

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
JOHN MAUZY PITTMAN, CHIEF JUDGE

DIVISION IV

CACR07-946

May 28, 2008

VICTOR LYONS

APPELLANT

APPEAL FROM SALINE COUNTY  
CIRCUIT COURT [NO. CR-2005-  
580-A]

V.

HON. GRISHAM A. PHILLIPS,  
JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant was found guilty by a jury of first-degree battery and sentenced to twenty years' imprisonment. On appeal, he argues that there is no substantial evidence to show that he caused the victim's injuries, and that the trial court erred in allowing testimony by the victim's eight-year-old sister because she was not competent to testify. We affirm.

To determine sufficiency of the evidence to sustain a criminal conviction, we view the evidence in the light most favorable to the State, considering only the evidence that supports the verdict, and we must affirm if the verdict is supported by substantial evidence, *i.e.*, evidence of such force and character to compel a conclusion one way or the other with reasonable certainty. *Wells v. State*, 93 Ark. App. 106, 217 S.W.3d 145 (2005). Matters of weight and credibility are for the jury to resolve and are outside the scope of our review. *Stewart v. State*, 88 Ark. App. 110, 195 S.W.3d 385 (2004).

Here, it is not contested that the twenty-three-month-old victim was severely injured. Appellant argues only that it was not proven by competent evidence that he intentionally caused those injuries. We disagree. There was evidence that the victim's mother left the children in appellant's custody when she was gone. During this time, the victim's sister observed appellant grab the infant victim and slam her forcefully against the wall in the hallway of the trailer in which they lived. The victim's sister was able to see this unobserved because she was watching through a slit in the doorway. A police officer who investigated testified that there were indentations in the hallway wall at about shoulder height and that the trailer was unusual in that there was a gap of approximately two inches between the floor and the bottom of the interior doors. A physician testified that the victim suffered massive internal injuries to the brain. She stated that such injuries could not be caused by falling out of a bunk-bed, as the mother claimed, and that a fall of two stories or more would be required to produce such injuries. Furthermore, the physician testified that a fall would not likely produce the victim's eye injuries, which are associated instead with shaken-baby syndrome. The physician testified that, in her opinion, the victim's injuries were produced by severe shaking. We hold that this is substantial evidence to support appellant's conviction for first-degree battery.

Appellant next argues that the trial court erred in refusing to strike the testimony of the victim's sister as untrustworthy and incompetent. The criteria for determining whether a witness is competent to testify are: (1) the ability to understand the obligation of an oath and to comprehend the obligation imposed by it; or (2) an understanding of the consequences of

false swearing; or (3) the ability to receive accurate impressions and to retain them, to the extent that the capacity exists to transmit to the fact finder a reasonable statement of what was seen, felt, or heard. *Clem v. State*, 351 Ark. 112, 90 S.W.3d 428 (2002). The law applicable to appellate review of competency determinations was thoroughly discussed by the Arkansas Supreme Court in *Byndom v. State*, 344 Ark. 391, 399, 39 S.W.3d 781, 785 (2001):

The question of the competency of a witness is a matter lying within the sound discretion of the trial court and in the absence of clear abuse, we will not reverse on appeal. *King v. State*, 317 Ark. 293, 877 S.W.2d 583 (1994); *Jackson v. State*, 290 Ark. 375, 720 S.W.2d 282 (1986). The trial court must begin with the presumption that every person is competent to be a witness. *Id.*; Ark. R. Evid. 601. The party alleging a witness is incompetent has the burden of persuasion. *Logan v. State*, 299 Ark. 266, 773 S.W.2d 413 (1989). The issue of competency of a witness is one in which the trial judge's evaluation is particularly important due to the opportunity he is afforded to observe the witness and the testimony. *Clifton v. State*, 289 Ark. 63, 709 S.W.2d 63 (1986). As long as the record is one upon which the trial judge could find a moral awareness of the obligation to tell the truth and an ability to observe, remember and relate facts, we will not hold there has been a manifest error or abuse of discretion in allowing the testimony. *Hoggard v. State*, 277 Ark. 117, 640 S.W.2d 102 (1982); *Chambers v. State*, 275 Ark. 177, 628 S.W.2d 306 (1982).

Child witnesses are treated no differently than adults in determining competency. The age of a child is not determinative of competency, and we apply the same presumption and standards in deciding the capacity of a child witness to testify as are applied in determining the competency of any witness. *Modlin v. State*, 353 Ark. 94, 110 S.W.3d 727 (2003).

Appellant argues that the witness's testimony was not completely consistent, but internal inconsistencies are common even in the testimony of adult witnesses, and are more

relevant to the weight of the evidence than to the competency of the witness to testify. *See Duvall v. State*, 41 Ark. App. 148, 852 S.W.2d 144 (1993). Here, the inconsistencies were minor. Appellant also argues that appellant was not competent because she did not understand the consequences of false swearing. However, the witness testified that she understood the difference between the truth and a lie and that lies were wrong and were punished. On this record, we cannot say that the trial court manifestly abused its discretion in allowing the testimony. *See id.*

Affirmed

BIRD and VAUGHT, JJ., agree.