

ARKANSAS COURT OF APPEALSDIVISION II
No. CACR11-877

JONATHAN CHARLES HAHN

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 25, 2012

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
FIFTH DIVISION,
[NO. CR-10-17]HONORABLE WENDELL GRIFFEN,
JUDGE

AFFIRMED

CLIFF HOOFFMAN, Judge

Appellant Jonathan Hahn appeals his conviction for second-degree battery. He argues that there is insufficient evidence to support his conviction. We affirm.

Hahn was charged with second-degree battery of his girlfriend's twenty-three-month-old son, Gavin Goldman. Christina Goldman testified that Hahn became her boyfriend in November 2009 and began spending the night at the home she shared with Gavin. During this time, Gavin went to daycare when Christina worked her day job, and her stepsister watched him when Christina worked in the evenings. Christina said that Hahn watched Gavin for her five or six times in November and there were no problems. On the morning of November 30, 2009, Christina asked Hahn to watch Gavin for her while she went to work. Later that day, Christina spoke with Hahn while she was at work, and Hahn told her that Gavin had fallen off his bed onto a toy and had hurt himself. That evening Christina saw

bruises on Gavin when she was changing his diaper. Hahn told her the bruises were from his fall off the bed, but Christina said she became suspicious because she thought the bruises did not look like the kind that one would sustain from falling on a toy. Christina said that she did not call the police at that time because she wanted a second opinion from an unbiased person who may have seen such bruising before and she planned to take Gavin to daycare the next day.

Christina testified that when she arrived at the daycare on December 1, she asked Alissa York, a teacher at the daycare, to look at the bruises and for her opinion. York testified that she saw Gavin as soon as he arrived at the daycare, and she immediately noticed bruises on his face. Christina testified that York told her the bruises looked weird and that she would have Hollie White, the director of the daycare, look at Gavin upon her arrival. Christina left for work. York and White both testified that Gavin had bruises on both sides of his face that appeared to be finger marks as if someone had grabbed him around his chin. They also observed bruises on his ears, trunk, and back. White said that when children Gavin's age fall, they usually bump their knees, shins, or head, and she had never seen bruises like Gavin had on any child in her thirteen-and-a-half years in childcare. White was alarmed by the scattering of bruises across different parts of his body and the fact that they mirrored each other on both sides of his body. White said that they called the owner of the daycare, Christina, and the child maltreatment hotline. Christina testified that although two pit bull dogs had been living in her home, they were very docile and did not bother Gavin. She said that she never laid a hand on Gavin and never saw Hahn do anything to cause her to think

he would injure Gavin; however, she believed he did it because he was the only person with Gavin when the bruises were sustained.

Dr. Amy Bailey, an emergency room pediatrician at Arkansas Children's Hospital, testified that she examined Gavin on December 1, 2009. She saw multiple areas of bruising on both sides of his face, on his cheeks, under his chin, on his upper rib cage, and a loop mark behind his right leg. She said that the bruising was consistent with physical abuse, explaining as follows:

They were in locations that weren't typical for accidental bruising. Most of the time accidental bruising occurs on prominent boney areas. We think of it as on the forehead, on the shoulders, forearms, knees, shins, those areas. It is very unusual for children to, especially of toddler age, to bruise soft tissue areas like his cheeks or under his chin and the upper rib cage. Certainly a single bruise in one of those areas . . . isn't necessarily concerning with the right history but multiple bruises on both sides of his cheek, under his chin and his rib cage are more concerning.

Dr. Bailey testified that a fall from a toddler bed and onto a toy was not consistent with Gavin's bruising. She testified that some of the bruises showed the classic pattern of a fingerprint bruise, and the locations of bruises on both sides of his body indicated that they were not sustained from an isolated fall, which would only bruise one side of the body. Dr. Bailey said the shape of the bruise on the back of Gavin's leg was a loop mark and was in an area where children do not typically accidentally fall, which indicated that the child was struck. She noted that Gavin also had scratches, which could have been caused by a dog, but she said that even a big dog could not bruise a child in the locations where Gavin was bruised. She said that it takes unusual force to cause that kind of bruising and such force on a child's face and upper rib cage is not typically how you handle a child, which is why it is considered

highly suspicious for inflicted harm. Dr. Bailey also said that she checked Gavin's blood cell count and other factors that may have made him bruise easier than the typical child, but Gavin had no medical conditions that would affect his sensitivity to bruising. Detective Marilyn Scott testified that she observed numerous bruises on Gavin that were not in typical locations for toddler bruises and were indicative of child abuse.

The State rested, and Hahn moved for a directed verdict, arguing that it was only speculation that he caused the bruises. The motion was denied. The only witness called by the defense was Penny Goldman, Christina's stepmother. Penny confirmed that on Thanksgiving, about a week before the alleged incident, family members expressed concerns to Christina about Gavin's weight or his condition and encouraged her to take him to the doctor. Penny did not testify to any specific concerns. She said that Christina did not take Gavin to the doctor at that time. She stated that since the time Gavin was injured, she and her husband, Christina's father, had obtained custody of Gavin.

Hahn's renewed motion for directed verdict was denied, and the court found him guilty of second-degree battery. Hahn was sentenced to 120 days in the county jail and five years' probation, as well as anger management and parenting classes, community service, fines, and court costs. Hahn filed a timely notice of appeal.

Hahn now argues that the State failed to produce sufficient evidence to convict him. A motion to dismiss at a bench trial and a motion for a directed verdict at a jury trial are challenges to the sufficiency of the evidence. *Graham v. State*, 365 Ark. 274, 229 S.W.3d 30 (2006). When a defendant challenges the sufficiency of the evidence that led to a conviction,

the evidence is viewed in the light most favorable to the State. *Id.* Only evidence supporting the verdict will be considered. *Id.* The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Id.* Evidence is substantial if it is of sufficient force and character to compel reasonable minds to reach a conclusion and pass beyond suspicion and conjecture. *Id.* A person commits battery in the second degree if the person knowingly, without legal justification, causes physical injury to a person he knows to be twelve years of age or younger. Ark. Code Ann. § 5-13-202(a)(4)(C) (Supp. 2011).

Hahn argues that the case is based solely on circumstantial evidence, which can only provide the basis to support a conviction if it is consistent with the defendant's guilt and inconsistent with any other reasonable conclusion. *Edmond v. State*, 351 Ark. 495, 95 S.W.3d 789 (2003). He notes that if there are two equally reasonable conclusions as to what occurred, this merely gives rise to a suspicion of guilt, which is not enough to support a conviction. *Id.* Hahn argues that the court could not have convicted him without speculation as to who caused the injuries, how the injuries occurred, and whether the injuries occurred knowingly or recklessly. He argues that the bare assertion that he was in the same residence at the time the injuries allegedly occurred is not sufficient. He claims that there are reasonable arguments that Christina could have caused the injuries, as she was also in the residence on the date the bruising allegedly occurred and did not inform the police about the injuries or seek any type of medical treatment until a daycare worker questioned her. Hahn argues that Christina commented about the bruises only after York pointed them out to her. On direct

examination, however, a hearsay objection was sustained that prevented York from testifying about what Christina had told her about the bruises. Furthermore, Hahn argues that Christina's own family noted the child's poor condition a week prior to the incident. He also claims that there are reasonable arguments that the injuries could have occurred when the child fell off his bed or was roughhousing with the two large pit bulls that resided in his home or that Hahn could have caused the injuries without the intent requisite for this crime.

The State argues that substantial evidence was presented that Gavin's bruising occurred while under Hahn's care and that the bruising was consistent with bruises caused by physical abuse. There was extensive testimony that the appearance of the bruises indicated that they were caused by someone's fingers on the child; thus, the injuries were not caused by falling onto a toy or by dogs. Additionally, the trial court found Christina's testimony credible; thus, the only conclusion is that Hahn caused the injuries as he was the only person with the child during the relevant time period. Lastly, a person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause the result. Ark. Code Ann. § 5-2-202(2)(B) (Repl. 2006). The number of bruises and the unusual force necessary to cause them, as testified to by Dr. Bailey, provide proof that Hahn knowingly caused physical injury. Viewing the evidence in the light most favorable to the State and giving due deference to the trial court to determine the credibility of witnesses, substantial evidence supports Hahn's conviction.

Affirmed.

ROBBINS and MARTIN, JJ., agree.