Cite as 2010 Ark. App. 309

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR09-669

COURTNEY CRAIG APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** April 14, 2010 APPEAL FROM THE PHILLIPS COUNTY CIRCUIT COURT [NO. CR-2006-33] HONORABLE L.T. SIMES, II, JUDGE AFFIRMED

JOSEPHINE LINKER HART, Judge

The circuit court placed appellant, Courtney Craig, on probation for ten years for committing the crime of first-degree battery. The State subsequently filed a petition to revoke appellant's probation, asserting that appellant had violated a condition of his probation by committing the crimes of rape, aggravated residential burglary, and possession of a firearm by a felon. Further, the petition alleged that he violated another condition of his probation by possessing a firearm. The circuit court revoked appellant's probation on the grounds set forth in the State's petition. On appeal, appellant argues that the circuit court's decision was clearly against the preponderance of the evidence. We affirm.

In revocation proceedings, the burden is on the State to prove by a preponderance of the evidence that the defendant has violated a condition of his probation. *Jones v. State*, 52 Ark. App. 179, 916 S.W.2d 766 (1996). Where the sufficiency of the evidence is challenged on appeal from an order of revocation, we will not reverse the circuit court's decision unless

the court's findings are clearly against the preponderance of the evidence. *Id*. In making our review, we defer to the superior position of the circuit court to determine questions of credibility and the weight to be given to the evidence. *Id*.

In support of its revocation petition, the State presented the testimony of the victim of the rape and aggravated burglary. The victim testified that on April 8, 2008, she awoke at 12:53 a.m. and found appellant, whom she had known "all [her] life," standing over her. She asked how he had entered her house, and he told her that he had knocked on the door and that the door came open. The victim later discovered, however, that her kitchen window had been broken open, and she concluded that appellant had entered her house through the kitchen window.

The victim asked appellant if he needed a ride home, and he declined. Appellant asked her if she was "going to give him some." She told him "no" and said, "Courtney, you know we're not like that." She asked him three or four times to leave, but he would not do so. The victim opened the door and began crying and told appellant that she would call the police if he did not leave. Appellant, she testified, "took a gun out on me and told me that I was going to give him some." He pointed the gun at her and told her to close the door and stop crying before someone heard her crying. She described the gun as a handgun. She testified, "I just did what he told me to do, [be]cause he had a gun. And I didn't want him to do anything to [me and my children]. And he raped me and I begged him not to." She testified that she asked him to wear a condom, which he did. Afterwards, appellant still refused to leave, and she testified that she "had to take him home, because he wouldn't leave." Further, she

testified, "I begged him not to kill me. I told him that I wouldn't tell [any]body. I swore on my kids that I wouldn't tell [any]body." He told her that if she "ever said anything that he would come back and kill me and my kids."

The victim called her mother at about four or five o'clock that morning, and her mother told her that she needed to report the incident to the police. She contacted the police at about nine or ten o'clock that same morning. She explained that she did not want to contact the police because of appellant's threats.

Appellant argues that the circuit court's decision to revoke his probation was clearly against the preponderance of the evidence. He asserts that the evidence was insufficient to support the element of "forcible compulsion" for the crime of rape, because the victim never testified that appellant threatened her with the gun or used physical force on her. We observe that a person commits the crime of rape if he engages in sexual intercourse with another person by forcible compulsion. Ark. Code Ann. § 5-14-103(a)(1) (Supp. 2009). "Forcible compulsion" includes "physical force or a threat, express or implied, of death or physical injury to . . . any person." Ark. Code Ann. § 5-14-101(2) (Supp. 2009). Appellant further notes that the victim testified that she gave him a ride home and that she did not contact law enforcement until the next morning. And he asserts that absent proof of rape, there was no aggravated residential burglary.

After deferring to the circuit court's determinations of credibility and weight, we conclude that the court's decision was not clearly against the preponderance of the evidence. According to the victim, appellant "took a gun out on me and told me that I was going to

give him some" and that appellant pointed a gun at her and told her to close the door and to stop crying before someone heard her crying. Appellant's pointing of a firearm at the victim was evidence of an implied threat of death or physical injury. Thus, the circuit court's decision to revoke on this basis was not clearly against the preponderance of the evidence. And accordingly, appellant's assertion that the crime of aggravated residential burglary was unproven because there was no proof of rape, is without merit.

Appellant further asserts that the evidence was insufficient to support revocation on the basis that he possessed a firearm, because there was no testimony that a weapon was ever found and because the firearm allegation was proven solely by the victim's testimony. We observe that no person shall possess or own any firearm who has been convicted of a felony. Ark. Code Ann. § 5-73-103(a)(1) (Supp. 2009). To "possess" is to "exercise actual dominion, control, or management over a tangible object." Ark. Code Ann. § 5-1-102(15) (Supp. 2009). Here, the victim testified that appellant had a gun. Given our deference to the circuit court's determinations of weight and credibility, we cannot say that the court's decision was clearly against the preponderance of the evidence.

Affirmed.

ROBBINS and HENRY, JJ., agree.