

ARKANSAS COURT OF APPEALS

DIVISION II
No. CR-17-380

RAHEEM LINDSEY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: December 6, 2017

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, SECOND
DIVISION

[NO. 60CR-14-3538]

HONORABLE CHRISTOPHER
CHARLES
PIAZZA, JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

A Pulaski County jury convicted appellant Raheem Lindsey of three counts of aggravated robbery, three counts of kidnapping, two counts of theft of property, and one count of rape. He was sentenced to an aggregate term of thirty years' imprisonment. On appeal, appellant contends that the evidence was insufficient to support his rape conviction for which he was sentenced to fifteen years' imprisonment. We find no error and affirm.¹

On August 30, 2014, appellant, along with T.S., approached three workers as they were leaving Arby's on Chenal Parkway in Little Rock and forced them back into the restaurant at gun point. T.S. unsuccessfully attempted to force the victim, Jeremy James, to

¹Appellant was seventeen at the time of the crimes. He attempted to have his case transferred to the juvenile division but that request was denied. He subsequently appealed that denial, and this court affirmed the trial court. See *Lindsey v. State*, 2016 Ark. App. 355, 498 S.W.3d 336.

open the time-locked safe. During this time, appellant made the other two victims, Erica Guzman and Christina Crumpton, lie on their stomachs at gun point. At some point, appellant forced Guzman up from the floor and into the women's bathroom of the restaurant. He made her pull down her pants and underwear and get down on all fours. Appellant attempted to vaginally penetrate Guzman. Guzman testified that appellant penetrated enough to hurt her but that he was not able to completely penetrate her. She stated that appellant's condom was left in her vagina. She testified that appellant then told her to perform oral sex on him and threatened to kill her as well as her co-workers if she refused. She stated that she performed oral sex on appellant and that she removed his penis from her mouth when she felt that he was about to ejaculate. She said that appellant ejaculated on the bathroom floor and that some of it got in her panties. She testified that appellant used her apron to clean up the ejaculation from the floor and her panties. She also said that he took the condom and the apron with him. She stated that appellant asked her for money, but she did not have any. He then took her iPhone and placed it in his pocket. She testified that appellant had her at gun point at all relevant times. The whole ordeal lasted between ten to fifteen minutes, and appellant returned Guzman to her spot on the floor where she remained until he and T.S. left the restaurant. Guzman did not tell her co-workers about the rape, but she did rinse out her mouth with water. Guzman subsequently had a rape kit performed on her, but her panties were not collected and sent to the crime lab. There was also a pubic hair that was not tested and blood found on the floor of the bathroom that failed to be submitted for testing. Appellant was

apprehended shortly after leaving the restaurant because he and T.S. were involved in a car accident. The condom and the apron were never recovered.

Guzman admitted on cross-examination that at the time of the incident, she was in this country illegally and using the name Romina Guzman. She testified that she applied for a visa after the rape but returned to Mexico in June 2015 because her father had died. She said that she was currently residing in Mexico and was only in the country for appellant's trial.

Crumpton corroborated that appellant took Guzman to the back towards the restrooms during the robbery for approximately ten to fifteen minutes. James testified that at some point he noticed that Guzman was no longer lying on the floor but that he later looked and Guzman was back.

Appellant moved for a directed verdict after the State's case, arguing that the State failed to prove the required element of penetration. The court denied the motion. Appellant did not present a case, but he did unsuccessfully renew his directed-verdict motion. The jury found him guilty of rape and recommended a sentence of fifteen years' imprisonment to run consecutive to appellant's other sentences. The sentencing order was filed on February 3, 2017. Appellant filed a timely notice of appeal on February 7, 2017. This appeal followed.

A motion for a directed verdict is a challenge to the sufficiency of the evidence.² When reviewing a challenge to the sufficiency of the evidence, this court assesses the

²*Hinton v. State*, 2015 Ark. 479, 477 S.W.3d 517.

evidence in the light most favorable to the State and considers only the evidence that supports the verdict.³ The sufficiency of the evidence is tested to determine whether the verdict is supported by substantial evidence, direct or circumstantial.⁴ Substantial evidence is evidence which is of sufficient force and character that will, with reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture.⁵ The credibility of witnesses is an issue for the jury and not the court.⁶ The trier of fact is free to believe all or part of any witness's testimony and may resolve questions of conflicting testimony and inconsistent evidence.⁷ Arguments not raised at trial will not be addressed for the first time on appeal, and parties cannot change the grounds for an objection on appeal, but are bound by the scope and nature of the objections and arguments presented at trial.⁸

A person commits rape if he or she engages in sexual intercourse or deviate sexual activity with another person by forcible compulsion.⁹ "Sexual intercourse" is penetration,

³*Id.*

⁴*Boyd v. State*, 2016 Ark. App. 407, 500 S.W.3d 772.

⁵*Hinton, supra.*

⁶*Id.*

⁷*Id.*

⁸*Rounsaville v. State*, 372 Ark. 252, 273 S.W.3d 486 (2008).

⁹Ark. Code Ann. § 5-14-103(a)(1) (Repl. 2012).

however slight, of the labia majora by a penis.¹⁰ “Deviate sexual activity” is defined as any act of sexual gratification involving the penetration, however slight, of the anus or mouth of a person by the penis of another person.¹¹ “Forcible compulsion” means physical force or a threat, express or implied, of death or physical injury to or kidnapping of any person.¹²

Appellant contends that there was insufficient evidence to support his conviction for rape because there was no physical evidence to support Guzman’s testimony that she was raped and because Guzman had motive to lie about the rape since she was in this country illegally. These arguments are not preserved for our review because appellant failed to raise them below. Appellant made no mention of Guzman’s credibility or the lack of physical evidence; rather, he challenged the element of penetration. Guzman testified that appellant attempted to penetrate her vaginally, but was unable to completely penetrate her. He then made her turn around and perform oral sex on him. She stated that appellant had her at gun point this entire time. Thus, the elements of rape, including penetration, were sufficiently proven. There is no requirement that the victim’s testimony be corroborated by other testimony or scientific evidence.¹³ The uncorroborated testimony of a rape victim describing penetration is enough for a conviction.¹⁴ The jury believed

¹⁰Ark. Code Ann. § 5-14-101(11).

¹¹Ark. Code Ann. § 5-14-101(1)(A).

¹²Ark. Code Ann. § 5-14-101(2).

¹³*Rogers v. State*, 2017 Ark. App. 521, ___ S.W.3d ___.

¹⁴*Id.*

Guzman's testimony regarding penetration and substantial evidence supports the conviction. Accordingly, we affirm.

Affirmed.

ABRAMSON and MURPHY, JJ., agree.

Stuart Vess, for appellant.

Leslie Rutledge, Att'y Gen., by: *Kathryn Henry*, Ass't Att'y Gen., for appellee.