

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR09-901

RYAN R. AUTRAND,

APPELLANT

V.

STATE OF ARKANSAS,

APPELLEE

Opinion Delivered MARCH 10, 2010

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT
[NO. CR-2002-1118]

HONORABLE STEPHEN TABOR,
JUDGE

AFFIRMED

KAREN R. BAKER, Judge

Appellant Ryan Autrand appeals from the revocation of his suspended sentence by the Sebastian County Circuit Court. Appellant's sole argument on appeal is that the State failed to present sufficient evidence that he violated the terms and conditions of his suspended sentence. We disagree and affirm.

On January 22, 2003, appellant pleaded guilty to breaking or entering, a Class D felony, in Sebastain County Circuit Court, for which he received a sentence of six years in the Arkansas Department of Correction plus six years' suspended imposition of sentence. Pursuant to the terms and conditions of his suspended imposition of sentence, appellant was to comply with federal, state, and municipal laws, pay fines and costs, and make restitution payments.

On October 31, 2008, the State of Arkansas filed a petition to revoke appellant's suspended imposition of sentence. In the petition to revoke, the State alleged that appellant committed the

offenses of domestic battery in the third degree, terroristic threatening in the second degree, and driving with a suspended license. The petition also alleged that appellant failed to pay fines, costs, and fees and failed to make restitution payments.

At the revocation hearing, Heather Autrand testified that she was married to appellant, that they had one three-year-old child together, and that she was pregnant with another child. She testified that on October 15, 2008, she arrived home from work to find appellant passed out on the sofa, smelling of intoxicants. She stated that the three-year-old was asleep and appellant's nine-year-old daughter from a previous relationship was watching television. After checking on her children, Heather was walking back to her bedroom when she heard appellant's phone ring. She noticed that appellant had received a voicemail from his boss, who needed to speak with appellant regarding work. Heather tried to wake appellant to tell him about the voicemail message. When she woke him, appellant was incoherent and began calling her names. Heather attempted to explain to appellant that he had received a voicemail from his boss, but appellant "just rolled over and went back to sleep." Heather stated that she was putting the phone back on the kitchen counter where she found it when it began to beep, indicating that a text message had been received. Heather checked the text message, which said, "Hi, are you okay, did you pass out on me." Heather became angry and began shaking appellant. She stated that she did not hit him. Appellant became very upset, sat up on the couch, and again, told her to leave him alone. Heather told him that he should be honest with her and tell her if there was anything going on with the person who sent the text message. Appellant responded by stating that "there was nothing going on." Heather then stepped outside the house and called the person from whom the text message was received. She testified that a female

answered the phone and that the woman was appellant's co-worker, whom "he had been seeing." Heather then went back into the house and attempted to wake appellant by grabbing his shoulder and shaking it. Appellant awoke, and they began to argue.

Heather testified that appellant refused to give her any information about the woman from whom he received the message, so she told appellant to get his things and leave the house. Instead, appellant got off the sofa, went to the bedroom, closed the door, and tried to lock it. Heather opened the door, following him inside. Appellant crawled into bed as Heather continued to question him. Again, appellant told her to leave him alone. Heather told appellant that she would continue to question him until he gave her the information she wanted. Appellant became very angry and wanted to know where his keys and cellular phone were located. Heather testified that appellant destroyed the bedroom looking for the items. When he did not find them, he became even more upset. Heather stated that appellant knew that her keys were in her pocket, so he "grabbed [her] and pushed [her] to the ground and he forced the keys from [her] pocket." She told appellant to leave, but appellant would not leave without his cellular phone. The argument then became even more "heated," and as Heather testified, appellant actually lifted her up by her neck off the ground and "slammed [her] into the refrigerator." Heather fell to the ground and sat there for a moment. She testified that she got up, ran outside, and called for help. While she was on the phone, appellant continued to rummage through the house looking for his keys. When he found them, he got into his truck, spun his truck in the yard, and drove away.

At the hearing, the State introduced photographs to support Heather's testimony. The first two photographs, exhibits five and six, were of the bedroom and hallway. Heather testified that the

photo depicted the damage to the bedroom resulting from appellant looking for his phone and keys. The next photograph, exhibit seven, was a photo of Heather's right arm, depicting a red mark where appellant had grabbed her and pushed her to the ground in order to get the car keys from her. Exhibit eight was a photograph of Heather's left arm that also had a red mark on it from appellant grabbing her. Exhibit nine was a photograph of the red marks that appeared on Heather's neck where appellant had grabbed her around the neck and choked her. She testified that appellant threatened her numerous times during their argument and told her that he would "hurt [her]."

Appellant testified as to his own version of the events of October 15. He testified that around 2:30 that afternoon he went to Shooters with a friend. When he arrived at home, he was "trashed" and he passed out. He stated that it was 11:00 p.m. when Heather arrived home from work. He stated that she woke him by shoving him and slapping him. Appellant denied that he was drunk when Heather woke him. He stated that Heather's accusations made him angry. He testified that as he and Heather were fighting about the text message on his phone, he was trying to find his keys so that he could leave. He stated that he thought Heather had hidden the keys on her night stand, so he "picked the table up and popped it into the air."

When asked about the photographs depicting the red marks on Heather's arms and neck, appellant testified that Heather had pale skin and that if "[y]ou even touch[ed] her . . . she [would] turn red." He denied grabbing her by the arm, throwing her against the refrigerator, or striking her in any way. He stated that he "restrained her against the refrigerator," "reached in her pocket," and "grabbed her keys." He removed his truck key from her key ring, threw her keys at the windshield of her car, and went outside to put his bag into his truck. He stated that Heather ran outside "holding

her neck” and called 911. He stated that he left the house in his truck, but got approximately one-half mile down the road when he found police waiting for him. Appellant admitted that on October 15 he did not have a license to drive the truck; his license had been suspended in the state of California for failure to appear. He also admitted that he knew that Heather was pregnant.

After the revocation proceeding, the trial court made the following comments:

This is a matter of credibility of the witnesses. I think a couple of things that kind of tilt the scale in the Court’s mind, one is and the most important are the photographs submitted by the State corroborate the testimony of Ms. Autrand and go against the testimony of Mr. Autrand as far as the version of the events that happened that night. The demeanor on the stand and in the courtroom throughout the proceeding also I think[] mitigates in favor of Ms. Autrand’s credibility. The court finds by a preponderance of the evidence that Mr. Autrand did commit the offense of domestic battery in the third degree, terroristic threatening in the second degree. I will say the Court is not considering any payment record regarding fines and court costs in its determination.

The trial court sentenced appellant to six years in the Arkansas Department of Correction. This appeal followed.

Appellant alleges that the court’s decision to revoke his suspended imposition of sentence was against the preponderance of the evidence and the evidence was not sufficient to compel a reasonable mind to reach a conclusion one way or the other without resting on conjecture. Here, the issue for the trial court was one of credibility of the two witnesses, and the court found Heather’s testimony to be more credible than that of appellant. On appeal, appellant cites no authority that contradicts the well-established rule that an appellate court defers to the trial court on questions of witness credibility and conflicting testimony. *E.g., Bradley v. State*, 347 Ark. 518, 65 S.W.3d 874 (2002).

Therefore, we must determine whether Heather’s testimony is sufficient to sustain the

State's burden to prove the violation of a condition of probation or suspended sentence by a preponderance of the evidence. *See* Ark. Code Ann. § 5-4-309(d) (Repl. 2006); *Bradley v. State*, 347 Ark. 518, 65 S.W.3d 874 (2002); *Barbee v. State*, 346 Ark. 185, 56 S.W.3d 370 (2001); *Rudd v. State*, 76 Ark. App. 121, 61 S.W.3d 885 (2001). On appellate review, the trial court's findings will be upheld unless they are clearly against a preponderance of the evidence. *Bradley, supra* (citing *Hoffman v. State*, 289 Ark. 184, 711 S.W.2d 151 (1986)).

A person commits domestic battery in the third degree if with the purpose of causing physical injury to a family or household member, the person causes physical injury to a family or household member or if the person recklessly causes physical injury to a family or household member. Ark. Code Ann. § 5-26-305(a)(1) and (2) (Repl. 2006). However, domestic battery in the third degree is a Class D felony if committed against a woman the person knew or should have known was pregnant. Ark. Code Ann. § 5-26-305(b)(2)(A). A person commits the offense of terroristic threatening in the second degree if, with the purpose of terrorizing another person, the person threatens to cause physical injury or property damage to another person. Ark. Code Ann. § 5-13-301(b)(1) (Repl. 2006). Terroristic threatening in the second degree is a Class A misdemeanor. Ark. Code Ann. § 5-13-301(b)(2). Arkansas Code Annotated section 5-1-102(14) (Repl. 2006) defines "physical injury" as the infliction of bruising, swelling, or a visible mark associated with physical trauma.

Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation or suspended sentence. *Bradley, supra*. When appealing a revocation, the appellant has the burden of showing that the trial court's findings are clearly against the preponderance of the

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evidence. *Id.* As a determination of a preponderance of the evidence turns on the question of credibility and the weight to be given testimony, we defer to the trial court's superior position to resolve those matters. *McLeod v. State*, 2010 Ark. 95 (citing *Seamster v. State*, 2009 Ark. 258). We hold that Heather's testimony was sufficient to sustain the State's burden to prove that appellant violated the terms and conditions of his suspended sentence.

Accordingly, we affirm.

PITTMAN and HENRY, JJ., agree.