Cite as 2010 Ark. App. 336

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR09-1010

KEITH BROWN APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** April 21, 2010 APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT [NO. CR-1993-809 A] HONORABLE STEPHEN TABOR, JUDGE AFFIRMED

JOSEPHINE LINKER HART, Judge

Keith Brown appeals from an order of the Sebastian County Circuit Court revoking his suspended sentences for possession of cocaine with intent to deliver and possession of drug paraphernalia. The State alleged that Brown had committed the offenses of second-degree terroristic threatening, second-degree criminal mischief, second-degree assault on a family or household member, and residential burglary. The trial court found that Brown violated the terms and conditions of his suspended sentences by committing second-degree terroristic threatening and second-degree criminal mischief. Brown was sentenced to two years in the Arkansas Department of Correction, with eight additional years suspended. On appeal, he argues that the State failed to show by a preponderance of the evidence that he violated the terms and conditions of his suspended sentences. We affirm.

At a hearing on the State's petition, Aleida Guadalupe Mejia testified that she had previously had an "intimate, dating relationship" with Brown, but on May 10, 2009, she "just stopped" all communications with him. According to Mejia, on May 26, 2009, while she was alone in her home, Brown "barged" into her residence through an unlocked door. She claimed that he had a "vicious look" on his face and that she locked herself in the bathroom so "he couldn't get to me." Mejia claimed Brown twice said, "I'm going to get you, you f----g bitch." She stated she was scared that he would kill her, and she dialed 911. She told him she was calling the police, so Brown left. Before he left, however, he threw her "snowball knick-knack" against the wall, breaking it. She admitted that she did not actually see him throw it and denied hearing the glass break, but she surmised that Brown had broken the snow globe when she found the broken glass after she emerged from the bathroom.

On cross-examination, Mejia admitted that she was not alone on the morning of the alleged incident; a "friend," Moses Franklin, was present. She also admitted that Franklin was in her bedroom when Brown arrived and that she heard Brown arguing with Franklin. She confirmed that Brown left when she threatened to call the police. Mejia further explained that she had not actually told Brown that their relationship had ended and that it was an accepted practice for her friends to just enter her residence without knocking.

Brown admitted that he was at Mejia's residence on the day in question, but denied knowing that his two-or-three-year relationship with Mejia had ended. He encountered Franklin, with whom he was acquainted, and Franklin told him, "Yo, man, you no longer

belong here." According to Brown, Franklin jumped off the bed and began pushing him. He left when Franklin threatened to call the police. He denied seeing Mejia, threatening her, or breaking anything, but admitted that "in the past, I told her I will whip her ass."

The trial court found that Brown had violated the terms of his suspended sentence by committing second-degree terroristic threatening and criminal mischief. Apparently, the trial court did not find that Brown had committed residential burglary. Nonetheless, the trial court also specifically found that Brown's testimony was not credible.

Brown argues on appeal that the State failed to show by a preponderance of the evidence that he violated the terms and conditions of his suspended sentence. He acknowledges that the trial court is the "sole arbiter and judge of witness credibility," yet asserts that the trial court erred when it weighed the credibility of Mejia against his own and found his to be lacking. Brown further asserts that the State failed to introduce any physical evidence of the allegedly broken snow globe. He also notes that Franklin was not called to testify. He urges us to hold that the "uncorroborated, admittedly inconsistent testimony of an accuser" is insufficient evidence as a matter of law to sustain the revocation order.

When we review a trial court's findings that an appellant violated the terms and conditions of his or her suspended sentence, those findings are upheld unless they are clearly against a preponderance of the evidence. *Ramsey v. State*, 60 Ark. App. 206, 959 S.W.2d 765 (1998). Evidence that is insufficient to support a criminal conviction may be sufficient to support a revocation. *Id.* We defer to the trial court's superior position to resolve matters of

witness credibility and the weight to be given testimony. *McLeod v. State*, 2010 Ark. 95. The supreme court has stated that it will not rely on testimony only if it is "inherently improbable, physically impossible, or so clearly unbelievable that reasonable minds could not differ thereon." *Brown v. State*, 374 Ark. 341, 345, 288 S.W.3d 226, 230 (2008).

We agree that Mejia's testimony was inconsistent regarding whether she was alone in her home on the morning of the alleged incident. However, we cannot say that this detail renders her testimony completely infirm as a matter of law. Moreover, the trial court noted that Brown's version of the morning's events was not credible. As noted previously, we defer to the trial court's superior position to determine the credibility of the witnesses. *McLeod*, *supra*.

We therefore consider whether the evidence was sufficient to sustain the revocation. A person commits second-degree terroristic threatening if, acting with the purpose of terrorizing another person, he threatens to cause physical injury or property damage to another person. Ark. Code Ann. § 5-13-201 (2009). The conduct prohibited is the communication of a threat with the purpose of terrorizing. *Whitney v. State*, 2009 Ark. App. 726. The defendant need not have the immediate ability to carry out the threat. *Knight v. State*, 25 Ark. App. 353, 758 S.W.2d 12 (1988). In the instant case, Mejia testified that Brown threatened to "get" her, which she interpreted as a threat to kill her. We cannot say that it is clearly against the preponderance of the evidence that Brown violated this statute.

Because the State must prove only one violation to establish that Brown violated the conditions of his suspended sentences, *see Brock v. State*, 70 Ark. App. 107, 14 S.W.3d 908

(2000), we find it unnecessary to address the other basis for the revocation of Brown's suspended imposition of sentence.

Affirmed.

PITTMAN and BAKER, JJ., agree.