

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 KA 1929

STATE OF LOUISIANA

VERSUS

BRUCE LEO JARBOE

Judgment Rendered: June 8, 2007

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**Appealed from the
32nd Judicial District Court
In and for the Parish of Terrebonne, Louisiana
Case No. 422,358**

The Honorable David W. Arceneaux, Judge Presiding

* * * * *

**Joseph L. Waitz, Jr.
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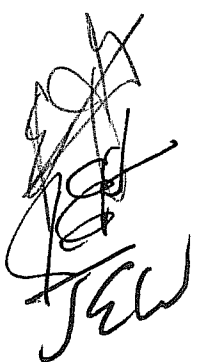
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Bruce Leo Jarboe**

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BEFORE: KUHN, GAIDRY, AND WELCH, JJ.



GAIDRY, J.

The defendant, Bruce Leo Jarboe, was charged by bill of information with indecent behavior with juveniles (two counts), violations of La. R.S. 14:81. The defendant entered a plea of not guilty. The defendant waived trial by jury. After a bench trial, the defendant was found guilty as charged on each count. The trial court denied the defendant's motion for post verdict judgment of acquittal and motion for new trial. The defendant was sentenced to two years of imprisonment at hard labor, on each count, to be served concurrently. The trial court denied the defendant's motion to reconsider sentence. The defendant now appeals, raising error as to the sufficiency of the evidence to support the convictions. For the following reasons, we affirm the convictions and sentences.

STATEMENT OF FACTS

The incidents at issue took place in Houma, Louisiana, at the defendant's residence. The incident involving victim B.C.¹ occurred when she was approximately eight years of age (sometime in or near 1997).² At the time of the incident, B.C. was a friend of the defendant's daughter Brittany. On this occasion, B.C. was spending the night with Brittany and slept with Brittany in Brittany's bedroom. According to B.C.'s testimony, after Brittany fell asleep, the defendant entered the bedroom and began rubbing B.C.'s back. The defendant told B.C. to turn over and she complied. The defendant began rubbing B.C.'s breasts (underneath her gown) and touched her vagina (on top of her panties). Before leaving the room, the defendant kissed B.C. on the forehead and instructed her not to tell Brittany.

¹ We reference this victim only by her initials. See La. R.S. 46:1844W.

² B.C.'s date of birth is February 4, 1989. B.C. was sixteen years of age when the trial commenced on September 8, 2005.

The second victim, A.L., is Brittany's cousin.³ According to A.L., she would visit Brittany and her family whenever A.L. and her family were in Houma, Louisiana. On one of those occasions, sometime in the year 2000 (when A.L. was approximately eleven years of age), A.L. spent the night at the defendant's house. A.L. slept in Brittany's bed that night. According to A.L.'s trial testimony, A.L. woke up when she felt the defendant touching her back and "moving towards my front area." Upon further questioning, A.L. explained, "he moved his hands toward my stomach and [h]e moved it up to my breast area." She began crying and said "no," and the defendant told her that she was falling off of the bed. Brittany woke up as A.L. continued to cry. A.L. stated that the defendant touched her skin directly, underneath her clothing.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues that the evidence presented herein was insufficient to support the convictions. The defendant notes that both victims delayed reporting the incidents to the police. The defendant further notes that both victims initially denied any inappropriate behavior by the defendant. The defendant's brief specifically states, "[i]t was only after their active teenage imaginations interacted with their mothers, who had been molested as children, that these charges were brought." The defendant further argues that it is unlikely that anyone would molest a child in the presence of his daughter. As the primary caretaker of his children, the defendant often entered his daughter's room to check on the children during the night. The defendant specifically notes his trial testimony regarding an incident where B.C. was sick and he may have put some vapor rub on her skin. The defendant's daughter (Brittany) recalled

³ This victim will also be referenced by initials only. A.L.'s date of birth is July 6, 1989. A.L. was sixteen years of age at the time of the trial.

her father patting B.C. on the back when she was sick and coughing. The defendant further notes that Brittany recalled an incident where A.L. fell out of the bed and her father put her back in the bed. The defendant, in effect, argues that the reasonable hypotheses of innocence presented during trial testimony have not been excluded.

The constitutional standard for testing the sufficiency of the evidence, as adopted by the Legislature in enacting La. Code Crim. P. art. 821, requires that a conviction be based on proof sufficient for any rational trier of fact, viewing the evidence in the light most favorable to the prosecution, to find the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). The *Jackson* standard of review is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, La. R.S. 15:438 provides that the trier of fact must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. *State v. Graham*, 2002-1492, p. 5 (La. App. 1st Cir. 2/14/03), 845 So.2d 416, 420.

The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. *State v. Richardson*, 459 So.2d 31, 38 (La. App. 1st Cir. 1984). Moreover, where there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. *Richardson*, 459 So.2d at 38. On appeal, this Court will not assess the credibility of witnesses or reweigh the evidence to overturn a fact finder's determination of guilt. *State v. Creel*, 540 So.2d 511, 514 (La. App. 1st Cir.), writ denied, 546 So.2d 169 (La. 1989). When a case involves circumstantial evidence, and the jury reasonably rejects the hypothesis of

innocence presented by the defendant's own testimony, that hypothesis falls, and the defendant is guilty unless there is another hypothesis which raises a reasonable doubt. *State v. Captville*, 448 So.2d 676, 680 (La. 1984).

Prior to the 2006 amendment, La. R.S. art. 14:81(A) defined indecent behavior with a juvenile as:

Indecent behavior with juveniles is the commission of any lewd or lascivious act upon the person or in the presence of any child under the age of seventeen, where there is an age difference of greater than two years between the two persons, with the intention of arousing or gratifying the sexual desires of either person. Lack of knowledge of the child's age shall not be a defense.

The word "lewd" means lustful or indecent and signifies that form of immorality which relates to sexual impurity carried on in a wanton manner. The word "lascivious" means tending to incite lust, indecent, obscene, and tending to deprave the morals in respect to sexual relations. Finding that an act is lewd or lascivious depends upon the time, the place, and all of the circumstances surrounding its commission, including the actual or implied intention of the actor. *State v. Bugbee*, 34,524, pp. 7-8 (La. App. 2d Cir. 2/28/01), 781 So.2d 748, 755; *State v. Sturdivant*, 27,680, p. 6 (La. App. 2d Cir. 2/28/96), 669 So.2d 654, 658-659.

B.C. testified that Brittany was asleep (lying in the same bed), when the defendant came in the bedroom. The lights were off and the defendant was kneeling when he committed the offense. B.C. would frequently spend the night at Brittany's house before the incident in question. After the incident in question, B.C. spent one more night at the residence but did not return. B.C. stated that she began visiting a new friend that she met at her school. In or near August of 2003 or 2004 (after B.C. and her family moved to Lafayette, Louisiana), B.C. reported the incident to her mother. At the time of this report, B.C. was at a birthday party for girls and the attendants

were having a discussion about people who could not be trusted. B.C. testified that she did not tell anyone before this occasion because she was afraid. She specified that she was afraid of hurting Brittany or Brittany's mom, Edna Jarboe. Edna Jarboe and B.C.'s mother were friends and, according to B.C., she did not want to breakup their friendship. The incident was reported to the police about one month after B.C. informed her mother. B.C. stated that she wanted to come forward when she found out about another incident involving the defendant. B.C. also stated that she was not sick on any of the occasions that she stayed at the defendant's residence.

As confirmed during cross-examination, before B.C. reported the incident, she previously had conversations with her mother about her mother being molested. On re-direct examination, B.C. confirmed that she was being truthful regarding the instant offense.

A.L. had only spent the night at the defendant's residence on a couple of occasions. She did not visit the defendant's residence again after the incident in question. The incident occurred near Brittany's birthday. A.L. testified that she did not remember falling out of or needing assistance to keep from falling out of the bed when the defendant touched her. As A.L. continued to cry, Brittany woke up and asked her what was wrong. At that point, the defendant took Brittany into the hall and told her that A.L. was having a nightmare or fell out of the bed. Brittany offered to switch positions in the bed and they did so. Both girls then went to sleep. The next morning the defendant woke the girls up and informed them that they were going to go "on a limousine ride." According to A.L., the defendant had rented the limousine for Brittany's birthday. After Brittany and Edna stepped out of the house, the defendant stayed inside with A.L. and apologized to her. The defendant asked A.L. to forgive him and she told

him that she would. The defendant and A.L. then joined the others in the limousine. That day, A.L. discussed the incident with Brittany and Brittany assured her that the defendant was helping her because she was falling off of the bed. The girls also discussed the incident with A.L.'s mother. A.L. specifically testified, "I told her that afternoon, but it wasn't anything, Brittany just said that he was putting me back in the bed." She did not tell her mother the details at that point because she was "scared . . . I didn't know what to think because Brittany was telling him (sic) something else." Near the middle of May of 2004, A.L.'s mother began questioning A.L. concerning the incident. A.L. initially denied that anything inappropriate had happened. Her mother asked her about it again for the next couple of days and A.L. continued to withhold details. A.L. ultimately approached her mother on May 14, 2004, and revealed all of the details. A.L. typed a statement regarding the incident at her mother's request.

During cross-examination, A.L. stated that B.C. came forward first. However, she stated that she did not have a conversation with B.C. before she wrote her statement. She responded negatively when asked whether it was possible that the defendant was only turning her over when he touched her. She further stated that the first time she slept in Brittany's bed was during the incident in question.⁴ On re-direct examination, A.L. reiterated that she was not falling out of the bed as the defendant was touching her. She described the defendant's actions as gentle rubbing. She testified, "It was under my shirt and he was just going up and down as if a rub that I felt, and then it went to the front, and I just sat there. I didn't do anything about it until he got his way to the front." She further stated, "His hands are on my

⁴ During re-direct examination, A.L. specified that on the other occasion that she spent the night at the defendant's residence, she slept on the sofa bed.

back and he moved his hands the other way. He started working his way up front.”

B.C.’s mother (Emma) also testified during the trial. Emma stated that she had a close friendship with Edna Jarboe for many years. From 1990-2000, Emma and her family lived in Houma. They would often visit Edna. She further confirmed that B.C. had a friendship with Brittany and would often sleep at Edna’s house. Consistent with B.C.’s testimony, in August of 2003, during a birthday party/sleepover, B.C. informed her mother that the defendant had inappropriately touched her. According to Emma, B.C. described the incident as follows: “She was laying in bed with Brittany, Brittany was asleep. And Bruce went in, and [B.C.] was on her stomach, and he rubbed her back.” She further added, “And he told her to turn over and he rubbed her breasts. And then he touched her bottom And he kissed her forehead and told her not to tell.” Emma clarified the word ‘bottom,’ stating that it meant her vagina. Approximately two weeks after B.C. relayed this information to Emma, Emma wrote and mailed a letter to the defendant. In a portion of the letter, Emma wrote, “and if I ever hear from anyone that you were doing anything to Britt or Alana, we will go to the police without hesitation.”⁵ According to Emma, they ultimately reported the incident to the police because B.C. was worried about the defendant’s other children. They found out about an incident involving A.L. before they went to the police.

During cross-examination, Emma was questioned regarding factual discrepancies in the letter (in comparison to B.C.’s other statements). Specifically, Emma was questioned regarding the letter stating that the defendant touched only B.C.’s breasts (without any reference to her vagina)

⁵ As testified by Emma, the names in this portion of the letter, Britt and Alana, were references to the defendant’s daughter Brittany and his younger daughter Alana.

and the letter indicating that the victim was ten years of age at the time of the incident instead of eight years of age. Emma stated that she was very emotional when she wrote the letter. Emma confirmed that both she and Edna had been molested in the past. She stated that she and Edna “didn’t sit there and focus” on their past instances of abuse. Emma stated that B.C. made new friends around 1996 or 1997 and the visits with Brittany were less frequent. Emma specified that Edna’s brother’s wife told her about an incident involving A.L. She stated that her knowledge of an incident involving A.L. was not her main reason for coming forward.

The final State witness, Detective Cher Pitre of the Terrebonne Parish Sheriff’s Office, stated that she was contacted by the Child Advocacy Center (C.A.C.) regarding the incident involving B.C. Emma contacted Detective Pitre on September 24, 2003.⁶ After B.C. gave a statement to Detective Pitre, she was taken to the C.A.C. to give an audio and videotaped statement. Detective Pitre was present during B.C.’s statement at the C.A.C. Detective Pitre testified that B.C.’s statement at the C.A.C. was consistent with her statement to Detective Pitre. After B.C. made her statements to the detective at the C.A.C., Detective Pitre contacted the defendant and transported him to the Sheriff’s Office. The defendant executed a waiver of rights form. The defendant informed the detective that he did not remember touching B.C., but if he did, he was rubbing vapor rub on her chest. He stated that he did not rub her vagina. The defendant stated that he received the letter from Emma. The defendant also stated that after they received the letter, his wife doubted his innocence and called their daughters’ friends to ask them if the defendant ever made them feel uncomfortable. The defendant stated that his

⁶ Detective Pitre testified that Emma contacted her on the 24th of September and informed her that she would be able to bring B.C. in for a statement on the 29th of September. Presumably, B.C.’s ultimate statement to the police took place on September 29, 2003.

wife did not receive any disclosures from their daughters' friends. The defendant was placed under arrest after making his statement.

Defense witness Edna Jarboe was no longer married to the defendant at the time of the trial. She stated that their divorce became final in June or July of 2004, and they had separated approximately six months prior to that time. Edna further testified that the defendant was a good husband and father, but was not a good provider financially. According to Edna, the neighborhood kids liked to play with the defendant. The defendant played the "mother" role as the caretaker of the children while Edna worked. Several little girls would visit their home since they had two daughters. According to Edna, kids thought it was a "fun" house to visit. Edna was hysterical after she read the letter from Emma. She called her daughters' friends and called Tille, A.L.'s mother. She noted that Tille is her aunt and A.L. is her first cousin. According to Edna, A.L.'s mother confronted A.L. after being questioned by Edna. Edna recalled waking up one night that A.L. was sleeping at her residence and the defendant was "coming out of the bedroom." Edna used the restroom and went back to bed. She further stated that she had her own opinion as to what happened that night, while A.L. had a different opinion. Edna testified that B.C. and Brittany spent the night with each other on several occasions (sometimes at Edna's house and sometimes at Emma's house) when they were ten years of age or less. Edna also testified that B.C. was a very withdrawn child and showed no emotion. The visits became less frequent sometime before B.C. and her family moved to Lafayette. Edna confirmed that she and Emma had been molested. Edna stated that she loved Emma and noted that Emma's job was to protect her daughter. She added that she did not want a confrontation with Emma. She further testified that she still trusts the defendant with their daughters.

On cross-examination, Edna reiterated that her divorce from her husband was not related to the instant incidents. She confirmed that her daughters were living with her since the separation, although the defendant was considered the “mother” figure during the marriage. Edna testified as follows regarding the incident with A.L.:

We had a twin size bedframe and we had a full size mattress on top of the bedframe. So when the kids did sleep on the edge, the mattress did tend to fall to the side. Okay. It was told to me that Bruce picked her up and he turned her over to get her away from the edge of the bed. Okay. Which I asked if this was the case, I told this to Tille, I said now if you have raised your children like I raised mine, you tell them if anybody touches you and it doesn't feel right, you come to me. I said so I'm just wanting you to know that this is what I was told, so maybe if you want to talk to [A.L.] about this, talk to [A.L.] about this.

According to Edna, the defendant was in Brittany's room at the moment A.L. was falling off of the bed.

Brittany Jarboe also testified for the defense. Brittany was sixteen years old at the time of the trial. Brittany recalled A.L. spending the night at her house sometime in 2000. Regarding that night, Brittany testified:

We watched a movie. And then we was going to bed and we went to sleep. And I saw my dad – I turned to wake her up. I had a box mattress. The bottom was a single and the top was, I think it was either a full or a queen. So a foot and a half of the bed slanted. And I slept by the wall and she slept towards the end of the bed. So when she was sleeping, she was rolling off because there was nothing to support the mattress right there. And I tried waking her up and I tried telling her to move over. But she wouldn't wake up, so I just went back to sleep. Well I heard my door open and I saw my dad come in and I saw him put one hand on her back and one hand on her stomach, and I saw him flip her toward me.

Brittany stated that A.L. was falling off the bed when the defendant flipped A.L. toward her. Brittany turned over and went back to sleep. She woke up because A.L. was crying. A.L. stated that she didn't want to say anything. Brittany told the defendant to “get out of the room” so that she could talk to A.L. to find out why she was crying. At that point, A.L. told Brittany “that

my dad touched her.” A.L. continued to cry and did not say where the defendant touched her. Brittany left the room to talk to the defendant and the defendant told Brittany that he rolled A.L. over, and “didn’t do anything.” When Brittany further spoke to A.L., A.L. stated that the defendant touched her stomach. A.L. did not want to continue talking about it and she continued to cry before falling asleep. Noting that the defendant’s friend was a limousine driver, Brittany testified that the next day they went to a restaurant. Brittany stated that the defendant was a “great father” and was “really the mom.” She added that he was “not a great provider but a great dad.”

Brittany also testified that she and B.C. spent the night with each other on several occasions when they were between approximately five years and seven years of age. B.C. never acted out of the ordinary toward the defendant and would play with the defendant and hugged him during her last visit (before B.C. moved to Lafayette). Brittany stated that B.C. “was always getting fussed” because she would often grab Brittany’s arm and tell her what to do as if she were Brittany’s parent. Brittany never saw defendant touch her friends, or anyone, inappropriately.

During cross-examination, Brittany testified that the day after the incident with A.L., Brittany discussed it with her mother, Edna. She told her mother that the defendant only put A.L. in the bed. Brittany thought she should discuss the incident with her mother. Brittany stated, “I was just worried about her crying.” Brittany confirmed that she fell asleep first on the night in question involving A.L. Brittany was asleep the whole night of the incident involving B.C. Brittany noted that B.C. was sleeping by the wall adding, “I would have had to have been moved or woke up.” Brittany

recalled a night when B.C. had a cold and the defendant patted her on her back as she coughed.

The defendant also testified. The defendant was fifty-three years of age at the time of the trial. The defendant discussed his two prior felony convictions for illegal possession of stolen things and theft. The defendant confirmed that he would watch Brittany and B.C. when they were around six, seven, and eight years of age. He stated that he did not, however, touch B.C. He vaguely remembered that he may have rubbed vapor rub on her chest on an occasion but never touched her vagina. He stated that B.C. would hug him and say hello before she and her family moved. According to the defendant, B.C. wanted him to play games with her like hide-and-seek on one occasion when he was at her house (as he had done in the past). The defendant refused as she was getting older and he did not want to get in trouble. The defendant testified that he would often enter Brittany's room at night because she had asthma. The defendant vaguely remembered an incident when A.L. spent the night in his home and was falling out of the bed. The defendant picked her up and put her in the bed and she started crying. The defendant thought she was crying because she had never been in his house before. The defendant stated that he did not touch her inappropriately. On cross-examination, the defendant stated that he felt both charges in the instant case were brought because, "one thing leaded [sic] to another and brought me here. That's what I think. Which was a lie."

Based on our careful review of the testimony presented during the trial, viewing the evidence in the light most favorable to the prosecution, we find that a rational trier of fact could reasonably conclude that all of the essential elements of the offenses have been proven beyond a reasonable doubt. Clearly, there was an age difference of greater than two years between the

defendant and the victims, who were not yet seventeen years of age at the time of the offenses. The acts of touching and rubbing the youthful victims underneath their clothing in inappropriate areas constituted lewd or lascivious acts upon the victims. Finally, it is evident that the defendant had the specific intent to arouse or gratify his own sexual desires in committing these acts. We find that the trial court reasonably rejected the defendant's hypotheses of innocence. The sole assignment of error has no merit.

Defendant's convictions and sentences are affirmed.

CONVICTIONS AND SENTENCES AFFIRMED.