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ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR 11-1004

ALTON McLISH APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** April 18, 2012 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, FIFTH DIVISION [NO. CR2010-2413] HONORABLE WENDELL GRIFFEN, JUDGE AFFIRMED

DOUG MARTIN, Judge

Following a bench trial in Pulaski County Circuit Court, appellant Alton McLish was convicted of one count of rape and sentenced to thirty years' imprisonment. His sole argument on appeal challenges the sufficiency of the evidence supporting his conviction. We find no error and affirm.

McLish's uncle, Johnny Brown, was married to L.M., the grandmother of the victim, I.M., who was seven years old at the time. On the evening of May 1, 2010, I.M. was spending the night at L.M.'s home and had been watching television in bed with her grandmother. McLish and Brown had been out together that evening, and when they came home, McLish entered L.M.'s bedroom, got I.M. out of the bed, and carried the child into the next bedroom, where there was a twin bed and a full-sized bed. McLish then apparently

went to the couch in the living room to watch television for a while, but L.M. suggested that he go to sleep in the larger bed in the bedroom where I.M. was sleeping.

I.M. testified that McLish later got out of the "big" bed and into her "little" bed with her, lying down behind her. She said that McLish "reach[ed] over [her] stomach" and touched her on her "private," which was "below her stomach" on the part of her body where she "use[s] the bathroom." I.M. said that McLish touched her inside her panties and inside of her private part. At that point, I.M. got out of the little bed and went to the larger bed, but McLish followed her; she went back to the little bed, but he followed her again.

I.M. did not tell her mother or grandmother what happened right away, but L.M. noted that the child "acted kind of strange" the next morning. Several days later, McLish's name came up in conversation between I.M.'s mother and L.M., and L.M. testified that every time she brought up McLish, I.M. "flinched and her eyes got big." When asked whether someone had done something to her, I.M. said, "yes." L.M. then asked who it was, and I.M. said, "Alton." When L.M. asked what McLish did to her, I.M. pointed to her "private area."

After the police were notified, Detective Shannon Howard interviewed I.M., who at first told Howard that McLish touched her on her private parts. When pressed for more detail, I.M. said that McLish's finger went inside her body. I.M. was later taken to Arkansas Children's Hospital, where Dr. Jerry Jones performed a physical examination of the child on May 10, 2010. Dr. Jones testified that the exam was "absent of any physical findings of sexual

abuse," but he said that "such findings are normal in these types of examinations," and "a normal exam doesn't rule out sex abuse."

At the conclusion of the trial, the circuit court specifically found that I.M.'s testimony was credible, despite some inconsistencies in her statements. In finding I.M. to be truthful, the court stated that "there appears to be no indication in the court's mind that this child was somehow under the influence of suggestibility so as to have led her to say something that she knew was not true or to withhold something that was true when asked about that." The court then denied McLish's motion to dismiss, found McLish guilty of rape, and sentenced him to thirty years in the Arkansas Department of Correction.

A motion to dismiss in a bench trial is identical to a motion for a directed verdict in a jury trial in that it is a challenge to the sufficiency of the evidence. *Law v. State*, 375 Ark. 505, 292 S.W.3d 277 (2009). In reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the verdict, considering only the evidence supporting the verdict, to determine whether the verdict is supported by substantial evidence, direct or circumstantial. *Kelley v. State*, 375 Ark. 483, 292 S.W.3d 297 (2009). Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *White v. State*, 367 Ark. 595, 242 S.W.3d 240 (2006).

A person commits rape if he or she engages in sexual intercourse or deviate sexual activity with another person who is less than fourteen years of age. Ark. Code Ann. § 5-14-103(a)(3)(A) (Repl. 2006). "Deviate sexual activity" means "any act of sexual gratification involving . . . [t]he penetration, however slight, of the labia majora or anus of a person by

any body member or foreign instrument manipulated by another person." Ark. Code Ann. § 5-14-101(1)(B) (Repl. 2006). A rape victim's testimony may constitute substantial evidence to sustain a conviction for rape, even when the victim is a child. *Witcher v. State*, 2010 Ark. 197, 362 S.W.3d 321. More particularly, the supreme court has stated that the testimony of the victim that shows penetration is sufficient evidence for conviction, even where that testimony is uncorroborated. *Id.*; *see also Lamb v. State*, 372 Ark. 277, 275 S.W.3d 144 (2008); *Gatlin v. State*, 320 Ark. 120, 895 S.W.2d 526 (1995).

On appeal, McLish acknowledges that it is the duty of the trier of fact to assess the credibility of the witnesses, but he nonetheless urges that, other than the victim's testimony, there was no physical evidence proving that he raped her. McLish points out that the rape was not reported until three days later; the medical examination did not reveal any evidence of sexual abuse; and there was no evidence, either direct or circumstantial, to indicate that he had any intent to cause harm to I.M.

His argument is unavailing, however, in light of the appellate courts' repeatedly holding that "all that is needed for a rape conviction is the uncorroborated testimony of the victim." *Vance v. State*, 2011 Ark. App. 413, at 3.[1] This is so even where the victim is a child. *Harlmo v. State*, 2011 Ark. App. 314, 383 S.W.3d 447. *See also Rohrbach v. State*, 374 Ark. 271, 287 S.W.3d 590 (2008); *Jones v. State*, 300 Ark. 565, 780 S.W.2d 556 (1989) (holding

[1]In *Vance*, this court noted that, "[w]hile more physical evidence . . . would have made a stronger case, the fact remains that [the victim] testified that she and Vance had sexual intercourse, and the trial court believed her," and that was sufficient to sustain Vance's rape conviction. *Id.*

that testimony of child victim, standing alone, was sufficient to sustain rape conviction where victim clearly identified defendant and testified to the acts). The victim is not required to use the correct terms for the body parts if she uses her own terms or shows an understanding of what and where the body parts being described are located. *Id*. (citing *McGalliard v. State*, 306 Ark. 181, 813 S.W.2d 768 (1991)). Moreover, it is not necessary that scientific evidence be introduced in order to sustain a rape conviction. *Jones v. State*, 2010 Ark. App. 324 (citing *Gatlin v. State*, 320 Ark. 120, 895 S.W.2d 526 (1995)).

Here, as discussed above, I.M. testified that McLish put his finger inside her body on what she described as her "private part." To prove rape, the State was required to show that there was penetration, however slight, of the labia majora of the victim. I.M.'s testimony, although uncorroborated, satisfied that burden, and accordingly, there was substantial evidence to support McLish's conviction.

Affirmed.

ROBBINS and HOOFMAN, JJ., agree.

Lott Rolfe IV, for appellant.

Dustin McDaniel, Att'y Gen., by: *Brad Newman*, Ass't Att'y Gen., for appellee.