

176 Ga.App. 780
Court of Appeals of Georgia.

HYATT
v.
The STATE.

No. 70873. | Nov. 7, 1985.

Defendant was convicted of sodomizing his seven-year-old son in Gilmer Superior Court, Milam, J., and he appealed. The Court of Appeals, Benham, J., held that: (1) young victim was competent to testify, and (2) evidence was sufficient to convict defendant of sodomy.

Affirmed.

West Headnotes (2)

[1] **Witnesses**

☞ Children

Seven-year-old sodomy victim who swore to tell the truth, and stated that it was good to tell the truth and bad to lie, and that he was aware that punishment awaited liars, was competent to testify.

[2] **Infants**

☞ Carnal knowledge; rape and sodomy

Sodomy

☞ Evidence

Evidence was sufficient to find defendant guilty of sodomy under O.C.G.A. § 16-6-2(a), where seven-year-old son testified that defendant placed his sex organ in son's mouth and anus.

Attorneys and Law Firms

**785 *781 David E. Ralston, Blue Ridge, for appellant.

Roger G. Queen, Dist. Atty., for appellee.

Opinion

*780 BENHAM, Judge.

Appellant was convicted of sodomizing his seven-year-old son. On appeal he questions the sufficiency of the evidence and the trial court's conclusion that the young victim was competent to testify.

[1] 1. “[T]he standard of intelligence required to qualify a child as a witness is not that he be able to define the meaning of an oath, nor that he understand the process under which the oath is administered, but rather that he know and appreciate the fact that as a witness he assumes a solemn and binding obligation to tell the truth relative to the case and concerning such matters as he may be interrogated on, and that if he violates the obligation he is subject to be punished by the court. [Cits.]” *Smith v. State*, 247 Ga. 511, 277 S.E.2d 53 (1981). At a competency hearing held outside the presence of the jury, the youngster stated it was good to tell the truth and bad to lie, and that he was aware that punishment awaited liars. He also swore to tell the truth. In the absence of an abuse of discretion, the appellate court will not overturn a trial court's competency ruling. *Bearden v. State*, 159 Ga.App. 892(1), 285 S.E.2d 606 (1981). See also *Sanborn v. State*, 176 Ga.App. 259, 335 S.E.2d 719 (1985).

[2] 2. The child testified that appellant placed his sex organ in the child's mouth and anus. The evidence was sufficient for a rational trier of fact to find appellant guilty of sodomy beyond a reasonable doubt. OCGA § 16-6-2(a); *Carter v. State*, 168 Ga.App. 177(1), 308 S.E.2d 438 (1983).

Judgment affirmed.

BANKE, C.J., and McMURRAY, P.J., concur.

Parallel Citations

337 S.E.2d 784