

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR 08-855

JEFFERY HAYES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 25, 2009

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[NO. CR2007-1097]

HONORABLE JOHN LANGSTON,
JUDGE

AFFIRMED

COURTNEY HUDSON HENRY, Judge

A jury in Pulaski County found appellant Jeffery Hayes guilty of rape, accomplice to rape, and two counts of kidnapping. As a consequence, appellant received sentences totaling fifty years in prison. For reversal, appellant contends that none of his convictions are supported by sufficient evidence. We find no merit in appellant's arguments, and we affirm.

On the evening of January 25, 2007, B. Wright and S. Layne attended a party at Impressions, a nightclub on Asher Avenue. These two women were roommates, and they traveled together to the club in Layne's vehicle. Layne parked beside a dumpster behind Sonic, which was next to a field. Wright and Layne left the club sometime between midnight and 1:00 a.m. As they were walking to Layne's vehicle, they were accosted by four men, who were later identified as appellant, Fredrick Childs, Lazaro Pedroso, and Eddrick Childs. Neither woman knew the men and had not associated with them in the club.

Wright testified that Fredrick Childs approached her with questions about obtaining her phone number and seeing her in the future. She said Childs became angry when she rebuffed his overtures and that he pointed a gun to her head and would not allow her to enter Layne's vehicle. Fredrick Childs then forced Wright at gunpoint into the field, where Pedroso removed her underwear and held the gun, while Fredrick Childs had sexual intercourse with her and also forced her to perform oral sex. Wright said that two men, appellant and Eddrick Childs, were at the vehicle with Layne as Wright was being taken to the field.

According to Layne, appellant approached her with a gun, led her to the field, and made her perform oral sex. Afterwards, Layne and appellant returned to Layne's vehicle, where he forced her to engage in oral sex again. Layne said that she could see Wright in the field and asked appellant what was happening to her, to which appellant replied that everything would be "fine."

Wright and Fredrick Childs subsequently returned to Layne's vehicle. Appellant drove Layne's vehicle, while Wright and Layne occupied the back seat with Fredrick Childs. Wright testified that Childs required her to perform oral sex as they traveled. Layne testified that she managed to call her boyfriend on her cell phone during the car ride but that Childs took the phone away from her when it made a noise. The four arrived at a one-bedroom apartment, where they were joined by Pedroso and Eddrick Childs.

Appellant and Fredrick Childs took Wright and Layne into the bedroom. Wright testified that Childs had sexual intercourse with her on the bedroom floor and again made her perform oral sex. Layne said that appellant made her remove her clothing and that he had

sexual intercourse with her at least three times on the bed. Layne said that Eddrick Childs exchanged places with appellant and that Eddrick Childs also had sexual intercourse with her. Wright testified that Eddrick Childs had intercourse with her as well.

Wright and Layne testified that the men began arguing and that appellant discharged a gun inside the apartment. In the confusion, Pedroso led Wright and Layne outside and into a white vehicle, and Eddrick Childs entered the vehicle with them. Wright heard more shots fired as Pedroso drove away. Pedroso deposited Wright and Layne at a gas station, and they called the police. Wright and Layne both insisted that appellant did nothing to extricate them from the situation, and both claimed that he actively participated in the events that evening.

Detective John Elizandro received a dispatch at 2:11 a.m. reporting shots fired at the Willow Springs Apartments on Geyer Springs Road. When he arrived, he saw appellant in the parking lot armed with a pistol and yelling at a white vehicle that was fleeing the scene. Appellant fled when Officer Elizandro ordered him to stop, but Officer Elizandro captured appellant after a brief foot chase. Appellant told the officer that he had wrestled the gun away from a man who tried to shoot him. Officer Elizandro further testified that appellant suddenly remarked, "Okay, I admit I had sex with her."

Detective Stuart Sullivan interviewed appellant on January 31, 2007, at appellant's request, and appellant gave an exculpatory explanation of his involvement in the episode. Detective Sullivan also testified as to the DNA results of the rape kits taken from Wright and Layne. DNA recovered from Wright matched that of Fredrick Childs. DNA recovered from Layne was contributed by an unknown subject. Detective Sullivan commented that the police had not yet apprehended Eddrick Childs.

Marqus Murphy, Layne's boyfriend, testified that he received a call from Layne on the night in question. He said that Layne was scared and told him that she loved him. Later, Murphy received a call from a man on Layne's phone, and he testified that the male referred to Layne in a derogatory manner, stated that he had her, and asked, "Do you want her back?"

Appellant's testimony differed substantially from that of Wright and Lane. Appellant testified that he was drunk that night. When he came out of the club, he saw Layne crying by her vehicle. She told him that some men were doing something to her friend. Appellant saw that the men were his friends, and he told her that she did not have anything to worry about because he was not like them. Appellant said that he tried to persuade Layne to leave but that she would not leave without Wright. When Fredrick Childs and Wright came back to the car, appellant said that Fredrick Childs pointed the gun at him and forced him to drive Layne's vehicle to the apartment.

Appellant testified that he and Layne exited the vehicle when they arrived at the apartment, while Wright and Fredrick Childs stayed in the vehicle. Appellant said that he once again urged Layne to leave but that Layne chose to follow him inside the apartment. Appellant testified that Layne began kissing him and that they ended up in the bedroom. He said that Layne pulled his pants down and performed oral sex. Appellant testified that at no time did he try or want to have sexual relations with Layne. He stated that Layne pulled him on top of her when Fredrick Childs and Wright entered the room, but he said that he was not physically capable of having sex with her. He witnessed Fredrick Childs rape Wright in the bedroom. Appellant said that when Eddrick Childs and Pedroso entered the bedroom, Eddrick Childs threw him off of Layne and then had sex with her.

Appellant said that, at this point, he could no longer maintain his composure and that he started arguing with the other men. Appellant said that he left the apartment but that his “conscience hit him,” so he went back inside the apartment, grabbed the gun, and fired shots in order to rescue the women. Appellant said that the women entered the car with Pedroso and Eddrick and that he fired shots at the vehicle to keep them from driving away with the women.

In this appeal, appellant contends that none of his convictions are supported by the evidence. When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State and consider only the evidence that supports the verdict. *Terry v. State*, 371 Ark. 50, 263 S.W.3d 528 (2007). We affirm a judgment of conviction if substantial evidence exists to support it. *Gaye v. State*, 368 Ark. 39, 243 S.W.3d 275 (2006). Substantial evidence is evidence that is forceful enough to compel a conclusion one way or the other beyond speculation or conjecture. *Flowers v. State*, 373 Ark. 127, ___ S.W.3d ___ (2008).

Rape of Layne

Appellant argues that the evidence is not sufficient to support the jury’s finding that he raped Layne. Appellant contends that the evidence is insufficient because there were inconsistencies between the statements Layne gave to the police and her testimony at trial and because DNA evidence excluded him as a donor.

A person commits the offense of rape if he or she engages in sexual intercourse or deviate sexual activity with another person by forcible compulsion. Ark. Code Ann. § 5-14-103(a)(1) (Supp. 2007). “Sexual intercourse” means the penetration, however slight, of the

labia majora by a penis. Ark. Code Ann. § 5-14-101(10) (Repl. 1996). “Deviate sexual activity” means any act of sexual gratification involving the penetration, however slight, of the anus or mouth of a person by the penis of another person. Ark. Code Ann. § 5-14-101(1)(A).

It is well established that the uncorroborated testimony of a rape victim alone is sufficient evidence to support a conviction. *Ward v. State*, 370 Ark. 398, 260 S.W.3d 292 (2007). Moreover, inconsistencies in a rape victim’s testimony are matters of credibility that are left for the jury to resolve. *Id.* Here, Layne testified that appellant forced her to perform oral sex upon him. This act constitutes rape in the form of deviate sexual activity, and thus Layne’s testimony in this regard is sufficient to support appellant’s conviction for raping her. Because this evidence alone is sufficient to support appellant’s conviction, we need not discuss in detail the evidence of rape by sexual intercourse, except to say that Layne’s unequivocal testimony describing sexual intercourse by forcible compulsion constitutes substantial evidence of rape.

Accomplice to the Rape of Wright

Appellant contends that there is no evidence suggesting that he willingly aided the others in raping Wright. He also argues that the evidence shows that he fired shots in the apartment in an effort to help both women escape.

An accomplice is one who directly participates in the commission of an offense or who, with the purpose of promoting or facilitating the commission of an offense, aids, agrees to aid, or attempts to aid the other person in planning or committing the offense. Ark. Code Ann. § 5-2-403(a)(1)-(2) (Repl. 2006). There is no distinction between principals on the one

hand and accomplices on the other, insofar as criminal liability is concerned. *Tillman v. State*, 364 Ark. 143, 217 S.W.3d 773 (2005). When two or more persons assist one another in the commission of a crime, each is an accomplice and criminally liable for the conduct of both. *Id.* The relevant factors in determining the connection of an accomplice to a crime are the presence of the accused in the proximity of the crime, the opportunity to commit the crime, and an association with a person involved in the crime in a manner suggestive of joint participation. *Pack v. State*, 373 Ark. 127, ___ S.W.3d ___ (2008).

In the case at bar, the evidence shows a simultaneous sequence of events in the parking lot of the club, during which appellant approached and raped Layne, while Fredrick Childs approached and raped Wright. Appellant and Fredrick Childs then took the women to an apartment where, in the same room and at the same time, appellant raped Layne, while Fredrick Childs raped Wright. Appellant also stood alongside when Eddrick Childs ravaged the women. The evidence indeed reveals a concert of action among the men and shows that appellant was an active participant in the entire criminal episode. We cannot say that substantial evidence does not support appellant's conviction as an accomplice to the rape of Wright.

Kidnapping of Wright and Layne

Appellant contends that the evidence is not sufficient to support the kidnapping convictions based on his testimony that Childs forced him at gunpoint to drive Layne's car from the club to the apartment. Appellant also relies on his testimony that he created a diversion in order to free the women from captivity.

As pertinent here, a person commits the offense of kidnapping if, without consent, the person restrains another person so as to interfere substantially with the other person's liberty with the purpose of engaging in sexual intercourse, deviate sexual activity, or sexual contact with another person. Ark. Code Ann. § 5-11-102(a)(5) (Repl. 2006).

We observe that the jury was the sole arbiter of assessing credibility, and the jury was not required to believe appellant's testimony, as he was the person most interested in the outcome of trial. *See Brown v. State*, 100 Ark. App. 172, 265 S.W.3d 772 (2007). Here, the jury obviously rejected appellant's testimony and accepted the women's testimony that appellant was not threatened by Fredrick Childs, that appellant was a willing participant, and that it was Pedroso, not appellant, who helped them escape. For these reasons, we conclude that substantial evidence also supports appellant's kidnapping convictions.

Affirmed.

HART and GLOVER, JJ., agree.