Cite as 2012 Ark. App. 651

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR 12-223

Opinion Delivered November 14, 2012

QUINTON DEWAYNE HARRIS
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

APPEAL FROM THE ARKANSAS COUNTY CIRCUIT COURT, SOUTHERN DISTRICT, [NO. CR-10-35]

HONORABLE DAVID G. HENRY, JUDGE

AFFIRMED

JOHN B. ROBBINS, Judge

Quinton Dewayne Harris was convicted of raping his aunt, Evelyn Dean Watson, and of committing first-degree terroristic threatening against her. Appellant was tried before a jury in Arkansas County Circuit Court, and he was sentenced to sixty and fifteen years of imprisonment, respectively. Harris argues on appeal that (1) there is insufficient evidence upon which to sustain convictions for either charge, and (2) the trial court erred in permitting the State to amend the criminal information on the day of trial. We hold that there is no valid basis upon which to reverse the convictions. We, therefore, affirm.

The means to challenge the sufficiency of the evidence is by a motion for directed verdict. *Sales v. State*, 374 Ark. 222, 289 S.W.3d 423 (2008). Failure to present a specific argument in a directed-verdict motion will constitute a failure to abide by Arkansas Rule of Criminal Procedure 33.1, resulting in a failure to preserve the issue for appellate review. *Robelo v. State*, 2012 Ark. App. 425, 421 S.W.3d 329. A general motion merely asserting that

the State failed to prove its case is inadequate to preserve the sufficiency of the evidence argument for appellate review. *Rounsaville v. State*, 2009 Ark. 479, 346 S.W.3d 289.

If a specific directed-verdict motion is made, then our review requires us to determine whether the jury's verdict is supported by substantial evidence. *Williams v. State*, 2011 Ark. App. 675, 386 S.W.3d 609. Substantial evidence is evidence of sufficient force and character that it will with reasonable certainty compel a conclusion one way or another; it must force the mind to pass beyond speculation or conjecture. *Id.* In our review, we consider the evidence in the light most favorable to the State and only consider the evidence that supports the jury's verdict. *Id.* Credibility of witnesses is a matter for the jury, not this court on appeal. *Williams v. State*, 363 Ark. 395, 214 S.W.3d 829 (2005). The finder of fact may believe all or part of any witness's testimony and may resolve issues of conflicting or inconsistent evidence. *Brown v. State*, 374 Ark. 341, 288 S.W.3d 226 (2008); *Phillips v. State*, 344 Ark. 453, 40 S.W.3d 778 (2001). A victim's uncorroborated testimony can alone constitute substantial evidence of guilt if it meets all the statutory elements. *Brown*, *supra*; *Gatlin v. State*, 320 Ark. 120, 895 S.W.2d 526 (1995). After a jury has given a witness's testimony full credence, we will not disregard it unless the testimony is inherently improbable, physically impossible, or so clearly unbelievable that reasonable minds could not differ thereon. *Wyles v. State*, 368 Ark. 646, 249 S.W.3d 782 (2007).

Appellant first contends that the alleged victim, Ms. Watson, was not credible where her testimony conflicted with the other evidence, which he contends requires reversal of his rape conviction. Considering the evidence at trial under the proper standards, we hold that

there was substantial evidence to support the conviction for rape.

The State called Ms. Watson to the stand, where she testified that on March 29, 2010, she was at a friend's home in DeWitt, Arkansas, drinking beer over the course of several hours. She stated that as evening approached, she called her nephew (appellant) to come pick her up to drive her home. Watson, a woman in her fifties, testified that appellant was about forty years old, and they lived near each other on Jim E. Loop in Tichnor, Arkansas. She said that on this night, when they arrived at her house, he followed her inside, hit her on the head, and rendered her unconscious. She stated that when she awoke, her colostomy bag and adult diaper had been removed, and appellant was engaging in sexual intercourse with her. She said she told appellant to quit and leave her alone, but he continued until he ejaculated. Watson testified that appellant warned her that if she told anyone, he would kill her. She said she was afraid of his threat, which was why she did not report the rape to the authorities for about three weeks.

The State also presented the testimony of appellant's nephew, Carlton Cole, who testified that appellant admitted to him that he used drugs with Watson and had sexual intercourse with Watson. Cole expressed anger for appellant having done that to their aunt, and his written statement that he gave to the police was entered into evidence. Ryan Heiden, an inmate who was in the county detention facility with appellant for several months, testified that appellant admitted to him that he raped Watson while she was "passed out" from drinking, and that he had done this several times before, but this time she awoke. Heiden said that appellant also admitted to threatening Watson that he would kill her if she told anyone.

Appellant told him that he used crack cocaine with his aunt and had shorted her on a crack-cocaine deal. Heiden's written statement to police was admitted into evidence.

Appellant's mother and sister testified that Watson was a heavy drinker whose personality and memory changed when she was under the influence. Appellant's mother confirmed that Watson called for appellant to come get her at around 7:30 or 8:00 p.m., which she discouraged him from doing because she knew Watson was intoxicated. Appellant's mother said she observed appellant asleep in his bed at her home at approximately midnight. She testified that Watson told her the next day that appellant had taken something from her, but that she would take care of it herself and would "pay him back."

Appellant's argument focuses on whether Ms. Watson was a believable witness, but this is a function left to the jury as the fact-finder. A rape victim's uncorroborated testimony is sufficient and substantial to support a conviction if it meets with all elements of the offense. *Clayton v. State*, 2012 Ark. App. 199. We hold that there is sufficient evidence to support appellant's conviction for rape.

Appellant next contends that because there is insufficient evidence to support a conviction for rape, the same holds true for terroristic threatening. This is, in essence, a similar attack on Ms. Watson's credibility. Appellant's directed-verdict motion was too general to preserve this issue for appellate review. His attorney asserted only that "there was not sufficient evidence upon which to base a prima facie case, much less sufficient evidence upon which to base a finding of guilty." This will not suffice. *See Rounsaville v. State*, *supra*. Even so, the jury had before it Watson's testimony that appellant threatened to kill her if she

reported the rape, and that she was scared to report the crime due to this threat. A conditional threat to cause the death of a person is terroristic threatening within the meaning of the applicable statute, Ark. Code Ann. § 5-13-301(a) (Repl. 2006). *See Walker v. State*, 13 Ark. App. 124, 680 S.W.2d 915 (1984).

Lastly, appellant argues that the trial court erred in permitting the State to amend the criminal information the day of trial, which commenced on August 4, 2011. The State had originally charged appellant in May 2010 with rape, battery, burglary, and terroristic threatening, although it ultimately dropped the battery and burglary charges. The State's information alleged that appellant raped Ms. Watson by forcible compulsion. It sought to amend the charge to add that the rape could alternatively have been committed while the victim was physically helpless. Appellant's attorney argued that the State informed him of this the previous day and that it should be required to choose under which theory to proceed or not be allowed to amend because it changed the nature of his defense. The State responded that the evidence showed that Watson was unconscious immediately before she became aware of and resistant to appellant having intercourse with her, which supported a forcible-compulsion or physically-helpless theory. The trial court allowed the amendment. Appellant argues that this requires reversal. We disagree.

The State is entitled to amend the information at any time before the case is submitted to the jury, provided that the amendment does not change the nature or degree of the criminal charge. *Hill v. State*, 370 Ark. 102, 257 S.W.3d 534 (2007); Ark. Code Ann. § 16-85-407 (Repl. 2005). An amendment does not change the nature or degree of the criminal

offense when it addresses only the manner of the alleged commission of the crime. *Green v. State*, 2012 Ark. 19, 386 S.W.3d 413; *Wood v. State*, 287 Ark. 203, 697 S.W.2d 884 (1985). A defendant must also show that the amendment resulted in prejudice through unfair surprise. *Walker v. State*, 2012 Ark. App. 61, 389 S.W.3d 10. Prejudice is not shown where a defendant fails to move for a continuance or fails to claim surprise after he is put on notice that the State plans to amend the information. *Hill v. State*, 370 Ark. 102, 257 S.W.3d 534 (2007); *Hoover v. State*, 353 Ark. 424, 108 S.W.3d 618 (2003).

Appellant did not move for a continuance, nor did he claim surprise. Rather, he claimed that the State should have to choose so that his defense could be tailored to a single theory. This does not establish error under Arkansas law on amending a criminal information. *Hill*, *supra*; *Hoover*, *supra*.

We affirm appellant's convictions for rape and first-degree terroristic threatening.

GLADWIN and HOOFMAN, JJ., agree.

Alvin Schay, for appellant.

Dustin McDaniel, Att'y Gen., by: *Jake Jones*, Ass't Att'y Gen., for appellee.