

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 28, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2016AP941

Cir. Ct. No. 2015JV8B

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN THE INTEREST OF J. F. K., A PERSON UNDER THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

J. F. K.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Shawano County:
JAMES R. HABECK, Judge. *Affirmed.*

¶1 STARK, P.J.¹ J.F.K. appeals a dispositional order adjudicating him delinquent of sexual intercourse with a child age sixteen or older, contrary to WIS. STAT. § 948.09. He argues the State presented insufficient evidence to corroborate his confession. We disagree and affirm.

BACKGROUND

¶2 Fifteen-year-old J.F.K. was referred to police by high school personnel upon suspicion that his former girlfriend, Emily,² was pregnant. During a February 2015 interview with detective Adam Hoffman, J.F.K. admitted he and Emily had dated for approximately seven months, and they had sexual intercourse twice during that time. J.F.K. confirmed Emily was seventeen years old at the time of the interview.

¶3 A delinquency petition was subsequently filed alleging J.F.K. had violated WIS. STAT. § 948.09 by having sexual intercourse with a child age sixteen or older who was not his spouse. Although Emily was subpoenaed by the State, she failed to appear at the fact-finding hearing on the petition. As a result, the only witnesses to testify at the hearing were detective Hoffman and school resource officer Scott Brown.

¶4 Detective Hoffman testified regarding the circumstances and substance of his February 2015 interview with J.F.K. The State then played a video recording of the interview for the court. After the video ended, Hoffman

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

² We refer to J.F.K.'s former girlfriend using a pseudonym.

testified that, in addition to the proceedings against J.F.K., police had also referred Emily to the district attorney's office "for charges for having sex with [J.F.K.]" When asked whether that case had been resolved, Hoffman responded, "I'm pretty sure. I looked on CCAP prior to coming here and I think she pled no contest in July of 2015." The State then introduced into evidence a certified copy of a judgment of conviction, which indicated Emily pled no contest to fourth-degree sexual assault, contrary to WIS. STAT. § 940.225(3m), on July 17, 2015.

¶5 Officer Brown testified "social services" reported to law enforcement in February 2015 that there was an allegation of sexual intercourse between J.F.K. and Emily, and Emily might be pregnant.³ After receiving that report, Brown interviewed Emily and set up an interview between Hoffman and J.F.K. Brown, who was familiar with Emily and J.F.K. from his work as a school resource officer, testified Emily was under eighteen and was not J.F.K.'s spouse.

¶6 Following Brown's testimony, the defense moved for a directed finding, arguing the State had failed to prove beyond a reasonable doubt that "there was actual intercourse between [J.F.K.] and [Emily]." The defense noted a confession alone "cannot serve as a basis for a finding that somebody has committed a crime." The defense further asserted Emily's judgment of conviction was insufficient to corroborate J.F.K.'s confession because it did not identify a victim and because the crime of conviction—fourth-degree sexual assault—required proof of nonconsensual sexual contact, rather than sexual intercourse.

³ After Brown testified that social services reported an allegation of sexual intercourse between J.F.K. and Emily, defense counsel objected on hearsay grounds. The circuit court overruled that objection, stating, "I'm not accepting it for the truth of the matter, but it does explain why the officer took steps, and it's valid for that purpose." Brown then elaborated that social services had reported there was a possibility Emily was pregnant.

The circuit court denied the defense's motion, reasoning J.F.K.'s confession established that he had sexual intercourse with Emily and that she was not his spouse, and Emily's age was established "through a combination of [Emily's judgment of conviction] and Officer Brown's investigation and his testimony which is entirely credible."

¶7 The defense then rested, without presenting any evidence. The circuit court subsequently found that the State had proved each of the elements of the charged offense beyond a reasonable doubt. With respect to J.F.K.'s confession, the court stated, "I would need to have some basis to knock out the voracity [sic] and accuracy of his statement which was recorded in order for me to not regard that as extremely strong evidence, and I have no such evidence. So I do regard it as extremely strong evidence." J.F.K. now appeals.

DISCUSSION

¶8 It is well established that a criminal conviction "will not stand on the basis of a defendant's confession alone." *State v. Bannister*, 2007 WI 86, ¶23, 302 Wis. 2d 158, 734 N.W.2d 892. Rather, the confession must be corroborated by independent evidence that the crime occurred. *See id.* Whether the State presented sufficient evidence to satisfy the corroboration rule is a question of law that we review independently. *See id.*, ¶22. However, "[b]ecause courts consider the corroboration rule after a ... verdict," when applying the rule we view the evidence "in a light most favorable to the verdict." *Id.*, ¶32.

¶9 In Wisconsin, the corroboration rule requires the State to present evidence corroborating "any significant fact" in the defendant's confession. *Id.*, ¶26. "A significant fact has been corroborated when there is confidence in ... the fact that the crime the defendant has confessed to indeed occurred." *Id.* A

significant fact need not independently establish a specific element of the crime. *Id.*, ¶27. In addition, a significant fact need not be “particular enough to independently link the defendant to the crime.” *Id.*, ¶30. Rather, a significant fact is “one that gives confidence that the crime the defendant confessed to actually occur[red].” *Id.*, ¶31.

¶10 Cases applying these principles demonstrate that the corroboration rule is not a particularly high bar. In *Bannister*, the defendant confessed to delivering morphine to a man who had died of a morphine overdose. *Id.*, ¶¶7, 11. Our supreme court concluded evidence that morphine was present in the man’s body at the time of his death was a “significant fact” that corroborated the defendant’s confession because it “[gave] confidence that he in fact gave [the victim] morphine.” *Id.*, ¶34. In *Jackson v. State*, 29 Wis. 2d 225, 138 N.W.2d 260 (1965), the court concluded the defendant’s admission to using heroin the previous day was sufficiently corroborated by fresh needle marks police observed on her arms, together with traces of opium alkaloid that were found on paraphernalia in the apartment where she was arrested. *Id.* at 229, 231-32. In *Holt v. State*, 17 Wis. 2d 468, 117 N.W.2d 626 (1962), the court held the discovery of a “charred human torso with an eight-to-nine-month gestational period” inside the defendant’s furnace was sufficient to corroborate her confession to burning her newborn baby, which was born alive. *Id.* at 471-72, 481.

¶11 In this case, the State similarly presented sufficient evidence to corroborate J.F.K.’s confession. Specifically, the State introduced a certified copy of a judgment of conviction, indicating that seventeen-year-old Emily pled no contest to fourth-degree sexual assault on July 17, 2015. The State also introduced detective Hoffman’s testimony that Emily was referred to the district attorney’s office “for charges for having sex with [J.F.K.],” and, based on Hoffman’s review

of CCAP records, he believed she pled no contest in July 2015. Taken together, and viewed in the light most favorable to the fact-finder's determination, *see Bannister*, 302 Wis. 2d 158, ¶32, the judgment of conviction and Hoffman's testimony support a reasonable inference that Emily and J.F.K. had a sexual relationship. This is a significant fact that corroborates J.F.K.'s confession, because it gives confidence that the crime J.F.K. confessed to—having sexual intercourse with Emily while she was under eighteen and not his spouse—actually occurred. *See id.*, ¶31.

¶12 J.F.K. argues Emily's judgment of conviction is insufficient to corroborate his confession because it does not list him as the victim of her offense. While that is true, detective Hoffman testified Emily was referred for charges stemming from her relationship with J.F.K., and he believed she pled no contest in that case in July 2015. Consistent with Hoffman's testimony, the judgment of conviction indicates Emily pled no contest to fourth-degree sexual assault on July 17, 2015. Hoffman's testimony therefore permits a reasonable inference that J.F.K. was the victim of the offense for which Emily was convicted, even though her judgment of conviction does not list him as the victim.⁴

¶13 J.F.K. also emphasizes that, in order for him to be adjudicated delinquent for violating WIS. STAT. § 948.09, the State needed to prove he and Emily had sexual intercourse. *See WIS JI—CRIMINAL 2138* (2009). He observes Emily's judgment of conviction shows she was convicted of fourth-degree sexual

⁴ In his reply brief, J.F.K. makes the conclusory assertion that Hoffman's testimony regarding the criminal proceedings against Emily is "even less significant factually than the Judgment of Conviction." However, J.F.K. does not develop any argument or cite any legal authority in support of this assertion. We therefore decline to consider it. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

assault—that is, sexual contact with a person without his or her consent.⁵ *See* WIS. STAT. § 940.225(3m). Because Emily’s conviction required proof of sexual contact, rather than sexual intercourse, J.F.K. argues it does not corroborate his confession to having sexual intercourse with Emily.

¶14 This argument overlooks the fact that, in order to corroborate a defendant’s confession, the State need only present evidence corroborating a “significant fact.” *Bannister*, 302 Wis. 2d 158, ¶26. A significant fact has been corroborated “when there is confidence in ... the fact that the crime the defendant has confessed to indeed occurred.” *Id.* Critically, the significant fact need not independently establish any of the elements of the charged offense. *Id.*, ¶27. Thus, contrary to J.F.K.’s assertion, the State was not required to present corroborating evidence establishing that he had *sexual intercourse* with Emily, as opposed to *sexual contact*. As discussed above, Emily’s judgment of conviction and detective Hoffman’s testimony permit a reasonable inference that Emily and J.F.K. had a sexual relationship. This is a significant fact, in that it gives confidence that the crime J.F.K. confessed to—sexual intercourse with Emily, a child over age sixteen who was not his spouse—actually occurred. *See id.*, ¶31.

¶15 Finally, J.F.K. argues the circuit court misapplied the corroboration rule when it stated, “I would need to have some basis to knock out the voracity [sic] and accuracy of [J.F.K.’s] statement ... in order for me to not regard that as extremely strong evidence, and I have no such evidence.” However, it appears the court made this comment as part of its general discussion of the weight of the

⁵ It is undisputed that, due to his age, J.F.K. could not legally consent to sexual contact or intercourse. *See State v. Joseph E.G.*, 2001 WI App 29, ¶11, 240 Wis. 2d 481, 623 N.W.2d 137.

evidence, rather than as part of its ruling on the application of the corroboration rule. Moreover, J.F.K.'s argument regarding the circuit court's comment ignores the fact that whether the State presented sufficient evidence to corroborate J.F.K.'s confession is a question of law that we review independently. *See id.*, ¶22. For the reasons explained above, we independently conclude the corroboration rule was satisfied in the instant case. Accordingly, the circuit court's alleged misapplication of the corroboration rule provides no basis for reversal.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

