

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
LARRY D. VAUGHT, JUDGE

DIVISION IV

CACR07-1148

May 14, 2008

LONNIE W. BURKS  
APPELLANT

APPEAL FROM THE SEBASTIAN  
COUNTY CIRCUIT COURT  
[CR-05-227, CR-05-320]

V.

HON. J. MICHAEL FITZHUGH,  
JUDGE

STATE OF ARKANSAS  
APPELLEE

AFFIRMED

Appellant Lonnie Burks appeals the trial court's revocation of his suspended sentence. He argues that the revocation was not supported by a preponderance of the evidence. We disagree and affirm.

On March 21, 2005, a judgment and commitment order was entered by the Sebastian County Circuit Court, reflecting that Burks pled guilty to second-degree forgery and possession of drug paraphernalia. Burks was sentenced to a two-year term of imprisonment in the Arkansas Department of Correction, along with an eight-year suspended sentence. Burks was paroled from prison in September 2006. On June 4, 2007, the State filed a petition to revoke Burks's suspended sentence alleging that he committed a new offense—second-degree forgery—in violation of the conditions of his suspended sentence.

A hearing on the State's petition to revoke was held on July 18, 2007. Ashley Smith, a teller employed with the First National Bank in Fort Smith, Arkansas, testified that on June 2, 2007, a female drove up to the teller window. Burks was in the passenger seat of the vehicle. Smith said that they handed her Burks's driver's license and asked that a \$1175 check made payable to Burks be cashed. The check was written on the account of Lawrence S. Tennant Inter Vivos Trust. Smith compared the signature on the check with the signature card on file and concluded that they did not match. She then contacted Tennant, the account holder, for verification. Following that conversation, Smith copied Burks's driver's license and called the police.

Meanwhile, according to Smith, Burks entered the lobby of the bank inquiring about the delay in cashing the check. Smith advised him that she was contacting the account holder to verify the check. Burks asked that Smith call Tennant's assistant (Burks's mother and Tennant's caregiver, Ms. Jeanette Cotton) to verify the check. When Smith told him she was not permitted to do that, Burks got angry and left.

The police arrived about five minutes after Burks left the bank. Fort Smith Police Officer Randy Triplett testified that upon his arrival, Smith summarized what had transpired and gave him the check Burks tried to cash and the copy of his driver's license. Officer Triplett contacted Tennant and also met with Burks at Tennant's home. Burks advised the officer that on June 1, 2007, he ran into an acquaintance named David Rowe. Rowe, who owed Burks money, told Burks that he had a check that he could not cash because he had no

identification. This was a \$650 check written on Tennant's account. Rowe asked Burks to cash the check for him; in exchange, Rowe would give Burks some of the money.

The next day, according to Burks, he and his sister ran into Rowe again, and Rowe asked Burks to cash another check for him, written on Tennant's account for \$1175. Rowe told Burks that the check was payment for work Rowe performed for Tennant. Burks told the officer that this was the check Burks and his sister tried to cash at the First National Bank on June 2. When asked why he left the bank without getting the check cashed, Burks told the officer that because of the delay, he thought there was something wrong with the check and the police might be on the way.

Tennant, who was eighty-nine years old, testified that he required assistance for his daily care. Tennant testified that Burks's mother was his day-time caregiver. Tennant knew Burks because he had been to Tennant's home several times to see his mother. Tennant, who managed his own financial affairs, testified that three checks were stolen from his checkbook. He realized the checks were missing from his checkbook when he received a call from the bank requesting check verification. He advised the bank that he did not fill out or sign those checks. He said that he did not give authority to Ms. Cotton to write checks on his account.

Tennant also testified that he met Rowe once. Tennant owned a 1982 Mercedes that he wanted to sell. Ms. Cotton represented to Tennant that Rowe was a Mercedes expert and arranged for Rowe to meet Tennant at his home. Tennant testified that Rowe never performed any work for him.

At the conclusion of the hearing, the trial court found that the State had proven by a preponderance of the evidence that Burks violated the terms of his suspended sentence. The court sentenced Burks to serve eight years' imprisonment in the Arkansas Department of Correction. Burks's sole point on appeal is that the trial court erred in finding that the State proved by a preponderance of the evidence that he violated the terms of his suspended sentence.

In a revocation hearing, the State must prove its case by a preponderance of the evidence. *Haley v. State*, 96 Ark. App. 256, 240 S.W.3d 615 (2006). To revoke a suspended sentence, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that probation or suspension. *Id.* (citing Ark. Code Ann. § 5-4-309(d)(Repl. 2006)). The State bears the burden of proof, but need only prove that the defendant committed one violation of the conditions. *Haley, supra*. Where the sufficiency of the evidence is challenged on appeal from a revocation, we will not reverse the trial court's decision unless its findings are clearly against the preponderance of the evidence. *Gossett v. State*, 87 Ark. App. 317, 191 S.W.3d 548 (2004). We defer to the superior position of the trial court to determine questions of credibility and the weight to be given to the evidence. *Id.*

“A person forges a written instrument if, with purpose to defraud, the person makes, completes, alters, counterfeits, possesses, or utters any written instrument that purports to be or is calculated to become or to represent if completed the act of a person who did not authorize that act.” Ark. Code Ann. § 5-37-201(a)(Supp. 2007). “A person commits forgery

in the second degree if he or she forges a written instrument that is ... a check.” Ark. Code Ann. § 5-37-201(c)(1) (Supp. 2007).

In the present case, the trial court’s revocation was supported by a preponderance of the evidence. There was evidence that on June 2, 2007, Burks possessed and uttered a check written on Tennant’s account that was not authorized by Tennant. There was evidence that the particular check had been stolen from Tennant’s checkbook. Further, there was evidence that Burks had been in Tennant’s home. Other evidence demonstrated that, while at the bank attempting to cash the check, Burks requested that Smith call someone other than Tennant to verify the check. Finally, instead of staying to explain the situation, Burks left the bank without the check when he thought the police had been called.

Burks contends that there was a lack of evidence showing that he knew the check he tried to cash at the bank was invalid and stolen. He cites the testimony of Officer Triplett, who stated Burks said the check came from Rowe, and the testimony of Tennant, who testified that Rowe had been at Tennant’s house. While Burks did tell Officer Triplett that he received the check from Rowe, the trial court was not required to believe him. *Champlin v. State*, 98 Ark. App. 305, \_\_\_ S.W.3d \_\_\_ (2007) (holding that the trier of fact is not required to believe the defendant’s version of events because he is the person most interested in the outcome of the trial). We defer to the trial court’s determination of questions of credibility. *Haley, supra*. Accordingly, we hold that the trial court’s revocation of Burks’s suspended sentence is not clearly against the preponderance of the evidence.

Affirmed.

PITTMAN, C.J., and BIRD, J., agree.