

ARKANSAS COURT OF APPEALSDIVISION II
No. CACR 11-916WALTER BERNARD BOYKINS
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered April 18, 2012

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
SEVENTH DIVISION
[NO. CR-07-4766]HONORABLE BARRY SIMS,
JUDGE

AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Walter Boykins pleaded guilty to Class C felony theft of property, and on July 31, 2008, he was placed on three years' probation. One of appellant's conditions of probation required him to obey all state laws. On January 15, 2010, the State filed a petition to revoke, alleging that Mr. Boykins violated the terms of his probation by committing second-degree sexual assault on July 27, 2009. On December 15, 2010, a jury trial was held on the second-degree sexual-assault charge, and the parties agreed that the evidence presented by the State would also serve as the evidence in the probation-revocation case. Because the jury could not reach a unanimous decision as to Mr. Boykins' guilt of second-degree sexual assault, the trial court declared a mistrial in that proceeding. However, the trial court found by a preponderance of the evidence that Mr. Boykins violated his probation by committing second-degree sexual assault. Consequently, on May 31, 2011, the trial court

entered an order revoking appellant's probation and sentencing him to ten years in prison. Mr. Boykins now appeals from his revocation, arguing that the State failed to prove a violation of his conditions. We affirm.

Pursuant to Arkansas Code Annotated section 5-14-125(a)(1) (Supp. 2011), a person commits second-degree sexual assault if the person engages in sexual contact with another person by forcible compulsion. "Sexual contact" means any act of sexual gratification involving the touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female. Ark. Code Ann. § 5-14-101(10) (Supp. 2011).

To revoke probation, the burden is on the State to prove the violation of a condition of the probation by a preponderance of the evidence. *Jones v. State*, 355 Ark. 630, 144 S.W.3d 254 (2004). On appellate review, the trial court's findings are upheld unless they are clearly against the preponderance of the evidence. *Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (2004). The burden on the State is not as great in a revocation hearing and, because the burdens are different, evidence that is insufficient for a criminal conviction may be sufficient for revocation of probation. *Jones, supra*. Since the determination of the preponderance of the evidence turns on questions of credibility and the weight to be given testimony, we defer to the trial court's superior position. *Haley v. State*, 96 Ark. App. 256, 240 S.W.3d 615 (2006).

The alleged victim in this case was Tracy Reed. In July 2009, Mrs. Reed was employed at The Children's Center, where her three children attended daycare. Mrs. Reed worked only part-time with limited income, and she contacted the Arkansas Department

of Human Services (DHS) to request public assistance in the form of food stamps and childcare vouchers. Mr. Boykins was a caseworker for DHS, and he was assigned to handle Mrs. Reed's application.

On July 20, 2009, Mrs. Reed went to the DHS office, where she met Mr. Boykins and filled out an application. According to Mrs. Reed, Mr. Boykins suggested that she put inaccurate information in her application in order to illegally receive more assistance. Mr. Boykins further asked Mrs. Reed to pay him the extra financial assistance she would be receiving. Uncomfortable with that suggestion, Mrs. Reed faxed a letter later that day to another DHS employee informing him of Mr. Boykins' unethical behavior.

On July 27, 2009, after Mrs. Reed's boss advised her that she would be terminated if she did not pay the money she owed for her children's daycare expenses, Mrs. Reed called Mr. Boykins for an update on the status of her application. Mr. Boykins told Mrs. Reed to come to his office to provide additional information on her application for childcare vouchers. Mrs. Reed went to Mr. Boykins' office early that afternoon and signed a few papers on his desk. Mrs. Reed described what happened next as follows:

He got up from his desk. I got up from the chair that was across from him. I went to leave. He came around the side of his desk, closed the door—it was open about this far (witness indicating). He closed the door, and the wall wasn't very far behind me at all. I was pushed up against the wall. His arms were on either side of me where I couldn't move.

He put his mouth over mine, put his tongue in my mouth. He put his right hand behind my left leg. I had a pair of shorts on that day. His hand went up my shorts, and his fingers went on the inside of the lips of my vagina. As he was leaning down to try and penetrate, I was able to move [to] this side, and I was able to go around him and out of the building.

After I went out the door, I went back to work. I do not have any idea of how long it took me after I left his office to get back to work. With regard to what

the first thing was that I remember after I left his office, I remember texting my new boyfriend, which is my husband at [this] time, telling him or trying to tell him what happened.

Mrs. Reed testified that when she returned to work that day she was upset and crying and told her boss what had happened. Her boss told Mrs. Reed to call the police, and the police were called. Between the time when the police were called and when they arrived, Mrs. Reed received a text message from Mr. Boykins. Mrs. Reed texted him back asking, “[w]hy did you try and do stuff with me?” and Mr. Boykins responded with the text, “I don’t know. Are you upset? You look nice.” After the police arrived, Mrs. Reed went with them to the police department and told them about the incident.

On cross-examination, Mrs. Reed acknowledged that in her statement to the police she told them that after leaving Mr. Boykins’ office on the afternoon of July 27, 2009, she visited with DHS caseworker Kenyon Collins in his office. However, in her trial testimony Mrs. Reed stated that she could no longer remember visiting with Mr. Collins on that day.

Mrs. Reed’s boss at the time, Ricki Scotton, also testified for the State. Ms. Scotton recalled that when Mrs. Reed arrived back to work on the afternoon of July 27, 2009, Mrs. Reed was extremely upset and shaking and told her that Mr. Boykins had assaulted her in his office.

DHS caseworker Kenyon Collins testified for the defense. Mr. Collins testified that his office was down the hall from Mr. Boykins’ office. Mr. Collins stated that, after Mrs. Reed talked with Mr. Boykins on the day at issue, Mrs. Reed came into his office and applied for temporary assistance for needy households. Mr. Collins described Mrs. Reed’s

demeanor as normal, and he did not notice anything out of the ordinary. He said that his interview with Mrs. Reed lasted thirty to forty minutes and that she gave no indication that she had been assaulted in Mr. Boykins' office.

On appeal, Mr. Boykins argues that the trial court erred in revoking his probation because the State failed to prove by a preponderance of the evidence that he committed second-degree sexual assault against Mrs. Reed. Mr. Boykins contends that the trial court should have found that Mrs. Reed's testimony was not credible for two reasons. First, Mr. Boykins posits that it is highly improbable that a DHS caseworker would sexually assault a client in the middle of a workday. Next, Mr. Boykins relies on the testimony of Mr. Collins, who undermined Mrs. Reed's testimony that Mr. Boykins had sexually assaulted her. Mr. Boykins asserts that because Mrs. Reed's testimony was not believable, the State failed to prove that he assaulted her and thus that his revocation should be reversed.

We hold that the trial court's finding that Mr. Boykins violated his conditions of probation by committing second-degree sexual assault was not clearly against the preponderance of the evidence. We have held that the uncorroborated testimony of the victim alone may be sufficient to sustain a conviction for second-degree sexual assault. *See Colburn v. State*, 2010 Ark. App. 587. In Mrs. Reed's testimony, she indicated that Mr. Boykins had her up against the wall and touched her buttocks and vagina. She further stated that she did not willingly let him do this and that she had to use force to get Mr. Boykins off of her. We are bound to defer to the trial court on issues of credibility, and Mrs. Reed's testimony established each of the elements for committing second-degree sexual

assault. We are not free to disregard the trial court's finding that Mrs. Reed was a credible witness as urged by appellant, and therefore we affirm the revocation of his probation.

Affirmed.

MARTIN and HOOFFMAN, JJ., agree.