NUMBER 13-16-00130-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

DAREN RENE TREVINO, **Appellant,**

v.

THE STATE OF TEXAS, **Appellee.**

On appeal from the 377th District Court of Victoria County, Texas.

MEMORANDUM OPINION

Before Chief Justice Valdez and Justices Longoria and Hinojosa
Memorandum Opinion by Justice Hinojosa

Appellant Daren Rene Trevino appeals from a judgment revoking community supervision on a count of engaging in deadly conduct, namely discharging a firearm at or in the direction of one or more individuals. *See* TEX. PENAL CODE ANN. § 22.05(b) (West, Westlaw through Ch. 49, 2017 R. S.). The trial court sentenced appellant to ten years' confinement in the Texas Department of Criminal Justice–Institutional Division, and it

assessed a $1,000 fine and court costs. In one issue, appellant contends that the trial court erred by finding true the alleged violation of "Condition 34," which is within the original terms of his community supervision, and that the condition is impermissibly vague. We affirm.

I. BACKGROUND[1]

In the underlying criminal matter, appellant waived an indictment, and he was charged by information with three counts of deadly conduct. *See id.* § 22.05(b). Appellant pleaded guilty to Count 1 of the information,[2] and the State moved to dismiss Counts 2 and 3. Appellant was sentenced to ten years' imprisonment. The trial court suspended the sentence and placed appellant on community supervision for a period of five years.

The terms and conditions of appellant's probation included, among other things, that appellant refrain from: committing an offense during his probation (Condition 1); possessing a firearm (Condition 12); and associating with people whom possess weapons and involving himself in activities involving said weapons (Condition 34). Appellant signed the judgment of conviction acknowledging that he understood the conditions of adult community supervision, and he did not challenge the propriety of any condition at the time of his plea or after his conviction became final.

Less than a year later, the State filed a motion to revoke community supervision

[1] Because this is a memorandum opinion and the parties are familiar with the facts, we will not recite them here except as necessary to advise the parties of the Court's decision and the basic reasons for it. *See* TEX. R. APP. P. 47.4.

[2] Count 1 specified: "On or about 1st day of March, A.D., 2015, in the County of Victoria and State of Texas, one Daren Rene Trevino did then and there knowingly discharge a firearm at or in the direction of an individual, namely, Kristen Camacho . . ."

on the grounds that appellant had violated the above conditions. Appellant pleaded "not true" to all the allegations against him in the motion to revoke.

At the revocation hearing, Thomas Rivera and his wife, Julia Silva, testified that three men, each of them carrying arms, threatened Rivera. Rivera and Silva further testified that a man in a "plaid jacket" pointed a gun at Rivera.

Dakota McCarthy, a senior patrol officer for the Victoria Police Department ("VPD"), arrived at the scene within minutes of Silva's 911 call. Officer McCarthy identified appellant at the revocation hearing as being near the incident at the time the alleged events occurred. Furthermore, Officer McCarthy's body camera footage and pictures of the men initially detained at the scene indicate appellant was wearing a "plaid jacket."

> STATE: And the people you initially detained, do you recall if any of them were wearing a plaid jacket?
>
> MCCARTHY: I do not recall what they were wearing, ma'am. I know my body camera was recording.

The State gave Officer McCarthy two pictures to view of men that were alleged to be co-conspirators with appellant:

> STATE: Officer McCarthy, were either one of those men wearing a plaid jacket?
>
> MCCARTHY: At that time, no, ma'am.

Robert Nichols, another VPD officer, testified as to appellant's attire:

> So as we were on scene, the dispatchers were continuing to relay the information that they had about the call. And they had stated that one of the subjects handed a firearm to a gentleman in a plaid jacket . . .

The State's final witness was Maria Alicia Sauseda, a resident of the apartment

appellant ran in after the alleged confrontation with Rivera. Sauseda did not know appellant was in her apartment until officers informed her as such. Upon learning of appellant's presence, Sauseda asked him to leave. After appellant left Sauseda's apartment, police searched the apartment and found two firearms. Sauseda testified that neither she nor any other apartment inhabitant owned the recovered firearms.

The trial court ruled in favor of the State, and it found that appellant had violated Conditions 1, 12, and 34 of the terms of community supervision. The trial court sentenced appellant to ten years' confinement plus a $1,000 fine and court costs. This appeal followed.

II. DISCUSSION

Appellant's sole issue is that the trial court erred by finding true the alleged violation of Condition 34, and that Condition 34 is impermissibly vague in and of itself. Appellant argues that the vagueness of this condition prevented him from adequately preparing a defense, and thus cannot satisfy due process requirements. Condition 34 of appellant's community supervision states:

> You are not to have, nor associate with anyone who has any weapons of any description, any weapon prohibited by law, including firearms, ammunition, nunchucks, or martial arts weaponry, and knives of any kind, in your or their possession while you are on community supervision, including any replica of any weapon, or involve yourself in activities in which weapons are used; i.e., hunting, target shooting.

Appellant requests a new revocation hearing based on the aforementioned arguments. The State responds that appellant waived any error as to the sufficiency of the motion to revoke and a challenge to the terms of Condition 34 by failing to timely object. Alternatively, the State argues that even if there is error related to Condition 34, it is

harmless because the trial court found appellant violated two other conditions of his community supervision and he does not challenge those findings.

A. Standard of Review and Applicable Law

We review a trial court's order revoking an appellant's placement on community supervision for abuse of discretion. *See Hacker v. State*, 389 S.W.3d 860, 865 (Tex. Crim. App. 2013); *Garrett v. State*, 619 S.W.2d 172, 174 (Tex. Crim. App. [Panel Op.] 1981). At a revocation hearing, the State must prove by a preponderance of the evidence that the appellant has violated a condition of his community supervision. *See Cobb v. State*, 851 S.W.2d 871, 873 (Tex. Crim. App. 1993). Proof of a single alleged violation is sufficient to affirm an order by the trial court revoking community supervision. *See O'Neal v. State*, 623 S.W.2d 660, 661 (Tex. Crim. App. [Panel Op.] 1981). Additionally, the trial court's judgment should be affirmed if the appellant does not challenge all of the grounds on which the trial court revoked community supervision. *See Baxter v. State*, 936 S.W.2d 469, 472 (Tex. App.—Fort Worth 1996), *pet. dism'd as improvidently granted*, 960 S.W.2d 82 (Tex. Crim. App. 1998).

Community supervision is a contractual privilege, and conditions thereof are terms of the contract entered into between the trial court and appellant. *See Speth v. State*, 6 S.W.3d 530, 534 (Tex. Crim. App. 1999); *Dansby v. State*, 448 S.W.3d 441, 447 (Tex. Crim. App. 2014). Appellant must complain at trial to the conditions he finds objectionable, or all conditions not objected to are affirmatively accepted as terms of the agreement. *See Speth*, 6 S.W.3d at 534. Additionally, if errors in a motion to revoke probation are not pointed out to the trial court in a timely motion to quash, then any error

to its sufficiency is waived for the first time on appeal. *See Rodriguez v. State*, 951 S.W.2d 199, 204 (Tex. App.—Corpus Christi 1997, no pet.). This is the case even when the motion is in fact defective on the grounds of its form or substance. *Id.* Furthermore, one probation violation that has sufficient ground to revoke community supervision will support the trial court's revocation, regardless of whether other alleged violations turn out to be defective at hearing. *See Smith v. State*, 286 S.W.3d 333 (Tex. Crim. App. 2009).

B. Analysis

Appellant asserts that the trial court erred by finding true the alleged violation of Condition 34 because it is impermissibly vague as to the exact manner appellant was in violation. Appellant also asserts that it does not give a date of the alleged violation, which allegedly deprived appellant of fair notice to prepare a defense. We hold that appellant was given fair and proper notice that the State was going to attempt to prove that he had violated Condition 34.

Additionally, appellant argues that Condition 34 is overbroad and yet too restrictive in and of itself, because it prohibits the possession of "any kind" of knives, including a "dull butter knife." We hold that by waiting until his appeal to complain about an error as to the sufficiency of the State's motion, appellant waived the defect and preserved nothing for review. *See Rodriguez*, 951 S.W.2d at 204.

Even if we were to assume, without deciding, that Condition 34 is unjustifiably broad and therefore an insufficient ground to revoke appellant's community supervision, such error is harmless because the trial court found two other violations that support revocation separate from Condition 34 that appellant did not challenge on appeal. *See*

Smith, 286 S.W.3d at 342. Accordingly, we conclude that the trial court did not abuse its discretion in revoking community supervision. Appellant's sole issue is overruled.

III. CONCLUSION

The judgment revoking community supervision is affirmed.

LETICIA HINOJOSA
Justice

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

Delivered and filed the
20th day of July, 2017.