

**ARKANSAS COURT OF APPEALS**

D I V I S I O N III

No. CACR 10-849

WILLIE J. WILSON, JR.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** MARCH 30, 2011

APPEAL FROM THE SEBASTIAN  
COUNTY CIRCUIT COURT,  
FORT SMITH DISTRICT  
[NO. CR 2008-918]

HONORABLE STEPHEN TABOR,  
JUDGE

AFFIRMED

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**JOHN B. ROBBINS, Judge**

Appellant Willie J. Wilson, Jr., appeals the revocation of his suspended imposition of sentence (SIS) by the Sebastian County Circuit Court. As part of a 2008 plea agreement, Wilson was required to serve a four-year period of SIS regarding his guilty pleas to driving while intoxicated-second offense, leaving the scene of a personal-injury accident, and theft by receiving. Wilson agreed to abide by certain conditions during his SIS, including that he not violate any federal, state, or municipal law. In February 2010, the State filed a petition to revoke, alleging that Wilson committed residential burglary with an enhancement for being a habitual offender. After a hearing in May 2010, the trial court found that the State had proved by a preponderance of the evidence that Wilson committed residential burglary. Upon

revocation, Wilson was sentenced to a term of imprisonment to be followed by additional SIS.<sup>1</sup> This appeal followed.

A trial court may revoke a defendant's suspension at any time prior to the expiration of that period if it finds by a preponderance of the evidence that the defendant inexcusably failed to comply with a condition of his SIS. *See* Ark. Code Ann. § 5-4-309(d) (Supp. 2009). We will not reverse the trial court's decision unless it is clearly against the preponderance of the evidence. *Owens v. State*, 2009 Ark. App. 876. Determination of the preponderance of the evidence turns largely on questions of credibility and the weight of the testimony, and for that reason we will defer to the trial judge's superior position. *Id.* Evidence that is insufficient for a criminal conviction may be sufficient for a revocation because the burdens of proof differ. *Haley v. State*, 96 Ark. App. 256, 240 S.W.3d 615 (2006). Circumstantial evidence may be sufficient to support revocation. *Lamb v. State*, 74 Ark. App. 245, 45 S.W.3d 869 (2001).

It is undisputed that someone removed decorative swords from the Fort Smith residence of Nancy Powers on February 19, 2010, while she was away on errands. Wilson ultimately confessed to taking the swords, later returning them to Powers. Even so, Wilson argues on appeal (1) that proof of intent was lacking because he took the swords only because Powers owed him a debt; and (2) that there was no competent evidence to show that a

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<sup>1</sup>The State notes that the sentence upon revocation might be illegal given the length. On its face, we do not see the potential defect that the State does. Wilson does not argue about the legality of his sentence, nor does he request any relief on this topic.

burglary actually took place absent more proof that her residence was “trashed or the windows were broken.” We disagree with his arguments and affirm.

As applied here, the State had to prove by a preponderance that Wilson entered or remained unlawfully in the Powers residence with the purpose of committing therein any offense punishable by imprisonment. Ark. Code Ann. § 5-39-201(a)(1) (Repl. 2006). Powers testified that Wilson came to her home on February 19 looking for her brother Billy. She told him that her brother no longer lived there. Wilson remained inside, running through her home looking at everything “like he was casing my house out,” and making attempts to log in to the home computers. Wilson was also caught masturbating behind one of the doors in the house. Wilson did not leave upon request, so Powers had her neighbor come over to assist. Then Wilson left of his own accord.

Truman Woody, the neighbor, corroborated the account given by Powers. He said he told Wilson to leave and he did. He did not hear any talk about money being owed, nor did he see Wilson leave with swords at that time.

Powers testified that she then left to run an errand, and when she returned, her windows were broken, her dog was cut badly enough to need stitches, her bedroom was in chaos, and two Samurai swords were missing. Wilson was identified by a friend of Powers, Margaret Reed, who remained in the house while Powers was gone and who saw Wilson back inside the residence. Wilson’s wallet was found near the area where the swords were kept. Inside the wallet, Powers found Wilson’s mother’s telephone number and called her.

Powers also called the police and turned over Wilson's wallet to them. She agreed that Wilson ultimately returned the swords to her. She denied ever borrowing money from Wilson.

Officer Jeff Carter of the Fort Smith Police Department testified that he responded to the call, interviewed Ms. Reed over the telephone, and contacted Wilson to ask for a statement. Wilson waived his Miranda rights, gave a statement that was typed for him, and signed the statement.

In the statement, Wilson said that Powers and two of her friends owed him \$60 that he loaned them so they could buy pills. He agreed he left the premises originally to wait outside, but he was angry and tired of waiting for his money, so he entered through the front door, was startled to find Ms. Reed in the house, and took the swords that were hanging on the wall. He said that he was sorry for taking them, and he returned the swords to Powers on February 22.

Wilson's father testified that 36-year-old Wilson had a learning disability and needed one last opportunity to get his life on track. He knew of his son's prior felony convictions. The State entered into evidence Wilson's prior convictions from 1995 through 1997 for theft of property, robbery, residential burglary, overdraft, and marijuana possession—second offense.

On this evidence, the judge concluded that Powers was more credible than Wilson, that Wilson was no longer licensed to be in her residence once he left, that he broke the glass to re-enter, and that he took unauthorized possession of the swords. The judge stated that it

was clear, far beyond a preponderance of the evidence, that Wilson committed residential burglary in violation of his conditions. Wilson appeals from these findings.

We hold that the trial court did not clearly err. Wilson admittedly took the swords, stating that he reentered the residence to get them after Powers left. This is sufficient, by a preponderance standard, to establish that Wilson entered or remained unlawfully in her residence and committed a theft by taking her swords. It is immaterial whether he broke her windows to enter; he entered without her permission. To the extent that Wilson believed himself entitled to take the swords due to some indebtedness, this type of defense was specifically rejected by our supreme court in *Heard v. State*, 2009 Ark. 546. Intent is difficult to ascertain by direct evidence and must usually be inferred from the circumstances. *Atkins v. State*, 63 Ark. App. 203, 979 S.W.2d 903 (1998). Any conflict in the testimony of Powers and Wilson was solely for the trial court to resolve, not our court on appeal. *Tiller v. State*, 42 Ark. App. 64, 854 S.W.2d 730 (1993). Those conflicts were resolved in favor of Powers in this case.

We affirm the revocation because the trial court's decision, that the State proved this violation by a preponderance of the evidence, was not clearly erroneous.

Affirmed.

HART and HOOFFMAN, JJ., agree.