

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR10-680

JEWEL GOLDSBERRY, JR.
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered May 2, 2012

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
SEVENTH DIVISION
[NO. CR-09-1527]

HONORABLE BARRY SIMS, JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

A Pulaski County jury found appellant Jewel Goldsberry guilty of sexual assault in the second degree. He was sentenced to twenty years' imprisonment. Goldsberry argues on appeal that the trial court erred (1) by not including his proffered jury instruction and (2) by admitting into evidence testimony that he attempted to hang himself. This is the third time this case is before us. We twice ordered correction and supplementation of the record due to the incorrect charge being reflected in the judgment and commitment order.¹ We affirm.

Goldsberry was tried and convicted of sexual assault in the second degree of his niece, JT. His jury trial took place on April 1, 2010. At trial, Fletcher Tye, JT's father, testified that when he picked her up on March 13, 2009, they had a conversation that led him to believe that JT had been molested by Goldsberry. Tye stated that due to JT's disclosure to

¹*Goldsberry v. State*, 2011 Ark. App. 556, and *Goldsberry v. State*, 2012 Ark. App. 25.



him, he took her to Arkansas Children's Hospital (Children's Hospital) for an examination.

Annie Goldsberry, JT's mother, testified that JT was born on April 3, 2003. She stated that appellant was her brother and that she allowed him to stay with her and JT for a while. She testified that she left JT home with appellant one night for a couple of hours to go visit her boyfriend. She stated that when she returned everything seemed normal, so she went to bed. Annie said that Tye called her and informed her about JT's accusations. She stated that she was also present with JT at Children's Hospital. She testified that she believed what JT said, and that JT had never made up any stories about appellant.

On cross-examination, Annie stated that JT had mentioned something to her while she was getting JT changed to go with Tye. She said, "[i]t caused me to have some alarm. I tried to do something like I said, she was leaving with her dad, and I was going to ask him what was going on."

JT testified that she was six years old and was about to have a birthday on April 3. She stated that appellant touched her on her body with his penis. She said that she was in bed when he touched her and that he "did nasty things" to her that she did not want him to do. JT stated that she had panties on before appellant touched her but that he took them off and placed them in the dirty clothes.

On cross-examination, JT stated that she and appellant had slept in the same room before. She also said that her mother did not come home the night appellant touched her. She acknowledged that she told "Mrs. Braswell that [her] uncle put his tee-tee around [her] backside."



Trish Smith testified that she was a social worker at Children's Hospital. She stated that she works with families and children who come in with abuse or suspected abuse, whether physical or sexual. She said that her role in abuse situations is to make contact with the victim and family and to make a judgment as to whether abuse may have occurred. She stated that it is her job to collect the information and to relay that information to the doctors. She testified that she does not determine whether a child needs to have further examination. Smith testified that JT indicated to her that appellant had placed his "pee-pee" in her "butt." She stated that JT was given a rape kit exam.

On cross-examination, Smith stated that she did not know the results from the exam given to JT. She said that since JT complained of anal contact or penetration, they "might not have gotten any results unless there was actual physical injuries." She further testified that "up to 90 percent of children who are sexually abused show absolutely no findings on exam."

Dr. Karen Farst of the UAMS Department of Pediatrics testified that she sees children at Children's Hospital. She stated that JT had both a general exam and a detailed exam of her anal and genital area. She said that JT also had a rape kit and was tested for sexually transmitted infections. Dr. Farst stated that the odds of lasting physical findings showing up on the exams of the kids they see is less than ten percent. She continued, "the fact that we do not see findings on kids a lot of the times when they come in and have given a disclosure of sex abuse, doesn't at all really kind of factor into the concern I might have that a kid has or has not been sexually abused[.]"



On cross-examination, Dr. Farst stated that based on her report, there was no sign of physical injury on JT. She also said that the STD tests were all negative, and that she assumed that the rape kit was negative as well. She stated that the findings were indeterminate for JT, meaning that they saw a finding but did not know if it was significant or not.

Detective Greg Siegler of the Little Rock Police Department testified, over appellant's objection, that he made contact with appellant on March 13, 2009. He stated that he went to talk to appellant and to get information for the police report. According to Det. Siegler, when he left and went back to the desk, he heard a loud bang come from the room appellant was in. He stated that he looked into the window on the door but that he could not see appellant. Detective Siegler testified as follows:

I didn't see him so I tried to open the door. At that point, I saw that he was laying on the ground behind the door so I had to push the door, force the door open, and push him out of the way. At that time, I looked at him and saw a shoestring around his neck. At that time, I removed the shoestring, we removed him from that room, pulled him out into the duty room where we have more room to work and we called MEMS and they came.

On cross-examination, Det. Siegler stated that when he went in to get information from appellant, appellant had just been informed about the charges against him. He testified that he also participated in the search of Annie's house where clothing and bed sheets were collected.

Appellant testified that he came to Little Rock in an attempt to get to know Annie a little better and to try to build a relationship with her. He denied doing anything to JT and insisted that there was no way that he would hurt a child. On redirect, he stated that after he was arrested, the officers told him that they had DNA evidence against him and that they had



everything they needed to convict him. He said that there was no way he could do anything to JT. Appellant stated that something could have happened to JT but that he was not the perpetrator. He said that JT could have mistaken him for someone else.

At the conclusion of the evidence, appellant asked the court to instruct the jury on sexual assault in the fourth degree. The court refused to instruct the jury, but allowed appellant to proffer his instruction on fourth-degree sexual assault. Appellant was subsequently convicted of second-degree sexual assault and sentenced to twenty years in the Department of Correction. This appeal followed.

For his first point, appellant argues that the trial court abused its discretion by not instructing the jury on sexual assault in the fourth degree. A trial court's ruling on whether to submit jury instructions will not be reversed absent an abuse of discretion.² This court will affirm a trial court's decision to exclude an instruction on a lesser-included offense if there is no rational basis for giving the instruction.³ Where the defendant relies on the defense of complete denial, there is no rational basis for giving instructions on lesser-included offenses, and the trial court is correct to refuse such instructions.⁴

The State contends, and we agree, that there was no rational basis for the court to instruct the jury on sexual assault in the fourth degree. Appellant completely denied doing anything to harm JT. Because he denied doing anything to JT, we hold that the trial court

²*Percefull v. State*, 2011 Ark. App. 378, 838 S.W.3d 905.

³*Id.*

⁴*Id.*



did not abuse its discretion by refusing to instruct the jury to consider sexual assault in the fourth degree.

Next, appellant contends that the court erred by admitting testimony that he attempted to hang himself. The State contends that there was no error and that our supreme court has previously upheld a trial court's admission of evidence that a defendant attempted suicide.⁵ Appellant's counsel objected to the admission of evidence that appellant attempted to hang himself in the police station. The court allowed the evidence in over appellant's objections. A ruling on the relevancy of evidence is discretionary and will not be reversed absent an abuse of discretion.⁶ It is well settled that the acts, conduct, and declarations of an accused before or after the crime may furnish necessary corroboration.⁷ The *Strong* court recognized that it had never directly addressed the question of whether evidence of suicide attempts is admissible to show guilt or consciousness of guilt. But it held that it could not say that the circuit court erred by permitting evidence of Strong's overdose attempts.⁸

Here, we cannot say that the court abused its discretion by allowing testimony into evidence that appellant attempted to hang himself. Accordingly, we affirm.

Affirmed.

PITTMAN and ABRAMSON, JJ., agree.

The Law Office of Darrell F. Brown, Jr., by: *Darrell F. Brown, Jr.*, for appellant.
Dustin McDaniel, Att'y Gen., by: *Brad Newman*, Ass't Att'y Gen., for appellee.

⁵See *Strong v. State*, 372 Ark. 404, 277 S.W.3d 159 (2008).

⁶*Id.*

⁷*Id.*

⁸*Id.*