Cite as 2012 Ark. App. 91

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR11-848

Opinion Delivered January 25, 2012

ARTHUR LEE NEWTON, JR.
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

APPEAL FROM THE DREW COUNTY CIRCUIT COURT, [CR-2010-155-1]

HONORABLE SAM POPE, JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

Appellant Arthur Lee Newton, Jr., was found guilty by a Drew County jury of sexual indecency with a child and sexual assault in the second degree.[1] He was sentenced to twenty-four years' imprisonment. He argues on appeal that the evidence was insufficient to support his convictions because there was no evidence that his actions were motivated by the desire for sexual gratification. He also argues that the trial court erred by overruling his objection to a question that had already been asked and answered. We find no error and affirm.

Newton's first argument on appeal is that the circuit court erred in denying his motion for directed verdict because there was insufficient evidence to support his convictions. On appeal, we treat a motion for directed verdict as a challenge to the sufficiency of the

[1]He was also charged with rape; however, the court granted his motion for directed verdict as to the rape charge.

evidence.[2] In reviewing a challenge to the sufficiency of the evidence, this court determines whether the verdict is supported by substantial evidence, direct or circumstantial.[3] Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture.[4] This court views the evidence in the light most favorable to the verdict, and only evidence supporting the verdict will be considered.[5]

A sexual-assault victim's testimony may constitute substantial evidence to sustain a conviction for sexual assault.[6] The victim's testimony need not be corroborated, and the victim's testimony alone, describing the sexual contact, is enough for a conviction.[7] The credibility of witnesses is a matter for the jury's consideration.[8] Where the testimony is conflicting, we do not pass upon the credibility of the witnesses and have no right to disregard the testimony of any witness after the jury has given it full credence, where it cannot be said with assurance that it was inherently improbable, physically impossible, or so clearly unbelievable that reasonable minds could not differ thereon.[9] Furthermore, the jury need not

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[2] *Camp v. State*, 2011 Ark. 155, 381 S.W.3d 11.

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] *Brown v. State*, 374 Ark. 341, 288 S.W.3d 226 (2008).

[7] *See Colburn v. State*, 2010 Ark. App. 587.

[8] *Tryon v. State*, 371 Ark. 25, 263 S.W.3d 475 (2007).

[9] *Davenport v. State*, 373 Ark. 71, 281 S.W.3d 268 (2008).

believe the defendant's own self-serving testimony, and it is free to believe all or part of a victim's testimony as it sees fit.[10]

A person commits sexual indecency with a child if "with the purpose to arouse or gratify a sexual desire of himself or herself . . . the person purposely exposes his or her sex organs to another person who is less that fifteen (15) years of age."[11] A person commits sexual assault in the second degree if he or she is eighteen (18) years of age or older and engages in sexual contact with someone less than fourteen (14) years of age who is not his or her spouse.[12] "Sexual contact" is defined as "any act of sexual gratification involving the touching, directly or through clothing, of the sex organs, or buttocks, or anus of a person or the breast of a female."[13] It is not necessary for the State to provide direct proof that an act is done for sexual gratification if it can be assumed that the desire for sexual gratification is a plausible reason for the act.[14]

The evidence viewed in the light most favorable to the State shows the following: Newton, the victim's grandfather, witnessed the victim and her older brother in a room with their clothes pulled down; he went into the house and made contact with both; he made the victim go to the pond levy with him, where he took her pants down; the victim testified that

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[10]*See Chavez v. State*, 2010 Ark. App. 161.

[11]Ark. Code Ann. § 5-14-110(a)(2)(A) (Repl. 2006).

[12]Ark. Code Ann. § 5-14-125(a)(3) (Repl. 2006).

[13]Ark. Code Ann. § 5-14-101(9) (Repl. 2006).

[14]*Estrada v. State*, 2011 Ark. 3, 376 S.W.3d 395.

Newton touched her "private place";[15] Newton conceded that he may have touched the victim while helping her remove her panties; the victim said that Newton took his "bad spot"[16] out, that she held his "bad spot," that "juice" came out of it, and that she let it go when the juice came from it; the victim further stated that the "juice" that came out of Newton "was not like when you go pee."

Here, the victim's testimony was enough to support Newton's convictions for both sexual indecency with a child and sexual assault in the second degree. Newton argues that he only evaluated the victim to ensure that she was not hurt as a result of what he had witnessed between her and her brother. The jury was presented with both the victim's and Newton's account of what took place and chose to believe the victim. Accordingly, we affirm.

Next, Newton argues that the trial court erred by overruling his objection to a question that he alleged had already been asked and answered. The trial court has wide discretion in making evidentiary rulings, and this court will not reverse those rulings absent an abuse of discretion.[17] Additionally, the trial court has broad discretion in eliciting testimony from a minor witness, and the State is granted some latitude, particularly in cases involving the sexual abuse of a minor.[18]

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[15]Victim's referral to vagina.

[16]Victim's referral to penis.

[17]*Kelley v. State*, 375 Ark. 483, 292 S.W.3d 297 (2009).

[18]*See Gibson v. State*, 2010 Ark. App. 46; *Johnson v. State*, 71 Ark. App. 58, 25 S.W.3d 445 (2000); *Hamblin v. State*, 268 Ark. 497, 597 S.W.2d 589 (1980).

The victim in this case was eight years old at the time she testified. During direct examination, she stated that she did not touch Newton's "bad spot" and that she did not tell anyone that she touched it. She was then asked about when she came to the prosecutor's office. She admitted that she told the prosecutor that she "touched [Newton's] bad spot out by the pond" and showed the prosecutor how she touched it. Given the age of the victim and the nature of the charges, we cannot say that the trial court abused its discretion in overruling Newton's objection. Therefore, we affirm.

Affirmed.

GRUBER and MARTIN, JJ., agree.