

ARKANSAS COURT OF APPEALSDIVISION IV
No. CR-13-754

TRAVIS EDWARD HARRIS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 30, 2014

APPEAL FROM THE OUACHITA
COUNTY CIRCUIT COURT
[NO. CR-11-233]HONORABLE EDWIN KEATON,
JUDGE

AFFIRMED

PHILLIP T. WHITEAKER, Judge

Appellant Travis Harris was charged by amended felony information with one count of rape, two counts of second-degree sexual assault, and one count of attempted sexual assault in the second degree.¹ A Ouachita County jury acquitted Harris of the rape count; however, it convicted him of second-degree sexual assault and sentenced him to twenty years in the Arkansas Department of Correction. On appeal, Harris argues that the evidence was insufficient to convict him and that the circuit court thus erred in denying his motion for directed verdict. We find no error and affirm.

¹The day of the jury trial, the circuit court struck one count of second-degree sexual assault and the count of attempted sexual assault, finding that it was unfair for the State to amend the information to include these charges so close to trial.

On appeal, we treat a motion for directed verdict as a challenge to the sufficiency of the evidence. *Paschal v. State*, 2012 Ark. 127, 388 S.W.3d 429; *Castrellon v. State*, 2013 Ark. App. 408, ___ S.W.3d ___. In reviewing a challenge to the sufficiency of the evidence, this court determines whether the verdict is supported by substantial evidence, direct or circumstantial. *Castrellon, supra*. Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.* This court views the evidence in the light most favorable to the verdict, and only evidence supporting the verdict will be considered. *Id.*

A person commits the offense of second-degree sexual assault if he, being eighteen years of age or older, engages in sexual contact with another person who is less than fourteen years of age and not the person's spouse. Ark. Code Ann. § 5-14-125(a)(3) (Supp. 2011). "Sexual contact" is defined as "any act of sexual gratification involving the touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female." Ark. Code Ann. § 5-14-101(10) (Supp. 2011). On appeal, Harris does not deny that he was over the age of eighteen or that his victim was under the age of fourteen. Rather, he contends that the victim's testimony lacked credibility and that there was no medical evidence to corroborate her testimony.

The victim in this case was twelve years old at the time Harris was arrested. She testified at trial that Harris, who usually got home from work around 3:00 a.m., would come into her bedroom while she was sleeping and touch her in her "private spot" and put his finger inside her. The victim explained that this "occurred a lot over the course of three

years.” Harris would also touch her breasts. The victim further described an incident that had occurred several years ago in which she fell asleep in Harris’s truck while he was driving, and she woke up to find him with his hand in her pants and his finger inside her vagina.

When the victim finally told her mother (who was Harris’s fiancée) what was happening, her mother set up a video recorder in the girl’s bedroom. At trial, the mother testified that “if he was going to do something like that, he needed to pay his time, and I needed some solid evidence against him.” After several nights, the mother observed Harris enter the victim’s room and put his hands under the bedcovers. At that point, she took the videotape to the police department.

Lieutenant Bo Woody of the Camden Police Department testified that he spoke with the victim’s mother and observed the videotape she had made. Woody watched the tape and observed Harris walk into the bedroom, reach under the covers, and try to touch the victim “in her crotch area.” Woody had the victim and her mother watch the video; the victim identified herself and agreed that it was true and accurate. The videotape was played for the jury at trial.

Dr. Karen Farst performed a medical examination of the victim. The exam revealed no abnormal findings, but Dr. Farst testified that it is not unusual for a sexual-assault victim to present with no physical evidence that the abuse occurred. Indeed, she noted that it was “actually unusual to see lasting signs of trauma in the . . . genital area” for children.

A sexual-assault victim’s testimony may constitute substantial evidence to sustain a conviction for sexual assault. *Brown v. State*, 374 Ark. 341, 288 S.W.3d 226 (2008); *Castrellon*,

supra. The victim's testimony need not be corroborated, and the victim's testimony alone, describing the sexual contact, is enough for a conviction. *Castrellon, supra*. The credibility of witnesses is a matter for the jury's consideration. *Id.* (citing *Tryon v. State*, 371 Ark. 25, 263 S.W.3d 475 (2007)).

Harris acknowledges these well-settled principles, but he nonetheless asserts that the evidence was insufficient because the victim's testimony lacked credibility and because there were no physical findings to support the allegations of sexual assault. He argues that the evidence merely "shows an individual who is checking on the well-being of a child and not someone making an attempt at sexual contact or gratification."² As the State points out, however, checking on the child's welfare does not explain why he touched her breasts or put his hands inside her pants when she fell asleep in his truck. The jury clearly believed the victim, and because the testimony of the victim, alone, is sufficient to support Harris's conviction, we must affirm.

Affirmed.

WYNNE and VAUGHT, JJ., agree.

Lott Rolfe, IV, for appellant.

Dustin McDaniel, Att'y Gen., by: *Brad Newman*, Ass't Att'y Gen., for appellee.

²During his case in chief, Harris presented witnesses who asserted that the victim frequently wet the bed, and he argued at trial and on appeal that he was simply checking to see if her bed was wet.