

Cite as 2022 Ark. App. 392
ARKANSAS COURT OF APPEALS

DIVISION III
No. CR-22-15

JOSHUA BAKER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 5, 2022

APPEAL FROM THE MILLER
COUNTY CIRCUIT COURT
[NO. 46CR-19-502]

HONORABLE CARLTON D.
JONES, JUDGE

AFFIRMED

LARRY D. VAUGHT, Judge

Joshua 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 argues that there was insufficient evidence supporting his conviction. We affirm.

Joshua was tried alongside his brother, Joseph Baker.¹ We affirmed Joseph’s conviction for rape in the companion case, *Baker v. State*, 2022 Ark. App. 391, 654 S.W.3d 63. A full recitation of the testimony and evidence presented at trial can be found in that case. The appellants mounted a joint defense at trial and have raised the same arguments on appeal. Therefore, our analysis in *Baker, supra*, applies here.

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.”

The victim, C.H., testified that he is a younger cousin of Joshua and Joseph and that they bullied him. C.H. testified that when he was between the ages of approximately twelve and fifteen, they forced him to engage in sexual activities against his will on at least four occasions. C.H. testified to two specific instances of sexual penetration by each appellant. He specifically testified that Joshua forcibly inserted his penis and the handle of a hairbrush into C.H.'s anus. C.H. also testified that Joshua forced C.H. to perform oral sex on him.

When the State rested its case, the appellants' counsel moved for directed verdict on the basis of 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. At the close of all the evidence, the appellants renewed their motion for a directed verdict, arguing that the State had 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 had failed to prove each element as to each appellant. The court again denied the motion. The case went to the jury, which ultimately convicted each appellant of one count of rape. This timely appeal followed.

“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 a directed verdict offered by the appellants at the close of the prosecution's case 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, the appellants made a vague and generic argument that the State had failed to prove the elements of the offenses.

Because the appellants failed to raise their argument regarding the 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. He specifically testified to forcible anal penetration by Joshua using both his penis and a hairbrush. The appellants object to the credibility of C.H.'s testimony, noting that other witnesses contradicted aspects of his

account. 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 Joshua'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.