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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CR-22-184

CLATE ALAN LEONARD APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** February 22, 2023 APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT, FORT SMITH DISTRICT [NOS. 66FCR-11-270 & 66FCR-18-981] HONORABLE STEPHEN TABOR, JUDGE AFFIRMED

BRANDON J. HARRISON, Chief Judge

Around 1:00 a.m. on 18 January 2021, David Giacinti woke to the sound of glass breaking in the kitchen. He saw the nozzle of a gasoline can come through a window and heard someone tell him from outside to "Get the fu** out of the house." Mr. Giacinti rushed to wake his wife and son. The gasoline ignited. The kitchen and most of the living room were destroyed.

Clate Leonard, Mr. Giacinti's stepson, was under three suspended sentences that were "conditioned upon good behavior." Clate was arrested about an hour after the fire for arson. The circuit court revoked his suspended sentences after a hearing. Clate appeals the sufficiency of the evidence for the circuit court's finding, by a preponderance of evidence, that he violated the conditions of suspension by committing arson. We do not reverse unless a violation finding is clearly against the preponderance of the evidence. Because a

determination of a preponderance of the evidence turns on credibility and weight to be given to the testimony, we defer to the circuit court's superior position to judge the weight and credibility of the testimony. *Mathis v. State*, 2021 Ark. App. 49, 616 S.W.3d 274.

The keystone of the State's case was Mr. Giacinti's testimony that the unseen person who spoke to him before the gasoline ignited was his stepson, Clate Leonard, whom he had known for twenty-two years. Mr. Giacinti was "100 percent" confident, with "no doubt" the voice was Clate's. That certainty was implicit in earlier exchanges like this:

PROSECUTION:	And when you say "he" [said "Get the fu** out of the house,"] who do you believe that person to be?
WITNESS:	Well, it was Clate Leonard.
PROSECUTION:	How do you know that?
WITNESS:	Because I could hear his voice. I know what his voice sounds like.

Clate argues that our supreme court has not affirmed a conviction supported only by a voice identification. None of the cited opinions (and no others we have found) squarely decline to do so either. Only one included a witness who, like Mr. Giacinti, recognized the defendant's voice as the crime was occurring. *Henderson v. State*, 288 Ark. 331, 705 S.W.2d 14 (1986).

Moreover, Clate is not appealing a conviction. The preponderance-of-evidence standard applies here, which is less than a conviction would require. *Bradley v. State*, 347 Ark. 518, 65 S.W.3d 874 (2002); *Payne v. State*, 2017 Ark. App. 265, 520 S.W.3d 699. And if more than the voice identification was needed, more was presented.

A battalion chief for the Fort Smith Fire Department confirmed the fire was intentionally set using gasoline. Other evidence demonstrated that Clate had the opportunity and means to set the fire and a "reason" (albeit a delusional one) to be angry at his mother, Mrs. Giacinti. The previous day, she had told him the duplex he rented would be shown to a buyer. Clate mistook this to mean he would have to move.[1] He packed his car full of his belongings and drove to the house where his father, Mr. Leonard, was staying. Mr. Leonard testified that Clate had seemed to be having an "episode," or a break with reality, like others in the past.[2] He tried to reassure Clate that he did not have to move, and his mother just wanted him to tidy up, but "he wasn't grasping that part."

Clate stayed after dinner. He was still awake and watching TV when Mr. Leonard went to sleep around 11:30 p.m. When Mr. Leonard awoke to a phone call telling him police were en route, Clate was in the shower. That was around 2:00 a.m. Clate's clothes were in the washing machine, which was running. Mr. Leonard noticed a faint smell of gasoline. He testified that Clate did some work for an uncle weed-eating and mowing. But not at 1:00 a.m. Officers found a weed eater and a large butane torch in Clate's car. They did not find a gas can.

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[1]Mrs. Giacinti did not own the duplex.

[2]For example, in November, Mr. Giacinti had opened the door to Clate, who "barreled in the door and took a swing at [him] and hit [him] in the head" believing his mother had killed herself. She was at work. Asked if this behavior seemed out of the ordinary for Clate, Mr. Giacinti responded, "Not really."

Given this evidence and the standard of review, we conclude that the circuit court did not err in finding the evidence sufficient to prove by a preponderance of the evidence that Clate committed arson, and we affirm the revocation of his suspended sentences.

Affirmed.

GLADWIN and KLAPPENBACH, JJ., agree.

Kezhaya Law PLC, by: *Matt Kezhaya* and *Sonia A. Kezhaya*, for appellant.

Leslie Rutledge, Att'y Gen., by: *Rebecca Kane*, Ass't Att'y Gen., for appellee.