ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR11-735

	Opinion Delivered April 11, 2012
BRENNAN MATTHEW KING APPELLANT	APPEAL FROM THE CIRCUIT COURT OF PULASKI COUNTY, FOURTH DIVISION NO. CR2009-4199
V.	
STATE OF ARKANSAS APPELLEE	HONORABLE HERBERT T. WRIGHT, JR., JUDGE
	AFFIRMED

WAYMOND M. BROWN, Judge

This is an appeal from a Pulaski County jury trial finding Brennan King guilty of one count of sexual assault in the second degree. Because there was substantial evidence to support appellant's conviction, we affirm.

Background

Appellant was charged by felony information with one count of second-degree sexual assault pursuant to Ark. Code Ann. § 5-14-125, for allegedly having sexual contact with his daughter B.K. (DOB 10/6/03) on or about February 1, 2009, during visitation at the home of appellant's mother and stepfather. Appellant pled not guilty, and a jury trial was held on April 13, 2011. Appellant moved for a directed verdict at the close of the State's case-in-chief and at the close of all evidence, and those motions were denied. The jury rendered a guilty verdict on April 14, 2011, and sentenced appellant to 120 months in the Arkansas Department

of Correction. The judgment and commitment order was filed on April 20, 2011, and appellant filed a timely notice of appeal on April 27, 2011.

Standard of Review

When reviewing the sufficiency of the evidence, this court determines whether there was substantial evidence to support the verdict, viewing the evidence in the light most favorable to the State.[1] Substantial evidence is that evidence which is of sufficient force and character to compel a conclusion beyond suspicion or conjecture.[2] We consider only the evidence that supports the guilty verdict.[3] Matters such as evaluating a witness's credibility and resolving inconsistencies in the evidence are issues for the jury and not this court.[4]

Discussion

Appellant was charged with violating Ark. Code Ann. § 5-14-125(a)(3) (Repl. 2006), which provides that a person commits sexual assault in the second degree if he, being eighteen years old or older, engages in sexual contact with someone under fourteen years old who is not his spouse. Arkansas Code Annotated section 5-14-101(10) (Repl. 2006) defines "sexual contact" as any act of gratification[5] involving the touching, directly or through clothing, of

---

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

[2] *Id.*

[3] *Id.* (citing *Arnett v. State*, 353 Ark. 165, 122 S.W.3d 484 (2003)).

[4] *Id.* (citing *Phillips v. State*, 344 Ark. 453, 40 S.W.3d 778 (2001)).

[5] Direct proof of sexual gratification is not required when it can be assumed that the desire for sexual gratification is a plausible reason for the act. *Estrada v. State*, 2011 Ark. 3, ___ S.W.3d ___; *Holloway v. State*, 312 Ark. 306, 849 S.W.2d 473 (1993).

the sex organs, buttocks, or anus of a person or the breast of a female. Viewed in the light most favorable to the State, there was substantial evidence to support appellant's conviction.

B.K. was interviewed on February 3 and 5, 2009, by Detective Denise Canterbury of the North Little Rock Police Department.[6] B.K. was five years old at the time of the interviews. She told Canterbury about a "magic thumb game" she played with appellant on the February 1, 2009 visit, while they were under the covers, in which appellant would "make himself big." B.K. pointed to the genitalia area of an anatomically correct doll when describing the "magic thumb," said it was located in appellant's pants, and said that "[w]hen daddy's thumb gets big, I turn it back little." B.K. stated that appellant told her to keep the game a secret. At trial, B.K. testified that the "magic thumb" was larger than a thumb, was squishy and did not look or feel like a thumb, and was located where a penis would be.

Jennifer Baker testified that in August 2006, she was working as a child-abuse investigator for the Arkansas State Police and was called in to interview B.K. Baker had been told that B.K. had been playing some kind of "wiggling" game, so she asked B.K. what that was. B.K. said that she "wiggled" on her daddy's behind or he would "wiggle" on hers. When asked to show Baker what "wiggling" was, B.K. laid her mother down on the bed, got on her back, put her hands underneath her mother's hips, and thrust her pelvic area back and forth against her mother's buttocks. Baker also testified that B.K.'s mother showed her a video that showed B.K. doing the same thing with a stuffed animal.

---

[6] A videotape of the interviews was played for the jury at trial.

B.K.'s mother, Patricia King, testified that she divorced appellant in May 2005 and in March 2006 started seeing B.K. "hunch," or thrust her pelvic area against items like stuffed animals and toy balls. In August 2006, B.K. began to come up behind Ms. King and "hunch" against her bottom. When Ms. King asked what she was doing, B.K. called it "wiggling," said she learned it from appellant, and told Ms. King, "You can wiggle on my butt like daddy does." Ms. King testified that after B.K.'s visitation with appellant on February 1, 2009, B.K. talked about playing a "magic thumb game" and a "sleepover game" during her visits with appellant. B.K. told Ms. King that the magic thumb was in appellant's pants and that appellant "made his thumb turn big" during the game, which was played under the covers. Ms. King further testified that B.K. demonstrated what she did with the "magic thumb" by massaging four of her (King's) fingers.

Cindy Kumpe, B.K.'s aunt, testified that in April 2009, she broke her arm and B.K. drew a large penis on her cast, as well as a stick figure with a penis, which she said represented appellant.[7] Kumpe and Dawn Frederick, B.K.'s maternal grandmother, also testified that they had observed B.K. "hunching" on people or objects since she was about two years old.[8]

---

[7] A photograph of the cast was entered into evidence at trial.

[8] For example, Kumpe testified that when B.K. was around two years old, she began exhibiting the "wiggling" behavior on different objects such as toy balls, pillows, or stuffed animals. Kumpe testified that she once saw B.K. get on her mother's back and begin "wiggling" against her bottom. When her mother asked what she was doing, B.K. pushed her head down and said, "Be still. I'll be done in a minute." Ms. Frederick testified that when B.K. was around two years old, B.K. started frequently "hunching" against objects, and once did so against Frederick's leg.

Appellant argues that his daughter's testimony contained many inconsistencies and therefore does not constitute sufficient evidence to support his conviction. Arkansas courts, however, have found that in sexual-assault cases, the victim's testimony, even without corroboration, is sufficient to sustain a conviction.[9] Although appellant denied and continues to deny the allegations of sexual abuse and presented testimony from his parents at trial to support his denials, we consider only the evidence supporting the conviction, and in any event, the jury was not required to believe appellant's self-serving testimony.[10] While it is true that B.K.'s testimony was at times inconsistent, the issue of a witness's inconsistent statements is a matter of credibility left to the jury's discretion.[11] Where the fact-finder has given credence to inconsistent testimony, this court gives full weight to that determination "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."[12] None of those circumstances exist here. In this case, there was substantial evidence, both from the victim and from corroborating witnesses, in support of appellant's conviction. Accordingly, we affirm.

Affirmed.

GLADWIN and GLOVER, JJ., agree.

---

[9] *Bryant v. State*, 2010 Ark. 7, ___ S.W.3d ___.

[10] *Brown*, *supra* (citing *Sera v. State*, 341 Ark. 415, 17 S.W.3d 61 (2000)).

[11] *Id.* (citing *Kitchen v. State*, 271 Ark. 1, 607 S.W.2d 345 (1980)).

[12] *Halliday v. State*, 2011 Ark. App. 544, at 2, ___ S.W.3d ___.