



The defendant was charged in the indictment with six counts of rape of a child under thirteen years of age, in violation of T.C.A. § 39-13-522 (Supp. 1995). At the close of proof, the State elected to proceed upon one count of the indictment and, on March 2, 1995, the jury found the defendant guilty on that count. At the sentencing hearing on March 27, 1995, the trial court sentenced him to fifteen years in the Department of Correction. In this appeal as of right, the defendant challenges the sufficiency of the convicting evidence. We find that the defendant's issue on appeal lacks merit, and we therefore affirm the judgment of the trial court.

The incident which led to the investigation of the present case occurred on October 10, 1993. On that date, Teresa Stokes, the mother of the victim<sup>1</sup> and the former wife of the defendant, testified that she had witnessed the defendant standing in the victim's bedroom holding his erect penis. The victim was sitting on her bed at the time, and the defendant was "pointing down at her private part." Stokes later questioned the victim about what had taken place. The victim eventually revealed that the defendant had been sexually abusing her since approximately May 1993. The sexual abuse allegedly included both oral and vaginal sex. In response to this information, Stokes telephoned the police. Stokes testified further that the victim had been sexually assaulted when she was three years old. That incident resulted in the prosecution of an individual, and he received probation and mandatory counseling. The victim also reported having been sexually assaulted in 1991 by another individual, but charges in that case were dropped.

The victim testified that on October 10, 1993, she had been sitting on her bed putting pants on over her shorts. The defendant entered her room, "grabbed his

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<sup>1</sup> We will refer to the defendant's step-daughter only as "the victim." It is the policy of this Court not to identify her by name because she was a minor when the incidents allegedly occurred.

private part,” pointed at her “private part,” and asked her to “do something” with him. The victim’s mother interrupted the conversation and called the victim into the bathroom. At this point, the victim told her mother that the defendant had been sexually abusing her.

The victim testified that the abuse had begun shortly after the defendant moved back into the home in the spring of 1993, while he and Teresa Stokes were attempting to salvage their marriage. The abuse included oral and vaginal sex, and it took place in every month from April 1993 through October 1993. The victim testified further that, although the defendant had not sexually abused her on October 10, 1993, he had sexually abused her during October prior to that date. In all, the defendant sexually abused the victim on more than ten or twelve occasions. The victim stated that she had not told her mother about the abuse prior to October 10, 1993, because she was afraid that the defendant would harm her mother or herself.

Barbara Derricks, a police investigator, testified that she had interviewed the victim after the police were called on October 10, 1993. The victim informed Derricks of the sexual abuse, and one incident drew Derricks’ attention. On one occasion, the defendant was sexually abusing the victim when he was interrupted by a knock at the door. The victim noticed that the defendant’s penis was dripping as he jumped up from her bed. Based on this information, Derricks had the victim’s bedspread and samples from the bedroom carpet tested for the presence of semen. When Derricks asked the defendant why his semen might be found on the victim’s bedspread, he responded that he would sometimes cover himself with the bedspread as he masturbated while watching football.

Dr. C. A. Stilwell testified that he had examined the victim on October 11, 1993. During his examination, Stilwell discovered that the victim’s hymen was stretched

significantly. Stilwell stated that such stretching was caused by a "significant sexual experience," meaning multiple occasions of penetration by something as large as an erect penis. Stilwell testified further that the condition of the victim's vagina could not have been caused by even multiple instances of fondling or digital penetration.

Deanne Johnson, a forensic serologist with the Tennessee Bureau of Investigation, testified that she had tested the bedspread and the carpet samples for the presence of bodily fluids. She confirmed the presence of semen on the victim's bedspread and stated that the semen came from a man with type B blood. She testified further that the defendant's blood test revealed that he has type B blood.

Margaret Bash, a forensic scientist specializing in DNA analysis with the Tennessee Bureau of Investigation, testified that she had conducted a DNA analysis of the semen sample from the victim's bedspread. Her analysis revealed that the DNA from the semen on the bedspread matched the DNA from the defendant's blood test. She testified further that the probability of selecting an unrelated individual from the African-American population having a matching DNA profile is one in two hundred thirty-three million.

At the close of the State's case-in-chief, the State elected to proceed upon one count of the indictment, alleging that the defendant had raped the victim in October of 1993 before October 10, 1993. The defendant offered no proof on his behalf.

When an accused challenges the sufficiency of the convicting evidence, we must review the evidence in the light most favorable to the prosecution in determining whether "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, 99 S.Ct. 2781, 61

L.Ed.2d 560 (1979). We do not reweigh or re-evaluate the evidence and are required to afford the State the strongest legitimate view of the proof contained in the record as well as all reasonable and legitimate inferences which may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978).

Questions concerning the credibility of witnesses, the weight and value to be given to the evidence, as well as factual issues raised by the evidence are resolved by the trier of fact, not this Court. Cabbage, 571 S.W.2d 832, 835. A guilty verdict rendered by the jury and approved by the trial judge accredits the testimony of the witnesses for the State, and a presumption of guilt replaces the presumption of innocence. State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973).

A defendant challenging the sufficiency of the proof has the burden of illustrating to this Court why the evidence is insufficient to support the verdict returned by the trier of fact in his or her case. This Court will not disturb a verdict of guilt for lack of sufficient evidence unless the facts contained in the record and any inferences which may be drawn from the facts are insufficient, as a matter of law, for a rational trier of fact to find the defendant guilty beyond a reasonable doubt. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

From a review of the record in this case, we can only conclude that the facts are sufficient, as a matter of law, for a rational trier of fact to find the defendant guilty beyond a reasonable doubt. The victim testified that the defendant had engaged in oral and vaginal sex with her on at least ten or twelve occasions, including an incident in October of 1993 before October 10, 1993. A medical examination of the victim's vagina revealed that it had been penetrated on multiple occasions by something as large as an erect penis. Scientific analysis confirmed the presence of semen matching the

defendant's DNA on the victim's bedspread. Given the proof in the entire record, the defendant has failed to carry his burden of demonstrating the legal insufficiency of the convicting evidence.

For the reasons set out in the foregoing discussion, we find the defendant's issue to be without merit. His conviction is therefore affirmed.

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JOHN H. PEAY, Judge

CONCUR:

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JOE B. JONES, Presiding Judge

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DAVID G. HAYES, Judge