

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs June 23, 2026

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Clerk of the
Appellate Courts

STATE OF TENNESSEE v. ANTHONY LAWRENCE JOHNSON

Appeal from the Criminal Court for Johnson County
No. 2022-CR-19 Stacy L. Street, Judge

No. E2025-00835-CCA-R3-CD

Defendant, Anthony Lawrence Johnson, was convicted by a jury of one count of rape, three counts of sexual battery by an authority figure, one count of statutory rape by an authority figure, and one count of aggravated statutory rape. At sentencing, the trial court merged some of his convictions and imposed an effective sentence of eleven years' incarceration. In this appeal as of right, Defendant raises fifteen issues, which can all be condensed into three basic assertions: that the evidence was insufficient to sustain his convictions, that the verdicts were inconsistent, and that the trial court abused its discretion in sentencing him. Having reviewed the entire record, we find no error and affirm the judgments of the trial court.

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

TIMOTHY L. EASTER, J., delivered the opinion of the court, in which ROBERT H. MONTGOMERY, JR., and STEVEN W. SWORD, JJ., joined.

J. Matthew King (on appeal) and Julie R. Canter (at trial), Kingsport, Tennessee, for the appellant, Anthony Lawrence Johnson.

Jonathan Skrmetti, Attorney General and Reporter; Lacy E. Wilber, Assistant Attorney General; Steven R. Finney, District Attorney General; and Leon T. Marshall and Ryann M. Jeffers, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Defendant was indicted by the Johnson County Grand Jury for two counts of rape by force or coercion and three counts of sexual battery by an authority figure. In a

subsequent presentment, Defendant was also charged with two counts of statutory rape by an authority figure and two counts of aggravated statutory rape.

Trial and Sentencing

State's Proof

The victim testified that she met Defendant during the summer of 2021, while she was a student at Johnson County High School. She participated in “the Explorer program,” which allowed students to volunteer with the rescue squad and “ride along and help out with the EMTs and paramedics.” Her career goal was to work in “the medical field.” The victim was sixteen years old at the time. The victim met Defendant, who was sixty years old, because he was a volunteer with the rescue squad.

In June of 2021, Defendant asked the victim if she wanted a job caring for his horses. The victim had an interview with Kerri Kennedy, Defendant’s live-in girlfriend, who owned the horses. Ms. Kennedy hired the victim to work with the horses. The victim described her duties, which included feeding the horses two to three times a day, training and riding them, and grooming them. She sometimes purchased supplies for the horses using Defendant’s debit card. Defendant paid her cash for her work.

The horses were kept in a barn, but the victim had permission to access Defendant’s house. She explained that there were a bathroom and refrigerator downstairs and “the same upstairs if there was nothing downstairs.” The house had two levels and an elevator. Ms. Kennedy had mobility issues and used a walker. Ms. Kennedy’s son, Kyle Kennedy, lived with them and stayed in a bedroom beside the elevator on the first level.

The State introduced several text messages between Defendant and the victim as exhibits at trial. On July 20, 2021, Defendant sent the victim a text asking, “Where are you[?]” The victim responded, “I clean the horses and I’m over here at the horses[.] [W]hy[?]” Defendant texted, “Hey butt floss. Lol. I left that paper and that box in your car[.]” The victim testified she felt “[k]ind of weird” when Defendant called her “butt floss.”

On July 23, 2021, the victim went upstairs to clean a bedroom, and Defendant entered the room while she was cleaning. Defendant pushed her onto the bed and pulled down her pants and panties. She testified he “put his tongue and hands in [her] vagina.” The victim asked him to stop “multiple times” and Defendant “kept on going.” Defendant only stopped when the victim kicked him in the shoulder. She testified, “When I kicked him, it pushed him back pretty good, and I went back downstairs and I left after that.” The victim “went home and maybe thought it was a mistake.” She planned to return to work

the next morning, but she was “[a] little bit” scared to go back to Defendant’s house. She was “not feeling good after the day before that with what he had done.”

The victim read a series of text messages sent between Defendant and her the following day. At 7:10 a.m., she texted Defendant that she woke up with a headache and body aches, and she asked if Defendant could feed the horses that morning. Defendant responded, “Sure.” Defendant asked if she was going to the tractor pull that night. The victim had planned to go to the tractor pull with the rescue squad. Later that morning, the victim texted Defendant, “I’m so sorry about this morning[.]” Defendant did not respond, and the victim texted, “Well idk if ur mad at me but I’ll be the[re] in 10[.]” Defendant responded, “Baby girl I’m not mad” and explained that he had been mowing grass.

At 10:10 a.m., the victim texted Defendant that she was “On [her] way!” and told him that her cell phone would not allow her to call or text unless it was using Wi-Fi. She wrote, “I need a new one but . . . idk[.]” Defendant responded, “OK sunshine” and later, “Hey sunshine I hope you’re feeling better we really really need you tonight[.]” The victim wrote, “I feel [a] little better still not the best[.]” Defendant texted, “Sweetie I am desperate I could definitely use you tonight I’ll make it up to you” and “You might end up with a new telephone[.]” The victim responded, “Aww really thank you[.]” and Defendant told her to meet him at his house at 2:15 and they would leave at 2:30. She responded, “Alrighty.” She then inadvertently texted, “No[.]” and said, “I didn’t meant to put that sorry[.]” explaining that she felt “like sh[**.]” Defendant texted, “I will make you feel better[.]” The victim asked, “How though[?]” Defendant responded, “I will make you feel better” and “You will see.” The victim wrote, “Alrighty” and “I’ll be the[re] in 10 minutes[.]”

That same day,¹ the victim got on the elevator to go upstairs to get a bottle of water. As she got onto the elevator to go back downstairs to feed the horses, Defendant followed her onto the elevator and stopped it. He pulled down her pants and panties and again “put his mouth and fingers back in [her].” The victim testified it was painful and she again told Defendant to stop multiple times. Defendant’s hands were behind her thighs, and she was “pinned up against the wall in the corner.” She testified, “with him pushing pressure on my legs, it was hard for me to go anywhere.” She was holding a water bottle in one hand and her phone in the other. She testified, “I don’t know why I took a picture, but I took a picture of him doing it just – I guess just to have to – if any – if I felt like I needed to say something.” The photo the victim took with her phone was introduced as an exhibit. Defendant told her not to tell anyone what he had done. The victim blamed herself for the

¹ The prosecutor apparently misspoke when he asked the victim to recount the events of July 25 because the photograph she took in the elevator was dated July 24, 2021.

second incident, testifying, “Because I went back the next day, and it happened again, and I shouldn’t have.”

On July 25, the victim went with Defendant to a cell phone store, and Defendant bought her an iPhone 12 Pro Max. She chose the color of the phone. The victim testified that prior to the incidents, Defendant had also bought her an Apple Watch and a pair of riding boots and riding pants while she was working for him as compensation for her work. On cross-examination, the victim testified Defendant also bought items for her friend, Jessee, and the victim believed “he was just being nice.”

On July 26, Defendant texted the victim, asking if she was upset and if she was going to work with a horse that day. The victim replied that she was “[f]ine” and that she would work with a horse that evening. She testified that she was upset but was afraid to tell Defendant because, “I just didn’t know what he would do if I did tell him.” Defendant asked if the victim needed a charger for her phone and watch, and she replied, “Yeah[.]” She testified she felt “[v]ery weird that he would want to buy [her] stuff after he’d done that.”

The victim and Defendant also exchanged the following text messages on July 26:

The victim: [H]ey, [i] don’t really appreciate the way you have been touching me and everything it’s making me very uncomfortable to come over anymore. . . [I] wish you didn’t even start cause you have put me in so much pain lately

Defendant I understand. I totally sorry. I was going to tell you the same thing today.
Can you call me
Can you call me.

The victim: Later

Defendant: It will never happen again
Are you going to continue to work with the horses

The victim: If you promise you won’t touch me anymore or get close like that again

Defendant: I do

The victim continued to work for Defendant for two or three more weeks. She testified, “I just figured since he did say he wouldn’t do it no more, it would be okay.” She testified that Defendant “really didn’t get close to [her] after that.”

The victim had a car accident on August 13, and her mother decided she should not return to work for Defendant. In September, the victim disclosed the abuse to her father, and her father took her to the Johnson County Sheriff’s Office to report it. The victim testified that in addition to incidents of digital and oral penetration, Defendant kissed her once when they were driving in his vehicle to get horse supplies. The victim testified she did not have any romantic interest in Defendant and that his actions made her “[v]ery uncomfortable” and caused her physical and emotional pain.

The victim started dating her boyfriend on July 13, 2021. On cross-examination, the victim did not remember texting her boyfriend that she was scared on July 25. She agreed that she told him she would not return to Defendant’s house but that she returned to feed the horses. The victim also told her boyfriend that she would tell her mother what Defendant had done, but she did not. She did not remember texting her boyfriend on July 29 that her father had sold her horse. She acknowledged that she never owned a horse. She “guess[ed]” that she lied to her boyfriend about her father’s selling her horse. She also acknowledged she lied to her boyfriend when she texted him on July 25, saying her mother had given her permission to spend the night at his house.

The victim did not recall texting Defendant to ask for money to pay for her boyfriend’s gas. She recalled that her boyfriend had been using his car to drive her around since her car accident. The victim agreed that in early August 2021, Defendant and Ms. Kennedy became upset with her when she spent more than \$1,000 on their credit card in one day. She could not remember whether she purchased things that were not on the list they had given her. She said she gave the credit card to her boyfriend “to use at the register” while she went outside and “took some stuff out.” The victim acknowledged that she used their credit card to pay for dinner for her and her boyfriend, but she testified, “I felt bad after I did because I grabbed the wrong one.” She testified Defendant and Ms. Kennedy “confronted me, but I wasn’t frustrated about it ‘cause they w[ere] nice about it.”

The victim agreed that she did not report the allegations until September 14, 2021. She testified on cross-examination that she told Investigator Cole Gladden “everything [she] . . . could think of at that time.” Investigator Gladden asked her to come back to the police station on October 11, and she made a new disclosure on that date. That was the first time she said that Defendant had pushed her onto the bed and put his fingers inside her. She also told Investigator Gladden that Defendant had asked “to put his thing inside of” her. She testified, “I honestly don’t know” about why she would omit that incident from the initial police report.

Investigator Gladden took a report from the victim on September 14. She also took an extraction of the victim's cell phone. On the same day, she and other officers went to Defendant's home and spoke to Defendant. They took Defendant's cell phone pursuant to a search warrant. Investigator Gladden testified they found no text messages or calls between the victim and Defendant on Defendant's phone, only "a couple of pictures of [the victim] with some of the horses"

Investigator Gladden testified that when she spoke to the victim again on October 11, the victim "disclosed another incident that had happened prior to the incident in the elevator." The victim told Investigator Gladden she had not disclosed the first incident because "she was ashamed and – and afraid to talk about it." On cross-examination, Investigator Gladden clarified that the victim said she was "really scared" to talk about the incidents and did not use the word "ashamed."

The victim's father had not met Defendant before the victim began working for him. Defendant called him from the Verizon store to talk about purchasing the victim a cell phone for work. The victim's father said the victim's phone "didn't work good and [Defendant] couldn't get ahold of her." The victim's father told Defendant that the victim's phone would have to stay on his service plan because the victim was sixteen. Defendant "agreed to purchase the phone and put it on [the victim's father's] plan."

The victim's father testified that he went to Defendant's house "maybe" twice while the victim worked there. On cross-examination, the victim's father agreed that tension arose between Defendant and him over an emergency radio the victim borrowed and did not return to Defendant. During a phone call between Defendant and the victim's father on the day before he took the victim to the police to report the incidents, Defendant asked for the victim's cell phone. The victim's father testified, "I couldn't figure out why he wanted the phone back so bad."

The victim's mother believed Defendant "was a good person because he was on the rescue squad and fire department[.]" but she testified, "it was a mistake" to allow the victim to work for him. She was aware of gifts Defendant had purchased for the victim, including a cell phone and an Apple Watch. She testified Ms. Kennedy had given the victim purses and shoes. After the victim disclosed the sexual abuse, the victim's parents took the items out of the house and put them "under [their] porch in [their] garage." The victim became "a little distant" and "was upset all the time" in July, August, and September of 2021. The victim's mother testified, "She actually had a breakdown after she went to school 'cause she was terrified that [Defendant] was going to show up at school while she was at school and her parents[weren't] there and no one could help her."

At the conclusion of the State's case-in-chief, Defendant moved for a judgment of acquittal, which the trial court denied, finding that the State had presented proof of penetration and Defendant's status as an authority figure.

Defense Proof

Ms. Kennedy testified that she had known Defendant for fourteen years. They never married because they each had children, and they "didn't want to upset them by changing names." In the summer of 2021, Ms. Kennedy's health was "poor to fair. It wasn't very good." She had undergone a kidney and pancreas transplant. Ms. Kennedy needed help around the house and taking care of the horses, so she hired the victim. Ms. Kennedy thought of the victim "like a daughter," and the victim "did a great job with the horses[.]" Ms. Kennedy gifted the victim several items, and Defendant bought the victim an iPhone and an Apple Watch because "she was usually never on time" and her cell phone "didn't work very well." Defendant and Ms. Kennedy "couldn't get ahold of her when [they] needed to." Ms. Kennedy gave the victim a credit card to use for buying supplies for the horses. After the victim stopped working for her, Ms. Kennedy discovered "some discrepancies." She explained that the victim had used the credit card for purchases that she did not authorize, including meals with her friends, "[e]xtra gas money[.]" "supplies for her boyfriend's horse. Jewelry." On cross-examination, Ms. Kennedy agreed that Defendant gave the victim job duties and paid her. Ms. Kennedy identified the elevator in the photo taken by the victim as being the elevator in her house.

Kyle Kennedy, Ms. Kennedy's son, referred to Defendant as "dad." He testified that he lived in an apartment on the first floor of the house beside the elevator. He would have "[e]asily" been able to hear anything going on inside the elevator or upstairs. The elevator had a working telephone and an emergency stop button. Mr. Kennedy recalled that on July 24, 2021, he began working on a project in the garage around 2:00 p.m. He discovered that two of his tools had been stolen, and he went inside to find Defendant, but Defendant was not there. Mr. Kennedy sat and drank coffee with Ms. Kennedy. He did not recall what time Defendant returned home, but it was daylight. They ate dinner around 7:00 or 7:30 p.m. Mr. Kennedy did not see the victim at work that day.

James Brown, a Johnson County EMS employee and fire department chief, knew Defendant through his work as a volunteer EMS worker and firefighter. They had been friends for about seven years. Mr. Brown said Defendant only ever "tried to help people." Mr. Brown also knew the victim through the Explorer program. Mr. Brown testified that the victim was "banned" from the EMS because "she would come in and tell her parents she was, you know, working shifts staying at the EMS. And she would take off for hours on end." Mr. Brown did not say when this occurred. On cross-examination, Mr. Brown identified Defendant as the person in the photo taken by the victim.

Aileen Aronson, a friend of Ms. Kennedy, lived in Virginia and sometimes visited Ms. Kennedy and Defendant in Tennessee. The first week of August 2021, she stayed at their house and met the victim. Ms. Aronson thought the victim “was a very sweet young girl[.]” She testified Ms. Kennedy and Defendant “treated [her] like family[.]” During Ms. Aronson’s stay, the victim and her boyfriend were asked to go get horse supplies. They “took the Cadillac that [Ms. Kennedy] owned, and they were gone for the entire day.” Ms. Kennedy was “agitated with them when they came back” because “they had done some other shopping” and gone to lunch using Ms. Kennedy’s credit card. Ms. Kennedy confronted the victim in a “matter-of-fact” way, and the victim “tried to say why she needed to buy all those things.”

Dustin McGlamery owned an excavating company and had done work for Defendant. He met the victim “[i]n passing” while doing work for Defendant. In July 2021, Mr. McGlamery spent a great deal of time with Defendant. He testified Defendant “practically lived with us when we were up there working. He -- would go check on his wife at times[] and run and get materials with one of my employees.” Mr. McGlamery did not observe anything unusual between Defendant and the victim.

Defendant testified that he was a retired project manager for a defense contractor. He recalled meeting the victim while she was in the Explorer program and seeing her there washing a car. Defendant “teased her” and offered her \$20 to wash his car. Defendant said he often referred to women as “sweetheart,” “darling,” and “honey,” not to be flirtatious, but because he was from North Carolina. He did not recall using the phrase “butt floss” and explained he often used voice texting and must not have proofread the message.

Defendant said the victim commented one day that she loved horses and was a trick rider. Ms. Kennedy had horses, and they needed help with them. Defendant arranged a meeting with the victim and Ms. Kennedy. Ms. Kennedy conducted the interview and hired the victim. Defendant testified, “I don’t have any authority over [the victim]. That’s Kerri’s thing.” Defendant and Ms. Kennedy decided to purchase a new cell phone for the victim because they had “problems reaching her.” Defendant said he and the victim’s father agreed the victim would repay Defendant for the new phone.

Defendant testified that the incident on July 23 “[d]id not happen.” Regarding the incident on July 24, he testified he “got roped into” directing traffic at the tractor pull. His texts to the victim were to ask for her help that night and not intended to be sexual. The victim met Defendant at his house, and they drove together to the EMS, where they picked up other Explorer program participants, and then drove to the tractor pull. Afterward, Defendant and the victim returned to Defendant’s house. Defendant testified, “We rode

up in the elevator. I bent down to tie my shoe. And when I looked up, there she stood. It caught me totally shocked, off guard.” Defendant “tried to put it behind” him because he thought, “God, this will kill Kerri. She’s already in a bad way.” Defendant denied that he kissed the victim or that he orally or digitally penetrated the victim, testifying, “[t]hat’s inappropriate.” He explained that the reason the victim’s photo showed the top of his head is that he was bent down tying his shoe. He said when the elevator stopped between floors, a “high-piercing” alarm sounded. After the incident, the victim went home, and Defendant “tried to forget everything.” Thereafter, Defendant “tried to keep [his] distance” from the victim. On cross-examination, Defendant agreed in “[h]indsight” that that it was not a good idea to buy the victim a cell phone the day after she took off her clothes in the elevator.

Defendant explained the July 26th text messages between him and the victim in which she confronted him about his “touching” her. He said, “She always complaining about her back. So I started rubbing her back for her one day and I hurt her and I apologized.” He testified Ms. Kennedy would have seen the texts between the victim and him because they shared an iCloud account and the texts would have gone to all of their devices. Defendant said the victim continued to work for Ms. Kennedy after she made unauthorized purchases on the credit card because “Kerri kind of had a kind heart.” Defendant eventually reported it as theft in September, after the victim alleged he had raped her.

Based on this evidence, the jury acquitted Defendant of rape in Count 1 for the incident on July 23, 2021, but convicted him of rape in Count 2 for the incident on July 24, 2021. The jury also convicted Defendant of three counts of sexual battery by an authority figure in Counts 3, 4, and 5. The jury acquitted Defendant of statutory rape by an authority figure in Count 6 and aggravated statutory rape in Count 8, but the jury convicted Defendant of statutory rape by an authority figure in Count 7 and aggravated statutory rape in Count 9.

Sentencing

At the outset of the sentencing hearing, the trial court announced that Counts 3, 4, and 5 (sexual battery by an authority figure) would merge into Count 2 (rape) and that Count 9 (aggravated statutory rape) would merge into Count 7 (statutory rape by an authority figure). The prosecutor announced that the State would not seek consecutive sentencing. The court admitted the presentence report and risk and needs assessment as exhibits. The State called the victim’s mother to testify, and defense counsel objected on the basis that the victim was no longer a minor, stating, “I guess my objection would be to the relevance of her mother testifying.” The court overruled the objection and allowed the victim’s mother to testify.

The victim's mother read from a prepared statement, in which she called Defendant a "monster" who "raped" and "destroyed" her daughter. She said the victim had not been the same since and that Defendant had stolen "her innocenc[e], the right to trust other people, her childhood, [and] the right to live a normal life." She said the victim never finished high school because "she was terrified to go to school." The victim's mother asked the court to impose a life sentence.

Defendant called several character witnesses. Brad Gentry, an employee with the Johnson County EMS, described Defendant as helpful and caring. On cross-examination, Mr. Gentry testified the victim "had a good personality" and "[l]iked helping people." Aileen Aronson testified she had known Defendant for over seventeen years. She described Defendant as "a very hard worker." Ms. Aronson was a single mother when she met Defendant. She trusted Defendant, and he "was always there to help [her] at a moment's notice." Ms. Kennedy was very ill when she met Defendant, and Defendant was "a loving, caring partner" to her. Defendant's neighbor, Gerald Lawrence, described Defendant as "dependable" and "trustworthy." Shirley Crank was working as Ms. Kennedy's housekeeper when Ms. Kennedy met Defendant in 2010. Ms. Crank described Defendant as loving and involved, and she testified Defendant was a devoted caregiver to Ms. Kennedy.

Ms. Kennedy testified that Defendant "saved [her] life." Defendant was Ms. Kennedy's primary caretaker. Defendant was sixty-three years old and had health issues. Ms. Kennedy described Defendant as "extremely caring, extremely loving." Ms. Kennedy believed Defendant was innocent. Defendant's daughter, Samantha Eckert, described Defendant as "the rock, the stable one, the one we all went to for advice." She said Defendant prioritized his family over himself and "was the biggest caregiver and just the pillar of our family."

At the conclusion of the hearing, the trial court determined the sentencing range to be eight to twelve years. The court applied enhancement factor 7, that Defendant committed the offense to gratify his desire for pleasure or excitement, but afforded it "very little weight" because "it is incorporated into much of the offense itself." The court found enhancement factor 14, that Defendant abused a position of public or private trust, inapplicable to the offense of sexual battery by an authority figure. For mitigating factors, the court found that the criminal conduct neither caused nor threatened serious bodily injury, and the court applied the catch-all factor, noting Defendant's age, employment history, and that Defendant had "upstanding citizens" and family members testify as to his good character.

The trial court commented, "if that were all that we were looking at, [Defendant] would probably be looking at an [] eight-year sentence in this case." The trial court then

recounted much of the evidence presented at trial and found that the victim “stayed rock-solid throughout” her testimony. The court noted the victim “[a]dmitted what she had done wrong; denied any accusation that she hadn’t [done].” The court then recalled Defendant’s testimony about the incident in the elevator and stated,

I don’t have to read a transcript to remember this because I will remember it as long as I’m sitting on this Bench. The Defendant took the stand and tried to convince that jury and this Court that he bent down to tie his shoe. And when he looked up, the victim had taken her pants off and stuck – stuck her crotch in his face.

About the photo the victim took inside the elevator, the trial court quipped, “Does that look like someone that was tying a shoe and, oh, just happened to have somebody’s crotch stuck in his face?” The court continued, “That makes the facts and circumstances of this offense, your lack of remorse, your gall to swear under oath that [the victim]’s the one that caused this, Exhibit #3, in this Court’s mind that takes that from eight to 12 in a heartbeat. In a heartbeat.”

The court imposed an effective sentence of eleven years to be served at 100 percent.

Analysis

Sufficiency of the Evidence

For ten of his sixteen issues,² Defendant asserts 1) the “verdict was contrary to the law and the evidence”; 2) “the evidence was insufficient as a matter of law to support the convictions”; 3) “the evidence preponderates against the guilt of [Defendant] and in favor of his innocence” 4) “the evidence adduced at trial did not rise to the level of proof necessary for a rational trier of fact to convict [Defendant] guilty beyond a reasonable doubt” of the charged offenses; 5) “the evidence adduced at trial was, as a matter of law, insufficient to support the findings by a rational trier of fact that [Defendant] was guilty beyond a reasonable doubt” of the charged offenses; 6) “the evidence at trial failed to show that [Defendant] was guilty beyond a reasonable doubt” of the charged offenses; 7) the State failed to prove Defendant was an authority figure, an essential element of two of the convicted offenses, 8) the victim’s testimony was not credible; 9) the trial court should

² The last two issues in Defendant’s brief are both numbered “15.”

have granted Defendant's motion for judgment of acquittal;³ and 10) the trial court erred by approving the jury's verdict as thirteenth juror.⁴

All of these issues can be stated more concisely as a challenge to the sufficiency of the evidence to support Defendant's convictions. When examining whether the evidence presented at trial was sufficient to support a conviction, several well-settled principles guide our analysis. We determine "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) (emphasis in original); *see also* Tenn. R. App. P. 13(e). 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 defendant bears the burden on appeal to demonstrate that the evidence is insufficient to support his conviction. *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982).

"[A] jury verdict, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State." *State v. Harris*, 839 S.W.2d 54, 75 (Tenn. 1992). The State is entitled on appeal 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). As such, this Court is precluded from reweighing or reconsidering the evidence when evaluating the convicting proof. *State v. Morgan*, 929 S.W.2d 380, 383 (Tenn. Crim. App. 1996); *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Moreover, we may not substitute our own "inferences for those drawn by the trier of fact from circumstantial evidence." *Matthews*, 805 S.W.2d at 779. Questions as to the credibility of witnesses and the weight of the evidence, as well as factual issues raised by such evidence, are resolved by the trier of fact, not this Court. *State v. Pruett*, 788 S.W.2d 559, 561 (Tenn. 1990). These principles guide us "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)).

Defendant was convicted of one count of rape, three counts of sexual battery by an authority figure, one count of statutory rape by an authority figure, and one count of aggravated statutory rape.

As relevant here, rape is unlawful sexual penetration of a victim by the defendant when force or coercion is used to accomplish the act. T.C.A. § 39-13-503(a)(1). "Sexual

³ In Defendant's brief, issue number 10 is incorrectly stated as: "Whether the trial court committed reversible error by *not* denying [Defendant]'s Motion for Judgment of Acquittal at the close of State's proof." (Emphasis added).

⁴ Issue number 11 in Defendant's brief.

penetration” is defined as “sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person’s body or of any object into the genital . . . openings of the victim’s . . . body[.]” *Id.* § -501(7). “‘Force’ means compulsion by the use of physical power or violence and shall be broadly construed to accomplish the purposes of this title.” *Id.* § 39-11-106(12) (2014) (subsequently amended). “‘Coercion’ means threat of kidnapping, extortion, force or violence to be performed immediately or in the future[.]” *Id.* § 39-13-501(1).

Aggravated statutory rape is defined as sexual penetration between a victim and the defendant where the victim is at least age thirteen but has not yet reached age eighteen and the defendant is at least ten years older than the victim. T.C.A. § 39-13-506(c). 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.* § 39-13-532(a)(1)-(3)(A). Sexual battery by an authority figure is defined, in relevant part, as sexual contact between a victim and the defendant where the victim is at least age thirteen but has not yet reached age eighteen and the defendant was in a “position of trust” that was used to accomplish the sexual penetration. *Id.* § 39-13-527(a)(1), (3)(A). “Sexual contact” includes “the intentional touching of the victim’s or the defendant’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).

Importantly, a minor’s testimony regarding sexual contact is sufficient to support a conviction for a sexual offense. *State v. Elkins*, 102 S.W.3d 578, 582-83 (Tenn. 2003); *State v. Bonds*, 189 S.W.3d 249, 256 (Tenn. Crim. App. 2005) (“It is well-settled law in Tennessee that the testimony of a victim, by itself, is sufficient to support a conviction.”); *State v. Qualls*, No. W2019-01083-CCA-R3-CD, 2020 WL 4346803, at *3 (Tenn. Crim. App. July 28, 2020) (concluding that testimony of the victim was sufficient to establish the essential elements of aggravated sexual battery), *no perm. app. filed*.

Defendant argues the victim’s testimony “must be discounted entirely” because of inconsistencies in her testimony. He also asserts there was a lack of physical evidence and that the “sole evidence supporting the charges was the testimony of the alleged victim,” who lacked credibility. Defendant points to inconsistencies in the victim’s disclosure to police and the victim’s lying to her boyfriend about having a horse and her misusing Ms. Kennedy’s credit card.

Defendant’s arguments relate to the jury’s credibility determinations and the weight of the evidence, not its sufficiency. First, we note that the victim’s testimony about the incidents in the elevator and Defendant’s bedroom was consistent and unequivocal.

Nonetheless, it is the sole province of the jury to determine which parts of the victim's testimony to accredit, and this Court will not intervene on appeal. *See State v. Nelson*, No. W2009-02190-CCA-R3-CD, 2010 WL 4513554, at *3 (Tenn. Crim. App. Nov. 5, 2010) (holding that a rape victim's testimony alone is sufficient to support a conviction, "even if it contains minor inconsistencies, because it creates a credibility question that rests soundly in the jury's province"), *perm. app. denied* (Tenn. Apr. 13, 2011).

It is undisputed that the victim was sixteen years old and Defendant was sixty years old at the time of the offenses. The victim testified that Defendant digitally and orally penetrated her on July 23 and 24, 2021. As stated above, the victim's testimony alone was sufficient to establish that Defendant sexually penetrated her and made sexual contact with her. Additionally, the evidence included a photo taken by the victim during the act in the elevator inside Defendant's home. The jury accredited the victim's testimony over Defendant's explanation for the image depicted in the photo. Defendant asserts on appeal that the photo "ironically" supports his version of events because it shows his sunglasses "uncomfortably smashed against his face in an attitude of surprise." Defendant argues if he had intended to perform oral sex on the victim, he would have removed his glasses. Again, it is the jury that determines the credibility of the witnesses and the weight of the evidence.

Defendant also argues the State failed to prove he was an authority figure to the victim, an essential element of sexual battery by an authority figure and statutory rape by an authority figure. Defendant argues that Ms. Kennedy, not Defendant, was the authority figure to the victim. For Defendant to be considered an authority figure, Defendant must have been "in a position of trust, or had supervisory or disciplinary power over the victim by virtue of the defendant's legal, professional or occupational status" T.C.A. § 39-13-527(a)(3)(A), -532(a)(3)(A). Our supreme court has held that "supervisory power" means "the power to direct the actions of another." *State v. Denton*, 149 S.W.3d 1, 19 (Tenn. 2004).

Text messages between Defendant and the victim established that Defendant gave directions and supervised her work with the horses. Messages included directions to "feed the dogs" and asking the victim her location and whether she knew what supplies to buy for the horses. In one text sent shortly after Defendant told the victim, "It will never happen again[.]" Defendant said, "Strictly business you do a fantastic job [with] these horses and we deeply appreciate it[.]" Defendant clearly had supervisory authority over the victim. He delegated chores to her and paid her cash for her work.

The proof viewed in the light most favorable to the State was sufficient to support Defendant's convictions. Defendant is not entitled to relief.

Inconsistent Verdicts

Defendant contends that the jury's verdicts in this case were inconsistent. Defendant argues, "no explanation exists for how the [j]ury could believe [the victim] for some counts and not for others." The State counters that inconsistent verdicts do not warrant a new trial so long as the evidence at trial is sufficient to support the convictions.

Initially, we observe that Defendant's argument for this issue consists of two short paragraphs in his brief and contains a single citation to the law. Nevertheless, the State does not argue waiver, so we will address the issue on the merits.

At the hearing on Defendant's motion for new trial, the State conceded that it "probably didn't do a very good job in terms of the indictment language in this case. And I think that probably caused a little bit of confusion for the jury." The prosecutor explained Defendant was charged with two counts of rape that occurred on two separate dates, and the jury acquitted Defendant of the first rape but "[f]ou]nd him guilty of the rape on the second day clearly because there was a picture of it, about as good [of] evidence as you could have." The trial court agreed and found "that the jury did their job."

Inconsistent verdicts are not a basis for relief and are "unassailable absent a legal insufficiency." *Tumlin v. State*, No. E2019-00622-CCA-R3-PC, 2020 WL 1487800, at *6 (Tenn. Crim. App. Mar. 23, 2020) (citing *State v. Davis*, 466 S.W.3d 49, 73 (Tenn. 2015)). Our supreme court has emphasized "the sanctity of the jury's deliberations and the strong policy against probing into its logic or reasoning, which would open the door to interminable speculation." *Davis*, 466 S.W.3d at 77 (quoting *United States v. Zane*, 495 F.2d 683, 690 (2nd Cir. 1974)). This principle reflects adherence to the judiciary's "longstanding position of honoring and respecting a jury's verdicts, even when they are inconsistent." *Id.* Accordingly, Tennessee appellate courts "will not upset a seemingly inconsistent verdict by speculating as to the jury's reasoning if . . . the evidence establishes guilt of the offense upon which the conviction was returned." *Wiggins v. State*, 498 S.W.2d 92, 94 (Tenn. 1973). Evidence need only be sufficient to establish guilt as to each conviction offense individually, without comparison to one another, rendering any seeming inconsistencies immaterial. *See id.*

Defendant's argument on this issue again centers around the credibility of the victim and the jury's accrediting her testimony as to the second rape but not the first. Just as we will not disturb the jury's credibility determinations when analyzing the sufficiency of the evidence, we will not disturb the jury's verdicts as long as the evidence supports a finding of guilt. Having already concluded that the evidence at trial was sufficient to sustain each of Defendant's individual convictions, we need not further consider this issue. Defendant is not entitled to relief.

Sentencing

Defendant also challenges his sentence on appeal, arguing: 1) the trial court erred by allowing the victim's mother to give a victim impact statement; 2) the sentence imposed is excessive; 3) the trial court erred by considering Defendant's lack of remorse as a circumstance of the offense; and 4) the trial court failed to properly weigh the applicable sentencing factors. The State asserts that the trial court acted within its discretion when it imposed a within-range sentence after considering the applicable enhancement and mitigating factors. We agree with the State.

This Court reviews the length, range, and manner of service imposed by the trial court under an abuse of discretion standard with a presumption of reasonableness. *State v. Bise*, 380 S.W.3d 682, 708 (Tenn. 2012). 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." *Id.* at 709-10.

In determining a defendant's sentence, the trial court is to consider the following factors: (1) the evidence, if any, received at the trial and the sentencing hearing; (2) the presentence report; (3) the principles of sentencing and arguments as to sentencing alternatives; (4) the nature and characteristics of the criminal conduct involved; (5) evidence and information offered by the parties on the mitigating and enhancement factors; (6) any statistical information provided by the Administrative Office of the Courts as to sentencing practices for similar offenses in Tennessee; (7) any statement by the defendant in his 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. *See* T.C.A. § 40-35-210(b); *see also Bise*, 380 S.W.3d at 697-98.

Defendant asserts the trial court erred by allowing the victim's mother to give a victim impact statement because the victim was no longer a minor at the time of sentencing. Defendant cites *State v. Ring*, 56 S.W.3d 577 (Tenn. Crim. App. 2001), and argues, "the testimony of [the victim's mother] was precisely the kind of 'emotional response to the evidence' warned against" in that case. Defendant seems to have misinterpreted the language used in *Ring*. In that case, this Court held that the trial court could consider the victim impact testimony but warned, "the trial court's consideration must be limited to a rational inquiry into the culpability of the defendant, not an emotional response to the evidence." *Id.* at 583-84 (citing *State v. Nesbit*, 978 S.W.2d 872, 892 (Tenn. 1998)). The Court's holding did not "discourage[]" emotional testimony, as Defendant suggests, but

rather directed that a trial court's consideration of the testimony be rational rather than emotional.

In any event, here, the trial court stated at the hearing on Defendant's motion for new trial that it gave "very little weight" to the victim's mother's statement. The court ruled that the State was allowed to present victim impact testimony from the victim's mother because the victim "was a minor at the time." The "Victim Impact Statement Act" defines "victim impact statement" as "a statement providing information about the financial, emotional, and physical effects of the crime on the victim and the victim's family, and specific information about the victim, the circumstances surrounding the crime, and the manner in which it was perpetrated." T.C.A. § 40-38-203(2). The Code authorizes an immediate family member of a minor victim to make a victim impact statement. *Id.* § 40-38-203(1)-(2).

We disagree with Defendant's interpretation of the statute's language. The Code simply states, "an immediate family member of a minor victim." Nowhere does it state the victim must be a minor at the time of the sentencing hearing. The victim was sixteen years old at the time of the offenses. At the sentencing hearing, the victim's mother gave a statement in which she described the emotional harm caused by Defendant to the victim and stated that the victim had been unable to return to school since the incidents. We conclude that the trial court properly considered the statement.

Defendant asserts the trial court failed to consider the purposes and principles of the Sentencing Act and, therefore, the court's sentencing decision should not be afforded a presumption of reasonableness. He argues his lack of criminal history, his education and work history, his social history, including his volunteer service, his good reputation, and his family and community support, as well as his favorable Strong-R assessment, favor a minimum sentence length. In fact, the trial court considered all of these factors and articulated its reasons for imposing a greater sentence on the record.

The trial court noted that it had reviewed the presentence report, the psychosexual evaluation, and the Strong-R assessment. The court applied the catch-all mitigating factor and stated that the character witnesses "carrie[d] weight with the [c]ourt." The court noted that if it only had to consider enhancement and mitigating factors, it would have imposed a sentence of eight years, the minimum within the range. However, recalling the evidence presented at trial, the court found that the victim "stayed rock-solid throughout [her] testimony." Defendant, on the other hand, testified that the victim had "stuck her crotch in his face" while he was tying his shoe in the elevator. The court found Defendant's testimony astonishingly incredible. The court noted Defendant's lack of remorse and his "gall to swear under oath that she's the one that caused this, Exhibit #3 (the elevator photo), in this [c]ourt's mind that takes that from eight to 12 in a heartbeat." The court then

considered Defendant's "age, employment history, the volunteers, and the character witnesses, I'll give you credit for the mitigation and I'll drop it one year."

The record clearly demonstrates that the trial court considered the purposes and principles of sentencing, considered the applicable enhancement and mitigating factors, provided its reasons on the record, and imposed a within-range sentence. Defendant does not challenge the court's application of any particular enhancement factor, and even if he did, a trial court's misapplication of an enhancement or mitigating factor does not invalidate the sentence. The trial court is "free to select any sentence within the applicable range so long as the length of the sentence is consistent with the purposes and principles of [the Sentencing Act]." *State v. Carter*, 254 S.W.3d 335, 343 (Tenn. 2008) (citation and internal quotation marks omitted).

The trial court did not abuse its discretion in sentencing Defendant. Defendant is not entitled to relief.

CONCLUSION

For the foregoing reasons, we affirm the judgments of the trial court.

s/Timothy L. Easter

TIMOTHY L. EASTER, JUDGE