

# ARKANSAS COURT OF APPEALS

DIVISION I  
No. CACR 08-319

SEDRICK TRICE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** OCTOBER 8, 2008

APPEAL FROM THE PHILLIPS  
COUNTY CIRCUIT COURT,  
[NO. CR 2004-011]

HONORABLE L. T. SIMES, II, JUDGE

AFFIRMED

**JOHN B. ROBBINS, Judge**

Appellant Sedrick Trice appeals the revocation of his probation. A Phillips County circuit judge heard the State's revocation petition. Appellant's sole contention on appeal is that the trial court's decision to revoke is clearly erroneous or clearly against the preponderance of the evidence. We disagree and affirm.

Appellant was placed on a five-year probationary term in December 2004 for a drug offense. The State filed a petition to revoke his probation in 2007, accusing appellant of (1) having committed a terroristic act by firing shots at an occupied vehicle, and (2) possessing a firearm, both on February 27, 2007.

The State's evidence included the testimony of a sheriff's deputy, who was in the vicinity of a West Helena liquor store when he heard a succession of gunshots. Shortly thereafter, the deputy observed two vehicles speeding away from the liquor store area and

toward him. The deputy initiated a stop of one of the vehicles, a Ford Taurus. Ashley Kelly was one of the occupants of the Taurus.

Kelly reported that appellant came to the liquor store driving a white Chevrolet Tahoe, that he drew a “long” firearm, and that he began shooting toward the Taurus, creating holes in the car and flattening one of the tires. Other evidence showed that there were bullet holes in the driver’s door of the Taurus, as well as in the front bumper and in one tire. Kelly positively identified appellant as the shooter and stated that there was “conflict” between them, including appellant having pointed a gun in her face before this incident. Kelly also stated that prior to this hearing, appellant offered to pay her for not testifying against him. Kelly’s testimony wavered on some details, but these were the most relevant pieces of evidence.

The passenger in the Tahoe that day was Jarvis Washington, who confirmed that there were three spent shell casings in the Tahoe, although he denied that either he or appellant fired shots that day.

Appellant confirmed that the Tahoe was not his, that he was borrowing it while his car was being repaired, and that he returned the Tahoe immediately after this incident. He admitted that the deputy was correct in seeing him driving away quickly from the liquor store, but appellant said he was merely leaving the scene of an unknown shooting. Appellant testified that Kelly was the one who asked for money in exchange for dropping the charges against him. Appellant did not know why Kelly would fabricate a story like this, except that perhaps Kelly’s boyfriend had an issue with him (appellant).

After hearing arguments from both the defense counsel and the prosecutor, the trial court revoked appellant's probation. The trial judge found that the more credible evidence was that appellant was in possession of a firearm and that shots were fired from the vehicle he drove that day. The judge found Kelly's testimony truthful on the facts related to who shot her car, found relevant that shell casings were inside the Tahoe, and found relevant that appellant fled the scene at a high rate of speed. The revocation followed, and this appeal resulted.

On appeal of a revocation, our review is directed toward determining whether the trial court's findings are clearly against the preponderance of the evidence. *Haley v. State*, 96 Ark. App. 256, 240 S.W.3d 615 (2006); *Jones v. State*, 52 Ark. App. 179, 182, 916 S.W.2d 766, 768 (1996). In order to revoke the terms of probation, the State must prove that the defendant violated a condition of his probation by a preponderance of the evidence. *Carruthers v. State*, 59 Ark. App. 239, 240, 956 S.W.2d 201, 202 (1997). Whether this standard is met is determined by questions of credibility and the weight to be given to the testimony, and we defer to the trial court's superior position with regard to those issues. *Jones v. State*, 355 Ark. 630, 144 S.W.3d 254 (2004). It should be remembered that evidence insufficient to support a conviction may be sufficient to sustain a revocation. *See Haley v. State, supra*.

Here, the petition rose or fell on the credibility of the State's main witness, Ashley Kelly. While portions of Kelly's testimony were weak or questionable, her positive identification of appellant as the shooter, the deputy's corroboration of the shooting and his

eyewitness account of appellant fleeing the scene, and the evidence of spent ammunition shell casings inside the vehicle driven by appellant, all support the trial court's determination in support of revocation.

After evaluating this appeal under the proper standard of review, we affirm the revocation of appellant's probation as not clearly against the preponderance of the evidence.

Affirmed.

MARSHALL and VAUGHT, JJ., agree.