Affirmed and Memorandum Opinion filed June 17, 2010.

In The

Fourteenth Court of Appeals

NO. 14-09-00435-CR
NO. 14-09-00436-CR

LEE EDWARD ST. ROMAIN, JR., Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 180th District Court
Harris County, Texas
Trial Court Cause Nos. 1126583, 1126584

MEMORANDUM OPINION

Appellant entered a plea of guilty to possession of a controlled substance, trial court cause number 1126583 (appeal number 14-09-00435-CR) and possession of a short-barreled firearm, trial court cause number 1126584 (appeal number 14-09-00436-CR). In both cases, the trial court deferred adjudicating guilt and placed appellant on community supervision. The period of community supervision was for two years in trial court cause number 1126583, and for five years in trial court cause number 1126584. Subsequently, the State filed a motion to adjudicate guilt in both cases. Following a hearing, the trial court found the allegations true and proceeded to adjudicate guilt in both cases. The trial

court sentenced appellant to confinement for two years in the State Jail Division of the Texas Department of Criminal Justice in trial court cause number 1126583, and for eight years in trial court cause number 1126584, to run consecutively. Appellant filed a timely notice of appeal in both cases.

In his sole issue, appellant claims the trial court abused its discretion because the State did not establish by a preponderance of the evidence that he violated his conditions of community supervision. The record reflects the State moved to adjudicate guilt on three grounds. First, the State claimed appellant committed an offense against the State of Texas in that he assaulted Jeannette Jacoway. Second, the State asserted appellant failed to maintain financial responsibility in that he failed to provide proof of financial responsibility. Third, the State alleged appellant had contact with Jeannette Jacoway. The trial court found all three allegations true.

STANDARD OF REVIEW

The trial court's decision to adjudicate guilt on the original charge "is reviewable in the same manner as a revocation hearing conducted under Section 21 of this article in a case in which an adjudication of guilt had not been deferred." Tex. Code Crim. Proc. Ann. art. 42.12, § 5(b) (Vernon Supp. 2009). Accordingly, we review the trial court's order for abuse of discretion. *See Forrest v. State*, 805 S.W.2d 462, 464 (Tex. Crim. App. 1991).

The trial court's order must be supported by a preponderance of the evidence. *See Maxey v. State*, 49 S.W.3d 582, 584 (Tex. App. -- Waco 2001, pet. ref'd) (citing *Scamardo v. State*, 517 S.W.2d 293, 298 (Tex. Crim. App. 1974)). This standard is met when the greater weight of the credible evidence creates a reasonable belief the defendant has violated a condition of his community supervision. *See Rickels v. State*, 202 S.W.3d 759, 764 (Tex. Crim. App. 2006). We view the evidence presented in the light most favorable to the trial court's decision. *Liggett v. State*, 998 S.W.2d 733, 736 (Tex. App. -- Beaumont 1999, no pet.) (citing *Garrett v. State*, 619 S.W.2d 172, 174 (Tex. Crim. App. 1981)). The

State is required to sustain the burden of proving the alleged violations. *See Cobb v. State*, 851 S.W.2d 871, 873 (Tex. Crim. App. 1993). Violation of a single condition of community supervision will support the trial court's decision to adjudicate guilt. *See Moore v. State*, 605 S.W.2d 924, 926 (Tex. Crim. App. 1980). The trial court is the sole fact-finder and the exclusive judge of the witnesses' credibility and the weight to be given their testimony. *See Garrett*, 619 S.W.2d at 174. The trial court resolves conflicts in the evidence and may choose to believe or disbelieve any or all of the witnesses' testimony. *See Sharp v. State*, 707 S.W.2d 611, 614 (Tex. Crim. App. 1986).

THE TESTIMONY

Martin Guzman, community supervision officer for Harris County, testified he assumed supervision of appellant's case in December 2007. On July 22, 2008, Guzman was informed appellant had violated the law and went to appellant's home on Brockington Drive. Guzman spoke with appellant's mother; she called appellant and he arrived shortly thereafter. Guzman informed appellant there was a warrant for his arrest and appellant acted surprised. Guzman told appellant his girlfriend had been assaulted, but appellant denied any involvement. Guzman did not take appellant into custody.

Mark Palmer, a firefighter/paramedic with the Westlake Fire Department and Houston Fire Department, testified he responded to an assault call at 4: 39 p.m. on July 22, 2008, on Ruble Street. They arrived at 4:43 p.m. and Jeanette Jacoway opened the door, holding her bloody nose. She was upset and crying. Jacoway told Palmer she was assaulted by her boyfriend, who was at the house earlier. Jacoway also told Palmer her dog had stepped on her foot and taken off outside. She asked Palmer to help look for the dog. Palmer testified there was blood on the floor inside the house. After the bleeding on her nose was controlled, Jacoway was taken to the hospital. Palmer testified Jacoway smelled of alcohol.

Officer Colin McHugh of the Harris County Sheriff's Office was called to the hospital to photograph an assault victim on July 22, 2008. Officer McHugh recognized

Jacoway, having met with her before as a victim. He testified she was intoxicated and began crying when she saw him. Officer McHugh developed appellant as a suspect. Officer McHugh was aware that appellant and Jacoway were common-law spouses. Officer McHugh acknowledged his history with appellant and Jacoway concerned the two cases for which appellant was placed on deferred adjudication. He had been to the house on Ruble Street twice before, once for an aggravated assault with a deadly weapon, shots fired; and again with Jacoway after a terroristic threat. In both those cases, Jacoway was the victim and appellant the suspect.

That same day, Officer McHugh went to Jacoway's and spoke to neighbors. He asked if any black men were seen in the neighborhood because Jacoway had told Deputy Garza she was attacked in her yard by black men. Officer McHugh testified Jacoway told him that appellant was living in the house with her on Ruble Street. He also testified the next-door neighbor told him appellant stayed on Ruble Street. Officer McHugh knocked on the door and heard a male voice from inside the house. No one would open the door. Neighbors told the officers, "He's in the house. I just saw him in the front yard."

The next day, officers went back to Ruble Street with a warrant. Officer McHugh testified Jacoway "said she didn't want him to go to prison. He would go to prison if she told me the truth." Officer McHugh testified Jacoway was talking about appellant and was trying to protect him. Jacoway also told Officer McHugh that it was one black man, then two, and then three black men that attacked her. At the hospital, Jacoway never said anything to Officer McHugh about her attackers being black men.

Jeanette Jacoway testified she lived with appellant from January 2007 until July 2007. They stopped living together after an incident in July 2007, because of a court order. Jacoway said she had no contact with appellant since July 2007 and he had not been to the house on Ruble Street. Jacoway testified that on July 22, 2008, two black men assaulted her. Jacoway claimed she was watering her yard when they drove up in an SUV and asked for appellant. Jacoway thought they wanted to buy a car she was selling.

When she tried to enter the house, they pushed the door open and the taller one punched her.

Jacoway did not recall telling Palmer it was her boyfriend that hit her in the nose. She also did not recall telling him the dog stepped on her foot and asking him to help find the dog. Jacoway denied telling Officer McHugh that appellant assaulted her. She claimed she told him two black men assaulted her, appellant was nowhere near her, and that appellant was on probation. Jacoway's medical records contained the notation "punched in the nose by her boyfriend." Her medical records also show medical personnel overheard her say two black men assaulted her.

The defense presented a number of witnesses to testify that appellant was not at the house on Ruble Street on the day in question. His sister, Lisa Gregg, testified appellant was with her that day, running errands, until they returned home around 3:30 p.m. Their mother, Barbara St. Romain, and a neighbor, Wynonna Keats, were there. At 4:00 p.m., she and appellant went to pick up her son, Nathan, from summer league basketball. They returned home at approximately 4:20 p.m. Her other sons, Anthony and Ryan, were also home by then. They were all home the rest of the evening. Lisa testified appellant was not out of her presence long enough to drive to Ruble Street. She also testified he does not drive either of the two vehicles at the home, which belong to her and her mother, because he is not insured. Lisa testified she is aware appellant is on probation for possession of a prohibited weapon and that he threatened to kill Jacoway with a sawed-off shotgun.

The testimony of Barbara St. Romain, appellant's mother, was consistent with Lisa's. She testified appellant does not drive. Barbara said Lisa and appellant arrived home around 3:30 p.m., left about 4:00 p.m. to pick up Nathan, and after they got home appellant did not leave the house again. Barbara testified appellant has his own car, but never drives it because it is not inspected and he does not want to drive. She stated appellant was arrested on the 23rd. According to Barbara, Guzman was at the house on the 23rd.

Wynonna Keats, a neighbor, testified Lisa and appellant had just driven up when she crossed the street to visit Barbara St. Romain, around 3:30 p.m. on July 22, 2008. She said they only left once, to pick up Nathan. Appellant parks his car at her house. Keats testified she has ridden with appellant in the car, but the last time was over a year ago and she has not recently seen him drive the car. She estimated it would take 45 minutes to drive from the house on Brockington to Ruble Street.

Nathan Gregg testified that on July 22, 2008, his mother and appellant picked him up from basketball, it was sometime between 4:10 and 4:20 p.m. They went home and appellant did not leave the house again. Ryan Gregg testified when he woke up on the morning of July 22, 2008, his mother and appellant were gone. They returned around 3:30 p.m. and left again to pick up his brother. They were gone about 15 minutes. Appellant did not leave the house again. Keatin Mawhood, a friend of Nathan's, testified that on July 22, 2008, he brother Ashton drove him to Nathan's house; they arrived around 4:40 to 4:50 p.m. Appellant was at the house. Keatin spent the night, and to his knowledge appellant never left the house. The State stipulated that Ashton Mawhood would testify that when he dropped his brother off at 4:50 p.m., he saw appellant in the front yard. The State also stipulated that Randall Haynes, a neighbor, would testify he arrived home around 5:50 p.m. and appellant was at the residence at that time.

Appellant testified on July 22, 2008, he was running errands with his sister until about 3:10 p.m., when they went home. They left to pick Nathan up but, other than that, he did not leave the house again that day. Appellant testified he had no contact with Jacoway on July 22, 2008.

ANALYSIS AND CONCLUSION

According to Officer McHugh, Jacoway said appellant was living in the house with her on Ruble Street. Further, Jacoway's next-door neighbor told Officer McHugh that appellant was staying in the house on Ruble Street. Although Jacoway testified there had been no contact with appellant since July 2007, the trial court could have chosen to believe

the testimony of Officer McHugh and found Jacoway's testimony lacked credibility. *See Sharp*, 708 S.W.2d at 614. The conflict in the evidence was for the trial court, as the trier of fact, to resolve. *See Garrett*, 619 S.W.2d at 174. Accordingly, we find the evidence presented was sufficient to create a reasonable belief that appellant came in contact with Jacoway. Therefore, the trial court did not abuse its discretion in revoking appellant's community supervision. Appellant's issue is overruled and the judgment of the trial court is affirmed.

PER CURIAM

Panel consists of Justices Brown, Sullivan, and Christopher.
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