

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

DIVISION II

CACR07-691

December 19, 2007

PHILLIP ANDRE MILNER
APPELLANT

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[CR2006-1149, CR2006-4474]

V.

HON. JOHN W. LANGSTON,
CIRCUIT JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant Phillip Milner appeals from orders entered by the trial court finding him guilty of theft by receiving, a Class C felony, and revoking his probation based on the conviction. He argues that the trial court erred in failing to grant his motions for directed verdict. We disagree and affirm.

At Milner's bench trial on the theft-by-receiving charge, Little Rock Police Officer Matthew Hoyle testified that in October 2006 he was on patrol with another officer when he observed a man on an orange scooter run a stop sign. Officer Hoyle testified that after the man on the scooter saw Hoyle's patrol car, the man drove between two closely parked construction vehicles, preventing the patrol car from following him. After asking a construction worker to move one of the vehicles, Officer Hoyle was able to catch up with the

man on the scooter, at which time Officer Hoyle witnessed the man run a second stop sign. At that point, Officer Hoyle conducted a traffic stop.

Officer Hoyle identified the man on the scooter as Milner. Officer Hoyle also observed that the ignition of the scooter was damaged and had no key in it. The officer conducted a pat-down for safety and discovered a bill of sale for the scooter in Milner's pocket. The bill of sale did not list Milner as the owner. Officer Hoyle asked Milner if he knew who the owner of the vehicle was, and Milner responded that he did not. Officer Hoyle then contacted the owner listed on the bill of sale, Joseph Brown, who confirmed that his scooter had been stolen the day before.

Brown testified that he purchased the orange scooter in August 2006. He paid \$1600 for it and was still making payments in October 2006 when it was stolen. Brown testified that when the scooter was stolen from him it was in "mint condition." However, when the scooter was returned to him the head light was broken, the ignition switch was destroyed, and the seat was damaged. Brown explained that he stored the bill of sale in a compartment underneath the seat. Brown testified that the seat compartment was locked when the scooter was stolen. Finally, Brown testified that he did not know Milner and did not give permission to him to operate the scooter.

Milner moved for directed verdict at trial, challenging the sufficiency of the evidence. The trial court denied Milner's motions and found Milner guilty of theft by receiving. Three days later, the parties appeared before the trial court on the State's petition to revoke

Milner's probation.¹ The State offered the testimony of two of Milner's probation officers. These probation officers testified that they, on separate occasions, read the conditions of probation to Milner and that Milner, in July 2006 and August 2006, signed different statements verifying that he understood the conditions. Thereafter, the parties stipulated to the admission of the testimony that was taken during the theft-by-receiving trial. At the conclusion of the revocation hearing, the trial court found that Milner wilfully violated the conditions of his probation by committing the offense of theft of property, and revoked Milner's probation. On appeal, Milner challenges the trial court's denial of his motions for directed verdicts on the theft-by-receiving conviction and the trial court's revocation of his probation based upon the conviction.

Regarding Milner's first point on appeal, a directed-verdict motion is a challenge to the sufficiency of the evidence. *Slater v. State*, 76 Ark. App. 365, 65 S.W.3d 481 (2002). When the sufficiency of the evidence is challenged, we consider only the evidence that supports the verdict, viewing the evidence in the light most favorable to the State. *Slater*, 76 Ark. App. at 369, 65 S.W.3d at 484. The test is whether there is substantial evidence to support the verdict, which is evidence that is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or another. *Id.* Resolution of conflicts in testimony and assessment of witness credibility is for the fact-finder. *Id.*

¹Milner was on probation after pleading guilty to burglary and theft-of-property charges that arose on September 27, 2005.

A person commits the offense of theft by receiving if he receives, retains, or disposes of stolen property of another person, knowing that it was stolen or having good reason to believe it was stolen. Ark. Code Ann. § 5-36-106(a) (Repl. 1997). The unexplained possession or control by a person of recently stolen property or the acquisition by a person of property for a consideration known to be far below its reasonable value shall give rise to a presumption that he knows or believes that the property was stolen. Ark. Code Ann. § 5-36-106(c).

Milner argues that because the State failed to offer into evidence photographs of the scooter, it was impossible to determine whether the condition of the scooter would have revealed that Milner “[knew] that it was stolen or [had] good reason to believe it was stolen.” Accordingly, argues Milner, the trial court had to resort to speculation and conjecture to find Milner guilty.

In response, the State contends that there was sufficient evidence demonstrating that Milner knew or should have known that the scooter he was operating was stolen. For example, there was testimony from Officer Hoyle that Milner, once he knew he was being observed by the police, acted suspiciously by trying to evade the officers. Officer Hoyle testified that upon viewing the scooter, he immediately noticed that the ignition switch was damaged and that there was no key in the ignition, but that the scooter’s engine was running. Although Milner had the bill of sale in his pocket, it did not list his name as the owner, and Milner had no idea who the owner was. The owner of the scooter, Brown, testified that the scooter had been stolen from him the day before and that he did not give Milner permission

to operate it. Brown further testified that the scooter was in mint condition prior to the theft, but after it was returned to him there were multiple items on the scooter that were obviously damaged. Finally, according to Brown, the only way for anyone to have obtained the bill of sale was to break open the locked seat compartment.

Based on our review of the record, we agree with the State that there was sufficient evidence to support the trial court's finding that Milner knew or should have known that the scooter was stolen. Accordingly, we affirm the trial court's finding that Milner was guilty of Class C felony theft by receiving.

Milner's second point on appeal is that the trial court erred in revoking his probation based upon the conviction. Milner makes the same argument he made for his first point on appeal—that there was insufficient evidence supporting the theft-of-property conviction, and therefore revocation based on that conviction was error.

To revoke probation, the burden is on the State to prove the violation of a condition of probation by a preponderance of the evidence. *Cheshire v. State*, 80 Ark. App. 327, 95 S.W.3d 820 (2003). On appeal, the trial court's findings will be upheld unless they are clearly against the preponderance of the evidence. *Cheshire*, 80 Ark. App. at 330, 94 S.W.3d at 822. Because the determination turns on questions of credibility and weight to be given testimony, we defer to the trial judge's superior position. *Id.*

The burden of proof in a probation-revocation case—proof by a preponderance of the evidence—is less than the State's burden of proof required in a criminal case—proof beyond a reasonable doubt. *See Jones v. State*, 355 Ark. 630, 144 S.W.3d 254 (2004) (recognizing

that the burdens of proof are different in criminal and probation-revocation cases, and therefore, evidence that is insufficient for a criminal conviction may be sufficient for revocation of probation or suspended sentence). Because we hold that the State met its burden in the theft-by-receiving case, we necessarily hold that the State met its burden of proof in the probation-revocation case and affirm.

Affirmed.

MARSHALL and MILLER, JJ., agree.