Cite as 2011 Ark. App. 164

# ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR 10-684

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| | **Opinion Delivered** MARCH 2, 2011 |
| JERRY HAWKINS<br>APPELLANT | APPEAL FROM THE HEMPSTEAD COUNTY CIRCUIT COURT<br>[NO. CR-2009-318-1] |
| V. | HONORABLE WILLIAM RANDAL WRIGHT, JUDGE |
| STATE OF ARKANSAS<br>APPELLEE | AFFIRMED |

**JOHN B. ROBBINS, Judge**

Appellant Jerry Hawkins was accused of four counts of rape against his niece. A jury in Hempstead County rendered guilty verdicts, and Hawkins was sentenced to forty years for each count. He appeals the convictions, challenging the sufficiency of the evidence and challenging the trial court's rejection of his *Batson* challenge to the State's strikes of jurors. We affirm.

We first consider the sufficiency of the evidence, as we must. *LeFever v. State*, 91 Ark. App. 86, 208 S.W.3d 812 (2005). We determine whether there is substantial evidence to support the verdict, viewing the evidence in the light most favorable to the State. *Barrett v. State*, 354 Ark. 187, 119 S.W.3d 485 (2003). Substantial evidence is evidence of sufficient force and character to compel a conclusion beyond suspicion and conjecture. *Id.* Credibility

determinations are for the finder of fact, not our court on appeal; any inconsistencies are matters of credibility for the jury to resolve. *Brown v. State*, 374 Ark. 341, 288 S.W.3d 226 (2008). The jury's acceptance of a witness's testimony will not be reversed on appeal unless the testimony is inherently improbable, physically impossible, or so clearly unbelievable that reasonable minds could not give it credence. *Id.*

A rape victim's testimony may constitute substantial evidence to sustain a conviction for rape, even when the victim is a child. *Id.* The rape victim's testimony need not be corroborated, nor is scientific evidence required, and the victim's testimony describing penetration is enough for a conviction. *Id.*

Hawkins was charged with rape, requiring proof that the defendant engaged 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) (Supp. 2009). Deviate sexual activity includes the 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) (Supp. 2009).

The evidence here, viewed most favorably to the State, revealed that appellant's niece, SM, was twelve years old when she accused appellant of raping her repeatedly at her maternal grandmother's house in Hope, Arkansas. Appellant, SM, SM's mother (appellant's sister), and SM's grandmother lived at that address. SM and her mother shared a bedroom, but on that Saturday night, August 8, 2009, her mother was not home. After SM and her grandmother

had gone to bed, appellant, who SM called "Uncle Jerry," came into SM's room and summoned her to the kitchen. While in the kitchen, she stated that he put his hand into her shorts sticking his finger "inside my butt." He stopped when the grandmother arose to go to the bathroom. Appellant told SM to hide and then go back to her bedroom, which she did.

SM described that appellant followed her to the bedroom, climbed into bed and on top of her, and penetrated her vaginally with his penis. Then, he turned her over in order to penetrate her rectally with his penis. She said he also penetrated her vagina with his fingers. SM clarified that she also called her vagina her "middle part." SM said, "it felt nasty." She said appellant left the bed "wet" from semen and that her bed had never been wet like that before. Appellant told SM not to tell anyone but she told a cousin.

SM's mother testified in support of her daughter. She agreed that SM had lied to her in the past, but she believed SM was telling the truth about the rapes because "he has done it to me." She confronted appellant and called authorities, giving the bed sheets to the sheriff's deputies. The grandmother verified that she washed those sheets before her daughter and granddaughter came to stay with her, but that they were not washed prior to giving them over to the authorities. The grandmother stated that appellant had not slept on those particular sheets since they were laundered and SM came to live with her. She was surprised that appellant did not answer her when she asked him about the accusations.

A crime laboratory forensic serologist testified that the sheets had blood and semen on them. She stated that with all scientific certainty the blood and semen originated with appellant.

Appellant testified in his own defense, denying that he raped SM. He said that his blood and semen were on those sheets because he had slept in that bed, he had masturbated in that bed, and that the blood probably came from a cut on his hand or a pimple that excreted blood. He said he never saw SM sleep in that bedroom alone. He believed SM was lying, although he could not come up with a reason for her to have anything against her uncle. Appellant said that his mother was just mistaken about when the sheets were last laundered. Appellant admitted that he was a five-time felon but insisted that he did not rape his niece.

Appellant argues on appeal, as he did at trial, that there was insufficient evidence of penetration or sexual intercourse. He adds that the scientific proof only supported that appellant masturbated and bled in the bed, not that penetration or sexual intercourse took place. We disagree that there is a lack of substantial evidence to support his convictions for rape. There need not be scientific proof to support a rape victim's testimony in order to sustain a rape conviction. *Brown*, *supra*. SM's testimony satisfied the statutory elements for rape, and any inconsistencies were for the jury to resolve. In fact, the scientific evidence corroborated SM's testimony, as did her mother's and grandmother's testimonies. We affirm the denial of appellant's motions for directed verdict.

Next, we consider appellant's argument that the State used its strikes of potential jurors in an impermissibly discriminatory fashion. Specifically, appellant argued to the trial court that the race-neutral explanations given by the State for striking three African-American venire members were pretextual, in violation of *Batson v. Kentucky*, 476 U.S. 79 (1986). To the extent that appellant now also argues that any strike was pretextual for gender discrimination, this argument was not raised to or ruled upon by the trial court, precluding our consideration on appeal. *Lewis v. State*, 84 Ark. App. 327, 139 S.W.3d 810 (2004).

On the preserved argument, we examine the requirements of *Batson*, *supra*. A prosecutor may not use peremptory strikes to exclude jurors solely on the basis of their race. *Jackson v. State*, 375 Ark. 321, 290 S.W.3d 574 (2009). Once a *Batson* objection is made, the circuit court must conduct a three-step inquiry to determine whether a violation occurred. *Id.* First, the opponent must present facts demonstrating a prima facie case of purposeful discrimination. *Id.* Second, the burden shifts to the State to produce a racially neutral explanation for the strike. *Jackson*, *supra*. The explanation must be more than a mere denial of discrimination or an assertion that a shared race with the opponent would render the challenged juror partial to that opponent. *Id.* The explanation need not, however, be persuasive or even plausible but can be silly or superstitious. *Williams v. State*, 338 Ark. 97, 991 S.W.2d 565 (1999). The stated reason will be deemed racially neutral unless a discriminatory intent is inherent in the prosecutor's explanation. *Purkett v. Elem*, 514 U.S. 765 (1995). When the State provides a race-neutral explanation, the initial presentation of a

purposeful discriminatory strike is rendered moot. *Holder v. State*, 354 Ark. 364, 124 S.W.3d 439 (2003). Third, the circuit court must decide whether the opponent of the strike has demonstrated purposeful discrimination. *Lewis*, *supra*. The ultimate burden of persuasion never shifts from the opponent of the strike. *Purkett*, *supra*. A circuit court's ruling on a *Batson* challenge is reversed only if the findings of fact are clearly against the preponderance of the evidence. *Holder*, *supra*.

The three venire persons struck were Murrya Collier, Christopher Brown, and Kenneth Moss. Appellant asserts that the fact that the jurors seated were all white demonstrates discriminatory intent. But reliance on the resulting all-white jury is not alone sufficient to prove a discriminatory intent. *Flowers v. State*, 362 Ark. 193, 208 S.W.3d 113 (2005).

Once the objection was raised by appellant, the prosecutor offered the following reasons for striking those persons. Collier was struck because she was young and did not have any children, calling into question whether Collier could appreciate the gravity of a child-rape case. Brown was struck because he had a prior drug conviction and had not filled out the jury questionnaire. Moss was struck because the prosecutor had visited with him at a recent political function. The prosecutor affirmatively stated that she was not using the strikes to purposely remove jurors because they were black. Appellant presented no further argument about why these strikes were made with purposeful discriminatory intent.

Age and immaturity of a potential juror are not inherently associated with race and may provide a race-neutral reason for striking that potential juror. *Riley v. State*, 2009 Ark. App. 613, at 8. Not filling out a juror questionnaire may provide a race-neutral reason for striking that potential juror. *Id.* A prior conviction may provide a race-neutral reason for striking that potential juror. *Hughes v. State*, 98 Ark. App. 375, 255 S.W.3d 891 (2007). Personal interaction or prior personal knowledge may provide a race-neutral reason for striking that potential juror. *Hinkston v. State*, 340 Ark. 530, 10 S.W.3d 906 (2000).

Appellant contends that the trial court's decision was clearly erroneous, but we disagree. It was appellant's ultimate burden to demonstrate purposeful intent to discriminate, and the trial court made findings with the evidence presented. We give the trial court some measure of deference in making *Batson* rulings because it is in a superior position to observe the parties and determine their credibility. *Id.* We cannot conclude that the trial court clearly erred in finding the prosecutor's race-neutral reasons to be genuine.

We affirm appellant's convictions.

PITTMAN and GRUBER, JJ., agree.