NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR08-998

	Opinion Delivered April 15, 2009
OSCAR WOOD STANLEY APPELLANT	APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT, [NOS. CR-99-481, CR-05-330]
V.	HONORABLE J. MICHAEL FITZHUGH, JUDGE
STATE OF ARKANSAS APPELLEE	
	AFFIRMED

WAYMOND M. BROWN, Judge

Oscar Stanley appeals the revocation of his suspended imposition of sentence on two underlying cases (CR-99-481(b) and CR-2005-330). He contends that the Sebastian County Circuit Court erred by finding that he violated the terms and conditions of his suspended sentence by committing theft by deception. We affirm.

In case number CR-99-481(b), appellant pled guilty to conspiracy to manufacture methamphetamine and possession of drug paraphernalia. He was sentenced to fourteen years' suspended imposition of sentence and ten years' suspended imposition of sentence respectively. Appellant pled guilty to conspiracy to possess drug paraphernalia with intent to manufacture methamphetamine in case number CR-2005-330 and was sentenced to five years' imprisonment with an additional five years suspended. As part of appellant's terms and conditions to the suspended sentences, he agreed not to violate any law. The State filed a

petition to revoke on March 27, 2008, alleging that appellant committed the new offense of theft by deception on March 18, 2008, in violation of the terms and conditions of his suspended sentence.

The revocation hearing took place on April 25, 2008. Anna Putman, an asset protection associate, testified that she worked security at the Wal-Mart located on Kelly Highway. According to Putman, she received a call on her off day concerning merchandise being taken from the store. The merchandise included a computer, a prepaid phone, a prepaid phone card, and an Easter basket. Putman pulled up the receipt and was able to pull up the transaction on video. She stated that on the video she saw a white male and a black female enter the store; that they went into the electronics department where they selected a computer, a prepaid phone, a prepaid phone card, and an Easter basket; and that they then went to the register to pay for the merchandise. She said that as the male attempted, unsuccessfully, to pay for the merchandise, the female left the store with it. Assistant manager Kevin Royal was called when the male's payment methods were declined. The male spoke with Royal and eventually left the store. Putman testified that as the male was inside the store, a car pulled up to the female, someone helped her load the merchandise into the trunk, and then the female and the driver of the car pulled off. Putman stated that they did not recover any of the merchandise that the female removed from the store. She said that the value of the merchandise was approximately $700. Putman identified appellant as being the white male she viewed on the video. The video was turned over to the Fort Smith Police

Department. On cross, she stated that appellant did not attempt to disguise himself when he came into Wal-Mart.

Officer Adam Creek of the Fort Smith Police Department testified that he was assigned to the theft by deception case involving appellant. He stated that the theft took place on May 6, 2008. Creek said that appellant was the alleged suspect and that he made phone contact with appellant. Appellant agreed to come in for an interview but he never showed up. Creek testified that he had Crawford County serve an outstanding warrant they had on appellant and that he went to Crawford County and picked up appellant. Appellant was advised of his rights and he signed the form indicating that he understood those rights. The Miranda form was introduced into evidence without objection. Creek wrote on the top of the form that appellant could read and write and that appellant had graduated high school. Creek stated that appellant made a statement to him concerning the events that took place on the date of the alleged theft by deception. According to Creek, appellant told him that he went to Joy's Scorpion, a local bar. Appellant met an unknown black female who promised him sexual favors for $100. Appellant did not have $100 cash, so he told the female that he would take her to Wal-Mart to get some things for her house. The female got in the car with appellant and the two left the bar. Creek testified that appellant told him that the female picked up a computer and a phone; that appellant knew that he did not have enough money to purchase the items; and that appellant told the female to go ahead and walk out with the property. Creek stated that appellant said that the female left with the property and he stayed at the register to try to pay for it. Appellant presented a check, an ATM card, and a credit card; all

of appellant's payment methods were declined. Creek typed up appellant's statement and appellant signed the statement. The statement was introduced into evidence without objection.

On cross, Creek stated that he believed that appellant was wearing his glasses when he interviewed him but that he did not remember. He acknowledged that appellant told him that he did not see well; however, he stated that appellant also told him that he could read and write. Creek stated that he did not recall a specific problem appellant had with his eyes. Creek testified that appellant gave him basically the same history from the beginning. Creek said that when appellant first gave a statement, he did not mention that he told the female to go ahead and leave the store. Creek stated that the information about appellant telling the female to leave the store came out after he and appellant talked a little more. According to Creek, he went back and added that part in the statement, pointed out to appellant where the change was made, and asked appellant to sign the statement if he agreed with it. Appellant signed the statement. Creek stated that he was doing paperwork pertaining to the case while appellant was reading over the statement. He said that he could not say how appellant was holding the paper. He also stated that he told appellant that he thought that appellant and the female planned the theft.

Appellant testified that he did not try to deceive anyone at Wal-Mart to obtain property that he was not entitled to. Appellant stated that the female's name was Sharon and that he and Sharon went into Wal-Mart so that he could purchase her $100 worth of items. Appellant said that Sharon was talking to someone on her cell phone the whole time he was

driving to Wal-Mart. He stated that, based on Sharon's phone conversation, he knew that she wanted to get a computer; however, he stated that he thought that she was going to pay for the computer. Appellant testified that he only agreed to spend $100, nothing more. He stated that after Sharon got the computer, she picked up a prepaid phone and an Easter basket. Appellant said that he picked up the $100 prepaid phone card for himself. Appellant stated that the merchandise totaled about $781 and that he knew that he only had about $165 in his checking account. Appellant said that he never told Sharon to leave the store but that she walked off as soon as the merchandise was scanned. Appellant testified that once his payment methods were declined, he offered to go outside and retrieve the merchandise. Appellant left his license and check at the register and went outside. Appellant stated that when he made it to his car all he saw was an empty buggy. Appellant returned and informed them that Sharon and the merchandise were not outside. Appellant said that security returned his license and check to him and he went and sat in his car. According to appellant, security came to his car and he popped the trunk to show security that nothing was in there. Appellant stated that security told him "Man, that girl just beat you." Appellant stated that he replied, "she didn't beat me, she beat you all because I didn't pay for nothing, I didn't have the money to pay for that." Appellant said that he did not see why Sharon was not arrested because Wal-Mart had the license number to the car that she left in. Appellant stated that he never told Sharon to leave. He also stated that he could not read the statement that he signed because he is legally blind. According to appellant, Officer Creek kept typing and he asked him what was he putting in the statement. Appellant stated that by that time he had signed

four or five statements. He said that Creek kept telling him that the prosecutor said that the statement was not going to work. Appellant testified that the statement looked like Braille and that he could not tell that it had anything different in it. Appellant maintained that he could not read the statement and stated that he is blind in his left eye and that the vision in his right eye is 20/550 with eye glasses. Appellant stated that he did not do anything on the date in question to cheat Wal-Mart or anyone else out of anything.

On cross, appellant stated that he knew that he could not drink but that he did not know that he could not patronize a bar. Appellant conceded that patronizing a prostitute is wrong. Appellant stated that he passed a number of ATMs between the bar and Wal-Mart; however, he said that he did not use ATM machines. According to appellant, he made a $100 deal with Sharon and the $100 was all he was going to pay her. Appellant testified that he assumed Sharon was going to pay for the items in excess of $100. Appellant stated that he did not think he touched any of the merchandise other than his $100 phone card. He said that Sharon "did the whole nine yards." Appellant stated that he still had the phone card when he left the store but that the card was never activated at the register. Appellant testified, "I was the victim of this woman who I don't know." Appellant stated that he intended to go to the police station but that he had to go to Westfork. According to appellant, he was going to go for the interview concerning the Wal-Mart incident on Tuesday; however, he was arrested for an outstanding warrant.

Upon being questioned by the court, appellant stated that his vision did not prevent him from driving; however, he said that he was not supposed to drive at night.

At the conclusion of the hearing, that trial court found that appellant had violated the terms of his suspended sentence. Appellant was sentenced to five years' imprisonment with an additional nine years suspended. The judgment and commitment order was entered on May 1, 2008. This appeal followed.

To revoke probation or a suspension, the circuit court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that probation or suspension. Ark. Code Ann. § 5-4-309(d) (Supp. 2006); *Haley v. State*, 96 Ark. App. 256, 240 S.W.3d 615 (2006). The State bears the burden of proof, but need only prove that the defendant committed one violation of the conditions. *Haley*, *supra*; *Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (2004). A defendant appealing from a revocation determination has the burden of showing that the trial court's findings are clearly against the preponderance of the evidence. *Haley*, *supra*. Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation or suspended sentence. *Lamb v. State*, 74 Ark. App. 245, 45 S.W.3d 869 (2001). Because the determination of a preponderance of the evidence turns on questions of credibility and the weight to be given testimony, we defer to the trial judge's superior position to resolve those matters. *Peterson v. State*, 81 Ark. App. 226, 100 S.W.3d 66 (2003).

Arkansas Code Annotated section 5-36-103(a)(2) (Supp. 2007) provides that a person commits theft by deception if he knowingly obtains the property of another, by deception, with the purpose of depriving the owner of the property. Appellant argues that the trial court

erred in finding that he committed theft by deception and subsequently violated the terms of his suspended imposition of sentence. We disagree.

The evidence in this case shows that even though appellant never left Wal-Mart with the property, he did tell Sharon to go ahead and leave the store. Appellant attempted to pay for the items knowing that he did not have enough money in his checking account or on his credit cards to cover the merchandise. While this was happening, a car pulled up and Sharon was able to leave Wal-Mart with the property. Once appellant's payment methods were declined, he attempted to go outside and bring the items back. However, by this time, Sharon and the items were gone. The State alleges that appellant is guilty of theft by deception because he knew that he did not have enough money to cover the price of the items. This knowledge coupled with the fact that appellant told Sharon to leave the store with the items before they were paid for is enough to find that appellant is guilty of theft by deception. Appellant violated the terms of his suspended sentence by committing a new crime. Accordingly, we affirm.

Affirmed.

VAUGHT, C.J., and HART, J., agree.