

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
May 19, 2026 Session

FILED

08/17/2026

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. STEPHEN RICHARD PRATT

Appeal from the Criminal Court for Campbell County
No. 18949 Zachary R. Walden, Judge

No. E2025-01133-CCA-R3-CD

A Campbell County jury convicted the Defendant of three counts of sexual battery by an authority figure, four counts of aggravated sexual battery, and one count of attempted rape. The trial court sentenced the Defendant to an effective sentence of fifty-five years in confinement. On appeal, the Defendant asserts that he is entitled to relief due to the admission of evidence of a request for a polygraph test, without objection, at trial, and that the trial court erred when it imposed consecutive sentencing. The Defendant also contends that the evidence is insufficient to sustain his convictions. After review, we affirm the trial court's judgments.

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

ROBERT W. WEDEMEYER, P.J., delivered the opinion of the court, in which JILL BARTEE AYERS and MATTHEW J. WILSON, JJ., joined.

J. Stephen Hurst, LaFollette, Tennessee, for the appellant, Stephen Richard Pratt.

Jonathan Skrmetti, Attorney General and Reporter; Katherine C. Redding, Assistant Attorney General; Jared R. Effler, District Attorney General; and Lindsey C. Cadle and Joshua E. McFarland, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION
I. Facts

This case arises from the Defendant's inappropriate sexual contact with his girlfriend's minor child. A Campbell County grand jury returned a thirteen-count indictment charging the Defendant with five counts of sexual battery by an authority figure, five counts of aggravated sexual battery, attempted rape, attempted statutory rape by an

authority figure, and attempted aggravated statutory rape. Before trial, the State elected not to prosecute two of the counts of sexual battery by an authority figure and one of the counts of aggravated sexual battery.

A. Trial

At trial, the parties presented the following evidence: The victim was born in California and moved with her mother (“CP”)¹ to Tennessee when she was about five years old. Her biological father remained in California, and the victim had “[v]ery minimal” contact with him. The victim’s mother met the Defendant in December 2012, and their relationship progressed quickly. The victim was seven years old at the time. The Defendant, CP, and the victim moved from LaFollette to a trailer park in Tazewell where they lived together for two or three years. Initially, the victim “really liked” the Defendant and thought of him as a “dad” and someone she looked up to. When they first moved to the trailer park, she described their relationship as how “any normal father and daughter would interact.” The Defendant was involved in the rule-making and discipline in the house, helped with getting the victim to school, and played video games with the victim.

While living in Tazewell, CP had a child (“CB”)² with the Defendant. The victim loved her new brother but also felt jealous of the attention the new baby was receiving. She described their home life as “chaotic” due to the change in sleeping patterns and presence of a newborn. At some point after CB’s birth, the family moved to a larger trailer in Tazewell.

The victim recalled that, when she was eight, she woke up one night and the Defendant was in her bed touching her vagina, over her pajamas, in “a stroking motion.” She described her room for the jury and stated that she had a twin bed at the time. The victim did not understand what was happening at the time and did not make any noise. The victim did not know what made the Defendant stop that night, but she felt terrified and embarrassed, so she did not tell anyone about the incident.

The victim testified that the Defendant repeated this conduct routinely throughout the time they lived in Tazewell. Some of these contacts occurred before her brother was born and some after his birth. She did not know how many times the Defendant came into her room at night but estimated, on average, once or twice a week. She stated that it did not happen every week but would happen “[o]ff and on.” On three separate occasions, CP walked into the victim’s room while the Defendant was in there. CP and the Defendant

¹ We reference the victim’s family members by initials only for matters of privacy.

² The victim’s mother and brother share the same initials so we will reference the victim’s brother by his first initial and “B” for brother to distinguish the two.

began talking, and the victim went back to sleep. The following day, CP and the Defendant fought all day, and the incidents stopped until they moved to LaFollette.

The summer before the victim entered the fifth grade, when the victim was ten and about to turn eleven, the family moved to LaFollette. She recalled that CP and the Defendant would tell her, "What happens in our house stays in our house." The family moved into a house on East Beech Street, and soon thereafter, CP obtained employment as a caregiver. This new job had a varied schedule with CP working day and night shifts. After CP began working, the Defendant resumed his nighttime visits to the victim's room.

After the move to LaFollette, the Defendant did fewer activities with the victim but still enforced the rules at home, and she called him, "Dad." The Defendant's interaction with her at night in her room was consistent with what he had done in Tazewell and occurred once or twice a week. The victim would wake up to the Defendant rubbing her vagina over her pajamas. The victim said she still did not understand what the Defendant was doing to her, but she understood that he should not have been doing it. The victim was old enough by this time that CP had talked with the victim about sex. CP explained sex in terms of intercourse but not in the context of "good touches/bad."

The victim testified that one time the touching progressed beyond the Defendant's rubbing her vagina. This incident occurred when the victim was around twelve years old and it happened during the daytime while her mother was at work. The victim and the Defendant had been "horseplaying," and they were in her parents' bedroom. The victim "ended up" lying on the bed. The Defendant placed the victim's feet on his shoulders, pulled her shorts down, and attempted to penetrate her "butt" with his penis. Once the victim felt the Defendant's penis inside her butt cheeks near the anal opening, she began kicking at the Defendant to get him away from her. The Defendant turned away from the victim into the corner, and the victim got off the bed, pulled up her shorts and went to her bedroom. She recalled the Defendant saying, "I just wanted to show you something." Following this event, the nighttime touching in the victim's bedroom ceased for a while but then continued with less frequency.

The victim testified that one of the three times that CP caught the Defendant touching the victim, CP pulled the victim aside in the house and asked, "if he was doing it again." The victim responded to CP in the affirmative, but the victim did not know what, if anything, CP did with the information.

The contact ended during the victim's freshman year in high school when she was fourteen or fifteen. The victim awoke one night to the Defendant in bed with her. CP walked in and asked the Defendant what he was doing, and then the Defendant and CP left the room. About what happened after her parents left the room, the victim stated, "I'm

assuming they got in a fight because that's all they ever did about it, was fight." That night was different, however, in that the family dynamic changed, and CP, the victim, and CB left shortly after the incident.

CP took the victim and CB to Jennifer Oaks' home. The victim told CP what had happened, and CP "freaked out and started crying." The victim recalled that she had felt awkward and had not wanted to talk about it. After several months, CP left the victim with Jennifer Oaks, and CP returned to East Beech Street with CB to live with the Defendant. The victim said that it had been hard and that she did not want to testify at trial and "re-live it."

On cross-examination, the victim agreed that some of the arguments between the Defendant and CP were over the victim. The victim wanted CP to leave the Defendant. The victim agreed that in December 2020, while they were staying at Ms. Oaks' home, CP asked the victim about what had occurred, and then the victim told the police about it.

CP testified that, at the time of trial, she was engaged to marry the Defendant, her ex-husband. She explained that they had been married from 2016 through 2021. She said that the victim disclosed that the Defendant had touched her inappropriately, so CP moved out with her children into Ms. Oaks' house. The divorce was final in April 2021, and she and the Defendant reconciled that same month.

CP denied having ever seen any inappropriate contact between the Defendant and the victim but clarified that she had "made a statement that [she] did." She explained that she told the Police Chief, Stephen Wallen,³ that she had seen the Defendant touching the victim's vagina about three weeks before she left the Defendant in December 2020. She agreed that, in December 2020, she stated to Chief Wallen, "I caught him touching her." She further stated to Chief Wallen that she had woken up in the night and felt something was not right. She went to the victim's bedroom and saw the Defendant touching the victim's vagina. She told Chief Wallen that when she confronted the Defendant, he said, "It's not what it looks like. I was rubbing her stomach." CP demanded to know what it was that he had been doing then and the Defendant stopped talking. The victim "came over" and told CP how long the touching had been going on. CP told Chief Wallen that she had waited a few weeks to leave the Defendant because she thought it might be dangerous to leave immediately after she caught him touching the victim.

At trial, when asked why she thought it was dangerous to leave, CP said that she was afraid of losing her husband and of losing her daughter. CP stated that her relationship

³ At the time of these events, Chief Wallen was the captain over the criminal investigations division but had since become the Chief of Police. Thus, we refer to him by his title as of the trial.

with the Defendant had been difficult at that time, so she had been afraid to leave. CP agreed that she and Chief Wallen spoke for a long time that day about all her concerns related to the Defendant including her “catching him” touching the victim. Even so, she reiterated that her entire statement to Chief Wallen was false.

CP agreed that, before speaking to Chief Wallen, she also filed a petition seeking an order of protection against the Defendant. In the petition she alleged that she had witnessed the Defendant touching the victim and that she was afraid that the Defendant would do so to CB as well. CP also filled out a petition on the victim’s behalf that alleged that the Defendant touched the victim inappropriately. CP attended multiple hearings related to the order of protection and always affirmed that the contents of her petition were true.

CP acknowledged that she had also set up a GoFundMe account based upon the inappropriate contact and titled it, “Justice for My Daughter.” She also took the victim to the Children’s Advocacy Center for a forensic interview.

CP explained that she said and did all these things because she was “under duress.” She explained that Ms. Oaks told her that if she went back to the Defendant, she would lose both her children. CP agreed that Ms. Oaks had not ever attempted to gain custody of her son and that the victim did not want to return to living with the Defendant and so she remained with Ms. Oaks. CP also agreed that Ms. Oaks did not report the sexual abuse; CP did, and CP had reported that she witnessed the contact.

On cross-examination, CP claimed that her December 20, 2021 statement to the police was a lie. She said that she made the statement based upon Ms. Oaks’ encouragement that CP support the victim. She was good friends with Ms. Oaks and trusted and relied upon her during this difficult time. In March, after she had filed the order of protection petition and the divorce was pending, her attorney encouraged her to drop the order of protection and “work[] out the divorce.” She explained that she wanted to reconcile with the Defendant because she had since learned that her difficulty with the Defendant was really born out of the victim’s resentment toward the Defendant. With reflection, she believed that the victim made it up because “any child would go to their parent immediately if they knew it was wrong,” and the victim had not.

CP testified that she stayed at Ms. Oaks’ house for five months. Being away from the Defendant helped her think clearly and realize “[the Defendant] didn’t do anything.” She recalled that the victim began treating Ms. Oaks like she was her mother instead of CP, and CP did not believe there was any way to restore her relationship with the victim. As a result, she moved back in with the Defendant and had no contact with the victim since.

CP testified that she was a light sleeper and that if the Defendant had gotten out of bed at night, as she had told Chief Wallen, it would have woken her, and she would have gotten out of bed with him. She testified to this by way of explaining that her statement to the police could never have happened because the Defendant would not have been up at night without her.

CP testified that the first time she learned of these allegations was in early December when Ms. Oaks told her about it. She confirmed that, prior to Ms. Oaks' disclosure, she had "no indication at all, nothing to tip [her] off, to give [her] any idea." CP confirmed that, following her statement to Chief Wallen, she had not been interviewed or questioned about the case again.

On redirect examination, CP confirmed that she overheard the victim and Ms. Oaks "concoct this plan" to make allegations against the Defendant to get CP to leave the Defendant. She confirmed that she had never told law enforcement or anyone related to the court proceedings for the order of protection about that conversation between the victim and Ms. Oaks.

Jennifer Oaks testified that she met CP through her ex-husband, and they became good friends. The friendship ceased, however, when CP, who had been staying with Ms. Oaks, told Ms. Oaks that she was leaving and then left the victim behind. Ms. Oaks recounted that in November 2020, the victim asked to stay with Ms. Oaks for the week. At the end of the week, the victim wanted to stay longer. Ms. Oaks said no, and the victim disclosed what the Defendant had been doing to her. Ms. Oaks called CP, and CP came over to Ms. Oaks' house where the victim told CP about what the Defendant had done to her. The victim stayed at Ms. Oaks' house, but CP returned to the marital home to gather her belongings while the Defendant was gone. She returned to Ms. Oaks' home several days later to stay. Ms. Oaks was present when CP reported the abuse to the police. Ms. Oaks recalled that CP was crying and very upset as she talked with the police. When CP called the police department, Ms. Oaks overheard CP report to the police that the Defendant had been touching her daughter. Later CP told Ms. Oaks that she had witnessed the contact.

Ms. Oaks testified that she had concerns about CP and the victim's safety in the East Beech residence due to interactions she had observed between the Defendant and the victim. She also had observed bruising on CP's wrists and face.

CP and her children moved into Ms. Oaks' house in December; however, several months later, CP returned to the East Beech residence to live with the Defendant. Ms. Oaks never doubted the victim's honesty about her allegations.

Ms. Oaks described the first few months with the victim, recalling that when she would wake the victim for school or an appointment, the victim would wake up terrified. She would also clean Ms. Oaks' house "obsessively." Ms. Oaks would ask the victim to do one chore, and the victim would clean the entire house. Ms. Oaks worked to be very consistent with the victim, and she described the victim as "a normal teenager now." The victim's grades went from "almost an F student" to all A's and B's. The victim graduated a year early, made friends, and began to engage in social activities such as sleepovers and attended a prom.

On cross-examination, Ms. Oaks said that she kept in contact with CP for about three months after CP moved back in with the Defendant, but she ceased all communication with CP after CP "blocked" the victim.

LaFollette Police Department Chief Stephen Wallen testified that CP initially reported the inappropriate contact to Officer Jesse Ferguson on December 10, 2021. As a follow-up to the initial report of abuse, Chief Wallen and a Department of Children's Services representative went to speak with the Defendant, who was almost forty at the time. The Defendant denied the allegations of inappropriate contact with the victim, and he said he wanted to talk to his attorney before he decided whether to take a polygraph test.

Chief Wallen also spoke with CP on December 20, 2021, at Ms. Oaks' house. CP's statement to Chief Wallen was consistent with her statement to Officer Ferguson, but she added more detail. He confirmed that CP had disclosed that she had seen the inappropriate contact. Chief Wallen observed no indicators that CP was lying at the time she gave her statement. The week before trial, however, when he delivered the subpoena, CP told him that she had lied and that her statement was made up. Chief Wallen was not present in the room during the forensic interview with the victim but observed a live feed of the interview. The victim's statements during the interview were consistent with CP's statements.

On redirect, Chief Wallen testified that in his investigation of sexual abuse cases it was more common for reporting to be delayed rather than immediate.

The State rested its case-in-chief, and the Defendant presented CP as his one witness. CP testified that because of physical altercations with the Defendant she suffered slight swelling and a little bruising, "nothing substantial." About the victim's "chores" at home, CP said that when the victim did not do her chores, the Defendant would point out to the victim that she needed to do them. In response, the victim would "throw a fit and threaten to call the law and make stuff up just to get [the Defendant] in trouble." CP agreed that occasionally the victim would threaten her in the same way.

After hearing the evidence, the jury convicted the Defendant of all of the remaining counts: three counts of sexual battery by an authority figure (Counts 5, 7, and 12), four counts of aggravated sexual battery (Counts 2, 4, 6, 8) and one count of attempted rape (Count 9).

B. Sentencing

The State submitted the presentence investigation report, certified copies of convictions, and the victim impact statement for the trial court's consideration. The State relied on its sentencing memorandum and neither party offered argument. The trial court made the following findings:

I have considered the evidence presented here today which includes the presentence investigation report and the prior judgments. Based on the prior judgments, I find that the [D]efendant is a range two offender as to counts two, four, six, eight and 13, but a range three offender as to counts one, three, five, seven, nine, 10, 11 and 12.

One thing that really stands out to me in the presentence investigation report is that there is a prior conviction for statutory rape and, of course, the offenses that we had on trial were sexual offenses.

In the presentence investigation report, I also note that the [D]efendant had - has not completed high school but reports he obtained his GED in 2002. There was some alcohol use but some pretty significant Marijuana use. And he does have some mental health diagnoses which are concerning as well.

I've also considered his social history which is detailed in the report, and that he largely worked. I've also considered the Strong R Assessment attached to Exhibit 1. He's considered a moderate risk level but has high needs for mental health, residential, employment and family, and moderate needs for education, attitudes, behaviors and friends and some low level needs for alcohol, drug use and aggression.

The nature and circumstances of the criminal conduct involved. I'm not gonna go into great detail on that because I presided over the trial in this case and heard from numerous witnesses in addition to the victim but others who corroborated her reports and the timing of those reports. And I did find the victim to be credible at trial.

I've also considered the purposes of sentencing which include that punishment shall be imposed to prevent crime and promote respect for the law by providing an effective general deterrent to those likely to violate criminal laws of the State. That matters a lot to me in sex crimes against children. I preside over a substantial number of trials involving child sex crimes against children, and they bear a lot of commonalities, primarily that they are often committed by someone close to the child, often in a position of trust or authority, someone who has access to the child in the home and those things are done in secret and are expected to be kept secret which really hinders law enforcement from discovering those violations unless someone is brave enough to make a report or there is some other discovery. So I do think lengthy sentences are important to deter that type of behavior because of how difficult it is to discover and frankly, how frequently we have those issues in our community. I think that the general public would be shocked to know just how often this is happening to the children that live here.

It must also restrain defendants with a lengthy history of criminal conduct, and this [D]efendant does have a lengthy history of criminal conduct. It also must encourage effective rehabilitation where reasonably feasible.

Under Tennessee Code 40-35-103, I need to consider sentences involving confinement, and the law requires this sentence to involve confinement so -- and it's necessary to avoid depreciating the seriousness of this offense. It is also particularly suited to provide deterrence for the reasons I've previously stated. It's also appropriate when measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant, and we have found a history of lesser measures being applied to this [D]efendant, and it still resulted in multiple years of sexual abuse being committed by this [D]efendant.

It also should be no greater than that deserved for the offense committed. And I need to consider the potential for rehabilitation. And frankly, I don't find that there is a basis that - to believe the [D]efendant is capable of being rehabilitated because we've had prior sexual instances in his criminal history which really, really bothers me.

I've also considered the enhancement and mitigation arguments made by counsel primarily in their sentencing memoranda. The State has asked me to impose and I will impose the first factor, that the [D]efendant has a

previous history of criminal convictions or criminal behavior in addition to those necessary to establish the appropriate range.

I am not going to find factor four, that the victim of the offense was particularly vulnerable because of the age or physical or mental disability because I believe that was already taken into consideration in the writing of the statute, although I do note that the victim was very young and vulnerable at the time. I just believe it was taken into consideration by the statute.

Factor seven, the offense involved a victim and was committed to gratify the Defendant's desire for pleasure or excitement. That's probably true, but case law especially involving sexual batteries requires specific proof to apply that enhancement, and I don't know that we had -- while we can make that assumption, that's usually why people commit sexual acts. The case law requires that additional element that the State wasn't required to prove at trial, and I'm not gonna make that finding here today.

Enhancement factor number 14, as to counts two, four, six, eight, nine and 11, I am gonna find that the [D]efendant abused his position of private trust over the victim. The others are -- his status as stepfather and an authority figure were taken into consideration.

I do not find that there are any mitigation factors that are appropriate.

The State has also requested the imposition of consecutive sentencing. I do find that I have discretion to order consecutive sentencing. First, the [D]efendant is an offender whose record of criminal activity is extensive. That finding is not only based on his criminal history, but this case itself involves extensive patterns of criminal behavior and an extensive record of that.

Additionally, the [D]efendant is convicted of two or more statutory offenses involving sexual abuse of a minor, and they do have aggravating circumstances based on the [D]efendant's relationship with the victims. Additionally, the time span was extensive. And the nature and scope of the sexual acts are extensive.

There -- the [D]efendant did testify at least about some mental damage so all factors are met, but not every factor has to be met in order to impose consecutive sentencing.

It is from these judgments that the Defendant now appeals.

II. Analysis

On appeal, the Defendant contends that the trial court erred when it admitted testimony referencing a polygraph test, the evidence is insufficient to sustain his convictions, and the trial court erred when it imposed consecutive sentencing. The State responds that the Defendant has waived our review of the issue related to the statement about a polygraph, the evidence is sufficient to sustain all of the Defendant's convictions, and the trial court did not abuse its discretion in sentencing.

A. Testimony Referencing Polygraph Test

The Defendant asserts that the trial court erred by failing to grant a new trial based upon Chief Wallen's testifying about "an offer to take a polygraph test." The Defendant references the following exchange at trial:

State: And when you went out to talk to [the Defendant], can you explain why you went there?

Wallen: Ms. Stephens with the Department of Children's Services wanted to speak with [the Defendant] and asked if he would be willing to take a polygraph test.

State: And were you able to speak with him when you went out there?

Wallen: Yes.

State: Do you recall what, if anything, he told you?

Wallen: The only thing I can remember is he denied the allegations and he said he wanted to talk to his attorney before he decided if he would take the polygraph or not.

State: And do you recall what those allegations were?

Wallen: Just the sexual abuse on his stepdaughter.

The Defendant did not object to the testimony at trial and first raised this issue in the motion for new trial. At the hearing, defense counsel argued that, despite the lack of an objection at trial, the trial court should grant relief. Defense counsel stated that the exculpatory nature of Chief Wallen's testimony that the Defendant denied the allegations inured to the Defendant's benefit. This created an "impossible[]" situation for defense counsel in deciding whether to object without knowing the "entire proof" that the State would present. Because of this, defense counsel claimed that waiver should not apply. Defense counsel also noted that an objection can bring more attention to the testimony than if no objection is made.

About this issue, the trial court found:

[T]he statement that officer Wallen made in response to the prosecution's questions, do you recall anything that the defendant told you, was the only thing I can remember is he denied the allegations, and he said he wanted to talk to his attorney before he decided if he would take the polygraph or not, that wasn't objected to at trial. That could have been done in a sidebar. There were a variety of options available to the Court including a limiting instruction. A mistrial could have been declared at that time as opposed to waiting until seeing what the jury was gonna do. That was a strategic decision that Defense made

In *State v. Sexton*, 368 S.W.3d 371 (Tenn. 2012), our supreme court stated, [P]olygraph evidence is inadmissible. *State v. Damron*, 151 S.W.3d 510, 515-16 (Tenn. 2004). This Court has repeatedly held that the results of a polygraph examination are inherently unreliable. *State v. Torres*, 82 S.W.3d 236, 252 n. 20 (Tenn. 2002); *State v. Hartman*, 42 S.W.3d 44, 61-62 (Tenn. 2001). The "lack of any indicia of reliability means it is not probative." *Hartman*, 42 S.W.3d at 60. Furthermore, "testimony regarding a [d]efendant's willingness or refusal to submit to a polygraph examination is not admissible." *State v. Stephenson*, 195 S.W.3d 574, 599 (Tenn. 2006) (appendix) (quoting *State v. Pierce*, 138 S.W.3d 820, 826 (Tenn. 2004)). One rationale for excluding the evidence is that it lacks relevance. See Tenn. R. Evid. 402; *United States v. Scheffer*, 523 U.S. 303, 309 n. 5 (holding that polygraph evidence is unreliable).

Sexton, 368 S.W.3d at 409.

In this case, the Defendant did not object to the testimony, thereby depriving the trial court from taking any curative measures. Normally, if a defendant fails to properly

and specifically object to testimony and/or does not raise the issue on appeal, the issue is waived. *See* Tenn. R. App. P. 36(a); Tenn. Ct. Crim. App. R. 10(b). However, Tennessee Rule of Appellate Procedure 36(b) authorizes an appellate court to grant relief when necessary to do substantial justice, if an error has affected the substantial rights of a defendant, even though the error was not assigned as error on appeal. The Defendant has requested plain error relief.

All of the following five criteria must be met in order for a defendant to be granted plain error relief:

- (1) The record has to clearly establish what occurred in the trial court;
- (2) A clear and unequivocal rule of law was breached by the error;
- (3) A substantial right of the defendant was adversely affected by the error;
- (4) The error was not waived for tactical purposes; and
- (5) The error was so significant so as to probably change the outcome of the hearing, resulting in substantial justice being at stake.

State v. Hatcher, 310 S.W.3d 788, 808 (Tenn. 2010).

Our review of the transcript shows that all five criteria were not met. At the motion for new trial hearing, defense counsel conceded that it was a strategic decision not to object to the testimony because Chief Wallen's statement contained exculpatory statements. In the testimony, Chief Wallen said that the Defendant denied having committed the alleged offenses. Defense counsel also argued that waiver should be inapplicable because this specific decision, as it relates to strategy, is "difficult." Given the nature of the testimony, it is reasonable that defense counsel would elect not to object to the admission of the testimony. Chief Wallen's testimony was consistent with the Defendant's position that he did not commit the offenses. This statement benefited the defense, especially since the Defendant elected not to testify. Defense counsel also referenced the desire not to draw attention to the statement, to which the trial court noted that an objection could have been raised outside the hearing of the jury. The record supports the trial court's finding that the decision was strategic. Therefore, because the Defendant has not established one of the prerequisites for plain error review, he is not entitled to relief.

B. Sufficiency of the Evidence

The Defendant asserts that the evidence is insufficient to support his convictions. His argument essentially attacks the victim's credibility. The State responds that there was sufficient evidence for a reasonable jury to find, beyond a reasonable doubt, that the Defendant committed each of the conviction offenses.

When an accused challenges the sufficiency of the evidence, this Court's standard of review is whether, after considering 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); see Tenn. R. App. P. 13(e); *State v. Goodwin*, 143 S.W.3d 771, 775 (Tenn. 2004) (citing *State v. Reid*, 91 S.W.3d 247, 276 (Tenn. 2002)). This standard applies to findings of guilt based upon direct evidence, circumstantial evidence, or a combination of both direct and circumstantial evidence. *State v. Pendergrass*, 13 S.W.3d 389, 392-93 (Tenn. Crim. App. 1999) (citing *State v. Dykes*, 803 S.W.2d 250, 253 (Tenn. Crim. App. 1990)). In the absence of direct evidence, a criminal offense may be established exclusively by circumstantial evidence. *Duchac v. State*, 505 S.W.2d 237, 241 (Tenn. 1973). "The jury decides the weight to be given to circumstantial evidence, and '[t]he inferences to be drawn from such evidence, and the extent to which the circumstances are consistent with guilt and inconsistent with innocence, are questions primarily for the jury.'" *State v. Rice*, 184 S.W.3d 646, 662 (Tenn. 2006) (quoting *Marable v. State*, 313 S.W.2d 451, 457 (Tenn. 1958)). "The standard of review [for sufficiency of the evidence] 'is the same whether the conviction is based upon direct or circumstantial evidence.'" *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011) (quoting *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009)).

In determining the sufficiency of the evidence, this Court should not re-weigh or reevaluate the evidence. *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Nor may this Court substitute its inferences for those drawn by the trier of fact from the evidence. *State v. Buggs*, 995 S.W.2d 102, 105 (Tenn. 1999) (citing *Liakas v. State*, 286 S.W.2d 856, 859 (Tenn. 1956)). "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 are resolved by the trier of fact." *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). "A guilty verdict by the jury, 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. Grace*, 493 S.W.2d 474, 476 (Tenn. 1973). The Tennessee Supreme Court stated the rationale for this rule:

This well-settled rule rests on a sound foundation. The trial judge and the jury see the witnesses face to face, hear their testimony and observe their demeanor on the stand. Thus the trial judge and jury are the primary instrumentality of justice to determine the weight and credibility to be given to the testimony of witnesses. In the trial forum alone is there human atmosphere and the totality of the evidence cannot be reproduced with a written record in this Court.

Bolin v. State, 405 S.W.2d 768, 771 (Tenn. 1966) (citing *Carroll v. State*, 370 S.W.2d 523, 527 (Tenn. 1963)). This Court must afford the State of Tennessee the ““strongest legitimate view of the evidence”” contained in the record, as well as ““all reasonable and legitimate inferences”” that may be drawn from the evidence. *Goodwin*, 143 S.W.3d at 775 (quoting *State v. Smith*, 24 S.W.3d 274, 279 (Tenn. 2000)). Because a verdict of guilt against a defendant removes the presumption of innocence and raises a presumption of guilt, the convicted criminal defendant bears the burden of showing that the evidence was legally insufficient to sustain a guilty verdict. *State v. Carruthers*, 35 S.W.3d 516, 557-58 (Tenn. 2000) (citations omitted).

1. Aggravated Sexual Battery

Aggravated sexual battery requires the State to prove unlawful sexual contact with a victim by the defendant where the victim was less than thirteen years of age. T.C.A. § 39-13-504(a)(4).

The evidence, viewed in the light most favorable to the State, showed that the Defendant married the victim’s mother when the victim was seven or eight years old. The Defendant assumed a parental role with the victim. He played games with her, took her to school, and made and enforced house rules. The victim called the Defendant, “Dad.” As to Counts 2, 4, 6, and 8, the victim testified that, when she was under the age of thirteen years old, after her family moved to LaFollette, she woke up in her bedroom to find the Defendant lying next to her and stroking her vagina over her clothing. She testified that this occurred, on average, once or twice a week. This is sufficient evidence to support the jury’s finding of unlawful sexual contact by the Defendant with the victim who was less than thirteen. (aggravated sexual battery - Counts 2, 4, 6, and 8).

2. Attempted Rape

Attempted rape, as charged, requires the State to prove that the Defendant acted with an intent to commit rape and committed a substantial step toward the unlawful sexual penetration of the victim through force or coercion. T.C.A. § 39-12-101(a)(3) and T.C.A. § 39-13-503(a)(1). “Sexual 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 an object into the genital or anal openings of the victim’s, the defendant’s, or any other person’s body.” T.C.A. § 39-13-501(7).

The evidence, as it related to the attempted rape charge, showed that CP was at work one day when the Defendant and the victim were “roughhousing.” The victim was lying down on her parents’ bed, when the Defendant placed the victim’s feet on his shoulders, pulled down her clothing and attempted to put his penis in her anus. The victim felt the

Defendant's penis touch between her "butt cheek" near her anal opening. This is sufficient evidence upon which a reasonable jury could find that the Defendant took a substantial step toward unlawfully penetrating the victim. (attempted rape – Count 9)

3. Sexual Battery by an Authority Figure

Sexual battery by an authority figure is "unlawful sexual contact with a victim by the defendant" when the victim was thirteen years to eighteen years old and the "defendant had, at the time of the offense, parental or custodial authority over the victim and used the authority to accomplish the sexual contact." T.C.A. § 39-13-527(a). Sexual contact is the intentional touching of a victim's intimate parts including the touching of the clothing covering the immediate area of the victim's intimate parts "if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification[.]" T.C.A. § 39-13-501(6).

The evidence also showed that, after the attempted rape, the Defendant once again resumed entering her bedroom at night, although this conduct occurred more sporadically. The Defendant touched the victim inappropriately for the last time when she was around fourteen years old. She testified that she awoke in her bed in her bedroom to find the Defendant stroking her vagina over her clothing. CP entered the room, and the Defendant and CP left the room. CP told Chief Wallen that she confronted the Defendant about this incident and CP, CB, and the victim moved to Ms. Oaks' house shortly thereafter. This is sufficient evidence upon which a jury could find, beyond a reasonable doubt, that while the victim was between thirteen and eighteen years old, the Defendant who was her stepfather, engaged in unlawful sexual contact with the victim. (sexual battery by an authority figure - Counts 5, 7, and 12)

Accordingly, we conclude that there is sufficient evidence to support each of the Defendant's convictions. The Defendant is not entitled to relief.

C. Sentencing

The Defendant similarly attacks the victim's credibility as a basis for challenging the trial court's imposition of consecutive sentencing. The State responds that the trial court acted within its discretion when imposing consecutive sentencing. We agree with the State.

The Tennessee Criminal Sentencing Reform Act of 1989 and its amendments describe the process for determining the appropriate length of a defendant's sentence. Under the Act, a trial court may impose a sentence within the applicable range as long as

the imposed sentence is consistent with the Act's purposes and principles. T.C.A. § 40-35-210(c)(2), (d) (2010); *see State v. Carter*, 254 S.W.3d 335, 343 (Tenn. 2008).

In *State v. Bise*, the Tennessee Supreme Court announced that “sentences imposed by the trial court within the appropriate statutory range are to be reviewed under an abuse of discretion standard with a ‘presumption of reasonableness.’” 380 S.W.3d 682, 708 (Tenn. 2012). A finding of abuse of discretion “‘reflects that the trial court’s logic and reasoning was improper when viewed in light of the factual circumstances and relevant legal principles involved in a particular case.’” *State v. Shaffer*, 45 S.W.3d 553, 555 (Tenn. 2001) (quoting *State v. Moore*, 6 S.W.3d 235, 242 (Tenn. 1999)). To find an abuse of discretion, the record must be void of any substantial evidence that would support the trial court’s decision. *Id.*; *State v. Grear*, 568 S.W.2d 285, 286 (Tenn. 1978); *State v. Delp*, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980). The reviewing court should uphold the sentence “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.” *Bise*, 380 S.W.3d at 709-10. In other words, so long as the trial court sentences a defendant within the appropriate range and properly applies the purposes and principles of the Sentencing Act, its decision will be granted a presumption of reasonableness. *Id.* at 707.

Tennessee Code Annotated section 40-35-115(b) provides that a trial court may order sentences to run consecutively if it finds any one of the statutory criteria by a preponderance of the evidence. As it relates to this case, the trial court found the following criteria applicable:

(2) The defendant is an offender whose record of criminal activity is extensive; and

(5) The 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;

T.C.A. § 40-35-115(b)(2), (5). These criteria are stated in the alternative; therefore, only one need exist to support the imposition of consecutive sentencing. *See id.*; *State v. Denise Dianne Brannigan*, No. E2011-00098-CCA-R3-CD, 2012 WL 2131111, at *19 (Tenn. Crim. App., at Knoxville, June 13, 2012), *no perm. app. filed*. The imposition of consecutive sentencing, however, is subject to the general sentencing principles that the overall sentence imposed “should be no greater than that deserved for the offense

committed” and that it “should be the least severe measure necessary to achieve the purposes for which the sentence is imposed [.]” T.C.A. § 40-35-103(2), (4).

We review a trial court’s decision to impose consecutive sentences for an abuse of discretion with a presumption of reasonableness. *State v. Pollard*, 432 S.W.3rd 851, 860 (Tenn. 2013).

As to factor (2), an extensive record of criminal activity, the record shows that the Defendant’s criminal record includes convictions for: aggravated burglary (3x), theft of property over \$1000 but less than \$10,000 (3x), aggravated sexual battery, passing counterfeit papers, theft of property up to \$500, statutory rape, possession of marijuana, and evading arrest. In the presentence report, the Defendant admitted daily use of marijuana. The Defendant’s prior convictions span from 1998 to 2015. The record supports the trial court’s findings with respect to the Defendant’s criminal activity.

Although one of these grounds alone is a sufficient basis for the imposition of consecutive sentencing, we also consider the other factor relied upon by the trial court, factor (5). We conclude that the record supports application of this factor as well. The Defendant was convicted of eight offenses involving sexual abuse of a minor. The trial court also found that the circumstances were aggravated due to the parental role of the Defendant to the victim, the abuse began when the victim was seven or eight and continued until she was around fourteen years old, and the circumstances of this ongoing abuse. For both factors relied upon to impose consecutive sentencing, the record contains substantial evidence in support of the trial court’s decision.

Accordingly, the trial court did not abuse its discretion in finding that the Defendant’s criminal activity was extensive and that he was convicted of two or more offenses involving a minor with consideration given to the relevant aggravating circumstances. The Defendant is not entitled to relief as to this issue.

III. Conclusion

Based on the foregoing reasoning and authorities, we affirm the trial court’s judgments.

S/ ROBERT W. WEDEMEYER
ROBERT W. WEDEMEYER, PRESIDING JUDGE