

NOT DESIGNATED FOR PUBLICATION

DIVISION IV

ARKANSAS COURT OF APPEALS

KENNETH RAY ODEN		No.	CACR07-202
	APPELLANT	Opinion Delivered	OCTOBER 24, 2007
v.		APPEAL FROM THE GREENE COUNTY	CIRCUIT COURT
STATE OF ARKANSAS	APPELLEE	[NO. CR-05-227]	
		HONORABLE JOHN NELSON	FOGLEMAN, CIRCUIT JUDGE
		AFFIRMED	

KAREN R. BAKER, Judge

A jury in Greene County Circuit Court convicted appellant, Kenneth Ray Oden, of rape and sentenced him to thirty years' imprisonment in the Arkansas Department of Correction. On appeal, appellant argues that his conviction for rape should be reversed because the trial court erred in denying his motions for directed verdict based on the fact that the evidence presented by the State failed to amount to substantial evidence to satisfy the requirement that appellant engaged in a "deviate sexual activity" pursuant to Ark. Code Ann. § 5-14-103. We disagree and affirm.

Appellant was convicted of raping his stepdaughter, H.S. The victim testified at trial that her mother and stepfather were separated, and he did not have a key to the house where she, her mother, and her siblings lived. Even though appellant did not have a key, he would break in the back door and come inside; he had "done so numerous times." Around seven o'clock in the morning on June 6, 2005, H.S.'s mother had already left for work. H.S. was asleep in her mother's bed with her two younger sisters, when she awoke to find appellant standing over her. She explained that appellant was trying to make her get up and go into the living room with him. She stated that, "I just kept on covering up my head with a blanket." While she would not get up, appellant kept walking

in and out of the bedroom. She testified that appellant said that "if I covered up my head one more time he was going to smack me," and "if I woke up my little sisters he was going to whoop me." Appellant then grabbed her by the arm and pulled her into the living area, located in the back of the home.

After appellant dragged H.S. into the living area, she testified that appellant told her to bend over in a chair. She testified that, "I'm not complete specific to what he done, but he done something to my backside." He kept pulling her pants down and she kept pulling them back up. Appellant then moved her to a bean bag on the floor. She stated that she was on her stomach and "kind of on all fours on the floor." Then, appellant pulled her pants down far enough that she could not get them up and he "stuck his penis in my butt and I don't think it went in like all the way, but it was enough that I could feel it." The victim continued, "I felt something. I knew it wasn't his finger because his fingers were on my vagina." She was crying, but appellant told her to "shut up and bend over." This went on for "a few minutes." Appellant then got up and went into the bathroom. H.S. saw him masturbating and "wiping himself off."

Dr. Young, a family nurse practitioner with a doctorate in nursing science in forensic nursing, testified that on June 9, 2005, she received a call from the Paragould Police Department requesting that she examine H.S. Dr. Young interviewed H.S. first, and then she performed a physical examination. Dr. Young observed a notch (an irregularity in the hymen ring); however, she concluded that the notch was not "specific." When performing the rectal exam on H.S., Dr. Young did not find any physical evidence of an anal tear. Dr. Young testified that it was common to find no physical signs of sexual abuse in young children; she explained that "ninety five to ninety six percent of the time that a child has been sexually abused, there's not going to be any physical findings at all." More importantly, in this case, days passed since the incident occurred. Appellant

also testified at trial. He testified that he often visited the home where his two step-children and his three biological children were living. Appellant stated that he loved H.S. and that he had raised her as his own. He denied, however, all allegations of raping H.S.

At the conclusion of the State's case, appellant moved for a directed verdict on the rape charge asserting that the State had failed to meet its burden of proof that appellant had "penetrated" the anus of the child. The motion was denied. Appellant renewed his motion at the close of all the evidence, and the motion was again denied.

Appellant argues that there was insufficient evidence for the rape conviction because the State failed to present sufficient evidence to show that appellant's activity with H.S. amounted to "deviate sexual activity." Specifically, appellant asserts that H.S. did not testify that appellant actually penetrated her anus. This court will affirm a conviction if there is substantial evidence to support the verdict when viewed in the light most favorable to the State. *Whitfield v. State*, 346 Ark. 43, 56 S.W.3d 357 (2001). Substantial evidence is evidence of sufficient force and character as to compel, with reasonable certainty, a conclusion beyond mere speculation or conjecture. *Id.* Sufficient evidence may be circumstantial or direct. *Id.* Where the evidence is circumstantial, the appellate court must consider whether the evidence was sufficient to exclude all other reasonable hypotheses. *Carter v. State*, 324 Ark. App. 395, 921 S.W.3d 924 (1996).

We defer to the jury's determination on the matter of witness credibility. *Johnson v. State*, 71 Ark. App. 58, 25 S.W.3d 445 (2000). Jurors do not and need not view each fact in isolation, but rather may consider the evidence as a whole. *Chrobak v. State*, 75 Ark. App. 281, 58 S.W.3d 387 (2001). The jury is entitled to draw any reasonable inference from circumstantial evidence to the same extent that it can from direct evidence, and it is within the province of the jury to accept or reject testimony as it sees fit and inconsistencies in the testimony of a rape victim are matters of

credibility for the jury to resolve. *Id.*

Arkansas Code Annotated section 5-14-103(a)(1) (Repl. 2006) states that “a person commits rape if he or she engages in sexual intercourse or deviate sexual activity with another person by forcible compulsion.” Further, Arkansas Code Annotated section 5-14-101(1)(A) (Repl. 2006) defines “deviate sexual activity” as “any act of sexual gratification involving the penetration, however slight, of the anus or mouth of a person by the penis of another person.”

In this case, testimony showed that early one morning, after H.S.’s mother left for work, appellant woke H.S., dragged her into the living room, and forced her to lie on her stomach with her pants down. Although there was no medical evidence of penetration, H.S. testified that appellant “stuck his penis in my butt and I don’t think it went in like all the way, but it was enough that I could feel it.” The supreme court has held that the testimony of a rape victim satisfies the substantial-evidence requirement in a rape case. *Prater v. State*, 307 Ark. 180, 820 S.W.2d 429 (1991). This is true even when the rape victim is a child. *Caldwell v. State*, 319 Ark. 243, 891 S.W.2d 42 (1995) (citing *Winfrey v. State*, 293 Ark. 342, 738 S.W.2d 391 (1987)). More particularly, the testimony of the victim which shows penetration is enough for conviction. *Clark v. State*, 315 Ark. 602, 870 S.W.2d 372 (1994). In addition, the rape victim’s testimony need not be corroborated, *Winfrey, supra*, nor is scientific evidence required. *White v. State*, 303 Ark. 30, 792 S.W.2d 867 (1990). Thus, based on the testimony in this case, we hold that there was sufficient evidence to support appellant’s rape conviction. See *Cox v. State*, 93 Ark. App. 419, 220 S.W.3d 231 (2005) (where the child victim testified that defendant touched her “in a bad way” on ten occasions beginning when she was six and stated that on four occasions he made her touch his “weeny” and “go up and down on it,” the testimony was sufficient to find that defendant engaged in “deviate sexual activity”).

Affirmed.

MARSHALL and MILLER, JJ., agree.