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ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR11-219

JOSEPH WAYNE TROTTER APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** NOVEMBER 9, 2011 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, FIRST DIVISION [NO. CR2009-3120] HONORABLE MARION A. HUMPHREY, JUDGE AFFIRMED

CLIFF HOOFMAN, Judge

Appellant Joseph Trotter appeals his conviction for rape. On appeal, Trotter argues that there is insufficient evidence to support his conviction. We affirm.

Trotter was charged with rape, as defined in Arkansas Code Annotated section 5-14-103(a)(3)(A) (Supp. 2009), for allegedly engaging in deviate sexual activity with a person who was less than fourteen years of age. A jury trial was held on September 29, 2010. Stefon "Geno" Bush testified that in the summer of 2009, he was living in a house with six other people, including Trotter. Bush said his two daughters, including the victim, A.B., visited him approximately every other weekend. Angela Nady, A.B.'s maternal aunt, testified that she had a very close relationship with A.B. and that in late June 2009, A.B. spent the night with Nady and Nady's mother. As Nady was getting A.B. ready for bed, A.B. made a disturbing comment to her. The next morning, Nady asked A.B. about what she had said.

Nady told her sister, A.B.'s mother, about what she had learned, and they took A.B. to the emergency room. Nady testified that A.B. refers to her vagina as her "tutu." Four-year-old A.B. testified that something bad happened to her when she was at her dad's house. She testified that "Joe put his finger in my tutu" and that her tutu is what she uses to "potty."

Melissa Burroughs, a detective with the Jacksonville Police Department, testified that she took a statement from Trotter, and the recorded statement was played for the jury. Trotter admitted to Burroughs that his finger could have accidentally entered A.B.'s vagina as he was cooking and holding some of the children while trying to avoid popping grease. In his statement, Trotter indicated on a drawn image of a hand how much of his finger penetrated A.B. He said it was "far enough that I could, that you could actually tell." Burroughs testified that A.B. told her Trotter put his finger in her.

Dr. Maria Esquivel, a pediatrician at Arkansas Children's Hospital, testified that she performed a forensic sexual-assault exam on A.B. Other than an anal wart, Dr. Esquivel did not find any other evidence of injuries. She testified that "there have been estimates that up to sixty or seventy percent of children that have been sexually abused may have a normal exam." She stated that the reason for this in most cases was that "the sexual abuse may have involved non-traumatic activity such as touching, fondling, digital penetration, things that would not have caused a significant pressure and trauma to the area." She testified that it was not very likely that someone could accidentally penetrate a three-year-old child.

The State rested, and the defense counsel moved for a directed verdict, which was denied. The defense then rested without presenting a case. The jury found Trotter guilty,

and he was sentenced to sixty years' imprisonment. A judgment and commitment order was entered on October 13, 2010. Trotter filed a notice of appeal on December 2, 2010. On March 17, 2011, the supreme court issued a per curiam opinion granting Trotter's motion for belated appeal, which was filed on February 25, 2011. *Trotter v. State*, 2011 Ark. 116.

On appeal, Trotter argues that there was insufficient evidence that his contact with the victim was done for the purpose of obtaining sexual gratification. Trotter argues that any penetration was accidental and that A.B.'s testimony was so lacking in detail that there were no circumstances from which the jury could infer that his conduct was for the purpose of obtaining sexual gratification.

When reviewing the sufficiency of the evidence, we determine whether there is substantial evidence to support the verdict, viewing the evidence in a light most favorable to the State. *Tryon v. State*, 371 Ark. 25, 263 S.W.3d 475 (2007). Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture. *Id.* On appeal, this court does not weigh the evidence presented at trial, as that is a matter for the fact-finder; nor does the appellate court assess the credibility of the witnesses. *Ewell v. State*, 375 Ark. 137, 289 S.W.3d 101 (2008).

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) (Supp. 2009). Deviate sexual activity means any act of sexual gratification involving the penetration, however slight, of the labia majora or anus of a person by any body member

or foreign instrument manipulated by another person. Ark. Code Ann. § 5-14-101(1)(B) (Supp. 2009).

The State is not required to provide direct proof that an act is done for sexual gratification if it can be assumed that the desire for sexual gratification is a plausible reason for the act. *Farmer v. State*, 341 Ark. 220, 15 S.W.3d 674 (2000). The supreme court has held that "when persons, other than physicians or other persons for legitimate medical reasons, insert something in another person's vagina or anus, it is not necessary that the State provide direct proof that the act was done for sexual gratification." *Id.* Sexual gratification, like intent, is rarely capable of proof by direct evidence and must usually be inferred from the circumstances. *Id.*

In *Rounsaville v. State*, the appellant argued that it was not plausible to assume his actions were done for sexual gratification because the incident occurred while he was bathing the seven-year-old victim. 374 Ark. 356, 288 S.W.3d 213 (2008). The court stated that "the jury could have found sexual gratification in this case even if the only evidence presented was that the appellant put his finger in the victim's anus"; however, there was also evidence that the appellant held the victim down and kissed him, providing further evidence on which the jury could determine that the appellant acted as he did for sexual gratification. *Id.*

Here, Trotter admitted that he placed his finger in A.B.'s vagina as far as the first joint of his finger. Based on the evidence, the jury could conclude that this was not accidental. Furthermore, this was not done for medical reasons, and the desire for sexual gratification was a plausible reason for his act. As the State argues, Trotter's explanation was implausible

because moving A.B. away from popping grease or out of his way did not require penetration. Evidence that an accused offered an improbable explanation of suspicious circumstances can be evidence of guilt. *Howard v. State*, 348 Ark. 471, 79 S.W.3d 273 (2002). Based on the circumstances, the jury could have determined that Trotter performed the act for sexual gratification. We affirm his conviction.

Affirmed.

PITTMAN and ABRAMSON, JJ., agree.