

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR 08-338

ERIC PAUL WORTH

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered OCTOBER 22, 2008

APPEAL FROM THE GRANT
COUNTY CIRCUIT COURT,
[NO. CR-2007-6-1]

HONORABLE CHRIS E WILLIAMS,
JUDGE

AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Eric Paul Worth was convicted by a jury of two counts of internet stalking of a child, and he was sentenced to two consecutive eight-year prison terms. Arkansas Code Annotated section 5-27-306 (Repl. 2006) provides in relevant part:

(a) Person commits the offense of internet stalking of a child if the person being twenty-one (21) years of age or older knowingly uses a computer online service, internet service, or local internet bulletin board service to:

. . . .

(2) Seduce, solicit, lure, or entice an individual that the person believes to be fifteen (15) years of age or younger in an effort to arrange a meeting with the individual for the purpose of engaging in:

- (A) Sexual intercourse;
- (B) Sexually explicit conduct; or
- (C) Deviate sexual activity as defined in § 5-14-101

Mr. Worth now appeals, arguing only that the trial court erred in failing to grant his motion for directed verdict. We affirm.

An appeal from a denial of a motion for directed verdict is a challenge to the sufficiency of the evidence. *Winston v. State*, 372 Ark. 19, __ S.W.3d __ (2007). In reviewing a challenge to the sufficiency of the evidence, we determine whether the verdict was supported by substantial evidence, direct or circumstantial. *Id.* Evidence is substantial if, when viewed in the light most favorable to the State, it is of sufficient force and character to compel reasonable minds to reach a conclusion and pass beyond suspicion and conjecture. *Fudge v. State*, 341 Ark. 759, 20 S.W.3d 315 (2000).

On January 10, 2007, Sheridan Police Officer David Holland entered an internet chat room posing as “Cheryl Kidd.” Mr. Worth, who was then twenty-one years old, made contact with “Cheryl” in the chat room and inquired about her age and sex. “Cheryl” replied that she was a fourteen-year-old female. A conversation followed wherein Mr. Worth made sexually explicit comments, which included asking “Cheryl” if she wanted to lose her virginity. “Cheryl” said that she did, and upon appellant’s prompting indicated that she had been sexually active before but only with another fourteen-year-old girl, who was a friend named “Bree.” Mr. Worth then asked “Cheryl” to find out if her friend would agree to a threesome. “Cheryl” said she would ask her friend, and the conversation ended when she represented that her mother had come home.

After three failed attempts by the appellant to contact “Cheryl” again, he successfully contacted her in the internet chat room on January 12, 2007. During that conversation, “Cheryl” indicated that she and her friend both would have sex with him. She gave Mr. Worth her home address and they discussed him meeting her there in a few days.

On January 15, 2007, after thirty-two failed attempts, Mr. Worth again made contact with “Cheryl” on the internet to set up what he thought was going to be a threesome with the two girls. During that chat, appellant made several more explicit comments about having sexual relations with the girls. He drove from his residence in El Dorado to her stated address in Sheridan pursuant to her directions. Upon arriving at the designated location, Mr. Worth was arrested.

After the police arrested Mr. Worth, they searched his truck and found a quantity of condoms and a loaded pistol. Mr. Worth was transported to the Sheridan Police Department where he waived his *Miranda* warnings and agreed to make a statement. During his interview with the police, Mr. Worth admitted that he had driven to Sheridan with the intention of having sex with two fourteen-year-old girls.

For reversal of his convictions, Mr. Worth now argues that there was no substantial evidence that he committed internet stalking of a child. He notes that the culpable mental state for that crime is “knowingly,” and argues that the State’s proof was insufficient because it failed to establish that he had actual knowledge of the victim’s age. In support of his argument, Mr. Worth relies on our decision in *Coleman v. State*, 12 Ark. App. 214, 671 S.W.2d 221 (1984).

As argued by the State, Mr. Worth’s challenge to the sufficiency of the evidence is not preserved for review. Rule 33.1 of the Arkansas Rules of Criminal Procedure provides, in pertinent part:

(a) In a jury trial, if a motion for directed verdict is to be made, it shall be made at the close of the evidence offered by the prosecution and at the close of all of the evidence. A motion for directed verdict shall state the specific grounds therefor.

....

(c) The failure of a defendant to challenge the sufficiency of the evidence at the times and in the manner required in subsections (a) and (b) above will constitute a waiver of any question pertaining to the sufficiency of the evidence to support the verdict or judgment. A motion for directed verdict or for dismissal based on insufficiency of the evidence must specify the respect in which the evidence is deficient. A motion merely stating that the evidence is insufficient does not preserve for appeal issues relating to a specific deficiency such as insufficient proof on the elements of the offense.

In the present case Mr. Worth moved for directed verdict at the close of the case on the grounds of entrapment and also on the basis that the evidence was insufficient to convict him of internet stalking. However, Mr. Worth did not make any argument pertaining to his lack of knowledge of the victim's age. Because Mr. Worth's directed-verdict motion posed a general challenge to the sufficiency of the evidence and failed to specify any elements of the crime that had not been proven, we need not address his sufficiency argument now being raised for the first time in this appeal. See *Pinell v. State*, 364 Ark. 353, 219 S.W.3d 168 (2005).

Even had appellant's argument been properly preserved, it has no merit. Mr. Worth's reliance on *Coleman v. State, supra*, is misplaced because that was an appeal from a first-degree battery conviction, and the victim's age was not an element of the offense as Mr. Worth suggests in his brief. The issues in that appeal involved jury instructions and were unrelated to the sufficiency issue being raised in the instant appeal.

To establish the offense of internet stalking of a child the State must prove that the person knowingly uses the internet to seduce someone he “*believes to be* 15 years of age or younger” in an effort to arrange a meeting for a sexual purpose. See Ark. Code Ann. § 5-27-306(a)(2) (Repl. 2006)(emphasis added). The statute does not require that the defendant know the intended victim’s age. In this case the evidence at trial showed that Mr. Worth engaged in internet chats with an undercover officer who represented himself to be fourteen-year-old “Cheryl Kidd,” and that Mr. Worth arranged to meet “Cheryl” and her fourteen-year-old friend “Bree” for the purpose of engaging in sexual relations with the girls. After his arrest, Mr. Worth confessed to the police that it was his intention to have sex with two fourteen-year-old girls. Because the State proved that appellant believed the victim to be fifteen years of age or younger, and there is no statutory requirement that appellant have actual knowledge of the victim’s age, Mr. Worth’s sufficiency argument fails. There was substantial evidence to support his convictions.

Affirmed.

MARSHALL and VAUGHT, JJ., agree.