

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR10-138

EUGENE TROY REED, JR.
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered JUNE 16, 2010

APPEAL FROM THE MISSISSIPPI
COUNTY CIRCUIT COURT
[NO. CR-02-75]

HONORABLE BARBARA HALSEY,
JUDGE,

AFFIRMED

KAREN R. BAKER, Judge

Appellant Eugene Troy Reed, Jr., asserts that insufficient evidence supports the revocation of his suspended imposition of sentence by the Mississippi County Circuit Court. The court found that he had violated the terms and conditions of his suspended imposition of sentence from an underlying burglary conviction. Upon revocation he was sentenced to five years' incarceration in the Arkansas Department of Correction with an additional five years' suspended imposition of sentence. We find no error and affirm.

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 (per curiam). Furthermore, a trial judge is not required to believe the testimony of any witness, particularly that of the accused since he or she is the person most interested in the outcome of the proceedings. *Wilson v. State*, 95 Ark. App. 394, 237 S.W.3d 473 (2006).

In this case, testimony established that on May 26, 2009, Christine Merritt was watching television in the residence she shared with her father located at 2108 Marguerite in Blytheville. She became alarmed when dogs began barking and she heard loud noises, including banging at the back door. She grabbed her cell phone, called her father, and ran outside to hide. Her father, Jimmy Merritt, who was not at home at the time, immediately called the police and "raced" homeward. Mr. Merritt later testified that he found muddy footprints on his back door, and that the door jamb was broken. The Merritts' testimony established that an attempt to break into their home was near completion when abandoned.

Mr. Merritt also testified that, when he stopped at the intersection a block from his house, he saw appellant and another person run across his backyard, jump his fence, and run toward a residence on Rose Street. He explained that he had an unimpeded view of his backyard and the open area between it and the house at 2119 Rose Street. Mr. Merritt flagged down Officer Hicks and described the two men and told the officers that the men who had jumped his fence had stopped at a car by the Rose Street house and talked with a

third person who was standing there, and that the third person ran into the house.

Officer Hicks arrived at the Rose Street address, saw the men Mr. Merritt had described, observed that they had grass and leaves in their hair, and noticed that they were perspiring as if they had recently exerted themselves. He arrested the men after speaking with them briefly. When the third man was brought out of the house, he was arrested by Officer Hicks as the man who matched the description given to him by Mr. Merritt and, who was located in the place identified by Mr. Merritt.

Appellant denied being involved. He testified that the owner of the Rose Street house and another man were standing by a blue car when two other men came running around the side of the house. Appellant also testified about the color of the t-shirts worn by the two men, which he relied upon in refuting his involvement. He alleged that the man who ran into the house was wearing a white t-shirt, but when he was later brought out he was wearing a black one that he had been carrying in his hand when he went in.

The trial court was entitled to disbelieve appellant's testimony and credit the testimony of Mr. Merritt. The trial court determined that sufficient credible evidence showed that appellant attempted to burglarize the Merritts' residence, and in so doing violated the terms of his suspended sentence. We hold that the trial court's determination was not clearly against the preponderance of the evidence.

Affirmed.

KINARD and BROWN, JJ., agree.