identified a photograph of the defendant’s bedroom and pointed out the cabinet where the defendant obtained the substance, which was the same cabinet where A.M. said that she and the defendant kept their lubricant. The victim testified that the defendant also placed his private in the victim’s mouth and his mouth on her private. The victim recalled seeing “[w]hite stuff” that looked like a liquid come out of the defendant’s private. Sometimes, the substance went into her mouth, and she testified that it tasted “nasty.”

The victim testified that the defendant touched her private with his private, and he placed the slippery substance on his private. The defendant placed his private inside of her private and moved it “in and out” of her private. The victim stated that before the defendant placed his private in hers, his private looked like a “stick.” The defendant would instruct the victim to remove her clothes, and he would remove his as well. The victim testified that the sexual abuse happened “[a] lot.”

The victim recalled a specific incident where the defendant penetrated her with his penis. They were on the defendant’s bed, and the victim was on her back with the

defendant holding her legs in “a ‘V’ shape.” While his private was “[m]oving in and out” of the victim’s private, the top sheet of the bed slipped. The defendant’s body lurched forward, and his private “went further” into her private. The victim testified that “[i]t hurt for a second.” The next day, the victim noticed that there was blood in her underwear. She testified that she did not tell anyone about the blood, and she said that this was the only time she saw blood in her underwear.

The victim could not recall precisely when the abuse occurred, although she said that it occurred at the 2738 Moon View address. She remembered that there were times when her maternal uncle and aunt, their children, the defendant’s brother, and his girlfriend lived with the family. She testified that the incident with the bed sheet happened when her mother was working at Waffle House. The victim was sure that only she, her siblings, her mother, and the defendant were living in the house when it occurred. She stated that she did not disclose the abuse to her mother because she was afraid that the defendant would hurt someone.

The victim testified that she never had an accident where she fell off of her bicycle and hurt her private. She recalled only one bicycle accident, when she fell after taking a turn too sharply and cut the right side of her body. She stated that she never told the defendant or anyone else that she had an accident where she hurt her private. She recalled seeing blood in her underwear only after the incident in which the bed sheet slipped.

The victim recalled several incidents that occurred when she was with her cousin. On one occasion, she, her cousin, and the defendant went on a walk to a lake in the woods, which the victim testified was a good distance from her home. The victim and her cousin were sitting on the defendant’s lap, and he touched both the victim’s and her cousin’s privates underneath their clothes. The victim also recounted an incident when her cousin spent the night and they were playing truth or dare with the defendant. The defendant dared both the victim and her cousin to remove their clothes, and they complied. The defendant then gave the victim’s cousin a “raspberry” on her stomach while she was naked.

The victim remembered telling Ms. Cole that she had not seen the defendant touch her cousin. She testified that she lied to Ms. Cole because she did not want to say anything about her cousin. The victim testified that no one from her family had told her to make up the allegations against the defendant.

The victim’s cousin also testified about the two incidents with the defendant, although her account differed slightly from that of the victim. The victim’s cousin testified similarly to the victim about the incident in the woods, but she said that she did

not recall seeing a lake. She also testified that the woods were close to the victim's home. The victim's cousin testified about the sleepover, and she said that it happened after she and her family moved out of the house. She did not think that anyone other than the defendant, A.M., and their children were living in the house at the time. She said that the defendant called her into the living room and "touched" her. He then told her to tell the victim to come into the living room, and the victim's cousin believed that the defendant touched the victim as well. The victim's cousin and the victim later played truth or dare with the defendant, and he dared them to take their clothes off and jump on the bed. He also dared the victim's cousin to kiss the victim on her "lips, her cheek and in her area," but the victim's cousin refused to do so. The defendant then made the victim's cousin kiss the victim "under her belly button." The victim's cousin testified that the defendant did not kiss her or give her "a raspberry." She testified that she watched a pornographic movie with the defendant on the night of the sleepover.

The victim's aunt testified that she met the victim's maternal uncle in August 2008. Shortly thereafter, they moved in with A.M., the defendant, their children, and the victim's grandfather. They first lived at 2732 Moon View Road, and the victim's aunt estimated that they lived there for one year. Around July 2009, the family moved into the house next door, which was 2738 Moon View Road. The victim's aunt believed that she, the victim's maternal uncle, and their children moved out of the house at the end of January 2010. The victim's aunt testified that shortly after her family left, the defendant's brother and his girlfriend moved in, although she was not sure of the approximate date of the move. The victim's aunt testified that the victim's cousin went to a sleepover with the victim sometime between "Christmas of 2010" and "January 16, 2011." The victim's aunt did not believe anyone other than A.M., the defendant, and their children were living at the home at the time of the sleepover.

Lieutenant Vicky Malone of the Shelby County Sheriff's Office testified that she worked in the Special Victim's Unit when she was contacted by A.M. Lieutenant Malone spoke with both A.M. and the victim, and the victim told Lieutenant Malone that her father had been touching her private parts. Lieutenant Malone scheduled forensic interviews for both the victim and the victim's cousin. In her interview, the victim stated that the defendant used "sticky slippery stuff," and she indicated that the substance was in a cabinet above the bed. After the forensic interviews, Lieutenant Malone searched A.M.'s home to find evidence that would corroborate the victim's statements. Lieutenant Malone searched the cabinet that the victim described and found lubricant.

Lieutenant Malone also interviewed the defendant. He denied the allegations. He acknowledged that there were pornographic movies in the house, but he contended that they were out of sight and reach of the children.

Dr. Karen Lakin testified that she was the medical director for the Le Bonheur CARES program. The program had a clinic at the CAC, and the victim received a forensic medical examination on April 5, 2011. During the examination, the victim said that her father placed his private inside of her private and inside of her bottom. Dr. Lakin stated that it was not typical for child victims of sexual assault to have visible traumatic injuries. She testified that the victim did not have any lacerations or bruising. There was a “notch,” which was “a little indentation in the border of the hymen,” that “did not confirm or discount the possibility of sexual assault.”

Defense Proof

The defendant’s brother testified that he and his girlfriend periodically lived with the defendant in the Moon View Road homes. The defendant’s brother testified that he and his girlfriend first lived with the defendant from January to April 2010. They moved out but returned to the home in July 2010 and stayed until October 2010. They then moved back into the home at some point between January 16 and 20, 2011. The defendant’s brother recalled the victim’s cousin’s spending the night at the home, and he was certain that the sleepover occurred after he had moved back into the home. He also recalled an incident when the victim fell off of her bicycle.

The defendant’s brother’s girlfriend testified similarly to the defendant’s brother about the three periods of time that they lived with the defendant and his family. She testified that the sleepover occurred while she lived in the home, and she believed that it was at some point between January and March 2011. She testified about the incident in which the victim hit her private on her bicycle. The defendant’s brother’s girlfriend had constructed a small bicycle ramp, and the bar of the victim’s bicycle struck her between the legs when she used the ramp. The victim told the defendant’s brother’s girlfriend that she had some blood in her underwear, and the defendant’s brother’s girlfriend unsuccessfully attempted to wake up A.M. The defendant’s brother’s girlfriend took the victim into the bathroom, and she noticed that the victim had “a little cut” above her private. The defendant’s brother’s girlfriend cleaned up the victim and gave her clean clothes. The defendant’s brother’s girlfriend informed the defendant about the incident when he returned from work. She believed that this occurred in February or March 2011. She said that it would surprise her to learn that the victim had testified that she did not have a bicycle accident where she hurt her private.

Amanda Briggs testified that she used to work with A.M. She testified that she heard A.M. say “numerous times” that if she ever had to leave the defendant, “she would have to do something dramatic and outrageous to get rid of him.” Ms. Briggs believed that the comments were initially made in jest.

The defendant testified that he had never sexually abused the victim or the victim's cousin. He testified that he had no idea why the victim would have testified the way that she did.

The State made an election of the incident where the bed sheet slipped while the defendant was penetrating the victim. The jury convicted the defendant of one count of rape of a child, and the trial court imposed a twenty-five-year sentence. The defendant now appeals his conviction.

ANALYSIS

On appeal, the defendant argues that the evidence is insufficient to sustain his conviction; that trial court erred in admitting the forensic interviews of the victim and the victim's cousin; and that the court erred in excluding evidence of a confrontation between the defendant and the victim's grandfather that precipitated the victim's grandfather's death.

I. Sufficiency of the Evidence

The defendant argues that the evidence is insufficient to sustain his convictions. He contends that the testimony of the victim and the victim's cousin was so inconsistent that it created a reasonable doubt of guilt. The State responds that the evidence is sufficient.

When a defendant challenges the sufficiency of the evidence, the relevant question for this court is "whether, after viewing the evidence in the light most favorable to the State, *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). On appeal, "the State is entitled to the strongest legitimate view of the evidence and to all reasonable and legitimate inferences that may be drawn therefrom." *State v. Elkins*, 102 S.W.3d 578, 581 (Tenn. 2003) (quoting *State v. Smith*, 24 S.W.3d 274, 279 (Tenn. 2000)). Therefore, this court will not re-weigh or reevaluate the evidence. *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Instead, it is the trier of fact, not this court, who resolves any questions concerning "the credibility of witnesses, the weight and value to be given the evidence, as well as all factual issues raised by the evidence." *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). A guilty verdict removes the presumption of innocence and replaces it with a presumption of guilt. *State v. Evans*, 838 S.W.2d 185, 191 (Tenn. 1992). The burden is then shifted to the defendant on appeal to demonstrate why the evidence is insufficient to support the conviction. *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). This court applies the same standard of

review regardless of whether the conviction was predicated on direct or circumstantial evidence. *State v. Dorantes*, 331 S.W.3d 370, 381 (Tenn. 2011).

Tennessee Code Annotated section 39-13-522(a) defines rape of a child 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.” Sexual penetration includes “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).

Viewing the evidence in the light most favorable to the State, the victim testified that the defendant sexually abused her when she lived at 2738 Moon View Road. She recalled one incident in which she was in the defendant’s bedroom and the defendant placed his penis inside of her private while holding her legs in the air. The victim described how she was on the defendant’s bed and felt his penis moving around inside of her private. She said that the bed sheet slipped, and the defendant’s penis went further into her private, causing her pain. She later noticed blood in her underwear, and A.M. also noticed blood in the victim’s underwear. The jury was made aware of the conflicting testimony regarding the bicycle accident and the injury to the victim’s private, and it is clear that they resolved this conflict in favor of the State. The jury was also made aware of the inconsistencies between the victim’s and the victim’s cousin’s accounts of the incidents in the woods and at the sleepover. These minor inconsistencies were not “so improbable or unsatisfactory as to create a reasonable doubt of the [defendant’s] guilt.” *State v. Elkins*, 102 S.W.3d 578, 583 (Tenn. 2003) (quoting *State v. Radley*, 29 S.W.3d 532, 537 (Tenn. Crim. App. 1999)). We conclude that the evidence was sufficient for a rational trier of fact to find the defendant guilty of rape of a child, and he is not entitled to any relief.

II. Forensic Interviews

The defendant argues that the trial court should not have admitted the forensic interviews because the State did not establish that Ms. Cole was a qualified forensic interviewer pursuant to Tennessee Code Annotated section 24-7-123. He contends that Ms. Cole was unqualified because the State never showed that she received eight hours of supervision from a qualified forensic interviewer. The State responds that the proof showed that both Ms. Cole and Ms. Campbell were qualified forensic interviewers.

A trial court’s decision regarding the admission of evidence is reviewed under an abuse of discretion standard. *State v. Robinson*, 146 S.W.3d 469, 490 (Tenn. 2004). A trial court has abused its discretion only when it has “applied incorrect legal standards,

reached an illogical conclusion, based its decision on a clearly erroneous assessment of the evidence, or employed reasoning that caused an injustice to the complaining party.” *State v. Banks*, 271 S.W.3d 90, 116 (Tenn. 2008).

Tennessee Code Annotated section 24-7-123 governs the admissibility of forensic interviews at trial. In order to be admissible, the forensic interview must have been conducted by a person who has “completed a minimum of forty (40) hours of forensic training in interviewing traumatized children.” T.C.A. § 24-7-123(b)(3)(D). Additionally, the interviewer must have completed “a minimum of eight (8) hours of interviewing under the supervision of a qualified forensic interviewer of children.” T.C.A. § 24-7-123(b)(3)(E). The defendant contends that the State failed to show that Ms. Cole’s supervisor, Ms. Campbell, had completed a minimum of forty hours of forensic training, meaning that she was not a “qualified forensic interviewer” for the purposes of supervising Ms. Cole for eight hours. It is the defendant’s position that because Ms. Cole was not supervised by a “qualified forensic interviewer,” Ms. Cole herself was not a qualified forensic interviewer, making the forensic interviews inadmissible.

The defendant’s argument is not supported by the record. While the defendant is correct in that the State introduced a document showing that Ms. Campbell received only 38.25 hours of forensic training in July 2009, the State also introduced additional training logs from the fiscal year 2010 showing that Ms. Campbell received 26 hours of forensic interview training. These logs indicate that as of October 2010, when Ms. Cole began working for the CAC, Ms. Campbell had 64.25 hours of forensic interview training. As a result, Ms. Campbell was a “qualified forensic interviewer” for the purposes of supervising Ms. Cole, and Ms. Cole was also a “qualified forensic interviewer” for the purposes of Tennessee Code Annotated section 24-7-123. We conclude that the trial court did not err in admitting the forensic interviews, and the defendant is not entitled to any relief.

III. Incident Involving the Victim’s Grandfather

The defendant argues that he should have been permitted to introduce evidence of the confrontation between the defendant and the victim’s grandfather and the victim’s grandfather’s subsequent death. He contends that he was denied the opportunity to present this evidence “when the trial court ruled that the incident was ‘so peripheral’ that the ‘prejudicial effect outweigh[ed] the probative value.’” He contends that the evidence illustrates that A.M. had a motive to coach the victim to falsify the allegations and that denial of the opportunity to present this evidence violated his right of confrontation. The State responds that the defendant has failed to demonstrate that he was deprived of the right to present the requested evidence.

We agree with the State that the trial court did not prohibit the defendant from introducing evidence of the confrontation and the victim's grandfather's death. The trial court's initial ruling that the evidence of the victim's grandfather's death was inadmissible was made in response to the State's motion to admit the evidence in its case-in-chief. The ruling did not preclude the defense from attempting to introduce the evidence. At no point, however, did the defendant attempt to introduce the evidence or argue that the trial court was improperly excluding the evidence. In fact, he argued for the exclusion of the evidence of the victim's grandfather's death at the evidentiary hearing. He cannot claim that his right to confrontation was violated when the trial court did not prevent him from introducing the evidence. *See* Tenn. R. App. P. 36(a) ("Nothing in this rule shall be construed as requiring relief be granted to a party responsible for an error or who failed to take whatever action was reasonably available to prevent or nullify the harmful effect of an error."). We conclude that the defendant is not entitled to any relief.

CONCLUSION

Based on the foregoing, we affirm the judgment of the trial court.

JOHN EVERETT WILLIAMS, JUDGE