

Opinion issued August 17, 2017



In The  
**Court of Appeals**  
For The  
**First District of Texas**

---

NO. 01-16-00521-CR

---

**ADRIAN GERALDO GONZALEZ, Appellant**  
V.  
**THE STATE OF TEXAS, Appellee**

---

---

**On Appeal from the 176th District Court**  
**Harris County, Texas**  
**Trial Court Case No. 1417328**

---

---

**MEMORANDUM OPINION**

Pursuant to a plea bargain, appellant, Adrian Geraldo Gonzalez, was granted deferred adjudication and placed on community supervision for four years for the offense of assault against a family member. The State moved to adjudicate his guilt in February 2016, alleging multiple grounds, including an allegation that he had

committed the offense of evading arrest in a motor vehicle. Appellant pleaded true to all of the grounds except the one based on the evading arrest charge. Following a hearing, the trial court granted the State's motion, adjudicated appellant guilty of the assault, and assessed his punishment at four years' confinement. In three issues, appellant argues that (1) the State presented insufficient evidence of the allegation of evading arrest in a motor vehicle; (2) appellant's community supervision officer testified that she supported the continuation of appellant's deferred adjudication; and (3) the trial court abused its discretion in assessing appellant's punishment at four years' confinement in light of his community supervision officer's testimony.

We affirm.

### **Background**

Appellant was indicted for the offense of assault against a family member. The indictment alleged that he had also been convicted of a prior offense of assault against a family member. Pursuant to a plea agreement with the State, appellant was granted deferred adjudication and placed on community supervision for four years. As a condition of his community supervision, appellant was required, among other things, to avoid the use or possession of drugs, submit to drug testing, maintain employment, perform community service at a rate of eight hours per month, avoid committing any further offense, remain in Harris County or obtain written permission to leave the county, and pay various fines and fees.

The State subsequently moved to adjudicate appellant's guilt. It alleged that appellant had committed the offense of evading arrest in a motor vehicle. The State further alleged that appellant had used a controlled substance, as evidenced by two different drug tests demonstrating marijuana use; failed to submit to a requested drug test; failed to maintain suitable employment for the entire year prior to the filing of the motion to adjudicate guilt; left Harris County without permission; failed to perform his community service; failed to pay his community supervision fee; failed to pay his fine and court costs; and failed to pay his laboratory processing fee.

At the hearing on the State's motion to adjudicate, appellant pleaded not true to the allegation that he committed the offense of evading arrest. He pleaded true on the record to the remaining allegations. The State presented the testimony of Officer J. Anders regarding the events surrounding appellant's arrest for evading arrest. Officer Anders testified that while he was on patrol in his marked police car he observed appellant's vehicle drive by at a "really high rate of speed." Officer Anders also observed appellant turn without signaling and run a stop sign. Officer Anders activated his siren and emergency lights, but appellant continued accelerating, reaching an estimated eighty to one hundred miles per hour, until he crashed into a ditch in a residential area.

Appellant's community supervision officer, Jonae Giles, also testified at the hearing. She stated that appellant was always respectful. She also testified regarding appellant's missed and failed drug tests, confirming his pleas of true to those allegations. She also agreed that appellant had not been successful in obtaining employment, had not completed all of his community supervision, and had not paid his fine and other fees. Giles testified that she would not have moved to adjudicate his guilt based on the allegations except that appellant had been charged with evading arrest. Giles recommended that the trial court order appellant to attend out-patient treatment and that he receive more specialized supervision through the Change Through Intervention program. She testified that if the trial court "were to see fit to put [appellant] back on probation," she would be willing to continue to supervise appellant.

Appellant's mother testified that appellant was generally respectful and helpful and was not the kind of person to get into trouble. She testified that on the night appellant was arrested for evading arrest he was driving her vehicle, which had mechanical problems. She also stated that he had no reason to avoid the police because the registration and other documentation on the vehicle he was driving at the time were current. Appellant's mother testified that appellant was running an errand for her. Receipts from the store he had visited for his mother on the night he was arrested for evading arrest were admitted into evidence.

Appellant also testified. He again reiterated that the allegations regarding his positive drug tests and other violations were true, but he denied evading arrest. He testified that he was returning home with items to deliver to his mother, and he acknowledged speeding and running stop signs. However, he denied knowing the police were behind him, testifying that the first time he became aware of the police was after he crashed into the ditch. Appellant also testified that, due to the age of the vehicle he was driving and its mechanical problems, it was impossible that he could have driven at a speed of one hundred miles per hour.

After receiving all of the evidence and the arguments of counsel, the trial court stated on the record, “I do think the State has met [its] burden on [the] paragraphs where the defendant entered a plea of not guilty.” The trial court granted the State’s motion to adjudicate and signed a written judgment in which it found appellant guilty of the assault offense and assessed his punishment at confinement for four years. The written judgment contained findings that appellant violated the terms of his community supervision consistent with each of the allegations asserted by the State in its motion to adjudicate.

This appeal followed.

### **Sufficiency of Revocation Evidence**

In his first issue, appellant argues that the State presented insufficient evidence on the allegation of evading arrest in a motor vehicle. In his second issue,

appellant contends that the trial court abused its discretion in adjudicating his guilt because Giles, his community supervision officer, testified that she supported the continuation of appellant on deferred adjudication. In his third issue, appellant argues that the trial court abused its discretion in assessing his punishment at four years' confinement in light of his community supervision officer's testimony that less punitive options were available. We consider these issues together.

**A. Standard of Review**

We review probation-revocation cases for an abuse of discretion. *Hacker v. State*, 389 S.W.3d 860, 865 (Tex. Crim. App. 2013). “To revoke probation (whether it be regular probation or deferred adjudication), the State need prove the violation of a condition of probation by a preponderance of the evidence.” *Id.* at 864–65. In this context, “‘a preponderance of the evidence’ means ‘that greater weight of the credible evidence which would create a reasonable belief that the defendant has violated a condition of his probation.’” *Id.* at 865. The trial court is the sole judge of the credibility of the witnesses and the weight to be given to their testimony. *Id.* We will affirm the trial court's order so long as there is sufficient proof of a single violation, including the defendant's plea of true to an alleged violation. *Shah v. State*, 403 S.W.3d 29, 33 (Tex. App.—Houston [1st Dist.] 2012, pet. ref'd); *see also Tapia v. State*, 462 S.W.3d 29, 31 n.2 (Tex. Crim. App. 2015) (“A plea of true, standing alone, is sufficient to support the revocation of

community supervision and adjudicate guilt.”) (citing *Moore v. State*, 605 S.W.2d 924, 926 (Tex. Crim. App. [Panel Op.] 1980)); *Clapper v. State*, 562 S.W.2d 250, 250 (Tex. Crim. App. [Panel Op.] 1978) (“Appellant’s plea of true was alone sufficient to support revocation.”).

## **B. Analysis**

Appellant argues in his first issue that the State failed to present sufficient evidence on the allegation of evading arrest in a motor vehicle.<sup>1</sup> However, the record reflects that appellant pleaded true to the State’s allegations that he tested positive for marijuana use on two occasions and failed to take a requested drug test on another occasion. Appellant also pleaded true to failing to maintain a job, failing to obtain permission to leave Harris County, failing to complete his community service hours, and failing to pay the required fines and fees. Appellant’s pleas of true to these violations of the terms of his community supervision were sufficient to support the trial court’s decision to revoke appellant’s deferred adjudication community supervision. *See Tapia*, 462 S.W.3d at 31 n.2. Accordingly, we need not address the sufficiency of the evidence to

---

<sup>1</sup> *See* TEX. PENAL CODE ANN. § 38.04(a) (West 2017) (“A person commits an offense if he intentionally flees from a person he know is a peace officer . . . attempting to lawfully arrest or detain him.”); *see id.* § 38.04(b)(2)(A) (specifying that offense is third-degree felony if actor uses vehicle); *see also Thompson v. State*, 426 S.W.3d 206, 209 (Tex. App.—Houston [1st Dist.] 2012, pet. ref’d) (“A person commits a crime under section 38.04 only if he knows that a police officer is attempting to arrest him but nevertheless refuses to yield to police show of authority.”).

support the trial court's revocation of his community supervision and adjudication of guilt based on the State's evading-arrest allegation.

Appellant argues that "notwithstanding the recitations in the written judgment," which found appellant guilty of all of the allegations asserted by the State in its motion to adjudicate, the trial court's oral pronouncement that it found true the allegation that appellant evaded arrest "is tantamount to a 'de facto' negative finding on the other allegations." We disagree. Nothing in the trial court's statement that it thought "the State has met [its] burden on [the] paragraphs where the defendant entered a plea of not guilty" purported to address the sufficiency of the allegations to which appellant pleaded true. And, as the written judgment makes clear, the trial court found that appellant had violated multiple conditions of his community supervision, including the ones to which he pleaded true.

We overrule appellant's first issue.

Appellant argues in his second issue that the trial court abused its discretion in deciding to adjudicate his guilt in light of Giles's testimony that appellant was always respectful, that she was willing to continue to supervise him if the trial court continued his community supervision, and that she recommended out-patient treatment and specialized supervision if the trial court denied the State's motion to adjudicate. However, Giles's testimony also indicated that appellant had violated multiple conditions of his community supervision, including testing positive for



marijuana use on two occasions and failing to submit to a drug test on another occasion. And, as discussed above, the evidence indicated that appellant pleaded true to multiple allegations and himself testified about multiple violations of the terms of his community supervision. This alone was sufficient support for the trial court's decision to revoke appellant's community supervision and adjudicate his guilt. *See Tapia*, 462 S.W.3d at 31 n.2. Furthermore, the trial court was the sole judge of the credibility of the witnesses and the weight to give their testimony. *See Hacker*, 389 S.W.3d at 865.

We overrule appellant's second issue.

Finally, appellant asserts in his third issue that the trial court abused its discretion in assessing his punishment at four years' confinement because evidence relevant to his sentence, including Giles's testimony, demonstrated "less punitive measures [were] available to address [appellant's] violations." Even in light of Giles's testimony about less punitive measures being available to the trial court, we cannot conclude, in light of the entire record, that the trial court abused its discretion in adjudicating appellant's guilt and assessing a punishment of four years' confinement. The trial court has discretion in assessing punishment, and the sentence imposed here—four years' confinement—is within the punishment range for a second offense of assault against a family member. *See, e.g., Jackson v. State*, 680 S.W.2d 809, 814 (Tex. Crim. App. 1984) (holding that trial court has

discretion to assess punishment and stating general rule that “as long as a sentence is within the proper range of punishment it will not be disturbed on appeal”); *Baldrige v. State*, 77 S.W.3d 890, 893–94 (Tex. App.—Houston [14th Dist.] 2002, pet. ref’d.) (assessment of punishment within statutory range provided by legislature will not typically be an abuse of discretion); *see also* TEX. PENAL CODE ANN. § 22.01(b)(2)(A) (West Supp. 2016) (family-violence assault, as enhanced by prior family-violence assault conviction, is third-degree felony offense); *id.* § 12.34 (West 2011) (punishment range for third-degree felony is imprisonment for between two and ten years with optional fine not to exceed \$10,000.00).

We overrule appellant’s third issue on appeal.

### **Conclusion**

We affirm the judgment of the trial court.

Evelyn V. Keyes  
Justice

Panel consists of Chief Justice Radack and Justices Keyes and Massengale.

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