

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR09-990

CHARLES EDWARD JONES,
APPELLANT

V.

STATE OF ARKANSAS,
APPELLEE

Opinion Delivered APRIL 14, 2010

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CR08-1753]

HONORABLE HERBERT THOMAS
WRIGHT, JR., JUDGE,

AFFIRMED

KAREN R. BAKER, Judge

A Pulaski County jury convicted appellant Charles Edward Jones of four counts of rape, class Y felonies, for which he was sentenced to four consecutive terms of 40 years' imprisonment in the Arkansas Department of Correction. On appeal he argues that the trial court erred in refusing to direct a verdict on one count of rape¹ and by allowing testimony by a doctor that a 404(b) witness had a sexually transmitted disease as proof of penetration of the witness. We find no error and affirm.

This court treats a motion for a directed verdict as a challenge to the sufficiency of the evidence. *Gwathney v. State*, 2009 Ark. 534. In reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State,

¹Appellant does not challenge the sufficiency of the evidence on the other three counts of rape.

consider only the evidence that supports the verdict, and we affirm if substantial evidence exists to support the verdict. *Id.* Substantial evidence is that evidence which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture. *Campbell v. State*, 300 Ark. 606, 780 S.W.2d 567 (1989).

A rape is committed when an individual engages in sexual intercourse or deviate sexual activity with a person less than fourteen years old. Ark. Code Ann. § 5-14-103(a)(3)(A) (Supp. 2009). This court has consistently held that the testimony of a rape victim, standing alone, is sufficient to support a conviction if the testimony satisfies the statutory elements of rape. *Rohrbach v. State*, 374 Ark. 271, 287 S.W.3d 590 (2008); *see also Jones v. State*, 300 Ark. 565, 780 S.W.2d 556 (1989) (holding that testimony of child victim, standing alone, was sufficient to sustain rape conviction where victim clearly identified defendant and testified to the acts). A rape victim's testimony may constitute substantial evidence to sustain a conviction of rape, even when the victim is a child. *Gatlin v. State*, 320 Ark. 120, 895 S.W.2d 526 (1995). 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.* The principle that a victim's uncorroborated testimony constitutes substantial evidence to support a guilty verdict is likewise true with respect to sexual offenses other than rape. *Rohrbach, supra*. Our supreme court in *Kelley v. State*, 375 Ark. 483, 292 S.W.3d 297 (2009), affirmed a conviction of rape and rejected Kelley's argument that the evidence was insufficient because the young victim's

testimony about penetration, time, and place, was contradicted by medical evidence and other testimony.

To the extent that there may be inconsistencies in the victim's testimony, this is a matter of credibility for the jury to resolve. *Id.* In cases of sexual abuse, it may be assumed that the defendant had sexual contact with the victim for the purpose of sexual gratification, and it is not necessary for the State to directly prove that he was so motivated. *Id.* It is similarly not necessary for the State to prove specifically when and where each act of rape or sexual contact occurred, as time is not an essential element of the crimes. *Id.* Furthermore, rape is not defined as a continuing offense; rather, it is a single crime that may be committed by either engaging in sexual intercourse or deviate sexual activity with another person who is less than fourteen years of age. *Id.*

Appellant claims that the evidence could not support the finding that he committed the offense of rape against A.T., a seven-year-old victim, because the evidence could not support a finding of penetration. Appellant's sufficiency argument focuses on the testimony of A.T. and characterizes her testimony as insufficient to support a finding of penetration because the young victim used the preposition "to" instead of "in" when describing appellant's placement of his "privates" with her "privates." The State emphasizes that the victim answered yes to the prosecutor's description of appellant placing his "private in" hers. Any inconsistencies between the young victim's use of the word "to" in parts of her testimony, and the use of the word "in" at other times, was for the finder of fact to resolve.

Accordingly, we find error in the trial court's denial of appellant's directed verdict motion.

Neither do we find that the trial court erred by allowing testimony by a doctor that R.A., an eleven-year-old witness in this case who reported an allegation of rape against appellant in a separate rape case, had been infected with chlamydia. Appellant argues that there was no evidence provided to link him to R.A.'s contraction of chlamydia, evidence he contends was irrelevant and should have been excluded because there was no evidence "linking the sexually transmitted disease to" him. Dr. Faust testified that R.A. tested positive for chlamydia which was a "true sexually transmitted infection," that could only be contracted by a young girl of R.A.'s age through sexual contact. She further explained that, at a minimum, the labia majora would have to be penetrated for the contraction of chlamydia.

The circuit court has wide discretion in making evidentiary rulings, and we will not reverse its ruling on the admissibility of evidence absent an abuse of discretion. *Jackson v. State*, 375 Ark. 321, 290 S.W.3d 574 (2009). While appellant urges us to find that the trial court erred in allowing the doctor's description of the necessity of penetration to contract the infection, we cannot say the trial court erred when the presence of the infection made the testimony of R.A. regarding penetration more probable and corroborated R.A.'s account of rape.

Appellant does not challenge the testimony of R.A. regarding the similarity of the incidents or on any 404(b) grounds. The test for admissibility under Rule 404(b) is whether the evidence is independently relevant, which means that it has the tendency to make the

existence of any fact or consequence to the determination of the action more or less probable than it would be without the evidence. See *Williams v. State*, 343 Ark. 591, 36 S.W.3d 324 (2001). We give considerable leeway to the circuit judge in determining the degree of similarity between the circumstances of a prior crime and the particular crime at hand. It is the sufficient degree of similarity that is required for the admission of evidence of the prior crime under Rule 404(b). Under Rule 404(b), our supreme court has noted that circuit judges have broad discretion in deciding evidentiary issues, and their decisions are not reversed absent an abuse of discretion. *Birmingham v. State*, 342 Ark. 95, 27 S.W.3d 351 (2000). Appellant's challenge is based upon whether sufficient evidence of penetration supported his conviction. Evidence of a similar incident and additional corroboration of penetration of the other young victim were relevant to the fact-finder's determination of whether penetration occurred between appellant and A.T.; therefore, we find no error in the trial court's evidentiary ruling.

Accordingly, we affirm.

GRUBER and MARSHALL, JJ., agree.