

**Affirmed and Memorandum Opinion filed August 23, 2011.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-10-00582-CR**

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**TROY JESSIE MOODY, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 351st District Court  
Harris County, Texas  
Trial Court Cause No. 1137675**

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**MEMORANDUM OPINION**

Appellant Troy Jessie Moody was on community supervision for felony aggravated assault when he was indicted a second time for the same offense. The trial court revoked Moody's community supervision and sentenced him to 20 years' imprisonment. In his sole issue on appeal, Moody challenges the sufficiency of the evidence in support of his guilty adjudication. We affirm.

On November 23, 2008, Johnmike Jones was at Doss Park in Houston playing basketball with his cousin, nephew, and stepson. He became involved in a dispute between his nephew and Cartez Moody, the appellant's brother, over use of a basketball court. The verbal altercation escalated when, according to Jones, Cartez ran toward the park's parking lot saying "I got something for you-all," which Jones believed meant Cartez was going to retrieve a weapon. After a brief chase, Jones and his nephew caught up to Cartez and one or both men began assaulting Cartez. Jones testified that as he was chasing Cartez, Troy "snuck off" the basketball court to get a gun. Troy returned to the group "waving a gun," which Jones described as a black pistol. Jones testified that Troy and Cartez began arguing and wrestling over the gun when the ammunition clip fell to the ground. After he bent down to reach for the clip, Jones looked up to see Cartez holding the gun. Jones testified Cartez fired a shot, striking Jones in the nose, and that Troy and Cartez then fled the scene in a red-and-white Suburban.

Two witnesses testified they saw Troy with the gun after the incident. One witness, Erin Roberts, testified that she was at the park on November 23 when she heard what she thought was a gunshot. Roberts testified that she then saw a red and white Suburban slowly drive past her with Troy in the passenger seat holding a "big, black gun." After police apprehended Troy and Cartez, Roberts testified that officers brought both suspects and the Suburban back to the park; Roberts identified the Suburban as the one she earlier saw fleeing the scene, and Troy as the person she saw in the Suburban holding the gun. Alejandro Ramirez, a witness who lived adjacent to the Moodys' house, testified that he was driving away from his house when he saw Troy and Cartez running toward their house with Troy carrying a black pistol in his hand.

Cartez's story differs. He testified he got in an argument over use of a basketball court with a "young man" who threatened to slap him. Jones joined the escalating verbal confrontation, and shortly thereafter Troy told Cartez to "go home." Cartez testified that

as he walked away Jones and the “young man” caught up to him and assaulted him. When Cartez saw Jones “going under his shirt” to get a gun, Cartez testified he grabbed the barrel of the gun to wrestle it away from Jones, and after a brief struggle the gun went off, shooting Jones, and Cartez ran away. Cartez testified Troy was not there when the gun went off.

Officers recovered a spent shell casing at the scene of the shooting as well as an unfired bullet in the Suburban matching the caliber and brand of the casing found at the scene. However, they were unable to find a firearm in Troy’s house or car. Officers conducted a gunshot-residue test on both Troy and Cartez. The test revealed “no particles confirmed as having composition characteristic with gunshot residue” on either of Troy’s hands. However, Cartez’s results indicated particles were present, but not to the degree necessary to generate a “positive” test result.

Troy, who at the time of the shooting was on community supervision for felony aggravated assault, was again indicted for aggravated assault in connection with the November 23 shooting. The State filed a motion to adjudicate Troy’s guilt, alleging Troy had violated the conditions of his community supervision by committing aggravated assault, failing to pay supervision fees, failure to pay laboratory-processing fees, possession of a firearm, and failing to participate in a court-ordered anger-management program. After a hearing, the trial court found all five allegations true, found Troy guilty, and sentenced him to twenty years’ imprisonment.

## II

In his sole issue on appeal, Troy claims the trial court erred finding the State’s allegations true because there is insufficient evidence to establish by a preponderance of the evidence that Troy violated the conditions of release on community supervision. We review an order revoking community supervision under an abuse-of-discretion standard. *Rickels v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006). The State has the burden to show by a preponderance of the evidence that the defendant committed a violation of the

conditions of community supervision. *Cobb v. State*, 851 S.W.2d 871, 873 (Tex. Crim. App. 1993). The preponderance-of-the-evidence standard is met when the greater weight of the credible evidence creates a reasonable belief that the defendant has violated a condition of his community supervision. *Rickels*, 202 S.W.3d at 763–64. When the State fails to meet its burden of proof, the trial judge abuses his discretion in issuing an order to revoke probation. *Walkovak v. State*, 576 S.W.2d 643, 644–45 (Tex. Crim. App. 1979).

The appellate court will view the evidence in the light most favorable to the trial court's order. *Moore v. State*, 11 S.W.3d 495, 498 (Tex. App.—Houston [14th Dist.] 2000, no pet.). In determining whether the allegations in the revocation motion are true, the trial court is the sole trier of facts, the judge of the credibility of the witnesses, and the arbiter of the weight to be given to the testimony. *Trevino v. State*, 218 S.W.3d 234, 240 (Tex. App.—Houston [14th Dist.] 2007, no pet.).

### III

Troy argues there is insufficient evidence supporting the trial court's finding that he committed aggravated assault with a deadly weapon. Although Jones testified Troy was "waving a gun," Troy points out Jones never testified Troy pointed the gun at him or his nephew "or that Jones was in any way threatened or harmed by [Troy's] actions." Troy further points to Jones's testimony that Troy and Cartez struggled for the gun while Cartez implored Troy to "give me the gun, I'll kill him." Accordingly, Troy argues there is "no evidence Troy willingly gave the gun to Cartez," and Jones's testimony is evidence that Troy "fought to keep the gun away from [Cartez], who was making threats against Jones's life."

A person commits felony aggravated assault if, in the course of committing an assault, he causes serious bodily injury to another or uses or exhibits a deadly weapon during commission of the assault. Tex. Penal Code § 22.02(a), (b). Jones testified Cartez shot him; however, Troy can be charged with aggravated assault even if he did not himself

perform the act if he is “criminally responsible as a party to an offense.” *Id.* § 7.01(a), (b). A person is criminally responsible for an offense committed by the conduct of another if, acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense. *Id.* § 7.02(a)(2). Criminal responsibility can also be established through the following:

If, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, all conspirators are guilty of the felony actually committed, though having no intent to commit it, if the offense was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the conspiracy.

*Id.* § 7.02(b). A reviewing court may look to events before, during, and after the commission of the offense to determine whether an individual is a party to the commission of the offense. *See Beardsley v. State*, 738 S.W.2d 681, 684 (Tex. Crim. App. 1987); *Diaz v. State*, 902 S.W.2d 149, 151–52 (Tex. App.—Houston [1st Dist.] 1995, no pet.).

Moody’s appeal, however, is without merit. Even if we agreed the evidence was legally insufficient to support the trial court’s aggravated assault finding, the trial court’s revocation order was also grounded in Troy’s possession of a firearm, failure to pay supervisory and lab-processing fees, and failure to participate in an anger-management course. Troy does not take issue with the trial court’s findings on any of these violations; his sole argument on appeal is that there is insufficient evidence he “intentionally or knowingly caused bodily injury to Johnmike Jones by using a firearm.”

Proof of even a single violation of a condition of supervision is sufficient to support a revocation of community supervision. *See, e.g., Moore v. State*, 605 S.W.2d 924, 926 (Tex. Crim. App. 1980); *Moore*, 11 S.W.3d at 498; *Alexander v. State*, 879 S.W.2d 338, 340 (Tex. App.—Houston [14th Dist.] 1994, pet. ref’d); *Hendley v. State*, 783 S.W.2d 750, 752 (Tex. App.—Houston [1st Dist.] 1990, no pet.). And though Troy does not contest the sufficiency of the evidence to support the other four violations, we note a probation

officer testified at the adjudication hearing as to Troy's failure to attend anger-management classes and to pay supervisory and lab-processing fees. This evidence is sufficient to establish by a preponderance that Troy was in violation of those three terms of his community supervision. Furthermore, there was sufficient evidence to find by a preponderance that Troy was in possession of a firearm. Two witnesses—Jones and Roberts—testified to seeing Troy with a gun at Doss Park, while a third, Ramirez, testified to seeing Troy running into his home holding a gun.

Because Troy challenges only one of the bases for the revocation of his community supervision, we could not disturb the trial court's order even if we agreed there is insufficient evidence to support a finding of aggravated assault. Accordingly, we overrule Troy's sole issue.

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For the foregoing reasons, we affirm the trial court's judgment.

/s/ Jeffrey V. Brown  
Justice

Panel consists of Justices Anderson, Brown, and Christopher.

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