Opinion filed July 13, 2017

In The

Eleventh Court of Appeals

No. 11-15-00177-CR

MAURICE EARL OLER, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 42nd District Court

Taylor County, Texas

Trial Court Cause No. 25701A

M E M O R A N D U M O P I N I O N

This is an appeal from the revocation of Maurice Earl Oler's community supervision. We affirm.

On October 8, 2014, Appellant pleaded guilty to assault family violence. *See* TEX. PENAL CODE ANN. § 22.01(b)(2)(A) (West Supp. 2016). Under the terms of the plea agreement, the trial court convicted Appellant and assessed his punishment at confinement for ten years, but suspended the imposition of the confinement portion of the sentence and placed Appellant on community supervision for six

years. Subsequently, the State filed a motion to revoke Appellant's community supervision. The trial court found that Appellant violated condition A of his community supervision, to "[c]ommit no offense against the laws of this or any other State, or the United States," and imposed the original sentence of ten years.

Appellant asserts that the evidence presented at his revocation hearing was insufficient to prove by a preponderance of the evidence that he violated the terms and conditions of his community supervision. Appellant specifically argues that there was insufficient evidence to prove:

> Said defendant, Maurice Earl Oler, violated condition A which states he will commit no offense against the laws of this or any other state, or the United States; in that said defendant, Maurice Earl Oler, on or about the 4th day of May, 2015, in the County of Taylor and State of Texas, did then and there coerce Dovie Wisdom, who was then and there a prospective witness in an official proceeding, to-wit: The prosecution of Larry Cherry, by soliciting money from the said Dovie Wisdom, with representation that Maurice Earl Oler would abstain from and discontinue the prosecution of Larry Cherry, a case where Maurice Earl Oler is the complaining witness, with intent to influence the said Dovie Wisdom, to discontinue the prosecution of another, namely, Larry Cherry.

We review a trial court's decision to revoke community supervision under an abuse of discretion standard. *Cardona v. State*, 665 S.W.2d 492, 493 (Tex. Crim. App. 1984). The trial court is the sole judge of the credibility of the witnesses and the weight of their testimony. *Garrett v. State*, 619 S.W.2d 172, 174 (Tex. Crim. App. [Panel Op.] 1981). We review the evidence in the light most favorable to the trial court's ruling. *Cardona*, 665 S.W.2d at 493. We will uphold a trial court's decision to revoke if any one of the alleged violations of the conditions of community supervision is supported by sufficient evidence. *Moore v. State*, 605 S.W.2d 924, 926 (Tex. Crim. App. [Panel Op.] 1980).

The evidence in the revocation hearing shows that Larry Cherry went to Appellant's motel room, robbed him at gunpoint, and assaulted him. After Cherry's arrest for aggravated assault, communications began between Appellant and Dovie Wisdom, Cherry's mother. Although at trial there was a question of which party first suggested it, those conversations allegedly concerned the proposition that Appellant would drop the charges against Cherry if Wisdom would pay Appellant $1,000. Wisdom claimed that Appellant contacted her with the offer. Appellant testified that Wisdom contacted him first.

In support of Wisdom's contention, the State offered, and the trial court admitted, a recorded phone conversation between Appellant and Wisdom wherein Appellant explained that, for $1,000, he would drop the charges against Cherry.

Appellant basically argues that there is a fatal variance between the allegations in the motion to revoke and the proof presented at trial. He claims that the State alleged that he tampered with a witness, under Section 36.05(a) of the Texas Penal Code, when the question was more directed at Section 36.05(b), which prohibits witnesses, or prospective witnesses, to solicit, accept, or agree to a benefit in exchange for favorable testimony, refusing to testify or discontinuing the prosecution of another. TEX. PENAL CODE ANN. § 36.05 (West Supp. 2016). We disagree.

When the State alleges that a probationer violated the law, "it is not necessary that such an allegation be in the same precise terms as would be necessary in an indictment allegation." *Bradley v. State*, 608 S.W.2d 652, 655 (Tex. Crim. App. 1980). It is sufficient if there is an alleged violation and the probationer had fair notice. *Id.* The State's motion contained some allegations that were clearly contradictory to the evidence. For instance, the State claimed that Appellant coerced Wisdom, who was a prospective witness; however, it was Appellant and not Wisdom who was the prospective witness. However, the State also alleged that Appellant

solicited money from Wisdom to abstain from the prosecution of Cherry. This second portion gave "the defendant fair notice of allegations against him so that he may prepare a defense" against a Section 36.05(b) charge based on the solicitation of a benefit for discontinuation of prosecution. *Figgins v. State*, 528 S.W.2d 261, 263 (Tex. Crim. App. 1975); *see* PENAL § 36.05. Appellant "fails to suggest any way in which his ability to prepare a defense was hampered by" the allegation that Appellant tampered with a witness. *Labelle v. State*, 720 S.W.2d 101, 109 (Tex. Crim. App. 1986).

Viewed in the light most favorable to the trial court's ruling, the evidence presented shows that Appellant was a prospective witness of an official proceeding who solicited a benefit and violated his community supervision. This was a charge that Appellant had fair notice of based on the State's allegation, and the evidence was sufficient to support that allegation. We hold that the trial court did not abuse its discretion when it revoked Appellant's community supervision. We overrule Appellant's sole issue on appeal.

We affirm the judgment of the trial court.

JIM R. WRIGHT
CHIEF JUSTICE

July 13, 2017

Do not publish. *See* TEX. R. APP. P. 47.2(b).

Panel consists of: Wright, C.J.,
Willson, J., and Bailey, J.