

JUDGE KAREN R. BAKER
NOT DESIGNATED FOR PUBLICATION
DIVISION IV

CACR06-1421

SYLVESTER JACKSON

NOVEMBER 14, 2007

v.	APPELLANT	APPEAL FROM THE LONOKE COUNTY CIRCUIT COURT [NO. CR-05-268]
STATE OF ARKANSAS	APPELLEE	HONORABLE LANCE LAMAR HANSHAW, CIRCUIT JUDGE

AFFIRMED

On May 18, 2006, a Lonoke County jury convicted appellant Sylvester Jackson for the rape of his nine-year-old granddaughter and sentenced him to ten (10) years' imprisonment in the Arkansas Department of Correction. He asserts two points of error on appeal: (1) The evidence was insufficient to support appellant's conviction for the offense of rape; (2) The trial court erred in allowing the introduction into evidence of prior bad acts of appellant. We find no error and affirm.

Appellant's first challenge to the sufficiency of the evidence is not preserved for appeal because the motion was not specific as required by Ark. R. Crim. P. 33.1 (b). A general motion that merely asserts that the State failed to prove its case is inadequate to preserve the issue for appeal. *Wright v. State*, 92 Ark. App. 369, 371-72, 214 S.W.3d 280, 281 (2005) (citing *Beavers v. State*, 345 Ark. 291, 46 S.W.3d 532 (2001)). At the close of the State's case, appellant stated he moved for a directed verdict based on the fact that the prosecution had not made a prima facie case. When the trial court denied the motion, appellant stated that he would rest his case without offering any

testimony and renewed his motion for a directed verdict. These general assertions that the prosecution failed to prove the case against appellant are inadequate to preserve a challenge to the sufficiency of the evidence on appeal. Accordingly, we find no merit to appellant's first point of error and affirm.

Neither do we find merit with appellant's second assertion that the trial court erred in allowing the introduction into evidence of prior bad acts of appellant. Rule 404(b) provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Appellant argues that the trial court erred in allowing his recorded confession regarding the sexual contact between appellant and the victim that occurred in Jefferson County, because appellant had never been charged with or convicted of any crime related to that incident. Appellant urges us to find the evidence inadmissible and that the State used the inadmissible evidence to improperly bolster its contention that that appellant had similar improper contact with his granddaughter in Lonoke County. He further claims that even if the evidence was admissible for a purpose other than to establish conduct in conformity with his character, it nonetheless should have been excluded because any probative value it had was substantially outweighed by the danger of unfair prejudice. Appellant contends that this testimony was particularly damaging because the victim denied at trial that the incident occurred in contradiction to appellant's recorded confession detailing the events.

We acknowledge that the victim's testimony did not corroborate appellant's more detailed account of his penetration of his granddaughter; however, the child also stated at trial that she loved her grandfather and did not want anything bad to happen to him. In addition, the events in Jefferson County took place when the child was eight years old, according to appellant's account,

approximately a year before the acts leading to these charges. The variances in appellant's confession and the witness's testimony raise credibility issues. The task of assessing the credibility of witnesses is one that is left to the trier-of-fact. *MacKool v. State*, 365 Ark. 416, 231 S.W.3d 676 (2006). We are also aware of the rather unique situation of this case where the accused provides a detailed account of the rape of the victim in one county from the year before, but denies the events for which he stands accused in the county of trial. Nevertheless, appellant does not challenge the propriety of his confession, and his motivation for confessing a crime against the same victim in another county is not our focus. The question before us is whether the trial court erred in admitting the evidence.

We find our discussion in *Anderson v. State*, 93 Ark. App. 454, 220 S.W.3d 225 (2005) to be applicable and helpful to our analysis:

When the alleged crime is child abuse or incest, we have approved allowing evidence of similar acts with the same or other children in the household when it is helpful in showing a proclivity for a specific act with a person or class of persons with whom the defendant has an intimate relationship. *Berger v. State*, 343 Ark. 413, 36 S.W.3d 286 (2001). This is known as the "pedophile exception" to Rule 404(b) of the Arkansas Rules of Evidence. *Parish v. State*, 357 Ark. 260, 163 S.W.3d 843 (2004). Further, it is admissible to show the familiarity of the parties and antecedent conduct toward one another and to corroborate the testimony of the victim. *Id.* The rationale for recognizing this exception is that such evidence helps to prove the depraved sexual instinct of the accused. *Flanery v. State*, 362 Ark. 311, 208 S.W.3d 187 (2005).

Anderson v. State, 93 Ark. App. at 458-59, 220 S.W.3d at 229-30 (2005) (affirming trial court's admission of other acts and convictions against same child victim occurring in a different county).

We find this reasoning dispositive of this case. The evidence of appellant's similar acts with the same child the previous year was helpful in establishing to the fact finder appellant's proclivity for sexual contact with his granddaughter. Although appellant attempts to classify the evidence as impermissible bolstering of the victim's testimony, the pedophile exception is specifically admissible

to corroborate the testimony of the victim. *Anderson*, 93 Ark. App. at 58, 220 S.W.3d at 29.

Appellant's argument that the evidence was unfairly prejudicial and thus inadmissible under Ark. R. Evid. 403 is equally unavailing. Rule 403 provides that, although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. *Id.* Trial courts have broad discretion in deciding evidentiary issues, and their decisions are not reversed absent an abuse of discretion. *Id.* (citing *Smith v. State*, 351 Ark. 468, 95 S.W.3d 801 (2003)). Here, the evidence indicated that appellant confessed to acts constituting rape in Jefferson County while denying the commission of any acts as described by the victim that occurred in Lonoke County. The evidence of the prior occurrences thus tended to corroborate the testimony of the child-victim and demonstrate appellant's proclivity for engaging in similar conduct with his granddaughter. We are not able to say that the trial court abused its considerable discretion in concluding that the probative value of the evidence exceeded the danger of unfair prejudice.

Accordingly, we find no error and affirm.

ROBBINS and VAUGHT, JJ., agree.