

ARKANSAS COURT OF APPEALSDIVISION III
No. CACR12-9KALVIN LEWIS EDWARDS
APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 3, 2012

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT
[NOS. CR07-1120, CR07-1137]HONORABLE J. MICHAEL
FITZHUGH, JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

Kalvin Edwards appeals the revocation of his suspended sentence. The circuit court found that Edwards committed rape, possessed drug paraphernalia, and obstructed governmental operations, all of which violated the terms and conditions of his suspended sentence. He presents three arguments on appeal: (1) the evidence was insufficient to show he committed rape; (2) the evidence was insufficient to show he possessed drug paraphernalia; and (3) the statute that criminalizes obstructing governmental operations, Ark. Code Ann. § 5-54-102(b) (Supp. 2011), is unconstitutional. We find that the evidence was sufficient to sustain the rape charge and, because the state need only prove one ground to sustain a revocation, affirm the circuit court.

Edwards was originally sentenced to nine years' imprisonment for second-degree battery and being a felon in possession of a firearm. He served two years with the remainder

suspended, eventually being released in February 2009. On October 11, 2011, the state filed a petition to revoke Edwards's suspended sentence. At a revocation hearing on November 30, 2011, the circuit court found that the state proved all three grounds, revoked the suspended sentence, and sentenced Edwards to twenty-two years' imprisonment.

The rape victim testified at the revocation hearing that she was walking down the street to her uncle's house after having a verbal argument with her fiancé when Edwards approached her on a bicycle and began riding alongside her. She requested that Edwards leave her alone, but he refused. The two then began talking casually. They arrived at the victim's uncle's apartment, but the uncle was asleep and did not answer the door. Edwards and the victim then went to Edwards's apartment where he dropped off his bicycle and got a twelve-pack of beer. They drank the beer and began walking back to the victim's house. Suddenly, the victim testified, they were in an alleyway, which was covered with gravel and leaves; Edwards punched her in the jaw, threw her to the ground, pulled her pants down, and put his penis between her legs. During the assault, Edwards struck the victim multiple times. She testified that he "raped" her, but was unable to recall whether there was actual penetration.

Stephanie Mann, a sexual-assault nurse, testified that she examined the victim after the assault and found a number of lacerations, bruises, and abrasions on the victim's body. Mann also collected genital swabs and located a dried leaf in the victim's labial opening, which presumably came from the leaves in the alleyway. After the examination, Mann sent the genital swabs to the state crime lab.

Patricia Sullivan from the Fort Smith Police Department testified about her interview with Edwards. Edwards admitted to Sullivan that he had intercourse with the victim; Edwards maintained, however, that the encounter was consensual. Sullivan also gathered genetic evidence from Edwards and sent the samples to the crime lab. The lab report indicated that the semen gathered from the victim's inner thigh belonged to Edwards.

A circuit court may revoke a suspension or probation if it finds that the state proved by a preponderance of the evidence that the appellant inexcusably failed to comply with a condition of that suspension or probation. *Walchli v. State*, 2012 Ark. App. 473. Because the burdens are different, evidence that is insufficient for a criminal conviction may be sufficient for revocation of probation or suspended imposition of sentence. *Knotts v. State*, 2012 Ark. App. 121. On appeal, the appellant bears the burden to demonstrate that the trial court's findings are clearly against the preponderance of the evidence. *Id.* The trial court's findings are given deference because determinations of the preponderance of the evidence turn heavily on questions of credibility and the weight of the evidence. *Id.* In order to revoke a suspended sentence, the State need only prove that the defendant violated one condition of his suspended sentence. *Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (2004).

Here, the circuit court's finding that Edwards committed rape is not clearly against the preponderance of the evidence. Rape is defined as follows: "A person commits rape if he or she engages in sexual intercourse or deviate sexual activity with another person . . . [b]y forcible compulsion." Ark. Code Ann. § 5-14-103(a)(1) (Supp. 2011). Sexual intercourse involves "penetration, however slight, of the labia majora by a penis." Ark. Code Ann. § 5-

14-101(11). At the revocation hearing, the victim could not remember whether penetration had occurred, and, accordingly, Edwards argues that penetration was not proved. Yet, direct evidence of rape is not required; instead, penetration can be shown by circumstantial evidence. *Fernandez v. State*, 2010 Ark. 148, 362 S.W.3d 905. In this case, the victim testified that Edwards knocked her to the ground, pulled her pants down, and put his penis between her thighs. Testimony from the sexual-assault nurse confirmed that the victim sustained multiple wounds to her body, including a broken jaw. This corroborates the victim's testimony of the violent nature of the assault and contradicts Edwards's claim that the encounter was consensual. Officer Sullivan also testified that Edwards admitted to having intercourse with the victim. Additionally, the nurse found debris inside the victim's vagina toward the end of the cervix; she implied penetration occurred, stating, "There was only one way that it could have gotten there . . . [i]t would not fall inside." Finally, the lab report confirmed that Edwards's semen was found on the victim's inner thigh. These facts establish that the circuit court's finding that Edwards committed the offense of rape is not clearly against the preponderance of the evidence.

Because the state must prove only one violation to sustain a revocation of suspended sentence, *Richardson, supra*, we do not address Edwards's remaining arguments regarding the sufficiency of the charge for possession of paraphernalia or the constitutionality of the charge for obstructing governmental operations.

Affirmed.

HOOFFMAN and BROWN, JJ., agree.

David O. Bowden, for appellant.

Dustin McDaniel, Att'y Gen., by: *Eileen W. Harrison*, Ass't Att'y Gen., for appellee.