DIVISION IV

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
TERRY CRABTREE, JUDGE

CACR 05-887

June 14, 2006

KARESS DARTELL JONES
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

APPEAL FROM THE CIRCUIT COURT OF CRAIGHEAD COUNTY
[NO. CR-04-719]

HONORABLE JOHN NELSON FOGELMAN
JUDGE

AFFIRMED

Appellant Karess Dartell Jones was found guilty by a jury of raping D.S., a minor less than fourteen years of age, for which he was sentenced to ten years in prison. Appellant contends on appeal that the trial court erred in denying his motion to suppress the statements he made to the police and that the evidence is not sufficient to sustain the finding of guilt. We find no error and affirm.

Although appellant's challenge to the sufficiency of the evidence is his second point on appeal, double jeopardy considerations require us to address that issue first. *Jones v. State,* 349 Ark. 331, 78 S.W.3d 104 (2002). In reviewing a challenge to the sufficiency of the evidence, we affirm if, viewing the evidence in the light most favorable to the State, there is substantial evidence to support the conviction. *Gilbert v. State,* 341 Ark. 601, 19 S.W.3d 595 (2000). Substantial evidence is evidence of sufficient force and character as to compel, with reasonable certainty, a conclusion

beyond mere speculation or conjecture. *Engram v. State,* 341 Ark. 196, 15 S.W.3d 678 (2000), *cert. denied,* 531 U.S. 1081 (2001).

A person commits rape if he or she 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) (Repl. 2006). The term "sexual intercourse" means penetration, however slight, of the labia majora by a penis. The phrase "deviate sexual activity" means any act of sexual gratification involving the penetration, however slight, of the anus of one person by the penis of another; or the penetration, however slight, of the labia major or anus of one person by any body member of another person. Ark. Code Ann. § 5-14-101(1)(A) & (B) (Repl. 2006).

The victim in this case, D.S., testified that she lived with her grandmother and that appellant raped her one night when she was spending the weekend with her mother. Specifically, she said that appellant "stuck his dick in my hole," meaning "the hole the blood comes out of once a month." According to her, three of her siblings were in bed with her when this occurred, and she had been wearing jeans, not pajamas, when she had gone to bed. D.S. testified that she was lying on her stomach with her pants down and that appellant's pants were pulled down below his knees. She said that appellant went into the front room when it was over and that she went into the bathroom and used a tissue to wipe off his sperm.

S.C., the victim's younger sister, testified that she was visiting her mother that night and that she saw appellant on top of D.S. with his pants halfway off. She said that D.S. was lying on her side and that his hands were on her bottom. S.C. testified that D.S. had on pajamas.

The victim's mother testified that D.S. was crying the next day and told her what had happened. She said that a month before the incident she had a conversation with appellant about

D.S. She said that appellant had thought that D.S. was sixteen or seventeen years old, but that she had told him that she was thirteen. She recalled that D.S. was wearing jeans the night in question.

Angela Meredith, a Jonesboro police officer, took a statement from D.S. Officer Meredith testified that D.S. told her that she had been alone in the bed at the time of the assault and that she had been wearing pajamas.

Detective Dewayne Pierce of the Jonesboro Police Department interviewed appellant about five days after the incident and then briefly again the following day. Video-tape recordings of the interviews were shown to the jury. To summarize their content, appellant admitted that he had sexual intercourse with D.S. and that it was not against her will.

Appellant contends that the evidence is insufficient in light of the inconsistencies in the testimony with regard to what clothing D.S. was wearing and whether the act occurred while the child was lying on her stomach or her side. Appellant also points out that, other than the inconsistent testimony, there was no forensic evidence establishing that a rape occurred. It is for the jury, however, to resolve inconsistencies in the testimony, and we will not disturb their credibility assessment. *Medlock v. State,* 79 Ark. App. 447, 89 S.W.3d 357 (2002). Furthermore, it has been frequently held that the uncorroborated testimony of a rape victim alone is sufficient to sustain a conviction. *Standridge v. State,* 357 Ark. 105, 161 S.W.3d 815 (2004). The child testified that appellant inserted his penis into her vagina, and appellant confessed to having intercourse with the victim. We cannot say that there is no substantial evidence to support the guilty verdict.

Turning to appellant's initial argument, he contends that the trial court erred in denying his motion to suppress the statements he made to Detective Pierce. Appellant argues that the evidence shows that he did not knowingly, intelligently, or voluntarily waive his rights under *Miranda.*

A statement made while in custody is presumptively involuntary, and the burden is on the State to prove by a preponderance of the evidence that a custodial statement was given voluntarily and was knowingly and intelligently made. *Jones v. State,* 344 Ark. 682, 42 S.W.3d 536 (2001). A suspect's waiver of rights is valid only if it is made voluntarily, knowingly, and intelligently. *Burin v. State,* 298 Ark. 611, 770 S.W.2d 125 (1989). There are two dimensions to the inquiry of waiver. *Howell v. State,* 350 Ark. 552, 89 S.W.3d 343 (2002), *overruled on other grounds, Grillot v. State,* 353 Ark. 294, 107 S.W.3d 136 (2003). First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. *Id.* Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. *Id.*

When reviewing the trial court's ruling, we make an independent determination based upon the totality of the circumstances. *Dickerson v. State,* ___ Ark. ___, ___ S.W.3d ___ (Oct. 6, 2005). The totality of the circumstances includes the age, experience, education, background, and intelligence of the defendant. *Id.* We defer to the superior position of the trial judge to evaluate the credibility of the witnesses who testify at the suppression hearing. *Flowers v. State,* ___ Ark. ___, ___ S.W.3d ___ (May 5, 2005). Conflicts in the testimony are for the trial judge to resolve, and the judge is not required to believe the testimony of any witness, especially that of the accused, as he is the person most interested in the outcome of the proceedings. *Id.*

At the suppression hearing, Detective Pierce testified that appellant was twenty-seven years old at the time of the interviews, that he was employed by Labor Ready Temporary Services, and that he operated a car. He did not consider appellant to be low functioning, although he did not know whether appellant could read or write. He read the rights form out loud to appellant, who signed the

form by printing his name. Pierce testified that he employs the "Reed Method" of interrogation, in which the interrogator tries to convince the individual that the investigation is complete and that the interrogator knows what occurred, in an effort to get the individual to be truthful. When asked if this method involves trickery, Pierce replied that it depended on how one defines trickery.

Detective Ray Buhrmester, another Jonesboro police officer, testified that he worked another case involving appellant in 2002. Buhrmester said that, when he interviewed appellant, he read the rights form to appellant because appellant said that he could not read or write. He said that appellant signed the rights form and that he understood it.

Appellant's mother, Christine Kelly, testified that appellant lived with her and that she had to take care of him because he could not hold a job. She said that as a child appellant had a learning disability and that he could not read, write, or comprehend what he reads. She said that it was necessary for her to fill out job applications for him.

Appellant testified that he could neither read nor write because he had a learning disability. He said that he finished the tenth grade in high school and that he took special education classes when he was in school. He had no GED. He said that he owned a vehicle and that he had acquired a driver's license. Appellant testified that Detective Pierce had gone over the rights form with him but that he did not understand it. He said, however, that he did not inform Pierce that he did not understand his rights. He said that he first learned about the rape accusation when he read about it in the newspaper. Appellant testified that he had been arrested two or three times and that he had been to prison.

Appellant's argument is that he did not knowingly, intelligently, or voluntarily waive his rights. He contends that the evidence showed that he had a learning disability and could not read or

write, and that Detective Pierce, a seasoned police officer, took advantage of him with his interrogation methods. Appellant also focuses on Pierce's use of the word "consensual" during the first interview, and appellant's statement in the second interview that he had not understood the meaning of that word. We cannot agree.

Although appellant's skill in reading comprehension may have been limited by a learning disability, even appellant agreed, and the recordings of the statements show, that Detective Pierce verbally advised appellant of his rights. Appellant also signed the rights form, indicating that he understood them. Although a low I.Q. and mental capacity are factors to consider in determining the validity of a waiver, standing alone they are not sufficient to suppress a statement. *Dickerson v. State, supra; Rankin v. State,* 338 Ark. 723, 1 S.W.3d 14 (1999). It is also significant that appellant was no stranger to the legal system. *Rankin v. State, supra.* As for his initial misunderstanding about the meaning of the word "consensual," appellant throughout both statements consistently admitted that he had sexual intercourse with the victim, and he said in different, but unmistakable terms that the victim had agreed to have sex with him and that he did not force her to have intercourse. Appellant also expressed concern about being charged with "statutory rape," reflecting a clear understanding of the accusation that was being made. Considering the totality of the circumstances, we cannot say that the trial court's decision is clearly erroneous.

Affirmed.

VAUGHT and BAKER, JJ., agree.