Cite as 2013 Ark. 86

SUPREME COURT OF ARKANSAS

No. CR12-496

ANTHONY PEREZ CHRISTIAN APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** February 28, 2013 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT [NO. 60CR-11-18] HONORABLE WENDELL L. GRIFFEN, JUDGE AFFIRMED.

COURTNEY HUDSON GOODSON, Associate Justice

A jury in Pulaski County Circuit Court found appellant Anthony Perez Christian guilty of four counts of rape. Sentenced as an habitual offender, he received four consecutive terms of life imprisonment. For reversal, appellant contends that the evidence is not sufficient to support three of the rape convictions. Because appellant received terms of life imprisonment, our jurisdiction is pursuant to Arkansas Supreme Court Rule 1-2(a)(2). We affirm.

The prosecuting attorney in Pulaski County filed a felony information charging appellant with four counts of rape and with being an habitual offender. The information alleged that appellant committed count one of the offense on or about June 1, 2007, through November 30, 2007; count two on or about February 1, 2009, through June 30, 2009; count three on or about August 1, 2009, through June 30, 2010; and count four on or about July 1, 2010, through July 27, 2010. The victim, B.B., was born on February 6, 1999, and she

was less than fourteen years old when the rapes were committed.

At trial, Arnita Spearman, B.B.'s mother, testified that she met and started dating appellant in 2005 when B.B. was approximately five years old. She stated that, in 2007, appellant began residing with her and B.B. at her home on Greenlee Drive in North Little Rock.[1] Spearman said that it was customary for B.B. to spend summers with Spearman's mother in Mississippi. However, she testified that B.B. went to stay with her mother in November 2007. Spearman said that she and appellant moved to Mississippi in February 2008. She identified State's Exhibit 1 as a photograph of the house on Greenlee Drive.

Spearman testified that she, appellant, and B.B returned to Arkansas in 2009 and that they lived on Whitmore Circle in Little Rock. She said that State's Exhibit 2 was a photograph of the residence on Whitmore Circle. Spearman recalled that she, appellant, and B.B., moved into a home on Pollock Street in North Little Rock in August 2009. She identified State's Exhibit 3 as the house on Pollock Street.

Spearman further testified that they all subsequently moved into a house on Graham Avenue in North Little Rock. She identified State's Exhibit 4 as a photograph of the home on Graham Avenue. In November 2010, while living in the house on Graham Avenue, Spearman discovered that B.B. was pregnant.

B.B., who was thirteen years old and in the seventh grade at the time of trial, testified that she had given birth by c-section to a son, C.B., who was presently one year old. B.B.

[1]We note that Spearman has other children besides B.B., but any discussion of them is not necessary to our decision.

identified the house depicted in State's Exhibit 4 as the one on Graham Avenue where she was living when she learned that she was pregnant. She testified that appellant had sexual intercourse with her "everywhere just about" in that home.

B.B. also recalled residing in the house on Pollock Street, as shown on Exhibit 3. She said that, while living there, appellant had sexual intercourse with her and that he also placed his penis inside her mouth. B.B. stated that appellant had sexual intercourse with her in the house on Whitmore Circle, depicted as Exhibit 2. She testified that appellant also had sexual intercourse with her when they lived in the house on Greenlee Drive, which she identified as Exhibit 1. When asked how many times appellant had sexual intercourse with her, B.B. testified that it happened "a lot," "maybe over a hundred times."

Officers collected DNA samples from appellant, B.B., and C.B. for purposes of analysis. Mary Simonson, a forensic DNA examiner with the crime lab, stated that testing showed that appellant was the father of C.B. within a statistical probability of 99.99 percent.

Appellant argues on appeal that the evidence is not sufficient to support the rape convictions involving counts one, two, and three listed in the information. He notes that the circuit court instructed the jury that the State was required to prove for each of these counts that appellant engaged in sexual intercourse or deviate sexual activity with B.B. during the specific time frames alleged in the information. Appellant contends that the proof as to when B.B. and appellant lived in the same houses was confusing and difficult to follow. For this reason, he asserts that the evidence was insufficient to sustain the jury's verdicts.

A person commits the offense of rape if he engages in sexual intercourse or deviate

sexual activity with another person who is less than fourteen years of age. Ark. Code Ann. § 5-14-103(a)(3)(A) (Supp. 2011). "Sexual intercourse" means "penetration, however slight, of the labia majora by a penis." Ark. Code Ann. § 5-14-101(11) (Supp. 2011). "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[.]" Ark. Code Ann. § 5-14-101(1)(A).

In reviewing a challenge to the sufficiency of the evidence, this court determines whether the verdict is supported by substantial evidence, direct or circumstantial. *Laswell v. State*, 2012 Ark. 201, ___ S.W.3d ___. Substantial evidence is evidence that is of sufficient certainty and precision to compel a conclusion one way or the other and pass beyond mere suspicion or conjecture. *Huff v. State*, 2012 Ark. 388, ___ S.W.3d ___. Furthermore, this court views the evidence in the light most favorable to the verdict, and only evidence supporting the verdict will be considered. *Fields v. State*, 2012 Ark. 353.

Here, appellant contends that the evidence does not demonstrate that he raped B.B. during the time periods specified in counts one, two, and three of the information. However, we take this opportunity to reiterate that it is not necessary for the State to prove specifically when each act of rape occurred, as time is not an essential element of the crime. *See Bryant v. State*, 2010 Ark. 7, 377 S.W.3d 152; *Rains v. State*, 329 Ark. 607, 953 S.W.2d 48 (1997); *Douthitt v. State*, 326 Ark. 794, 935 S.W.2d 241 (1996); *Bonds v. State*, 296 Ark. 1, 751 S.W.2d 339 (1988); *Huffman v. State*, 288 Ark. 321, 704 S.W.2d 627 (1986). Moreover, this court has recognized that it is rare that youthful victims of sexual abuse can provide exactness

as to the time an offense occurred, and any discrepancies in the testimony concerning the date of the offense are for the jury to resolve. *Rains v. State*, *supra*; *Yates v. State*, 301 Ark. 424, 785 S.W.2d 199 (1990). Even though proof of time is not critical in a rape case, the references to time stated in the information correspond with the dates during which appellant, Spearman, and B.B. were living in various houses in Little Rock and North Little Rock. Spearman's testimony provided the details as to when they lived in these homes. In her testimony, B.B. stated that appellant had sexual intercourse with her in each residence. This court has consistently held that the testimony of a rape victim, standing alone, is sufficient to support a conviction if the testimony satisfies the statutory elements of rape. *Estrada v. State*, 2011 Ark. 3, 376 S.W.3d 395; *Rohrbach v. State*, 374 Ark. 271, 287 S.W.3d 590 (2008). *See also Jones v. State*, 300 Ark. 565, 780 S.W.2d 556 (1989) (holding that the testimony of a child victim, standing alone, was sufficient to sustain the rape conviction where the victim clearly identified the defendant and testified to the acts). We hold that substantial evidence supports appellant's convictions for rape.

Because appellant received sentences of life in prison, we reviewed the record for all objections, motions, and requests that were decided adversely to appellant, pursuant to Arkansas Supreme Court Rule 4-3(i). We found no prejudicial error.

Affirmed.

HART, J., concurs.

JOSEPHINE LINKER HART, Justice, concurring. I agree that this case should be affirmed, but I write separately because I have a different understanding of the appellant's

point on appeal. This is a tragic case where an adult repeatedly raped a young child, beginning when the victim was in the second grade. Understandably, young children tend to be poor historians and are often unable to separately articulate multiple instances of abuse. To its credit, the State overcame this problem by tying the victim's account of abuse to each of the four residences that she shared with the appellant. This enabled the State to charge—and convict—appellant of four separate counts of rape.

Appellant grasped the intent of the State's strategy. In appellant's directed-verdict motion, he stated:

> On counts one, two, and three, I think, based on what the witnesses said, he may not have been there on the dates they're saying at those addresses. Without him being around [BB] on those dates, I don't think they've met the burden of preponderance of the evidence [sic] to go forward on counts one, two and three that he was living with her on June 1st of 2007 to November 30th of '07; on February 1st of '09 through June 30th, '09 or August 1st of '09 through June 30th of '10.

I will not dispute that majority's assertion that the time of occurrence of a rape is not an "essential element of the crime." However, that point is not an issue in this case. Nor was this phrase dispositive of a challenge to the sufficiency of the evidence in any of the cases cited by the majority. In *Bryant v. State*, 2010 Ark. 7, 377 S.W.3d 152, an appeal of convictions for two counts of rape and two counts of second-degree sexual assault, this court found substantial evidence in the testimony of the victim describing different deviate-sexual acts. In *Rains v. State*, 329 Ark. 607, 953 S.W.2d 48 (1997), an appeal of convictions forsix counts of rape, one count of attempted rape, and two counts of first-degree sexual abuse, this court affirmed the separate rape convictions because testimony established different deviate-sexual acts involving three different victims. In *Bonds v. State*, 296 Ark. 1, 751 S.W.2d 339 (1988),

and *Huffman v. State*, 288 Ark. 321, 704 S.W.2d 627 (1986), sufficiency of the evidence was not an issue. Finally, in *Douthitt v. State*, 326 Ark. 794, 935 S.W.2d 241 (1996), this court construed the appellants challenge to the sufficiency of the evidence as an argument involving the adequacy of the felony information, which the *Douthitt* court procedurally barred him from raising.

Here, given the way that appellant was charged, it was essential that the State prove that appellant had access to the victim during the times alleged in the felony information in order to establish the four separate counts of rape. This was effectively proved at trial through the testimony of the victim's mother, Arnita Spearman, establishing the time frames in which the victim lived in each residence. Spearman's testimony, coupled with the victim's statement that at least one rape occurred in each residence provided substantial evidence; thus, like the majority, I would affirm this case.

Don Thompson, Deputy Public Defender, by: *Clint Miller*, Deputy Public Defender, for appellant.

Dustin McDaniel, Att'y Gen., by: *LeaAnn J. Adams*, Ass't Att'y Gen., for appellee.