

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR10-114

RICHARD LEE PYLES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 8, 2010

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT
[NOS. G-CR-2006-72; G-CR-2008-25]

HONORABLE STEPHEN TABOR,
JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Judge

Appellant pleaded guilty in February 2007 to sexual assault. Imposition of sentence was suspended for five years. In February 2008, appellant pleaded guilty to failing to observe his reporting requirements as a sex offender, and he was sentenced to two years' imprisonment with imposition of any additional sentence suspended for a period of four years. These suspensions were conditioned, *inter alia*, on the requirement that appellant violate no federal, state, or municipal law. In September 2009, the State filed a petition to revoke appellant's suspensions, asserting that he violated the conditions thereof by committing third-degree domestic battery. After a hearing, appellant was found to have violated the conditions of his suspensions by committing domestic battery, and he was sentenced to three years' imprisonment for each of his prior convictions, to run concurrently. On appeal, he argues that the evidence is insufficient to show that he violated the conditions of his suspended

sentences by committing domestic battery. We affirm.

In order to revoke a suspension or probation, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that suspension or probation. Ark. Code Ann. § 5-4-309(d) (Repl. 2006). On appeal from an order of revocation, the appellant bears the burden of showing that the trial court's findings are clearly against the preponderance of the evidence. *Peterson v. State*, 81 Ark. App. 226, 100 S.W.3d 66 (2003). In deciding whether appellant has met this burden, we defer to the trial court's superior opportunity to assess the credibility of the witnesses. *Id.*

It is undisputed that appellant and the victim, Josie Peterson, had been married in 2006 and subsequently divorced, but were in a romantic relationship at the time of the alleged domestic battery in July 2009. Police were summoned and found Ms. Peterson agitated and upset, as if she had been in an altercation, and she reported at that time that appellant had choked her. Appellant reported that Ms. Peterson had in fact attacked him. The investigating officer noticed red marks on Ms. Peterson's neck but saw no marks on appellant to substantiate his claim.

At the hearing, Ms. Peterson testified that, although appellant did choke her during the incident, he did so inadvertently while pushing her away after she struck him in the face with her fist. She stated that she struck appellant because appellant took the cell phone off the charger. On cross-examination, Ms. Peterson said that she believed on the night of the incident that appellant intentionally choked her, but that she now believed that he was merely

pushing her away. She admitted that she and appellant had reconciled since the incident and in fact had remarried the day before the revocation hearing. She also admitted that she did not tell the investigating officer that she had hit appellant first in her statement on the night of the incident.

The statements given by Ms. Peterson at the time of the incident and at the time of the hearing were largely contradictory, and the issue turns on the credibility of her testimony at trial. In light of the trial court's superior opportunity to assess the credibility of witnesses, we cannot say that the trial judge clearly erred in finding that appellant committed domestic battery in violation of the conditions of his suspended sentences.

Affirmed.

ROBBINS and KINARD, JJ., agree.