

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR09-880

RAMON E. CHAVEZ

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 17, 2010

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT
[CR-2008-1249]

HONORABLE J. MICHAEL
FITZHUGH, JUDGE

AFFIRMED

DAVID M. GLOVER, Judge

Appellant, Ramon Chavez, was convicted of sexual assault in the second degree by a Sebastian County jury and was sentenced to five years' imprisonment. On appeal, he contends that the trial court erred in denying his motions for directed verdict. We affirm Chavez's conviction.

For appellate review, the critical evidence at trial consisted of the testimony of the victim and her mother, and the transcript of the interview between the appellant and the police officers, all a part of the State's main case. The victim, a family friend, testified that on July 26, 2008, she participated in Chavez's stepdaughter's quincianera; that prior to the quincianera, she went to Chavez's house and changed into her dress in the stepdaughter's room; that after the quincianera and the subsequent reception, she called her parents, who had

left earlier due to other commitments, and asked her father if he was coming to pick her up; that her father told her that Chavez was going to take her home; that Chavez first took his mother to her house, along with a load of chairs from the reception; and that she and Chavez then went to his house to pick up her clothes. The victim said that on the way to Chavez's house, Chavez told her that he thought she was beautiful, and he asked her if she thought he was cute. She said that when they arrived at his house, Chavez followed her to his stepdaughter's room, stood in the doorway, and told her again that he thought that she was beautiful and that this would be his only chance to tell her because they might not be alone again; that he stepped toward her and asked for a kiss; that she told him no and said that she had a boyfriend; that he came closer, put his arms around her waist, and started pushing her toward the bed, causing her to fall backward; that he got on top of her and started trying to kiss her; that she pushed him off, but he got back on top of her; and that he told her that if she would give him a kiss that he would take her home. She said that he finally gave up, got off her, grabbed her hand as she picked up her bag, kissed her arms and neck, and told her that he wanted them to be together.

The victim testified that when they got into the vehicle, Chavez drove to a convenience store; that she tried to call someone for help but Chavez came back too quickly; and that when he got back in the vehicle, instead of taking her directly home, Chavez took a longer way to her house. The victim said that on the way to her house, Chavez again told her that she was beautiful; that she had a nice body and butt and nice legs and "boobs"; and that they could be together and that he could treat her better than a sixteen-year-old. The

victim said that Chavez asked her if she had ever had sex; that she told him “no”; that he asked her if she wanted to have sex with him; that she again told him “no”; and that he proceeded to tell her that they could be secret lovers or that they could just get married and have sex all the time, and that he would bring her money to buy whatever she wanted. The victim testified that Chavez then asked her what size bra she wore; when she told him that she did not know, he put his hand on her left breast, “scooped” her breast like he was picking it up, and told her that he could tell her what size bra she wore. At that time, the victim removed Chavez’s hand and told him her bra size; when he asked what size panties she wore, she said that she told him because she did not want him to try to touch her. The victim said that Chavez told her not to tell anyone.

The victim testified that when Chavez took her home, she got out of the vehicle, went inside, went straight to her room, and put on her pajamas. According to the victim, she called a friend and reported what had happened, and the friend told her that she needed to tell her parents, which she did. Her parents called the police. The victim said that the responding officer did not tape record what she told him, and that she only told him the main points. She said that when she later talked to a detective, she told him more of the details. She said that she did not remember if she told the officer everything that she had told the jury. On cross-examination, the victim said that Chavez grabbed her left breast and that he motioned for her right breast, but she pushed his hand away and he never touched it.

The victim’s mother testified that after the reception she and her husband told Chavez that they would come back for their daughter, but he told them that he could take her home.

She said that when her daughter arrived home, she went straight to her room, but that she later came out and asked to speak to her parents, at which time she told them that Chavez had touched her.

A transcript of the interview between Chavez and the officers was admitted into evidence over Chavez's objection that the interpreter was not certified by the Administrative Office of the Courts. In this interview, Chavez said that he saw the victim like one of his daughters, even though he did not know her well, and he told her that she was too pretty and too young to have a boyfriend. He said that he thought that the victim misunderstood the advice he was trying to give her because his English was not very good. Further, when confronted with the victim's version of events, Chavez denied that he asked her for a kiss in his stepdaughter's bedroom or that he grabbed her, threw her on the bed, and started trying to kiss her. He also denied kissing the victim's arm and neck in the bedroom. Chavez said that he told the victim to wait until she was older, and then she could date someone his age, who could take care of her and buy her things. He denied touching the victim's breast or trying to kiss her in the car. He admitted that he talked to the victim about bras and underwear, but asserted that he was telling her that when she was older, someone would take care of her and buy her things like that, and that she must have misunderstood him. He admitted that he had tried to hug the victim while she was picking up her bag in his stepdaughter's room, but claimed that he had no bad intentions.

At the close of the State's case and again at the close of all the evidence, Chavez moved for directed verdicts, arguing that there were "extreme and tremendous" factual

inconsistencies between the written police reports and the affidavit that was sworn out for Chavez's arrest warrant, as well as in the testimony. The trial court denied these motions. Chavez now makes that same argument on appeal to this court.

The denial of motions for directed verdict are treated as a challenge to the sufficiency of the evidence. *Hull v. State*, 96 Ark. App. 280, 241 S.W.3d 302 (2006). In reviewing a challenge to the sufficiency of the evidence, the evidence is viewed in the light most favorable to the State, and only evidence supporting the verdict is considered. *Rohrbach v. State*, 374 Ark. 271, 287 S.W.3d 590 (2008). If substantial evidence exists to support a conviction, it will be affirmed; substantial evidence is evidence that is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture. *Id.*

A person commits second-degree sexual assault if he engages in sexual contact with a minor and the person is the minor's temporary caretaker or a person in a position of trust or authority over the minor. Ark. Code Ann. § 5-14-125(a)(4)(A)(iii) (Repl. 2006). "Sexual contact" includes any act of sexual gratification involving the touching, directly or through clothing, of the breast of a female. Ark. Code Ann. § 5-14-101(9) (Repl. 2006).

All of Chavez's arguments center on the credibility of the victim and the discrepancies between her testimony and the officers' notes, reports, and affidavit, and his denial that the touching occurred. He argues that the State relied "solely upon the self-serving testimony of [the victim] and the biased corroborating testimony of her mother," and that the record is "hopelessly conflicted as to what transpired" between the victim and him. Chavez contends

that the State convicted him on purely circumstantial evidence, and because the case was purely circumstantial, the State was saddled with the burden of proving his guilt “to a moral certainty and excluding every reasonable hypothesis” other than his guilt. He is mistaken.

The victim’s testimony was not “circumstantial evidence,” as Chavez categorizes it. Rather, it is direct evidence that provides the victim’s recollection of the series of events that culminated in the touching of her breast by Chavez with his hand. While Chavez attacks the victim’s testimony and that of her mother as “self-serving” and “biased,” the credibility of witnesses is a matter for the jury’s consideration; where testimony is conflicting, the appellate courts do not pass on the credibility of the witnesses and have no right to disregard the testimony of any witness after the jury has given it full credence, if it cannot be said with assurance that it was inherently improbable, physically impossible, or so clearly unbelievable that reasonable minds could not differ thereon. *Rohrbach, supra*. It is well established that reconciling conflicts in the testimony and weighing the evidence are matters within the exclusive province of the jury, and the jury’s conclusion on credibility is binding on this court. *Hull, supra*. Although Chavez denied that he touched the victim’s breast, and he points to the inconsistencies and omissions between the victim’s testimony and the reports and affidavits of the police officers who were involved in the case, the jury is not required to believe Chavez’s own self-serving testimony, and it was free to believe all or part of the victim’s testimony as it saw fit. *Brown v. State*, 374 Ark. 341, 288 S.W.3d 226 (2008). Furthermore, if the victim’s testimony is believed by the jury, her uncorroborated testimony

constitutes substantial evidence to support a guilty verdict for sexual assault in the second degree, *id.*, and any inconsistencies in other testimony is irrelevant.

Chavez also complains that a transcript of his interview at the police department was obtained with the assistance of a translator who was not certified by the Administrative Office of the Courts and was admitted into evidence in violation of Rule 1009 of the Arkansas Rules of Evidence, and that “the State’s case is, by definition, based entirely on the testimony of [the victim] and conjecture and speculation as to what was said by [Chavez] during his interrogation.” While it is true that the translation was not made by a qualified translator as set forth in Rule 1009, and Chavez objected on this basis, he did not object to the admission of the transcript at trial; in fact, his attorney stipulated at trial that the transcript reflected the interview. Furthermore, as discussed above, the victim’s testimony alone is sufficient to support Chavez’s conviction. *Brown, supra.*

Affirmed.

ROBBINS and MARSHALL, JJ., agree.