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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CR-21-403

CODY VESSEL

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 7, 2022

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[NO. 26CR-19-249]

HONORABLE RALPH C. OHM,
JUDGE

AFFIRMED

LARRY D. VAUGHT, Judge

Cody Vessel appeals his conviction by the Garland County Circuit Court of one count of rape in violation of Arkansas Code Annotated section 5-14-103 (Repl. 2013), a Class Y felony. On appeal, Vessel challenges the sufficiency of the evidence presented against him and the credibility of the victim's testimony. We affirm.

Vessel was charged with raping M.M., a minor. After Vessel waived his right to a jury trial, the Garland County Circuit Court conducted a bench trial on April 1, 2021. The evidence at the trial was as follows.

Janice Fordham, M.M.'s mother, testified that she learned on January 1, 2019, that her daughter, who was thirteen years old at the time, had sex in July 2018 with Vessel, who was then nineteen years old. She contacted law enforcement. Fordham testified that Vessel was friends with M.M.'s older sister, Denice Minton, and that Minton and Vessel had been spending time together around the time of the rape. Fordham also testified that, after July

2018, M.M. reported feeling depressed. Fordham obtained counseling for M.M., and M.M. was prescribed antidepressant medication.

Minton testified that she had a long-standing friendship with Vessel and that the two of them had lived together “on and off . . . for probably two years.” She considered him a best friend and “like [her] little brother.” Minton testified that, after M.M. disclosed the rape to her, she reported it immediately to Fordham, which conflicts with Fordham’s account of when she learned of the rape. Minton testified that, on the morning following the events at issue in this case, she woke up and saw M.M. and Vessel asleep together in bed. She also testified that she reported the incident to her mother because she “figured my mom needed to know that [M.M.] was sleeping with people, maybe she needed to be on birth control just in case a pregnancy were to happen.”

M.M. testified that she met Vessel through Minton. Vessel attended M.M.’s thirteenth birthday party at Chuck E. Cheese. M.M. testified that she and Vessel became close and texted and talked frequently. She testified that on the night of the rape, she, Minton, Vessel, and a few of Minton’s friends were at Minton’s house. She testified that they were drinking alcohol, specifically blue-raspberry vodka with Dr. Pepper. In contrast to M.M.’s testimony, Vessel and Minton both testified that M.M. was not drinking that night. However, M.M. testified that the alcohol gave her a headache and that she went to sleep. She stated that when she woke up, Vessel was having sex with her. M.M. stated that “[h]is penis was in my vagina.” She testified that she tried to push him off of her and that he got out of the bed and left the room. She stated that after the incident, Vessel quit talking to her, even though she tried to contact him multiple times. She testified that she told her sister about the incident in October and that her

sister did not tell their mother immediately. She testified that her mother did not find out until New Year's Day in 2019.

Investigator Jennifer Tonseth testified that, after Fordham reported the rape to police, Tonseth contacted Fordham and requested an interview with M.M. The Cooper-Anthony Mercy Child Advocacy Center (“CAC”) conducted the interview, at which Investigator Tonseth was present. Investigator Tonseth then met with Minton and Fordham. She testified that Minton was not cooperative.

On January 30, 2019, after many attempts to reach him by phone, Investigator Tonseth contacted Vessel at his workplace and arranged an interview that evening. In the recorded interview that followed, which was played for the court during the trial, Vessel described his communications with M.M. as romantic. He first denied and then confessed to having sex with her in July 2018. Specifically, he admitted “pulling out” of M.M. instead of using a condom. When Tonseth asked again whether he had sex, “[p]enile to vaginal sex[.]” Vessel responded, again, in the affirmative. Vessel denied that there was alcohol involved and stated that M.M. had been fully awake and alert and had consented to having sex.

The court found Vessel guilty of raping M.M. and sentenced him to twenty-five years in the Arkansas Department of Correction. This appeal followed.

On appeal, Vessel challenges the sufficiency of the evidence against him, arguing that there was insufficient evidence of penetration and that M.M.’s testimony was not credible. In reviewing a challenge to the sufficiency of the evidence, the appellate court determines whether the verdict is supported by substantial evidence. *Sharp v. State*, 2019 Ark. App. 506, at 11, 588 S.W.3d 770, 777. Evidence is substantial if it is forceful enough to compel a conclusion

without suspicion or conjecture. *Id.* at 11–12, 588 S.W.3d at 777. Evidence is viewed in the light most favorable to the verdict. *Id.* at 12, 588 S.W.3d at 777. The credibility of witnesses and the weight of evidence are matters for the trial court to determine, not the appellate court. *Id.*

On appeal, Vessel argues that the State presented insufficient evidence of penetration. The required elements to prove rape under section 5-14-103(a)(3)(A) are that (1) the person engage “in sexual intercourse or deviate sexual activity” with a (2) victim who “is less than fourteen (14) years of age.” Under Arkansas Code Annotated section 5-14-101(13) (Supp. 2021), “[s]exual intercourse’ means penetration, however slight, of the labia majora by a penis[.]”

Here, M.M. clearly testified that Vessel’s penis was in her vagina, and it is well-settled law in Arkansas that a rape victim’s testimony, standing alone, is sufficient to sustain a conviction if the testimony satisfies the statutory elements of rape. *Robrbach v. State*, 374 Ark. 271, 274, 287 S.W.3d 590, 593–94 (2008). Additionally, Vessel described “pulling out” in his interview with Tonseth, which also provides evidence of penetration. Therefore, Vessel’s challenge to the sufficiency of the evidence regarding penetration provides no basis for reversal.

Vessel also points out several inconsistencies between the testimony provided by the State’s witnesses. Specifically, he challenges the credibility of M.M.’s testimony and the weight that it should have been afforded due to these inconsistencies. As discussed above, it is well-settled law in Arkansas that the credibility of witnesses and the weight of evidence are matters

for the trial court, not issues to be determined on appeal. *Sharp*, 2019 Ark. App. 506, at 11–12, 588 S.W.3d at 777.

Affirmed.

ABRAMSON and GLADWIN, JJ., agree.

K. “Presley” Hager Turner, for appellant.

Leslie Rutledge, Att’y Gen., by: Clayton P. Orr, Ass’t Att’y Gen., for appellee.