

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR10-224

SHAWN MASSEY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered MAY 18, 2011

APPEAL FROM THE FAULKNER
COUNTY CIRCUIT COURT
[NO. CR-09-146]

HONORABLE DAVID L.
REYNOLDS, JUDGE

AFFIRMED

JOSEPHINE LINKER HART, Judge

The circuit court convicted Shawn Massey of the third-degree domestic battering of his four-year-old stepdaughter in that, with the purpose of causing physical injury to a family or household member, he caused physical injury to a family or household member. Ark. Code Ann. § 5-26-305(a)(1) (Supp. 2009). Massey argues on appeal that the evidence was insufficient to support the conviction. We affirm.

A teacher at the Mayflower School District noticed swelling and bruising on the victim's hand. The school nurse testified that she examined the victim and observed bruising on the backs and palms of the victim's hands. She also observed that the victim's middle two fingers were swollen. When the nurse asked the victim about the cause of her injuries, she stated that her fingers were pulled back by "Shawn" to get her to be quiet. The victim further stated that sometimes he would sit on her and pull her fingers back. The victim also

stated that when she was not quiet “Shawn put his fingers down her throat to get her to be quiet.”

A physician later examined the victim. He determined that the victim had bruises on the left side of her head, her back, and her buttocks. The bruises in each area were at different stages of healing. He testified that the bruises on the head looked as if the victim had been thump[ed], that the bruises on the back were the result blunt trauma, and that the bruises on the buttocks appeared to be the result of spanking. He further testified that the victim’s left hand had a hematoma on ninety to ninety-five percent of the dorsal surface, including swelling of the fingers with very little bruising on the distal part of the third and fourth digits. He concluded that, given the disproportional ecchymoses and swelling, the victim’s hand was not injured by the closing of a car door; rather “there was a mechanism of action like pulling her fingers back.” On cross-examination, the physician disagreed with Massey’s attorney that the injury could have been caused by the hand being slammed in a door or that he had previously so stated. He further acknowledged that he did not have a photograph of the inside of the victim’s left hand and had based his determination that the injury was not caused by a slamming door on his recollection of the condition of the hand.

Massey asserts on appeal that the physician’s opinion that the injury to the victim’s hand was not consistent with the hand being slammed in a door was not credible because it contradicted the physician’s earlier opinion and because his testimony was based not on photographs but on his recollection that there was no bruising on the palm of the hand, when in fact the school nurse had testified that there was bruising on both the backs and

palms of the victim's hands. Massey also asserts that while the school nurse testified about the victim's statement to her that Massey caused the injuries to her hand, this testimony was inconsistent with other testimony. He notes that the victim testified that the injury to her hand was caused by the slamming of a door and that she had previously stated to an investigator that a ghost had caused her injuries. Massey also notes that the victim's eight-year-old brother testified that the injury to the victim's hand was the result of his having slammed the door on her hand.

In challenges to the sufficiency of the evidence, we view the evidence in the light most favorable to the State, considering only the evidence that supports the conviction, and affirm if substantial evidence supports the conviction. *See, e.g., Rounsaville v. State*, 372 Ark. 252, 273 S.W.3d 486 (2008). The finder of fact determines the credibility of the witnesses and resolves questions of conflicting testimony and inconsistent evidence. *Id.*

Viewing the evidence in the light most favorable to the State, the school nurse testified that the victim told her that Massey caused the injuries to her hand by pulling her fingers back. The treating physician's testimony corroborated the victim's statements to the nurse in that he opined that this was the mechanism used to cause the injuries. While Massey asserts that there were inconsistencies in the evidence, resolution of these inconsistencies was for the finder of fact.

Affirmed.

GLADWIN and ABRAMSON, JJ., agree.