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ARKANSAS COURT OF APPEALS
DIVISION I
No. CR-22-80

EVERETT JAMES MILLER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 26, 2022

APPEAL FROM THE MILLER
COUNTY CIRCUIT COURT
[NO. 46CR-20-188]

HONORABLE BRENT HALTOM,
JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

Everett James Miller appeals his rape conviction from the Miller County Circuit Court. On appeal, Miller argues that the circuit court erred by denying his directed-verdict motion. We affirm.

On March 23, 2020, the State charged Miller with the rape of a minor child (MC1); specifically, for engaging in sexual intercourse or deviate sexual activity with a person less than fourteen years old. The State alternatively alleged rape by forcible compulsion.¹ On August 23, 2021, the case proceeded to a jury trial.

At trial, James Justus, MC1's father, testified that he is married to MC1's mother, Samantha Justus, and that Samantha's aunt is married to Miller. He testified that in December 2019, MC1 spent the night at Miller's house with two other minor relatives, MC2 and MC3

¹The State also charged Miller with second-degree sexual assault; however, the State later moved to nolle prosequi that charge.

James testified that when he retrieved MC1 from Miller's house the next day, MC1 immediately became emotional and told him that Miller had "licked his wee-wee" in the bathroom and showed him videos of naked women. James testified that they eventually took MC1 to the hospital, and at the hospital, he provided a law enforcement officer with the only set of clothing MC1 had worn at Miller's house.

MC1 testified that he is eight years old. He stated that Miller touched his "private" with his hand and his mouth and that Miller "pulled down my pants and my underwear and licked my privates." During the testimony, MC1 demonstrated the action with his finger, and he stated that Miller's mouth went on his private. MC1 stated that Miller's actions made him feel "weird." He further testified that Miller showed him videos on Miller's phone of boys and girls doing "bad stuff" such as "kissing and everything else."

Emma Fort, a forensic DNA analyst at the Arkansas State Crime Laboratory, testified that she analyzed DNA from tape-lifted strips pulled from the inner front and back portion of MC1's underwear and that she compared the DNA to an oral sample from Miller. She stated that her initial testing yielded inconclusive results because "there [were] at least two people" and "there [were] just so many markers that I was looking at that I [couldn't] tell what belongs to which person." However, after obtaining oral samples from MC1, she conducted a second round of testing,² and the results indicated the presence of DNA profiles from three different males. She testified that two profiles belonged to MC1 and his father, James Justus, and that Miller or his paternal ancestor could not be excluded from the third profile.

²Fort noted that for the second round, she completed "Y-STR testing" and that "Y-STR testing" examines only male DNA.

At the close of the State's case, Miller moved for a directed verdict. He argued that the State presented insufficient evidence of forcible compulsion or deviate sexual activity. The court granted Miller's motion as to rape involving forcible compulsion, but it denied the motion as to rape involving a minor under fourteen years old.

Miller then testified on his own behalf. He denied inappropriately touching MC1. He stated that he discovered MC1 watching pornography on his phone and that he reprimanded MC1. He also testified that during the sleepover, MC1 and MC2 removed their clothes and wrestled.

Miller renewed his directed-verdict motion at the conclusion of his case and at the conclusion of the State's rebuttal. The court again denied the motion. The jury later found Miller guilty of rape, and he was sentenced to twenty-five years' imprisonment. This appeal followed.

On appeal, Miller argues that the circuit court erred by denying his directed-verdict motion because the State presented insufficient evidence of rape. He asserts that MC1's testimony is inconsistent and that there are numerous other explanations for the presence of his DNA on MC1's underwear.

An appeal from the denial of a motion for a directed verdict is treated as a challenge to the sufficiency of the evidence. *Mabry v. State*, 2020 Ark. 72, 594 S.W.3d 39. In reviewing a challenge to the sufficiency of the evidence, we determine whether the verdict is supported by substantial evidence. *Id.* Substantial evidence is evidence that 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. *Id.* In reviewing a sufficiency challenge, we view the

evidence in the light most favorable to the State, considering only the evidence that supports the verdict. *Id.*

A person commits rape if he 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) (Supp. 2021). “‘Deviate sexual activity’ means any act of sexual gratification involving . . . [t]he penetration, however slight, of the anus or mouth of a person by the penis of another person[.]” Ark. Code Ann. § 5-14-101(1)(A) (Supp. 2021). The supreme 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. *Dominguez v. State*, 2020 Ark. 286. This is equally true when the victim is a child. *Id.*

Viewing the evidence in the light most favorable to the State, we hold that substantial evidence supports the jury’s verdict. MC1 testified that Miller touched his “private” with his hand and his mouth, and he also stated that Miller “licked my privates.” MC1 demonstrated the act with his finger. MC1’s testimony is sufficient to prove Miller was guilty of rape under section 5-14-103, and any inconsistencies in the evidence are for the jury to resolve. *Warner v. State*, 2021 Ark. 215. We therefore affirm Miller’s conviction.

Affirmed.

WHITEAKER and BROWN, JJ., agree.

David Dunagin, for appellant.

Leslie Rutledge, Att’y Gen., by: *Michael Zangari*, Ass’t Att’y Gen., for appellee.