

Cite as 2022 Ark. App. 391
ARKANSAS COURT OF APPEALS

DIVISION III
No. CR-22-12

JOSEPH BAKER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 5, 2022

APPEAL FROM THE MILLER
COUNTY CIRCUIT COURT
[NO. 46CR-19-497]

HONORABLE CARLTON D.
JONES, JUDGE

AFFIRMED

LARRY D. VAUGHT, Judge

Joseph Baker appeals the sentencing order entered by a Miller County Circuit Court following his conviction for one count of rape in violation of Arkansas Code Annotated section 5-14-103 (Repl. 2013), a Class Y felony. On appeal, he challenges the sufficiency of the evidence supporting his conviction. We affirm.

At trial, the victim, C.H., testified that he is the younger cousin of Joseph Baker, who is the appellant in this case, and Joshua Baker, who was also tried for rape alongside Joseph and is the appellant in the companion case of *Baker v. State*, 2022 Ark App. 392, 654 S.W.3d 351.¹ C.H. stated that the appellants bullied him for much of his life, and when he was between the ages of approximately twelve and fifteen, they forced him to engage in sexual activities

¹While Joseph and Joshua have appealed separately, they were tried together and were represented by the same counsel at trial and on appeal. They made joint motions at the trial and have raised the same arguments on appeal. For simplicity, they are referred to herein jointly as “the appellants.”

against his will on at least four occasions. He testified about two specific instances of sexual penetration by each defendant. C.H. testified that Joseph made him perform oral sex on more than one occasion and stated that Joseph had forced him to engage in anal sex. C.H. said that he did not tell law enforcement about the anal sex when he made his statement to police.

At various points during his testimony, C.H. provided inconsistent statements. He also claimed that someone else had put allegations into the police report that he had not made, but he later admitted that the allegations were in his handwriting. He also stated that Joseph never had anal sex with him. C.H. testified that his relationship with the rest of his family had suffered since he made the allegations.

C.H. testified that he was fifteen years old when Joseph Baker stopped forcing him to engage in sex acts. When C.H. was around seventeen years old, in the eleventh grade, he began dating M.P. He disclosed the sexual abuse to her. She encouraged him to tell his mother. He then disclosed the abuse to his mother and to law enforcement.

Several witnesses testified at trial about a family fight that had occurred the day before C.H. disclosed the abuse to his mother. According to witnesses, the fight stemmed from C.H.'s mother telling him to break up with M.P. Witnesses observed that C.H. was extremely upset and angry. He denied the allegation that he had asked to go live with the appellants' parents immediately after the fight, denied cursing at his mother and grandmother, and denied that the argument was about his mother telling him he could no longer date M.P. He also denied the appellants' contention that he made the allegations of sexual assault as a way to reconcile with his mother after the argument.

M.P. testified that she dated C.H. in high school. She stated that when C.H. told her about the sexual abuse, she encouraged him to tell his mother.

Priscilla Hinds, C.H.'s mother, testified that the appellants and their parents lived within walking distance of her residence and explained that the families spent a significant amount of time together. She testified that when C.H. was around ten or eleven years old, the appellants started bullying him. When asked about an argument between her and C.H. that occurred immediately before he disclosed the abuse, Hinds acknowledged that there had been an argument that was heated and tense. The next day, C.H. told her about the sexual abuse, and she called law enforcement. Hinds testified that her relationship with her sisters and her mother had been severely damaged by C.H.'s allegations of abuse and that no one else in the family wanted anything to do with her or her son.

Dale Thornton of the Miller County Sheriff's Office testified that he took a report from C.H. in which he accused the appellants of raping him. Patsy Dehart of the Crimes against Children Division of the Arkansas State Police testified that previously she worked for the sheriff's office and that, in investigating C.H.'s allegations, she set up an interview for C.H. at the Children's Advocacy Center. As a result of the interview, she obtained arrest warrants for the appellants.

Kathy Lach testified that she conducted a sexual-assault examination of C.H. and found no evidence to corroborate his story due to how much time had passed. Kaleigh Dodson testified that she works at the Children's Advocacy Center where she does forensic interviews. She testified to the reasons why reports of sexual assault are often delayed.

The State rested its case, and the appellants' counsel moved to dismiss for insufficient evidence. The appellants argued that the State failed to prove when the alleged assaults took place and that there was no evidence of forcible compulsion. The circuit court denied the motion, noting that C.H. testified that Joseph had threatened to beat him up. The court concluded that there was a question of fact for the jury regarding forcible compulsion.

Marissa Sivils testified that she is C.H.'s sister and that she now lives with the appellants. She lived with her parents and brother from 2010 to 2016. She stated that she and the appellants have a close relationship but that she would not lie for them. She stated that the walls of her parents' home are very thin, and while she lived there, she could hear everything that occurred in the trailer, but she never heard anything to support C.H.'s claims. She also testified that C.H. never disclosed the abuse to her.

Tammy Baker testified that she is the appellants' mother. She stated that she never saw C.H. being abused and never thought anything strange was going on. She testified that she was present for the argument on July 15 and saw C.H. and his mother curse at each other. She observed C.H. come out of the house and poke or prod his grandmother, April Potts, in the forehead and curse at her, as well. She observed Joseph then grab C.H. by the collar and tell him not to talk to their grandmother like that. She further testified that C.H. then asked her if he could move in with her.

Potts testified that she remembered the argument. C.H.'s mother called her and said C.H. was upset because she made him break up with his girlfriend. Potts confirmed that C.H. confronted her and that Joseph intervened. She testified that, even when Joseph grabbed

C.H.'s collar, C.H. did not appear to be intimidated. Potts also testified that she never saw any evidence of rape.

Joseph testified and denied the allegations made against him. He stated that he is four years older than C.H. and admitted that he used to bully a lot of people including his brother and C.H. However, he testified that he never raped anyone. Joseph also testified about the argument, confirming the previous testimony that he had intervened to stop C.H. from accosting their grandmother.

Joshua testified and also denied C.H.'s allegations. He stated that he had never forced C.H. to do anything sexual. He stated that he never raped C.H., but he admitted that he had bullied him along with other kids.

After the defense rested, the State recalled C.H.'s girlfriend, M.P., because, contrary to her testimony, C.H. had testified that the appellants never assaulted him at the same time. M.P. reiterated that C.H. told her that the appellants assaulted him together.

The appellants renewed their motion for a directed verdict, arguing that the State failed to prove that each of them knowingly engaged in sexual intercourse or deviate sexual activity with C.H. by forcible compulsion. Their motion simply alleged that the State failed to prove each element as to each appellant. The court again denied the motion. The case went to the jury.

During deliberations, the jury asked the court whether it could find a defendant guilty of one count and not guilty of the other count. The court informed the jury that each count should be considered separately and a verdict arrived on each separate count. The jury found

both appellants guilty of one count of rape and not guilty of the second count. This timely appeal followed.

On appeal, the appellants raise identical arguments. They claim that the State failed to present sufficient evidence to support each of the convictions, specifically arguing that there was no evidence to corroborate C.H.'s allegations and that C.H.'s testimony was inconsistent and unreliable. We find no merit to these arguments and affirm.

“In a jury trial, if a motion for directed verdict is to be made, it shall be made at the close of the evidence offered by the prosecution and at the close of all of the evidence. A motion for directed verdict shall state the specific grounds therefor.” Ark. R. Crim. P. 33.1(a) (2021). Arkansas courts construe Rule 33.1 strictly. *Blanton v. State*, 2022 Ark. App. 44, at 2. Likewise, an appellant is bound by the scope and nature of his directed-verdict motion and cannot change his argument on appeal. *Scott v. State*, 2015 Ark. App. 504, at 4, 471 S.W.3d 236, 239. The two grounds for directed verdict offered by the appellant at trial were that there were “no dates provided for the specific acts of rape on either Joshua or Joseph” and that there was “insufficient testimony as to forcible compulsion on behalf of either Joseph Baker or Joshua Baker.” When renewing the motion, appellants’ counsel made a vague and generic argument that the State had failed to prove the elements of the offense.

Because the appellants failed to raise their argument regarding lack of corroboration for C.H.'s testimony in their motions for directed verdict, they have not preserved their argument for appeal. The appellants did, however, preserve an argument regarding the lack of evidence of forcible compulsion. To the extent that their appellate challenges regarding the

weight and credibility to be afforded to C.H.'s testimony relate to their claim that the State failed to adequately prove forcible compulsion, their argument is preserved but lacks merit.

It is well settled in Arkansas that a rape victim's testimony, standing alone, is sufficient to convict if the testimony satisfies the statutory elements of rape. *Robrbach v. State*, 374 Ark. 271, 274, 287 S.W.3d 590, 593–94 (2008). Evidence is viewed in the light most favorable to the verdict. *Sharp v. State*, 2019 Ark. App. 506, at 11–12, 588 S.W.3d 770, 777. The credibility of witnesses and the weight of evidence are matters for the finder of fact to decide. *Id.*

Here, C.H. testified graphically about multiple instances in which the appellants forced him to perform oral sex and forced him to engage in anal sex. The appellants object to the credibility of C.H.'s testimony, noting that other witnesses contradicted aspects of C.H.'s account, but as noted above, the jury was free to give C.H.'s testimony as little or as much weight as it chose. We may not reweigh the evidence or substitute our own credibility determinations for those of the finder of fact, which had the opportunity to observe the witnesses, observe their demeanor, and determine the appropriate weight to be given to each witness's testimony. *Id.* C.H.'s testimony was sufficient evidence to support Joseph's conviction.

Affirmed.

MURPHY and BROWN, JJ., agree.

Jacob Stem Potter, for appellant.

Leslie Rutledge, Att'y Gen., by: *Clayton P. Orr*, Ass't Att'y Gen., for appellee.