

ARKANSAS COURT OF APPEALSDIVISION I
No. CR-12-972

CURTIS RICHEY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

OPINION DELIVERED JUNE 19, 2013APPEAL FROM THE LAWRENCE
COUNTY CIRCUIT COURT
[NO. CR-2011-106]HONORABLE HAROLD S. ERWIN,
JUDGE

AFFIRMED

ROBERT J. GLADWIN, Chief Judge

Appellant Curtis Richey appeals from his conviction by the Lawrence County Circuit Court on four charges of rape. Appellant's sole point on appeal challenges the sufficiency of the evidence. We affirm.

On June 17, 2011, the Arkansas State Police, Crimes Against Children Division, was contacted about sexual-abuse allegations concerning appellant and his daughter. Investigator Jim Milam contacted the alleged victim, R.R., and then he interviewed appellant. During the interview, appellant made incriminating statements concerning his conduct with R.R. Based on appellant's interrogation and R.R.'s statement, the State filed an information charging appellant with two counts of rape and two separate counts of incest. The information was subsequently amended to four counts of rape.

A jury trial was conducted on July 24–25, 2012. Appellant was convicted of four counts of rape pursuant to Arkansas Code Annotated section 5-14-103(a)(4)(A)(i) (Supp.

2011) and sentenced to a total of thirty-five years' imprisonment in the Arkansas Department of Correction (ADC) pursuant to the sentencing order filed July 25, 2012. He filed a timely notice of appeal on August 15, 2012.

In reviewing a challenge to the sufficiency of the evidence, this court views the evidence in the light most favorable to the State and considers only the evidence that supports the verdict. *Williams v. State*, 93 Ark. App. 353, 219 S.W.3d 676 (2005). This court will affirm a conviction when there is substantial evidence to support it, and substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion without resorting to speculation or conjecture. *Id.* Moreover, the jury is responsible for determining the weight and credibility of evidence, *see Bruner v. State*, 2013 Ark. 68, ___ S.W.3d ___, and a rape victim's testimony, standing alone, is sufficient to support a conviction if it establishes the elements of the offense. *Rohrbach v. State*, 374 Ark. 271, 287 S.W.3d 590 (2008).

At the jury trial, the first witness called by the State was R.R., the victim. She testified that appellant raped her over a period of years while she lived with him. It is undisputed that R.R., along with her three other siblings, lived with appellant from birth until the charges of rape were filed against him. R.R. testified that she had lived in Lawrence County with appellant at her grandparents' home and that certain sexual abuse took place there. She stated that appellant had penetrated her on numerous occasions. She further testified she did not know the number of times appellant inserted his fingers, penis, or tongue

into her vagina. She testified several different times that she did not know the number of times these incidents occurred.

Investigator Milam and Detective Andrew Turner were called as witnesses for the State. They testified as to their interview with appellant, and a tape of that interview with appellant was introduced into evidence. During the taped interview, appellant made admissions that he had in fact put his tongue and fingers into R.R.'s vagina. Appellant denied ever having oral sex or penetrating R.R. with his penis. At no point in the interview did appellant state any specific dates or times that the incidents of sexual contact with R.R. occurred.

The State rested its case at the close of Detective Turner's testimony and the playing of the audio-taped interview between Investigator Milam, Detective Turner, and appellant. The defense made a motion for directed verdict on two different grounds: (1) that the State failed to prove that the crimes, if they occurred, occurred in Lawrence County and (2) that the State failed to prove four specific allegations and that those specific allegations occurred in Lawrence County. The motion was denied by the trial court.

Appellant testified in his defense, denying any sexual contact with R.R. The defense then rested its case and renewed its motion for directed verdict, which the trial court denied.

Appellant argues that the State failed to prove four specific allegations of rape and that those specific allegations of rape occurred in Lawrence County. He emphasizes that R.R.'s testimony referenced several different places and numerous different incidents, but he claims that the State failed to present sufficient evidence to demonstrate that each count was proven,

or if any did occur, that it happened in Lawrence County, Arkansas. The State simply alleged that four rapes occurred.

Appellant challenges R.R.'s testimony in that she did not know the number of times appellant inserted his fingers, penis, or tongue into her vagina. He also claims that R.R. failed to explain whether any or all of these acts occurred during a single incident or multiple separate incidents. Appellant acknowledges that in the interview with officers he made incriminating admissions. However, he points out that there were no specific dates, times, nor number of occurrences discussed in the interview. He claims that it is not possible to ascertain specifically whether four rapes occurred in Lawrence County from the vague testimony presented.

Arkansas Code Annotated section 5-14-103(a)(4)(A)(i) provides that “a person commits rape if he or she engages in sexual intercourse or deviate sexual activity with another person... [w]ho is a minor and the actor is the victim’s [g]uardian.” Additionally, Arkansas Code Annotated section 5-14-101(1)(B) (Supp. 2011) provides that “deviate sexual activity” includes “any act of sexual gratification involving the penetration, however slight, of the labia majora or anus of a person by any body member or foreign instrument manipulated by another person.”

At trial, R.R. testified that over the years she lived with appellant in Evening Shade (Sharp County), Powhatan (Lawrence County), and Imboden (Lawrence County). She explained that while they were living in Evening Shade, appellant penetrated her with his fingers, but she also explained that he “penetrated my vagina with his penis” for the first time

while they were living in Powhatan, which is in Lawrence County. R.R. also testified that appellant penetrated her with his tongue “too many times to count,” while they were living in Powhatan. She further explained that they subsequently moved to Imboden, also in Lawrence County, where appellant also penetrated the victim with his fingers, tongue, and penis on multiple occasions.

The uncorroborated testimony of a rape victim, including a child, standing alone can constitute sufficient evidence to support a conviction, and any evaluation as to the credibility of the witness is a matter for the finder of fact. *Martin v. State*, 2013 Ark. App. 110, ___ S.W.3d ___. Thus, R.R.’s testimony alone is substantial evidence of rape, and we further hold that the evidence before us specifically establishes that appellant raped his daughter at least four times while they were living in Lawrence County. The trial court did not err by denying the motions for a directed verdict.

Affirmed.

GLOVER and VAUGHT, JJ., agree.

C. Scott Nance, for appellant.

Dustin McDaniel, Att’y Gen., by: *Lauren Elizabeth Heil*, Ass’t Att’y Gen., for appellee.