NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA08-1359

	Opinion Delivered April 29, 2009
B. M. S. APPELLANT	APPEAL FROM THE LONOKE COUNTY CIRCUIT COURT [NO. JV-07-148]
V.	HONORABLE PARKER SANDERS HUCKABEE, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

LARRY D. VAUGHT, Chief Judge

The Lonoke County Circuit Court (Juvenile Division) adjudicated appellant BMS delinquent based on rape, a class Y felony, and second-degree assault, a class D felony. He was sentenced to twelve months' probation and ordered to submit to a juvenile-sex-offender assessment. On appeal, BMS contends that the State failed to introduce sufficient evidence to support either charge. We disagree and affirm.

We review sufficiency claims considering the evidence in the light most favorable to the State. *White v. State*, 367 Ark. 595, 242 S.W.3d 240 (2006). The sufficiency-of-the evidence test is whether there is substantial evidence to support the verdict. *Id.* Sufficient evidence is evidence that has sufficient force and character that it will, with reasonable certainty, compel a conclusion that does not rely on speculation or conjecture. *Id.* And we only consider evidence, direct or circumstantial, that supports the verdict. *Id.*

As to the governing statutes, rape is defined as "sexual intercourse" or "deviate sexual activity" with another person who is less that fourteen years old. Ark. Code Ann. § 5-14-103 (Repl. 2006). "Deviate sexual activity" means any act of sexual gratification involving the penetration, however slight, of the anus or mouth of one person by the penis of another person by any body member or foreign instrument manipulated by another person. Ark. Code Ann. § 5-14-101(1) (Repl. 2006). Also, the insertion of a penis into the mouth of a child under fourteen (14) years old constitutes rape. Ark. Code Ann. § 5-14-103(a)(3)(A). In support of the allegation, the uncorroborated testimony of a child-rape victim is sufficient evidence to support a delinquency adjudication. *White*, 367 Ark. at 600, 242 S.W.3d at 245. Moreover, 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. *McGalliard v. State*, 306 Ark. 181, 813 S.W.2d 768 (1991).

On April 20, 2007, the State filed a petition alleging that BMS committed rape and sexual assault against his sister, KS. According to the petition, she was approximately nine years old when the alleged acts took place. At trial, she testified that, during the summer of 2006, BMS rubbed against her "privates" with "his lower body part," while they were in a swimming pool. She indicated that her privates were her "front-bottom" area.

KS also testified that she and BMS had played the "taste it" game and that he "put his private area in [her] mouth." Although her eyes were closed during the game (and BMS claimed that it was his hand he had inserted into her mouth), she described that "[i]t felt sort of hard at first. It felt hard" and noted that BMS asked her to wait a few moments after

removing the body part from her mouth. She testified that his request confirmed her belief that it was his "private" that had been placed in her mouth.

First, we consider BMS's claim that the State failed to establish the "deviate sexual activity element" because the victim merely stated that he placed his "private part" in her mouth. As noted earlier, that description is sufficient under our case law to support this element. Here, when KS was able to describe BMS's penis as his "private" and stated that it felt "hard" when it was in her mouth when they were playing the "taste it" game, she sufficiently demonstrated her understanding of the body part in question, and her testimony alone is sufficient evidence to support BMS's adjudication on the rape charge. *Gatlin v. State*, 320 Ark. 120, 895 S.W.2d 526 (1995).

As to BMS's sufficiency argument relating to his sexual-assault adjudication, he argues that the State failed to establish that he had sexual contact with the victim. Sexual contact is defined as "any act of sexual gratification involving touching, directly or indirectly or through clothing, of the sex organs . . . of a female." Ark. Code Ann. § 5-14-101(9) (Repl. 2006). A victim's uncorroborated testimony constitutes substantial evidence to support a conviction of second-degree sexual assault. *Brown v. State*, 374 Ark. 341, __ S.W.3d___ (2008). And, like with the previously discussed rape charge, it is not essential that the victim use the precise terms so long as she demonstrates what and where the body parts referred to are. *McGalliard*, *supra*.

Here, KS testified that BMS rubbed against her "privates" or bottom area "in the front" with "his lower body part." This is sufficient because it was the victim's indication that BMS touched a sex organ of hers. *Id.* Further, the fact that BMS claims that contact—if

any—occurred through a life preserver, is of no consequence. Under our laws, sexual contact includes the touching of sex organs through clothing. Ark. Code Ann. § 5-14-101(9) (Repl. 2006). As such, there is substantial evidence to show that sexual contact occurred, and we affirm the adjudication.

BMS also argues that his age, eighteen, was not proved and that the dates of the alleged acts were not proved to have occurred as alleged in the information. However, these arguments will not be addressed by our court because they were not properly preserved or argued to allow our review. *See Harrison v. State*, 371 Ark. 652, 269 S.W.3d 321 (2007). And, because we find that there was sufficient evidence to support his rape and second-degree assault adjudications, the decision of the circuit court is affirmed.

Affirmed.

MARSHALL and BAKER, JJ., agree.