

Cite as 2009 Ark. App. 709

ARKANSAS COURT OF APPEALSDIVISION IV
No. CACR09-192SOUVANNY MINGBOUPHA
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE**Opinion Delivered** OCTOBER 28, 2009APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
[NO. CR-08-234]HONORABLE STEPHEN TABOR,
JUDGE

AFFIRMED

RITA W. GRUBER, Judge

Souvanny Mingboupha was charged by felony information with rape allegedly committed in the time period from August 1, 2007, through January 4, 2008, in the house in Fort Smith he shared with his girlfriend and members of both families. The victim was his then-girlfriend's daughter, who was nine and ten years old when the acts occurred. Mingboupha was found guilty by a jury and was sentenced to forty years' imprisonment in the Department of Correction. He contends on appeal that the trial court erred in not granting his motions for a directed verdict. We hold that the evidence was sufficient to support the conviction, and we therefore affirm.

In *Brown v. State*, 374 Ark. 341, 288 S.W.3d 226 (2008), the nine-year-old daughter of appellant's live-in girlfriend was the victim of second-degree sexual assault. Our supreme court found no error in the trial court's denial of Brown's motions for a directed verdict,

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explaining:

We treat the denial of a motion for directed verdict as a challenge to the sufficiency of the evidence. *King v. State*, 323 Ark. 671, 916 S.W.2d 732 (1996). The test for determining the sufficiency of the evidence is whether there is substantial evidence to support the verdict. *Id.* Evidence is substantial if, when viewed in the light most favorable to the State, it is of sufficient force and character to compel reasonable minds to reach a conclusion and pass beyond suspicion and conjecture. *Id.* Matters such as evaluating a witness's credibility and resolving inconsistencies in the evidence are issues for the jury and not the court. *Phillips v. State*, 344 Ark. 453, 40 S.W.3d 778 (2001). On appellate review, it is permissible to consider only that evidence that supports the guilty verdict. *Arnett v. State*, 353 Ark. 165, 122 S.W.3d 484 (2003).

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. (Citations omitted.)

374 Ark. at 342–43, 288 S.W.3d at 228–29. Our supreme court cited *Brown* in *Kelley v. State*, 375 Ark. 483, ___ S.W.3d ____ (2009), affirming a conviction of rape and rejecting 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.

Mingboupfa was charged with rape under Arkansas Code Annotated section 5-14-103. The statute states, in pertinent part, that a person commits rape if he or she engages in sexual intercourse or deviate sexual activity with another person less than fourteen years of age. Ark. Code Ann. § 5-14-103(a)(3)(A) (Supp. 2007). Deviate sexual activity includes any act of sexual gratification involving the penetration, however slight, of the anus

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or mouth of a person by the penis of another person. Ark. Code Ann. § 5-14-101(1) (Repl. 2006). Sexual intercourse means the penetration, however slight, of the labia majora by a penis. Ark. Code Ann. § 5-14-101(10) (Repl. 2006).

The evidence viewed in the light most favorable to the State is as follows. At trial the victim used the words “hum” and “emo” to identify drawings of a penis and a vagina. She testified:

He got on top of me and started having sex with me. He tried putting his hum in my front part, my emo. His hum went inside my emo. I felt it inside there. Then for about a couple of seconds he turned me over and he tried to put his hum in my butt, but it wouldn't go in there, I could feel it. . . . He couldn't get it all the way in. I felt it on my butt, that he was trying to get it in.

She stated that she had seen Mingboupha's penis, which had a piercing on it and over which, when he had sex with her, he sometimes wore something that looked like a glove, fit tightly, and was rubbery on the end. When asked what had happened between August 2007 and January 4, 2008, she said that “more than just once” before January 4

what he would do to me was like what I just described. . . . He would put his hum in my emo and then he would mostly try to put it in my butt. He would stop if the white thing that comes out of his hum This white thing was gooey. Mostly he would put it on my back and he would wipe it off with his shirt or something else. It would feel all slimy. That is why he would stop.

She testified that she told her Aunt Sonny on January 4 that Mingboupha had raped her, told the same thing to her mother after she came over to the aunt's home, and told police what had happened after going to the hospital.

Susan Stockton, R.N., a certified sexual-assault examiner at the Children's Safety

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Center in Springdale, testified that she had performed a sexual assault forensic exam on the victim on January 5, 2008. Stockton said that the examination revealed a tear more than two weeks old completely through the hymen and revealed a superficial abrasion to the skin of the anus, which was fresh and would have occurred in the previous forty-eight hours. In Stockton's opinion, penetrating trauma was the most likely cause of the hymen injury, it was consistent with what the child had disclosed to police, and although the anal abrasion could have been caused by constipation or parasites, it was consistent with anal penetration. Detective Michael McCoy testified that the victim disclosed in his interview with her around January 5 that Mingboupha put his hum in her emo and also in her butt. McCoy said that the child did not have a word for anus.

Mingboupha contends on appeal, as he did in his motions for a directed verdict, that there was no evidence of penetration. He argues that there was no evidence of anal penetration and that despite the child's testimony that vaginal penetration occurred, the medical records indicate that any vaginal penetration was at least two weeks before the date of her rape examination, January 5, 2008. These arguments go to the victim's credibility and to inconsistencies in the evidence, matters that are not for the appellate court but for the jury to decide. *Brown*, 374 Ark. at 342–43, 288 S.W.3d at 228–29. The jury is free to believe all or parts of the prosecuting witness's testimony and to disbelieve the defendant's assertions; furthermore, the determination of inconsistent testimony's credibility will not be reversed unless it is inherently improbable, physically impossible, or so clearly unbelievable that

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reasonable minds could not differ thereon. *Brown*, 374 Ark. at 345, 288 S.W.3d at 230.

Here, the victim testified that Mingboupha raped her vaginally and attempted to rape her anally on January 4, 2008, and that he had performed similar acts earlier. Consistent with this testimony were medical findings on January 5 of a fresh anal abrasion and an older tear of the hymen. The jury clearly gave credence to the victim's testimony despite any alleged inconsistencies within it or contradictions with other testimony. We therefore affirm the conviction.

Affirmed.

BAKER and BROWN, JJ., agree.