

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR 11-841

GARY EDWARD KNOTTS
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered FEBRUARY 8, 2012

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
FORT SMITH DISTRICT
[NO. CR-05-1429]

HONORABLE JAMES O. COX,
JUDGE

AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Gary Edward Knotts pleaded guilty to second-offense domestic battery in the third degree on December 14, 2005, and was given a six-year suspended imposition of sentence. The conditions of Mr. Knotts's suspended imposition of sentence prohibited him from violating any state law. On September 22, 2010, the State filed a petition to revoke appellant's suspended sentence on the basis that he violated his conditions by committing residential burglary, battery in the third degree, and endangering the welfare of a minor in the second degree. After a revocation hearing, the trial court revoked Mr. Knotts's suspended imposition of sentence and sentenced him to six years in prison. Mr. Knotts now appeals, and his sole argument for reversal is that the State failed to prove by a preponderance of the evidence that he violated the terms of his suspended sentence. We affirm.



A court may revoke a defendant's suspended sentence only if the State proves by a preponderance of the evidence that the defendant failed to comply with the conditions. *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 a preponderance of the evidence. *Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (2004). Deference is given to the trial court's superior position to weigh the evidence and determine witness credibility. *Stultz v. State*, 92 Ark. App. 204, 212 S.W.3d 42 (2005). In order to revoke a suspended sentence, the State need only prove that the defendant violated one condition of his suspended sentence. *Ramsey v. State*, 60 Ark. App. 206, 959 S.W.2d 765 (1998). Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation or suspended sentence. *Lamb v. State*, 74 Ark. App. 245, 45 S.W.3d 869 (2001).

The alleged battery victim, Victor McCarthy, testified for the State. Mr. McCarthy stated that in September 2010 he lived in an apartment with his girlfriend, Amanda Workman, along with their infant son. At that time, appellant Gary Knotts was living in an adjacent apartment with his then girlfriend, Juanita Collins.

The events occurred on the evening of September 11, 2010. Mr. McCarthy testified that, on that night, Mr. Knotts was visiting him and his girlfriend at their apartment and that they were all drinking. According to Mr. McCarthy, Mr. Knotts was making sexually explicit comments toward Ms. Workman and as a result Mr. McCarthy asked Mr. Knotts to leave. Mr. Knotts left the apartment, and the situation resulted in an argument between Mr. McCarthy and Ms. Workman.



Mr. McCarthy testified that he and his girlfriend went to bed a few hours after Mr. Knotts left their apartment. About an hour later, Mr. McCarthy heard “a sound like the police were beating on the door.” Mr. McCarthy answered the door and it was Mr. Knotts. Mr. McCarthy further testified:

Gary Knotts pushed his way into the apartment and all heck broke loose. He pushed his way past Amanda and pulled a knife on me. He stuck it to my throat. I grabbed it and pulled it away. I told him “You better kill me if you are going to pull a knife on me.” When I grabbed the blade to pull it away, he hit me in the mouth. He hit me with his fist. I got punched several times. I do not know how many times he hit me after the third or fourth time. I was injured. I had a gash through my bottom lip. My nose was swollen and bloody. This took place in our apartment in the area between the dining room and living room. My son and Amanda were in the living room when this happened. I never went to the floor. I was right next to my child. After the first punch I lost my balance and fell on to the baby’s playpen. It was bent. My son was asleep in the playpen at the time. He punched me in the face repeatedly with his fists. I was standing in the kitchen trying to get my focus when the police came in the front door. Gary Knotts was going out of the apartment as they were coming up and they met on the front porch. I did not seek medical attention. There was a pool of blood where I was standing in the kitchen.

Ms. Workman also testified about the events of that night. She stated that Mr. McCarthy did not live with her but that he had a key to her apartment and was staying there. Ms. Workman testified that she and Mr. McCarthy got into an argument and that Mr. Knotts left the apartment. After that, Ms. Workman went over to Mr. Knotts’s apartment for a while and then returned home. She stated that she made Mr. McCarthy leave earlier and that, when she came back to her apartment, Mr. McCarthy was not there. Ms. Workman put the baby in the playpen and went to sleep, and Mr. McCarthy returned to the apartment sometime later that night.



Ms. Workman testified that when Mr. Knotts banged on their door it was so loud that they thought it was the police. She said that Mr. Knotts pushed his way inside and started fighting with Mr. McCarthy. Ms. Workman saw Mr. Knotts punch Mr. McCarthy in the face ten to fifteen times. As a result, Mr. McCarthy had a bloody nose and lip and “blood was everywhere all over the kitchen floor.” Ms. Workman said that both she and a neighbor called the police.

Officer Jeffrey Fugatt of the Greenwood Police Department was dispatched to investigate the disturbance. When he arrived, he made contact with Mr. Knotts and observed that he was sweating heavily and had blood on his shirt and hands. Upon entering the apartment, Officer Fugatt saw a large pool of blood in the kitchen and smaller drops of blood in the dining room area. Officer Fugatt stated that the playpen was pushed over and bent. According to Officer Fugatt, Mr. McCarthy had several cuts on his lip and was bleeding from the mouth. Officer Fugatt stated that he saw no indication that Ms. Workman had been involved in any kind of physical confrontation.

Appellant’s then girlfriend, Juanita Collins, testified for the defense. Ms. Collins stated that on the night of September 11, 2010, she was at home watching movies with some friends when Mr. McCarthy came in and told Mr. Knotts, “thank you for getting me kicked out of my apartment.” After that Ms. Workman entered Ms. Collins’s apartment and started fighting with Mr. McCarthy. Ms. Collins stated that the fight was both verbal and physical, and that Ms. Workman struck Mr. McCarthy and knocked him into the recliner.



After coming in and out of the apartment several times, eventually Ms. Workman and Mr. McCarthy left.

Ms. Collins testified that Mr. Knotts went over to Ms. Workman's apartment to protect the baby. Ms. Collins stated that she went to the bathroom and then stepped outside and saw the police. Ms. Collins testified that Mr. Knotts was not over there long enough to have beaten Mr. McCarthy.

Both Thomas Sanders and Sara Koval were watching movies at appellant's apartment that night. Both of these witnesses testified that they saw Mr. McCarthy and Ms. Workman arguing, and that after they returned to their apartment loud noises could be heard through the wall. Ms. Koval testified that it sounded like a fight was going on. Mr. Sanders stated that they "heard a ruckus through the wall" and that Mr. Knotts ran over there.

Mr. Knotts testified on his own behalf, and he stated that after he went back to his apartment that night Mr. McCarthy and Ms. Workman came in and had a physical argument. He said that because of their argument he feared for the safety of their baby, and maintained that he went to their apartment to protect the baby. Mr. Knotts testified that he knocked on the door and heard loud noises. He said that Ms. Workman answered the door and told him she was fighting with Mr. McCarthy. Mr. Knotts stated that after he came inside "Victor and Amanda looked like they had just beat the crap out of each other." Mr. Knotts stated that Ms. Workman was on top of Mr. McCarthy beating him and that he got between them to try and split them up. He said that when that happened Ms. Workman took offense



and called the police. Mr. Knotts indicated that it was Ms. Workman who caused the injuries to Mr. McCarthy, and he denied hitting Mr. McCarthy that night.

In this appeal, Mr. Knotts argues that the State failed to prove a violation of his suspended sentence by a preponderance of the evidence. He contends that the State's civilian witnesses had been drinking, disagreed on some points and omitted others, and did not rise to the level of credible witnesses. When combining the inconsistencies in the testimony with the proof presented by Mr. Knotts and his defense witnesses, Mr. Knotts submits that the State failed to shoulder its burden of proof by a preponderance of the evidence and that his revocation must be reversed.

A person commits third-degree battery if, with the purpose of causing physical injury to another person, the person causes physical injury to any person. Ark. Code Ann. § 5-13-203(a)(1) (Repl. 2006). We hold that the trial court's finding that Mr. Knotts violated his conditions by committing third-degree battery against Mr. McCarthy was not clearly against the preponderance of the evidence.

Variances and discrepancies in the proof go to the weight and credibility of the evidence. *Porter v. State*, 356 Ark. 17, 145 S.W.3d 376 (2004). It is for the fact-finder to resolve any conflicts and inconsistencies. *Id.* While there may have been some inconsistencies in the evidence presented, both Mr. McCarthy and Ms. Workman testified that Mr. Knotts struck Mr. McCarthy multiple times in the face, causing cuts to Mr. McCarthy's mouth and significant bleeding. While Mr. Knotts testified that it was Ms. Workman who caused those injuries, Officer Fugatt testified that Ms. Workman did not



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appear to have been in an altercation. Mr. Knotts, on the other hand, was found to be sweating heavily with blood on his hands and shirt. Particularly in light of the lesser burden of proof, we affirm the trial court's revocation on the basis that it was Mr. Knotts who purposely caused the victim's physical injuries.

Affirmed.

PITTMAN and GLOVER, JJ., agree.

Joseph C. Self, for appellant.

Dustin McDaniel, Att'y Gen., by: *Christian Harris*, Ass't Att'y Gen., for appellee.