

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR09-773

DON E. JORDAN

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered DECEMBER 16, 2009

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
FORT SMITH DISTRICT
[NO. CR-07-1097]

HONORABLE STEPHEN TABOR,
JUDGE

AFFIRMED

JOHN B. ROBBINS, Judge

On October 17, 2007, appellant Don E. Jordan pleaded guilty to the Class D felonies breaking or entering, third-degree domestic battery, and first-degree terroristic threatening. Mr. Johnson was sentenced to two years in prison, followed by a four-year suspended imposition of sentence. On May 6, 2008, Mr. Jordan was paroled from prison.

On February 18, 2009, the State filed a petition to revoke appellant's suspended sentence. The State alleged that on February 13, 2009, Mr. Jordan committed the offenses of leaving the scene of a personal-injury accident and driving with a suspended license, in violation of his condition that he shall not violate any federal, state, or municipal law. The State also alleged that Mr. Jordan violated his suspended sentence by failing to pay a \$100 public-defender fee, which was payable at the rate of \$50 per month beginning sixty days



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after his release from prison.

After a hearing, the trial court revoked Mr. Jordan's suspended sentence on the basis that he committed the two criminal offenses alleged in the revocation petition. The trial court thereafter sentenced him to three concurrent four-year prison terms. Mr. Jordan now appeals, arguing that the State failed to show by a preponderance of the evidence that he violated his conditions. We affirm.

In a hearing to revoke probation or a suspended sentence, the burden is on the State to prove a violation of a condition by a preponderance of the evidence. *Stultz v. State*, 92 Ark. App. 204, 212 S.W.3d 42 (2005). On appellate review, the trial court's findings are upheld unless they are clearly against the preponderance of the evidence. *Id.* In order to revoke, the State need only prove one violation. *Id.*

At the revocation hearing, the State introduced a fines and payment ledger. The ledger showed that the \$100 public-defender fee assessed against Mr. Jordan remained unpaid.

Liliana Picazo, the accident victim, testified for the State. Liliana stated that she was crossing a street in Fort Smith on the evening of February 13, 2009, when she fell and was struck by a white car. As a result of the accident, Liliana sustained fractures to her leg and hip, as well as internal bleeding, resulting in an eight-day hospital stay. Liliana testified that she did not see the person who was driving the car that hit her.

Officer Scott Newton of the Fort Smith Police Department testified that he was



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dispatched to the accident scene at 9:04 p.m. and arrived two minutes later at the corner of Albert Pike and Wirsing. Officer Newton found a Hispanic female lying off the roadway in a residential front yard. According to Officer Newton, she was crying and in too much pain to speak to him. In addition, she had road rash and her pants were torn, indicating she had been pulled a short distance by a car.

Officer Newton spoke with people at the scene, and although none had actually witnessed the accident, one of the individuals said he saw a white car drive away at a high rate of speed. While still at the scene, Officer Newton was approached by a woman named Diane Thompson, who advised him that she had let someone borrow her car and that it was involved in an accident. Mrs. Thompson said that she received a phone call telling her about the accident, and she gave the officer the phone number of the person who had called.

Officer Newton matched the phone number with an address and went to the house, where he found a white car parked in front. Mr. Jordan came out of the house and approached, and Officer Newton did not ask any questions other than to ask appellant to state his name. After identifying himself, Mr. Jordan said that he had been driving the vehicle northbound on Albert Pike, that there was a female lying in the middle of the road that he did not see, and that he ran her over. Mr. Jordan told Officer Newton that he waited for ten or fifteen minutes and then left the accident scene. Mr. Jordan said that he left because his license was suspended, and Officer Newton confirmed that fact and took him into custody. Officer Newton testified that during their conversation, Mr. Jordan seemed



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a little slow and smelled of alcohol.

On appeal, Mr. Jordan challenges the sufficiency of the evidence to support his revocation. Although the State did introduce a ledger showing nonpayment of the public-defender fee, Mr. Jordan contends that this did not establish a violation because the State put on no proof that his failure to pay was willful. As to the allegations that he committed two new criminal offenses, Mr. Jordan asserts that Ms. Picazo could not identify the driver of the car that hit her and that there was nothing to corroborate his statements to the police that he hit a person in the street and had a suspended license. Mr. Jordan complains that there was nothing official presented to show that his driver's license was, in fact, suspended. Under such circumstances, appellant argues that the trial court had to resort to speculation in reaching its ruling that he violated a condition.

We need not discuss whether Mr. Jordan's nonpayment of the public-defender fee was willful, because this was not a basis for revoking his suspended sentence. The trial court revoked appellant's suspended sentence because he committed two violations of the law, and we hold that these findings were not clearly against the preponderance of the evidence.

Arkansas law requires the driver of any vehicle involved in an accident resulting in injury to stop and remain at the scene in order to identify himself, render reasonable aid, and be present if law enforcement was contacted for assistance. *See* Ark. Code Ann. § 27-503-101 & 103 (Supp. 2009). Arkansas Code Annotated section 27-16-303(a)(1) (Repl. 2008) makes it unlawful for a person to drive a motor vehicle while his license is suspended.



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In this case, the victim testified that she was struck by a white car, and a witness at the scene advised Officer Newton that he saw a white car speed away. Upon gaining information that a woman's borrowed car had been involved in an accident, Officer Newton's investigation led him to a house where he found a white car, and Mr. Jordan emerged from the house speaking spontaneously. Mr. Jordan stated that he had been driving earlier and accidentally ran over a woman, and he left the scene because he knew his license was suspended. Upon confirming suspension of the license, Officer Newton made an arrest. We have no hesitation in concluding on this record that the trial court committed no error in finding that appellant committed two violations by leaving the scene of the accident and driving with a suspended license. Therefore, we affirm the revocation of appellant's suspended sentence.

Affirmed.

KINARD and GRUBER, JJ., agree.

David L. Dunagin, for appellant.

Dustin McDaniel, Att'y Gen., by: *Rachel M. Hurst*, Ass't Att'y Gen., for appellee.