

# ARKANSAS COURT OF APPEALS

DIVISION I

No. CACR07-1279

JOE ROBINSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** SEPTEMBER 3, 2008

APPEAL FROM THE POPE COUNTY  
CIRCUIT COURT  
[NO. CR-2006-85]

HONORABLE JAMES DANIEL  
KENNEDY, JUDGE

AFFIRMED

**ROBERT J. GLADWIN, Judge**

Appellant Joe Robinson appeals his July 25, 2007 conviction by a Pope County jury on a charge of sexual assault in the fourth degree and the resulting sentence of two years in the Arkansas Department of Correction. His sole point on appeal is a challenge to the sufficiency of the evidence. We affirm.

The State filed a felony information on February 17, 2006, alleging that appellant committed the offense of sexual assault in the fourth degree, a Class D felony, pursuant to Ark. Code Ann. § 5-14-127, on or about November 1, 2005, and December 1, 2005. The charge arose from reports that appellant, age thirty-seven, had been having a sexual relationship with then fifteen-year-old M.B.

During the fall and winter of 2005, appellant was living with his girlfriend, J.K., and her two daughters, A.K. (then age eighteen) and R.K. (then age fourteen). M.B. was a friend of R.K. and routinely stayed at the home three to four nights a week over a period of two to three months. There was evidence that M.B.'s home life with her mother and stepfather was not ideal. She was having trouble at school during this time, with kids picking on her and calling her names. When M.B. stayed at the house, she slept on a hide-a-way bed in the living room. The other girls slept in their respective rooms, and appellant and J.K. slept in J.K.'s bedroom.

Appellant's relationship with M.B. came to light when the school nurse, Ms. Cain, became aware of inappropriate notes written by appellant to M.B. when M.B. was sharing the information with one of her friends at school. Ms. Cain and other school officials confronted M.B. about the notes, and M.B. told her about the relationship with appellant. The incident was reported to law enforcement officials and DHS, and M.B. acknowledged having sexual intercourse with appellant on multiple occasions. Edie Deal, a senior investigator with the Arkansas State Police Crimes Against Children Division, visited M.B. at her mother's home on December 2, 2005, and recovered nine notes/letters that had been written by appellant to M.B. in a location described by M.B.'s mother.

A jury trial was held on July 25, 2007. At the close of the State's case in chief, appellant moved for a directed verdict based upon insufficient evidence that he actually committed the offense of sexual assault in the fourth degree. The circuit court denied the motion, and appellant proceeded to testify on his own behalf. Following the close of his case in chief, as

well as after rebuttal testimony from witnesses for the State, appellant renewed his motion for directed verdict, both of which were denied by the circuit court. The jury returned a guilty verdict, and appellant was sentenced as previously set forth. A judgment and commitment order was entered on July 30, 2007, and appellant filed a timely notice of appeal on August 6, 2007. This appeal followed.

#### *Standard of Review*

In reviewing a challenge to the sufficiency of the evidence, we determine whether the verdict is supported by substantial evidence, direct or circumstantial. *Dunn v. State*, 371 Ark. 140, \_\_\_ S.W.3d \_\_\_ (2007). Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture. *Id.* In reviewing a challenge to the sufficiency of the evidence, this court views the evidence in the light most favorable to the State. *May v. State*, 94 Ark. App. 202, 228 S.W.3d 517 (2006).

This court does not pass upon the credibility of witnesses who testify at trial, nor does it resolve conflicts in the testimony, as those are matters solely for the jury's determination. *Barrett v. State*, 354 Ark. 187, 119 S.W.3d 485 (2003). Moreover, a sexual assault victim's testimony alone may constitute substantial evidence to support a conviction. *Ellis v. State*, 364 Ark. 538, 222 S.W.3d 192 (2006).

#### *Discussion*

Appellant argues that the State failed to prove that he committed the offense of sexual assault in the fourth degree, as set forth in Ark. Code Ann. § 5-14-127(a)(1):

A person commits sexual assault in the fourth degree if the person:

- (1) Being twenty (20) years of age or older, engages in sexual intercourse or deviate sexual activity with another person who is:
  - (A) Less than sixteen (16) years of age; and
  - (B) Not the person's spouse.

Appellant acknowledges that M.B. was at his girlfriend's home on a frequent basis and that M.B. shared with them her fear of her stepfather and desire to get out of her mother's home. He claims that M.B.'s mother and his girlfriend approached him at a school homecoming football game with a plan to help M.B. alleviate some of the problems she was encountering at school. Specifically, the two women told him that if M.B. was to receive notes or letters from a boyfriend, the other kids might stop calling her names, which had included calling her a lesbian. Appellant contends that, while reluctant, he agreed to the plan and wrote M.B. a total of nine notes or letters over a period of two to three weeks. Appellant acknowledges writing them, initialing them, and including suggestive comments in the letter. He asserts, however, that M.B.'s mother, his girlfriend, and her two daughters A.K. and R.K. were all aware of the letters, and that A.K. and R.K. actually made suggestions and participated in drafting the letters. Appellant claims that R.K. even let him copy language from certain notes she had received from her boyfriend and that the letters were delivered to M.B. at school by either A.K. or R.K.

Appellant points out that M.B. never accused him of having sexual intercourse with her until she was confronted by school officials. At trial, he explains that while M.B. did testify

that the two of them had engaged in sexual intercourse on four occasions, she was unclear about what that term meant. He claims that M.B. likewise could not remember when the alleged events occurred. Appellant maintains that M.B.'s testimony at trial was inconsistent as to the relevant and important facts related to the charge against him. Additionally, he asserts that her testimony was inconsistent as to the reporting of the incident and even whether she told A.K. and R.K. about the notes or the alleged relationship. Appellant reiterates that M.B. has recanted her accusations both to his girlfriend, as well as to DHS officials. He clearly calls into question the credibility of M.B.'s testimony.

The letters that were used by the State as evidence of the romantic relationship between appellant and M.B. are a primary focus of appellant's argument. He asserts that the purpose for which the letters were written demonstrates the lack of evidentiary value regarding the existence of a sexual relationship between M.B. and himself, as they were merely to portray M.B. in a light more favorable to her peers. Appellant argues that to allow the letters to prove the existence of a sexual and romantic relationship between them is a resort to speculation and conjecture in light of the intended purpose for which they were written.

The evidence supports the conclusion that the offense is covered by Ark. Code Ann. § 5-14-127(a)(1) from the aspect of the actors' respective ages. J.K. testified that appellant told her he was thirty-seven years old at the time of the alleged incidents, and no other evidence refutes that testimony. Additionally, M.B. testified that she was born on March 17, 1990, which would have made her fifteen years old at the time of the assaults in late 2005.

M.B. testified that she thought of appellant as her boyfriend, that the two of them were close, and that she talked to him about everything. M.B. specifically explained that the two of them had a physical relationship that included kissing and engaging in sexual intercourse on four occasions. The State maintains that the requisite ages of appellant and M.B., together with her testimony describing sexual activities that occurred between them, constitute substantial evidence to satisfy the requirements of Ark. Code Ann. § 5-14-127. We agree.

The State acknowledges appellant's denials of the accusations, as well as his story about the letter-writing plan hatched in an effort to help M.B.'s reputation. The State notes, however, that appellant admitted that he had not told investigators about allegedly being coaxed into writing the letters. Further, J.K.'s testimony did not support his allegation, as she specifically testified that, although she observed him writing the letters, she had neither asked him to write the letters nor read them. Additionally, there was no corroborating testimony that J.K.'s daughters had been involved in the plan, told him what to write, or provided sample letters for him to copy.

This is an issue of credibility, which is the province of the jury rather than this court. *See Barrett, supra.* M.B.'s testimony that appellant engaged in sexual intercourse with her was, in and of itself, substantial evidence of his guilt. *See Ellis, supra.* Accordingly, we hold that the circuit court did not err by denying appellant's motions for directed verdict.

Affirmed.

PITTMAN, C.J., and HEFFLEY, J., agree.

