

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR10-1258

CARLTON X. RUSSELL

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered JUNE 29, 2011

APPEAL FROM THE WHITE
COUNTY CIRCUIT COURT
[NO. CR-2009-472]

HONORABLE ROBERT EDWARDS,
JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

CLIFF HOOFFMAN, Judge

Appellant Carlton Russell was convicted by a jury of rape and sentenced to ten years' imprisonment. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k) of the Rules of the Arkansas Supreme Court and Court of Appeals, Russell's counsel has filed a motion to withdraw, alleging that this appeal is wholly without merit, and has filed a brief in which all adverse rulings are abstracted and discussed. Russell was notified of his right to file pro se points for reversal and has filed pro se points challenging the sufficiency of the evidence supporting his conviction. We grant counsel's motion to withdraw and affirm the conviction.

The jury trial was held on August 10, 2010. The sixty-nine-year-old victim, Jimmie Jean Miller, testified that on September 13, 2009, at 1:00 a.m., Russell knocked on her door and asked to use her telephone. Miller testified that she recognized Russell after he reminded

her that he had helped jump-start her vehicle approximately one month earlier. She let Russell into her home, and after he used the telephone, Miller stated that he sat down by her and started to rub her legs. Miller told him, "No, we can't do this. It's time for you to go." According to Miller, Russell then pushed her coffee table back and when she attempted to fight him, he took hold of her arms and hit her twice on the side of her head with his hand. Miller stated that Russell then pushed her onto the bed, choked her until she almost passed out, then raped her. She testified that he continued to rape her even though she was yelling at him that he was hurting her. Miller also stated that she kissed him on the forehead at one point and told him that she would pray for him; she testified that she meant it because she was a good Christian woman. After it was over, Miller stated that Russell went into her bathroom and cleaned himself up with a pink hand towel. She further testified that he told her that he should not have done that to her and then left.

Miller stated that she was in a lot of pain and bled for four or five days afterwards. However, she did not go to the hospital or notify the police until two days later, after she feared that it might happen to somebody else. The police collected the pink towel as evidence and convinced her to go to the emergency room, where a rape examination was performed. Miller identified Russell after being shown a photo line-up by the police, and she also identified him as the man who raped her at the trial. When questioned as to whether she had noticed tattoos or facial hair on her rapist, Miller testified that she was not sure if he had facial hair and that she did not notice any tattoos, although she stated that she had mainly looked

at his face.

Dr. Gary Sherwood, an emergency-room physician, testified that he examined Miller on September 14, 2009. According to Dr. Sherwood, Miller had vaginal abrasions and a bloody discharge that were consistent with a sexual assault. Chantelle Taylor, who was employed with the State Crime Laboratory, also testified. She stated that she performed testing on the pink hand towel and that there were hairs of Negroid origin found on the towel, although they were not suitable for DNA analysis. Also testifying for the State was Paul Michael Sapp, a friend of Miller's, who corroborated Miller's story that he had sent Russell to her home to help jump-start her vehicle one month earlier. The police detectives who worked on the case further testified that Miller immediately picked Russell out of the line-up and that Russell lived less than three hundred feet from Miller's mobile home. The detectives stated that Russell gave a voluntary statement to police denying that he knew Miller or had raped her, although he also claimed that he suffered from blackouts for several hours at a time and stated that the only way that he could have raped Miller was during one of his blackouts.

At the close of the State's case, Russell made a motion for a directed verdict, arguing that there was insufficient evidence that sexual contact occurred by forcible compulsion. The trial court denied the motion. Russell's wife, Dionne Russell, testified for the defense and stated that her husband had tattoos on his chest, arms, and back, and that they were fairly noticeable with his shirt off. Russell then renewed his motion for a directed verdict, which was again denied. After deliberations, the jury found him guilty of raping Miller and sentenced

him to ten years' imprisonment.

As counsel contends, the only rulings adverse to Russell were the denials of his motions for a directed verdict. Russell's sole pro se point on appeal also challenges the sufficiency the evidence supporting his conviction. We agree with counsel that there would be no merit to an appeal on this issue.

An appeal from the denial of a directed-verdict motion is a challenge to the sufficiency of the evidence. *Walker v. State*, 2010 Ark. App. 688. When reviewing a challenge to the sufficiency of the evidence, the appellate court will affirm the conviction if there is substantial evidence to support it, when viewed in the light most favorable to the State. *Id.* Substantial evidence is evidence that is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or another without resort to speculation or conjecture. *Id.*

According to Ark. Code Ann. § 5-14-103 (Supp. 2009), a person commits rape if he engages in sexual intercourse or deviate sexual activity with another person by forcible compulsion. Forcible compulsion is defined as a "physical force or threat, express or implied, of death or physical injury to or kidnapping of any person." Ark. Code Ann. § 5-14-101(2) (Supp. 2009). The testimony of the victim is, by itself, substantial evidence to support a conviction for rape. *Walker v. State, supra.*

In his pro se point, Russell argues that there was no DNA or other physical evidence to prove that he was the rapist, that Miller testified that she did not notice any tattoos or facial

hair on her attacker, while he has tattoos and a full goatee, and that Miller's testimony that she kissed him during the attack shows that she was not raped but instead had sex of her own free will. As the State contends, there is no merit to any of these arguments. A rape conviction does not require DNA or other physical evidence, as Miller's testimony alone was substantial evidence of Russell's guilt. However, there was also physical evidence that corroborated her testimony, such as the Negroid hairs on the hand towel and the vaginal abrasions. Although Miller did testify that she did not see any tattoos on her attacker, she also stated that she did not really look and that she only noticed his face. She further stated that she did not remember whether her attacker had any facial hair. It was within the province of the jury to weigh the credibility of the witness and to resolve any conflicts or inconsistencies in the evidence. *Tryon v. State*, 371 Ark. 25, 263 S.W.3d 475 (2007).

Also, contrary to Russell's argument that the evidence showed that Miller had volitional sex and was not raped, she testified that he struck her twice on the face, pushed her down on the bed, and choked her until she almost passed out. Miller also testified that she kept shouting at him to stop and that he was hurting her, and the medical evidence showed that she had vaginal abrasions consistent with a sexual assault. Thus, there was substantial evidence to support Russell's conviction for rape, and we affirm the conviction and grant counsel's motion to withdraw.

WYNNE and MARTIN, JJ., agree.