

ARKANSAS COURT OF APPEALS

DIVISION I

No. CA09-925

R.W., a Minor

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered March 3, 2010

APPEAL FROM THE CRAIGHEAD
COUNTY CIRCUIT COURT
[NO. JV-08-403]

HONORABLE BARBARA HALSEY,
JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

R.W. was adjudicated delinquent pursuant to the juvenile court's finding that he committed the criminal offense of misdemeanor theft by receiving. His probation on a prior adjudication offense was revoked following the adjudication. Appellant argues on appeal that the trial court erred by denying his motion for directed verdict and by subsequently revoking his probation. We affirm.

Appellant was initially placed on probation after being adjudicated delinquent for residential burglary and theft on November 18, 2008. The State filed a petition to have appellant adjudicated delinquent on a new charge and a petition to revoke appellant's probation on May 18, 2009. A hearing took place on June 3, 2009.

George Johnson testified that he was the county environmental officer and that he supervises juveniles participating in public service work. Johnson stated that he was supervising appellant on or about May 16, 2009, when he received a call from dispatch that “some juveniles had stolen some condoms and an energy drink at break.” Johnson said that a search was performed and some condoms were found on another juvenile who admitted taking the condoms. Condoms were also found on other juveniles; however, no condoms were found on appellant. According to Johnson, the other juveniles implicated appellant in the theft. Johnson stated that seven condoms were subsequently found under the van.

Aaron Bellinger testified that he was performing public service with appellant on May 16, 2009. According to Bellinger, they went into Hilltop Store, and appellant asked if there were any condoms. Bellinger stated that appellant picked the condoms up, placed them in his shoes, and did not pay for them. Bellinger also admitted to stealing condoms from the store. Bellinger further stated that appellant placed the condoms under the van when they were being searched.

On cross-examination, Bellinger stated that it was appellant’s idea to steal the condoms. He said “appellant put the condoms under the van because they were checking him.”

At the conclusion of the State’s case, appellant made the following motion for a directed verdict:

At this time the Appellant moves for a directed verdict on theft by receiving. The statute says that they had to have known or should have known that the merchandise was stolen. The evidence presented here is contradictory to that. . . .

. . . .

The statute on theft by receiving specially states that he had it in his possession and knew or should have known it was stolen. That is not what is presented here today. As far as the directed verdict, there has to be corroborating evidence. There is nothing but the testimony of a co-defendant. There has to be something else that corroborates this because testimony by a co-defendant alone is not sufficient to sustain a conviction.

The court denied the motion. At the close of trial, appellant renewed his motion for directed verdict based on the previously stated grounds. The motion was again denied by the circuit court, which found the allegation of theft by receiving to be true. The court subsequently revoked appellant's probation. Appellant filed a timely notice of appeal.

The standard of review for sufficiency of the evidence in a juvenile proceeding is the same as in a criminal case. *Pack v. State*, 73 Ark. App. 123, 41 S.W.3d 409 (2001). In reviewing a juvenile-delinquency case, we look at the record in the light most favorable to the State to determine whether there is substantial evidence to support the conviction. *J.R. v. State*, 73 Ark. App. 194, 40 S.W.3d 342 (2001). Substantial evidence is evidence of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without mere speculation or conjecture. *Id.* In determining whether there is substantial evidence, we only consider that evidence tending to support the verdict, and we do not weigh the evidence presented at trial, as that is the responsibility of the finder of fact. *Pack, supra*.

Pursuant to Arkansas Code Annotated section 5-36-106(a) (Repl. 2006), a person commits the offense of theft by receiving if he or she receives, retains, or disposes of stolen property of another person knowing that the property was stolen or having good reason to

believe the property was stolen. The offense is a misdemeanor if the value of the property is less than \$500. Ark. Code Ann. § 5-36-106(e)(3).

In the instant case, Bellinger testified that appellant stole condoms from the store and then placed them under the van to prevent detection. Appellant contends on appeal that the store owner did not testify that the condoms were stolen, that there was no evidence to show the value of the condoms, and that nothing placed appellant in possession or in constructive possession of the condoms. Appellant attempts to raise these argument for the first time on appeal. We will not consider issues raised for the first time on appeal, even constitutional ones, because the trial court never had the opportunity to rule on them. *Rye v. State*, 2009 Ark. App. 839, 373 S.W.3d 354. Appellant also argues that there was no evidence presented that he knew or should have known that the condoms were stolen. Bellinger testified that he and appellant stole the condoms from the store. Therefore, appellant knew or should have known that the condoms were stolen.

Appellant further argues that Bellinger's testimony had to be corroborated. Arkansas Code Annotated section 16-89-111(e)(1) (Repl. 2005) states in pertinent part:

(A) A conviction or an adjudication of delinquency cannot be had in any case of *felony* upon the testimony of an accomplice, including in the juvenile division of circuit court, unless corroborated by other evidence tending to connect the defendant or the juvenile with the commission of the offense.

(B) The corroboration is not sufficient if it merely shows that the offense was committed and the circumstances thereof.

(Emphasis added.)

Appellant was charged with a misdemeanor; therefore, Bellinger's testimony did not have to be corroborated. In light of the evidence and the arguments on appeal, we affirm appellant's adjudication of delinquency.

As his second point, appellant argues that the trial court erred by revoking his probation. The Arkansas Juvenile Code and its provisions apply to proceedings in the juvenile court. *K.M. v. State*, 335 Ark. 85, 983 S.W.2d 93 (1998). Specifically, Arkansas Code Annotated section 9-27-339 (Repl. 2008) governs issues of probation revocation in juvenile court. *Bailey v. State*, 348 Ark. 524, 74 S.W.3d 622 (2002). A revocation hearing is held once the State files a petition seeking to revoke a juvenile's probation. See Ark. Code Ann. § 9-27-339(d). In juvenile-revocation cases, the trial court must find by a preponderance of the evidence that the juvenile violated the terms and conditions of probation. Ark. Code Ann. § 9-27-339(e).

On appeal, the trial court's findings will be upheld unless they are clearly against the preponderance of the evidence. *Peterson v. State*, 81 Ark. App. 226, 100 S.W.3d 66 (2003). Because the burdens are different, evidence that is insufficient for a criminal conviction may be sufficient for a probation revocation. *Williams v. State*, 351 Ark. 229, 91 S.W.3d 68 (2002). Because the determination of a preponderance of the evidence turns on questions of credibility and the weight to be given testimony, we defer to the trial judge's superior position to determine those matters. *Jones v. State*, 355 Ark. 630, 144 S.W.3d 254 (2004).

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Appellant was required to obey all state, federal, and municipal laws as a condition of his probation. Having already determined that substantial evidence supports the court's decision to adjudicate appellant delinquent, we affirm the court's revocation.

Affirmed.

HART and GLADWIN, JJ., agree.