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ARKANSAS COURT OF APPEALS
DIVISION IV
No. CR-23-588

LARINDA PATE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 5, 2024

APPEAL FROM THE HOT SPRING
COUNTY CIRCUIT COURT
[NO. 30CR-20-100]

HONORABLE STEPHEN L. SHIRRON,
JUDGE

AFFIRMED

ROBERT J. GLADWIN, Judge

Larinda Pate appeals the February 27, 2023 Hot Spring County Circuit Court sentencing order convicting her of the rape of a minor child (“MC”) and sentencing her to twenty-five years’ imprisonment. She argues that substantial evidence does not support his rape conviction. We affirm.

I. Facts and Procedural History

In September 2019, MC disclosed that Pate and MC’s father, McCauley, had repeatedly raped him one afternoon between May and June 2018. On April 17, 2020, Pate was charged by criminal information with having committed the offense of rape pursuant to Arkansas Code Annotated section 5-14-103(a)(3)(A) (Supp. 2017).

On August 18, 2022, a jury trial was conducted, which led to a mistrial. A second jury trial was held on February 23–24, 2023. During the second trial, the State called MC, then

twelve years old, who testified that when he was raped, he was eight years old and living in Malvern, Arkansas, with his mother, grandparents, and siblings. MC identified Pate in open court as the woman who had raped him with his father and that he knew her as “Binky.”

MC explained that after returning home on the day in question, he walked to his Uncle Zach’s house to check on him because he was ill, which was his usual routine. MC’s father was staying at his uncle’s house at the time. As MC walked toward his uncle’s room he was “pulled . . . into a room” by his father. Once inside, his father locked the door and blocked it with a dresser; he then threw MC onto a bed and raped him for “the first time.”

MC testified that his father then called Pate, who arrived at the house soon thereafter. Once she arrived, his father moved the dresser, unlocked the door, and let Pate into the room where he was with MC. After his father again locked the door and moved the dresser back in front of it, and Pate and his father took some needles from a dresser drawer and “did drugs” in front of him.

MC testified that Pate watched his father anally rape him. Once that ended, MC was flipped onto his back, Pate got on top of him, and McCauley forced MC to “put my thing in . . . her” “multiple” times.

MC was presented an anatomical diagram of a nude male, and when asked what he meant by “his thing,” he circled the penis depicted on the diagram. MC was also presented a diagram of a nude female, and he circled the area of the diagram that depicted a vagina after the State asked him where inside Pate’s body his penis had gone.

MC stated that he put his clothes back on after the multiple rapes and attempted to leave his uncle's house, but Pate and his father prevented him from leaving; instead, they picked him up, put him in Pate's car, and drove him to Pate's house. He testified that once there, his father again picked him up and carried him inside to Pate's bedroom where he was stripped nude. After his father raped him again, Pate once more got on top of him, and he was forced to put his penis inside of her. MC explained that his father also placed him in a bathtub, and Pate got "on top of [him] again." Pate and his father put MC back into her car, drove back to his uncle's house, and carried him back inside to his father's room. MC explained how the "same thing happened" as before, except no drugs were used this time.

MC testified that after it was over, his father told him that that he was going to slap him or hurt him if he told his mom or anyone else. Pate and McCauley let him leave, and he did not tell anyone at that time because he was too scared. He stated that he later told his "[M]imi"—his other grandmother with whom he did not live—because she was "the only person he felt safe talking to."

MC later was interviewed at a Child Advocacy Center by Stephanie Hrabal, and a significant portion of the recorded interview was played at trial during defense counsel's cross-examination of MC. The jury heard MC tell Hrabal the details of the incident. And while he admitted that some of the details he provided Hrabal at the time of the interview may have been inaccurate, MC swore that "[he] wouldn't lie about this. This is too serious to lie about."

The State's next witness was Tonya Taunton, who testified that she is MC's aunt, that she has been his legal guardian since 2019, and how he came to live with her after the incident. She described her knowledge of Pate and Pate's house; MC's parents; her younger brother; issues MC had in school following the incident; his treatments; and his counseling.

The State's third witness was Lieutenant Glen Pye with the sheriff's department who testified that he was the arresting officer who had investigated this incident after receiving a report from the Arkansas State Police Crimes Against Children Division on September 16, 2019. Lieutenant Pye testified about the logistics of the investigation and the people whom he interviewed. He acknowledged that there was no report that anyone had gone to the hospital, and there was no physical evidence of rape other than MC's statement.

The State's final witness was Stephanie Hrabal, who testified as an expert. Hrabal, who had had extensive training and participated in over four hundred forensic interviews involving minors, confirmed that she interviewed MC in 2019. Hrabal stated that MC was around the age of eight when he was interviewed and opined that it was not uncommon for minors that age to misremember "peripheral details" after having been sexually assaulted. When asked whether it was unusual for a minor not to disclose sexual assault immediately, Hrabal explained, "Absolutely not," which, she elaborated, was confirmed by many childhood-trauma studies. She testified about MC's demeanor; how the interview process works depending on the age of the child; that MC seemed to be a developmentally average eight-year-old as far as those abilities during his interview; about how he would have encoded—or stored—his memories from the interview; about how his explanation of the

events as a twelve-year-old at trial could likely be different than when the rape occurred when he was eight; that it is not unusual in cases like this for there to be delayed disclosure by a child; and about the reasons for timing and sequencing inconsistencies.

After the State rested its case, counsel for Pate moved for a directed verdict, arguing that the State did not meet its burden of proof because there was no proof of rape; and other than MC's statement, there was no evidence of any sexual intercourse or deviate sexual behavior—such as forensic or corroborating evidence—to support MC's testimony that she had raped him. The circuit court denied the motion.

The defense first called Meredith McCormack, the principal at Malvern Elementary School. She brought school records with her that established that MC was not attending Malvern Elementary School in May or June 2018; however, she explained that MC had been dropped and reenrolled many times between 2016 and 2020.

The defense next called Melinda Champion. Ms. Champion testified that she was the counselor at the Strong/Huttig School District, which is located in Strong, Arkansas. Ms. Champion testified that Strong is approximately two hours from Malvern. Ms. Champion also testified that she had reviewed MC's attendance records, and MC was attending school in Strong in May and June 2018. Records introduced as defendant's exhibit No. 2 corroborated Ms. Champion's testimony and showed that MC was attending school in Strong, approximately two hours from Malvern, on the day that he alleged he was raped.

The next witness for the defense was Joey Pate, Pate's husband of seven years. He testified that he is retired from the Garland County Sheriff's Office, where he worked for

thirty years. He denied ever seeing Pate come into the house with another man and a child, nor did he have knowledge of any of the other incidents to which MC had testified.

Pate then testified in her own defense. She denied having any sort of inappropriate relationship with MC—or any relationship with McCauley—and that she did not even know of MC until after June 2018. She explained that she met McCauley through his ex-wife, Rhonda McCauley, when the two women worked together at Long Meadow Nursing Facility in the early 2000s. She acknowledged that she provided care for McCauley in her home for about two or three weeks in October 2018 after he had broken his back in a fall from a deer stand. Pate noted that the medical care or assistance she provided to him during that time consisted of changing the bandage on his back. She claimed that MC had been at her house on two occasions and was there with his mother and grandmother playing in the swimming pool with other kids.

The defense then rested and renewed the motion for directed verdict verbatim, and the circuit court again denied the motion. After arguments from the State and Pate, the jury found her guilty of one count of rape and sentenced her to the minimum twenty-five years' imprisonment.

The sentencing order was filed on February 27, 2023. Pate filed a timely notice of appeal on March 27.

II. *Standard of Review and Applicable Law*

A motion for a directed verdict is treated as a challenge to the sufficiency of the evidence. *E.g., Bolen v. State*, 2023 Ark. App. 373, at 20, 675 S.W.3d 145, 156. We recently

reiterated our standard of review in appeals that challenge the sufficiency of the evidence in *Morrison v. State*, 2024 Ark. App. 300, at 9:

In reviewing challenges to the sufficiency of the evidence, we determine whether substantial evidence, direct or circumstantial, supports the verdict. Substantial evidence is evidence of sufficient certainty to compel a conclusion without resort to suspicion or conjecture. This determination, along with the credibility of witnesses and the weight of the evidence presented at trial, is left to the jury. It “is the function of the jury, and not the reviewing court, to evaluate [such] and to resolve any inconsistencies in the evidence.” Moreover, we view the evidence in the light most favorable to the State and consider only the evidence that supports the verdict.

(Internal citations omitted.) Even if a defendant denies the allegations, “the jury is free to disbelieve the [defendant’s] self-serving testimony and believe the victim’s testimony instead.”

Bolen, 2023 Ark. App. 373, at 21–22, 675 S.W.3d at 157.

III. Discussion

Pate argues that the jury lacked sufficient evidence to convict her of raping MC. She maintains that the State did not provide any testimony or introduce any evidence that corroborated MC’s statement. On the other hand, Pate submits that her witness, Melinda Champion, was an unbiased witness who testified with corroborating evidence that on the day MC said he was raped, he was actually attending a school in a different town. She notes that Champion, who has no interest in the outcome of this case and was subpoenaed to testify, brought school records that proved MC was actually attending school approximately two hours from Malvern on the day he alleges he was raped.

Pate notes that MC acknowledged on cross-examination that he lies a lot and that his lying about the alleged rape was around the same time he was admitted to Rivendell and

seen by Therapeutic Family Services. Regarding MC's lack of veracity, Pate recounts that MC was asked on cross-examination about what school he was attending when he was raped, and he testified that he it was in Malvern. He specifically testified that he got off the school bus in Malvern and went to his Uncle Zach's house where he was raped. But on further cross-examination, when MC was asked how he could have gotten off of the school bus and gone to his Uncle Zach's house when he was, in fact, not even attending school in Malvern during that time, MC merely again stated that when he was raped, he was in the second grade and attending school in Malvern.

The jury in Pate's second jury trial heard MC testify about a brutal assault that occurred when he was still a young child. Pate asserts that it is clear from the testimony and evidence that was presented below that the jury allowed passion and emotion to dictate its deliberations. She reiterates that she presented uncontradicted testimony and evidence that it was impossible for MC to have been assaulted at the time and place to which he testified. For this reason, she urges that the State's evidence was insufficient to support her rape conviction.

We disagree. There is no merit to Pate's argument that the State failed to present any evidence that corroborated MC's testimony that she repeatedly raped him because MC's uncorroborated testimony constitutes sufficient evidence to sustain a rape conviction if the testimony adequately specifies the acts prohibited by law. *See, e.g., Driver v. State*, 2023 Ark. 181, at 5, 678 S.W.3d 753, 758–59; *see also Langlois v. State*, 2023 Ark. App. 263, at 8–9, 666 S.W.3d 884, 889; *Bahena v. State*, 2023 Ark. App. 261, at 3, 667 S.W.3d 553, 555–56. A

minor victim who testifies that the defendant put his penis inside him or her is substantial evidence of sexual intercourse. *Driver*, 2023 Ark. 181, at 5, 678 S.W.3d at 758.

Pate was convicted of having raped MC pursuant to Arkansas Code Annotated section 5-14-103(a)(3)(A), which provides as follows: “A person commits rape if . . . she engages in sexual intercourse . . . with another person . . . [w]ho is less than fourteen (14) years of age.” It is undisputed that MC was less than fourteen years old at the time of the incident. Sexual intercourse means “penetration, however slight, of the labia majora by a penis[.]” Ark. Code Ann. § 5-14-101(12) (Supp. 2017).

We hold that the evidence presented at trial constitutes substantial evidence that Pate raped MC. At trial, then twelve-year-old MC specifically testified that he was repeatedly forced to put his penis inside Pate’s vagina while at his uncle’s house and then at her house in 2018, identifying both his penis and her vagina on anatomical figures. Although Pate denied his allegations, the jury, as it was entitled to do, disbelieved her self-serving testimony and believed MC instead. *E.g.*, *Bolen*, 2023 Ark. App. 373, at 21–22, 675 S.W.3d at 157.

Similarly, whether to believe MC’s testimony regarding his school attendance in light of the contradictory school records admitted at trial was for the jury to determine. *E.g.*, *Milton v. State*, 2023 Ark. App. 382, at 6, 675 S.W.3d 173, 177. But even if he had not been attending school in Malvern in May and June 2018, the time a crime is alleged to have occurred is not of critical significance; this is particularly true in cases of sex crimes against children. *See, e.g.*, *Kelley v. State*, 375 Ark. 483, 487, 292 S.W.3d 297, 299 (2009). Accordingly, we affirm Pate’s conviction.

Affirmed.

VIRDEN and HIXSON, JJ., agree.

Hurst Law Group, by: *Josh Q. Hurst*, for appellant.

Tim Griffin, Att’y Gen., by: *Michael Zangari*, Ass’t Att’y Gen., for appellee.