

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR09-505

ROUTY ABERNATHY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 28, 2009

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT
[NO. CR-2007-135G]

HONORABLE JAMES O. COX,
JUDGE

AFFIRMED

JOSEPHINE LINKER HART, Judge

A jury found appellant, Routy Abernathy, guilty of two counts of rape. On appeal, appellant challenges the sufficiency of the evidence to support the convictions. We hold that the evidence is sufficient to support the convictions. Further, appellant argues that, for three reasons, the “pedophile exception” to Rule 404(b) of the Arkansas Rules of Evidence is unconstitutional under both the state and federal constitutions. However, because appellant failed to adequately develop these constitutional challenges on appeal, we decline to address these issues.

Appellant was convicted of the two rape counts for engaging in sexual intercourse or deviate sexual activity with two victims, both of whom were less than fourteen years of age. *See* Ark. Code Ann. § 5-14-103(a)(3)(A) (Supp. 2009). In a nutshell, appellant’s challenge to the sufficiency of the evidence is premised on the conclusion that the testimony of each

victim, for a variety of reasons, was not credible. He also argues that testimony from another child about uncharged misconduct involving appellant and the child also was not credible. His arguments, however, are unavailing. It is firmly established that the credibility of a witness is a matter for the jury's consideration. *See, e.g., Rohrbach v. State*, 374 Ark. 271, 287 S.W.3d 590 (2008). Accordingly, we conclude that substantial evidence supports the convictions.

Appellant next raises three constitutional challenges to the “pedophile exception” to Rule 404(b). The Arkansas Supreme Court recognizes a “pedophile exception” to the rule where evidence of similar acts with the same or other children is allowed when it is helpful to show a proclivity for a specific act with a person or class of persons with whom the defendant has an intimate relationship. *See id.*

In his brief on appeal, appellant first argues that, in violation of the due-process clauses of both the state and federal constitutions, admitting “pedophile exception” evidence required him to defend against an uncharged offense. Second, appellant argues that, in violation of his presumption of innocence embedded in the due-process clauses of both the state and federal constitutions, admitting this evidence led jurors to assume that he had a proclivity to sexually violate minors and thus inflamed and prejudiced the jurors against him to such an extent that the jury was unable to presume his innocence. Third, appellant argues that, in violation of his right against self-incrimination embedded in the state and federal constitutions, admitting this evidence forced him to waive his right against self-incrimination and testify at trial to deny the allegations, because if he did not do so, the jurors would assume he had a proclivity to sexually

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violate minors, thus inflaming and prejudicing the jury against him and consequently eliminating the possibility of a fair and impartial trial.

Appellant does not further develop these conclusions in his brief, nor does he cite authority to support these conclusions. And it is not apparent that his conclusions are well taken. We will not reach the merits of an argument on appeal, even a constitutional argument, when an appellant presents no citation to authority or convincing argument in its support and it is not apparent without further research that the argument is well taken. *See, e.g., Williams v. State*, 371 Ark. 550, 268 S.W.3d 868 (2007). Appellate courts are not at liberty to provide legal authority or develop arguments for parties asserting issues on appeal. *Id.*

Affirmed.

PITTMAN and GLOVER, JJ., agree.