

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

DIVISION II

CACR07-684

December 5, 2007

JIMMY ED LEE

APPELLANT

APPEAL FROM THE LAFAYETTE  
COUNTY CIRCUIT COURT  
[CR-2005-3-2]

V.

HON. JAMES S. HUDSON, JR.,  
CIRCUIT JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant Jimmy Ed Lee appeals the revocation of his probation. He claims that the Lafayette County Circuit Court erred in allowing hearsay evidence under the business-record exception. We affirm.

On April 10, 2006, Lee pled guilty to possession of drug paraphernalia with the intent to manufacture methamphetamine. Thereafter, on July 27, 2006, a judgment and disposition order was entered sentencing Lee to five years of probation and \$2900 in fees and court costs. Lee's conditions of probation prohibited him from committing a criminal offense and drinking or possessing intoxicating or alcoholic beverages. Lee was also required to report to a supervising officer and pay \$50 per month until his fees and court costs were paid in full.

On January 23, 2007, the State filed a petition to revoke Lee's probation. The petition alleged that Lee committed an offense against the law of Arkansas, failed to report to his probation officer as directed, and failed to pay court costs and fines. At the hearing on the petition to revoke Lee's probation, the State offered the testimony of two witnesses. The first witness was Amanda Cliff, who was employed with the Department of Community Correction as a probation and parole officer. Cliff testified that Officer Elmore was the probation officer assigned to Lee but that Elmore was unavailable to testify because he was in training. Cliff further testified that she had never met Lee but that she was handling all of Elmore's cases.

As Cliff began to testify about the documents contained in Lee's probation file, Lee's counsel objected, arguing that such testimony was inadmissible hearsay. The trial court then asked Lee's counsel whether the records were excepted from the hearsay rule under the business-records exception. Lee's counsel responded that "they might meet an exception, but." The trial court then ruled that while the testimony was hearsay, the business-records exception applied.

Cliff went on to testify that the probation records indicated that Lee failed to report to his probation officer from October 2006–January 2007; that Lee failed to pay any of the \$2900 in fines and court costs; and that Lee committed a new offense on January 14, 2007. Based on these facts, Cliff testified that Elmore asked to have Lee's probation revoked.

The State's second witness was Cindy Dyer. Dyer testified that on January 14, 2007, she was traveling on Highway 53 south of Stamps when a truck struck the side of her vehicle

causing her vehicle to flip over into three feet of water. After the accident, Dyer had to crawl out of the sunroof of her vehicle. Dyer further testified that the truck that struck her did not stop after the accident; however, she was able to describe the truck to law-enforcement authorities. She testified that Lee was arrested following the incident. The State then offered into evidence a certified copy of the Lafayette County District Court docket sheet, which reflected that on February 15, 2007, Lee pled guilty to failure to yield, driving while intoxicated, refusal to take a breathalyzer test, and leaving the scene of an accident.

After hearing all of the evidence, the trial court stated:

I certainly find that your [probation] violation is proved by clear and convincing evidence. The Petition to Revoke is true, and to committing other offenses, in fact, other offenses, against the State of Arkansas. Failure to report and failure to pay without sufficient explanation or excuse, so on all three counts, the revocation is true.

The trial court then sentenced Lee to twenty years' imprisonment in the Arkansas Department of Correction and ordered Lee to pay the original fines and court costs previously assessed. Lee appeals from this order.

Lee argues that the trial court erred when it permitted Cliff to testify about the contents of Lee's probation file pursuant to the business-records exception to the hearsay rule. According to Lee, the only evidence at trial establishing Lee's failure to report and failure to pay fines and court costs came from Cliff's inadmissible hearsay testimony. Therefore, according to his argument the trial court's ruling that Lee failed to report and pay fines and court costs was clearly against the preponderance of the evidence. In response, the State argues that we need not address Lee's argument because the trial court revoked Lee's

probation not only because of his failure to report and to pay fines and court costs, but also because he committed new offenses and there was independent testimony support this violation.

In a probation-revocation hearing, the State must prove its case by a preponderance of the evidence. *Haley v. State*, 96 Ark. App. 256, \_\_\_ S.W.3d \_\_\_ (2006). To revoke probation, the circuit 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 (Repl. 2006)). The State bears the burden of proof, but need only prove that the defendant committed one violation of the conditions. *Id.* When appealing a revocation, the appellant has the burden of showing that the trial court's findings are clearly against the preponderance of the evidence. *Id.* Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation. *Id.* 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. *Id.*

The State alleged in its petition that Lee violated three different probation conditions. As set forth above, the State only had to prove that Lee committed one violation of the conditions of his probation. The trial court specifically stated in its oral findings that it was revoking Lee's revocation because Lee failed to report, failed to pay fines and court costs, *and* committed new offenses against the State of Arkansas: "[S]o on all three counts, the revocation is true." Importantly, the State offered testimony, independent of Cliff and the documents contained in the probation file, that supported the finding that Lee violated the

condition that he not commit new offenses. The independent testimony came from Cindy Dyer—the woman who, while traveling in her vehicle, was struck by Lee’s truck, which caused her vehicle to flip over into water. It was Dyer who testified that Lee had left the scene of the accident that he caused. Therefore, we hold that the trial court’s revocation of Lee’s probation, based in part on a finding that Lee committed new offenses (which was supported by evidence independent from the testimony of Cliff), was not clearly against the preponderance of the evidence, and we affirm. Based on this holding, we need not address Lee’s hearsay argument.

We affirm.

MARSHALL and MILLER, JJ., agree.