

ARKANSAS COURT OF APPEALS

DIVISION III

No. CACR10-847

KELLY DON REEVES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered APRIL 6, 2011

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
FORT SMITH DISTRICT
[NO. CR-91-874]

HONORABLE STEPHEN TABOR,
JUDGE

AFFIRMED

CLIFF HOOFFMAN, Judge

Appellant Kelly Reeves appeals the revocation of his suspended imposition of sentence (SIS) for committing the offense of rape, for which the trial court sentenced him to six years, three months, and twenty-eight days in the Arkansas Department of Correction. On appeal, Reeves argues that the State failed to prove by a preponderance of the evidence that he violated the terms and conditions of his SIS.

On January 29, 1992, Reeves pled guilty to rape and was sentenced to forty years' imprisonment, with an additional ten years' SIS. On February 17, 2010, the State filed a petition to revoke Reeves's SIS for committing a new offense of rape. A hearing on the petition was held on May 12, 2010. The State presented the testimony of H.R., the fifteen-year-old victim, who was Reeves's stepdaughter. H.R. testified that on the night of

December 31, 2009, her mother and Reeves had to pick her up after she had been drinking. She was disciplined by Reeves, who gave her “swats” on her behind, and she was made to do household chores as part of her punishment. She denied, however, that she was angry or that she cursed at her family, as they claimed.

The next day, on January 1, 2010, H.R. testified that she and Reeves were driving home from a smoke shop when Reeves pulled the car into a car wash and told her to pull her shirt up and her pants down. H.R. complied because she was afraid Reeves would spank her again. She testified that Reeves did not touch her at that time but only looked at her. Later that evening, H.R. stated that she and Reeves were straightening up the attic, where H.R.’s bedroom was located, when he told H.R. to take her clothes off and threatened to hit her with the belt. H.R. testified that she did not want to get hurt, so she took her clothes off, and that Reeves then proceeded to touch her breasts and insert his fingers into her vagina. When Reeves asked her to perform oral sex on him, H.R. refused. She stated that he continued to touch her for a few more minutes, until her boyfriend started texting her on the phone, and that Reeves then stopped, going back downstairs. H.R. stated that her mother, her sister, her brother, and a friend of her mother’s were all downstairs at the time, watching television. H.R. testified that she called the police as soon as Reeves left the attic, .

H.R. testified that when the police arrived a short time later, Reeves ran partially up the ladder leading into her room and was “frantic,” asking her not to tell the police what he did because he would go back to jail. She stated that she was crying and upset, and that the

police made Reeves go back downstairs. H.R. testified that she then went downstairs and told the police what had happened.

Corporal Rick Ellison with the Fort Smith Police Department testified that when he arrived at Reeves's residence, Reeves met him outside in the yard. When Ellison told Reeves that H.R. had called the police and that he needed to speak with her, Reeves walked straight into the house, climbed halfway up the ladder into the attic, and was speaking to someone, although Ellison could not hear what was said. Ellison told Reeves and H.R. to come downstairs. According to Ellison, H.R. was crying and "visibly shaken." Ellison testified that H.R. proceeded to tell him what had happened and that when her mother overheard, she came into the room and called H.R. a liar. Ellison further testified that Reeves denied any inappropriate activity with H.R.

Officer Troy Williams testified that he also responded to the scene and that after he transported Reeves to the police station, Reeves asked to use the restroom. When Williams checked on Reeves, he noticed him washing his hands "feverishly" and stated that he had "never seen someone wash their hands so thoroughly," almost like Reeves was "scrubbing in for surgery." Williams testified that Reeves denied ever touching H.R. and that Reeves told him that she was mad at Reeves and that she was just getting back at him for spanking her.

H.R.'s mother, Shelly Reeves, who is Reeves's wife, testified that H.R. was angry at her and Reeves for disciplining her because she had been drinking. Shelly Reeves stated that H.R. had told everyone in the house to "fuck off and die" and that she would get even with

them. On January 1, 2010, Shelly Reeves testified that they were putting away Christmas decorations in the attic and that she heard Reeves and H.R. moving boxes around while she was in the living room. Shelly Reeves further testified that she heard H.R. laughing and that she never heard anything alarming. She stated that Reeves was only up in the attic for approximately ten to fifteen minutes.

J.R., H.R.'s brother, and K. W., who lived with the family and considered Reeves and Shelly Reeves to be her adoptive parents, also testified that they heard H.R. tell everyone to "fuck off and die" the night she came home after drinking. Both witnesses stated that H.R. and Reeves were putting away boxes of decorations in the attic on January 1, that they only heard talking and laughter, and that they did not hear anything alarming. When the police arrived, J.R. and K.W. testified that they all thought H.R. was in trouble for her actions the night before and that, while they were sitting on the couch in the living room, they both heard Reeves tell H.R. when he climbed up the ladder not to tell the police anything to incriminate herself.

After hearing the evidence, the trial court concluded that H.R.'s testimony was more credible than the testimony of Reeves's witnesses. The trial court noted that portions of the testimony of his witnesses were "almost word for word and were given unsolicited to the questions asked by either counsel." In addition, the trial court found that Ellison's testimony that he was unable to hear what Reeves said to H.R. while standing on the ladder into her room was more credible than that of J.R. and K.W., who were farther away from Reeves at the time. The trial court found by a preponderance of the evidence that Reeves had

committed the offense of rape and revoked his SIS, sentencing him to six years, three months, and twenty-eight days' imprisonment.

On appeal, Reeves argues that the State failed to show that he violated the terms and conditions of his suspended sentence by a preponderance of the evidence. In order to revoke a suspended imposition of sentence, the burden is on the State to prove a violation of a condition of the suspended sentence by a preponderance of the evidence. *Bradley v. State*, 347 Ark. 518, 65 S.W.3d 874 (2002). On appeal, the trial court's findings will be upheld unless they are clearly against the preponderance of the evidence. *Id.* Because the burdens are different, evidence that is insufficient for a criminal conviction may be sufficient for a revocation of a suspended sentence. *Id.*

Reeves contends that the trial court arbitrarily disregarded the testimony of his witnesses, Shelly Reeves, J.R., and K.W., showing that H.R. lied about what happened and that the trial court erred in choosing to give more credibility to H.R.'s testimony. However, the trial court did not arbitrarily disregard the testimony that H.R.'s allegations were untruthful; instead, the trial court carefully considered all of the evidence, including that from Reeves's witnesses. In its findings at the conclusion of the hearing, the trial court noted that all of Reeves's witnesses testimonies were almost "word for word" identical and sounded "rehearsed." In addition, both J.R. and K.W. testified that they could hear what Reeves said to H.R. after the police had arrived, even though they were in the living room; however, Ellison testified that he could not make out what was said, and he was closer to Reeves at that

time. The trial court thus found Ellison's and H.R.'s testimonies to be more credible than that of Reeves's witnesses. The trial court in this case properly weighed the evidence and made credibility determinations. Because a determination of the preponderance of the evidence turns heavily on questions of credibility and weight to be given the testimony, we defer to the trial court's superior position in this regard. *Id.*

Reeves also argues that H.R.'s testimony was uncorroborated and that neither physical evidence nor witnesses supported her allegations of rape. This argument is without merit, as it is well settled that a victim's uncorroborated testimony is sufficient to support a criminal conviction, even with its higher burden of proof. *Davis v. State*, 330 Ark. 501, 956 S.W.2d 163 (1997); *Johnson v. State*, 71 Ark. App. 58, 25 S.W.3d 445 (2000). In addition, circumstantial evidence may be sufficient to warrant revocation. *Lamb v. State*, 74 Ark. App. 245, 45 S.W.3d 869 (2001). In this case, Ellison's testimony that H.R. was crying and visibly shaken, Williams's observation of Reeves's strange behavior in obsessively washing his hands, as well as H.R.'s testimony describing the rape, is sufficient to establish by a preponderance of the evidence that Reeves violated the terms and conditions of his SIS. We affirm.

Affirmed.

HART and ROBBINS, JJ., agree.