Affirmed and Memorandum Opinion filed January 21, 2016.

In The

Fourteenth Court of Appeals

NO. 14-14-00708-CR

ODEL RODRICK ALLEN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 351st District Court
Harris County, Texas
Trial Court Cause No. 1324945

M E M O R A N D U M O P I N I O N

Appellant Odel Rodrick Allen appeals the trial court's judgment revoking his community supervision. In three issues, Allen argues that (1) the trial court abused its discretion by denying his motion to suppress; (2) the evidence is legally insufficient to conclude that he violated a condition of his community supervision; and (3) the evidence is factually insufficient to determine that he violated a term of his community supervision. We affirm.

BACKGROUND

In 2012, Allen pleaded guilty to the felony offense of possession with the intent to deliver cocaine. The trial court deferred an adjudication of guilt and placed Allen on community supervision for six years. His community supervision included several standard conditions, including the requirement that he "[c]ommit no offense against the laws of this or any other State or of the United States."[1]

The State claims that Allen violated this condition by "unlawfully[,] intentionally[,] and knowingly caus[ing] serious bodily injury to [A.B.], . . . a child younger than fifteen years of age." A.B. is the daughter of Allen's girlfriend, and she and her mother and brother lived with Allen at the time.[2] The State alleged that A.B. was injured in August 2013 at the age of 20 months old. Allen denied the allegations and agreed to a polygraph examination. During interviews conducted before and after the exam, Allen made multiple incriminating statements.

Based on the information obtained from Allen, the State filed a motion to adjudicate on September 16, 2013. The motion alleged that Allen injured A.B. by: (1) striking her with his hands, (2) squeezing her with his hands, (3) throwing her to the floor, (4) shaking her with his hands, (5) striking her with a blunt object, and (6) causing her to strike a blunt object. Allen pleaded "not true" to each paragraph and filed a motion to suppress the statements he made during the interviews. Allen argued that the statements were involuntary because they were the result of

[1] The State also alleged that appellant failed to pay a monthly supervision fee as well as a fee to Crime Stoppers of Houston, but Allen's arguments on appeal only relate to the trial court's finding that he violated the "commit no crimes" condition of his community supervision. Nevertheless, proof of any one ground for revocation will support the trial court's order revoking community supervision. *Garcia v. State*, 387 S.W.3d 20, 26 (Tex. Crim. App. 2012); *Greer v. State*, 999 S.W.2d 484, 486 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd). We do not discuss the other alleged violations.

[2] The household included: Allen, A.B.'s mother, A.B.'s brother, A.B., Allen's cousin, the cousin's girlfriend, and the cousin's four children.

promises, coercion, and threats made by Officer Robinson of the Houston Police Department.

After conducting hearings on both motions, the trial court denied Allen's motion to suppress and granted the State's motion to adjudicate. The trial court found that Allen violated the "commit no crimes" condition of his community supervision. The court then adjudicated Allen guilty of possession with the intent to deliver in relation to his 2012 guilty plea, found the deadly weapon paragraph to be true, and sentenced him to 30 years' confinement. Allen appeals.

ANALYSIS

I. Motion to Suppress

In his first issue, Allen claims the trial court erred in denying his motion to suppress statements he made during interviews conducted before and after his polygraph examination. Specifically, Allen argues that "under serious coercions, threats, lies, promises and suggestions, [he] made some untrue statements to give the interviewer the explanation he was asking for." Allen contends that these statements were involuntary and are therefore inadmissible.

A. Standard of Review

Traditionally, we give almost total deference to the trial court's determination of historical facts, especially when the trial court's fact findings are based on an evaluation of credibility and demeanor. *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). However, when, as here, we have a videotape of the statement and an uncontroverted version of events, we review the trial court's ruling on an application of law to facts de novo. *Herrera v. State*, 194 S.W.3d 656, 658 (Tex. App.—Houston [14th Dist.] 2006, pet. ref'd); *see also Carmouche v. State*, 10 S.W.3d 323, 332 (Tex. Crim. App. 2000) (stating that the court will not

turn a blind eye to a videotape when it presents indisputable visual evidence contradicting the testimony of a police officer and noting that evaluating videotape evidence does not involve evaluations of credibility and demeanor). We have reviewed the videotape and note there is no controversy about the statements made. Thus, we make our ruling based on a de novo review.

Although Allen does not specifically identify the statements he claims were improperly admitted, we infer from his motion and brief that these statements include: (1) his pre-polygraph statement to Officer Robinson about how he might have admonished A.B.; (2) post-polygraph statements to Robinson that described how he repeatedly threw A.B. to her brother; and (3) subsequent incriminating statements made to Officers Childs and Alvarez.

At the hearing on the motion to suppress, the trial court heard testimony from Officer Robinson and Allen before denying the motion. The court subsequently issued the following relevant findings of fact and conclusions of law pursuant to Texas Code of Criminal Procedure article 38.22, section 6:

Findings of Fact

. . .

6. On August 26, 2013, Robinson was assigned to interview [Allen] in connection with injuries to his girlfriend's 20-month-old child.
7. Robinson was unarmed during the interview.
8. Robinson explained to [Allen] that everything was audio and video recorded.
9. Robinson began the interview by reading [Allen] his *Miranda* rights.

. . .

1. Robinson asked [Allen] if he understood those warnings, and he indicated that he did.
2. Robinson asked [Allen] if he wanted to speak to him and [Allen]

agreed to talk.

. . .

1. Robinson did not promise, coerce[,] or threaten [Allen] to make him give a statement. No police officer coerced or threatened [Allen] to make him give a statement.

. . .

2. This Court finds that [Officer] Robinson was a credible witness and accepts his testimony as true.
3. This Court finds that [Allen] was not a credible witness and does not accept his testimony as true.
4. [Allen] did not provide any evidence that his age, mental disorders, possible intoxication or fatigue influenced his ability to understand his rights or the questions by police.
5. This Court did not consider the polygraph examination results in determining whether [Allen] violated a condition of his deferred adjudication.
6. This Court did not consider [Allen's] statements during the administration of the polygraph examination in determining whether [Allen] violated a condition of his deferred adjudication.

Conclusions of Law

1. Because Officer Patrick Robinson provided [Allen] his statutory warnings, [Allen] knowingly waived those warnings, and there was no evidence of police compulsion or persuasion, [Allen's] statement that he intentionally threw a 20-month-old child from the bed to the floor was voluntarily given.
2. Because Officer Patrick Robinson provided [Allen] his statutory warnings, [Allen] knowingly waived those warnings, and there was no evidence of police compulsion or persuasion, [Allen's] statement that he lifted a 20-month-old child in the air and shook her to scold her was voluntarily given.
3. Because the procedural safeguards were followed, [Allen] knowingly waived his rights, and there was no evidence that his age, mental disorders, possible intoxication[,] or fatigue that prevented him from understanding those rights or the questions by police, his statement was voluntarily given.

B. Allen's Statements Were Voluntary.

The statement of an accused may be used against him if it appears it was freely and voluntarily made without compulsion or persuasion. Tex. Code Crim. Proc. art. 38.21. A confession is involuntary if there was official, coercive conduct of such a nature that any statement obtained thereby was unlikely to have been the product of an essentially free and unconstrained choice by its maker. *Alvarado v. State*, 912 S.W.2d 199, 211 (Tex. Crim. App. 1995). The ultimate test is whether the defendant's will was overborne by police coercion. *Creager v. State*, 952 S.W.2d 852, 856 (Tex. Crim. App. 1997); *Mason v. State*, 116 S.W.3d 248, 257 (Tex. App.—Houston [14th Dist.] 2003, pet. ref'd). To make this determination, we examine the totality of the circumstances. *Delao v. State*, 235 S.W.3d 235, 239 (Tex. Crim. App. 2007).

Allen argues that Officer Robinson made the following "coercive threats":[3]

1. Well like I say, anybody that touches this from now on, after we leave here, without an explanation, they going to think the worst. They are going to see you as any and every other person that comes through their desk that needs to be locked away.
2. I'm just telling you that without an explanation, people such as the DA and everybody else who going to be touching it, they goanna try to throw the book at you, but with an explanation, it doesn't make you seem like a bad person.
3. Without explanation, you are going up against everybody and they goanna think that you have no remorse for it.
4. [B]ut the road that you will be going down, would be a whole lot easier with the explanation.
5. [B]ut the road you go on, that you go right now, it could be, it can

[3] The quoted threats, promises, and "coercive analogous suggestion" appear in Allen's motion to suppress and in his brief filed with this court. Because the State does not challenge Allen's transcription of the video, we assume for purposes of our analysis that it is accurate and reproduce it here verbatim.

be bright and shiny or it would be dark and gloomy.

6. That's the only way you will have to go forward. Plus on top of that, you got a kid on the way too. I know you want to be there for your kid.
7. I can tell you this, no explanation, it's over. There is a real hard chance that jail time will come behind this, if [Mother] goes into labor, you aren't going to be there.
8. So it is like this, no explanation – explanation, [demonstrating with his hands] no explanation you know where it will be heading on to, but with explanation, you have a greater chance of going somewhere instead of the other place. That other place isn't somewhere you want to go.

Allen also claims that Robinson made the following "coercive analogous suggestion":

> I had somebody not too long ago that told me that what he did was that he was playing around with his girlfriend's kids; he wrapped them up in two blankets, not blankets but a comforter. He played football with them and the other kid attacked him. Then, well, the kid ended up having two fractured ribs. Not something he was meaning to do, but something that happened while they were playing. The kids were laughing and jumping around and everything. Then the kid started to have pain and had to get x-rays. The guy didn't think what he did could have hurt him but he knows that he did it and that's probably where it came from. He said he was not even attacking them real hard. Isn't that something that can be explained? And follows along with the injuries, yes, is he a bad person, no. He was playing with the kids.

After reviewing the recording of Allen's interview, we conclude that none of Officer Robinson's statements rise to the level of coercion necessary to render Allen's statement involuntary. There is nothing to indicate that Allen's will was overborne by Robinson's interview tactics. As the Supreme Court has noted, "[A] confession . . . is not always the result of an overborne will. The police may be midwife to a declaration naturally borne of remorse, or relief, or desperation, or

calculation." *Culombe v. Connecticut*, 367 U.S. 568, 576 (1961); *see also Jaggers v. State*, 125 S.W.3d 661, 667 (Tex. App.—Houston [1st Dist.] 2003, pet. ref'd) (citing *Culombe*). Robinson testified that although "[Allen's] eyes were red" and "he seemed like he had something on his mind," Allen remained calm and was "very cooperative." According to Robinson, Allen "didn't seem like . . . he was angry or anything at all." He stated that he believed that Allen understood his rights and waived them all before the interview began.

Furthermore, Robinson testified that he was not wearing a firearm, the door was not locked, and he told Allen that he could leave or terminate the interview at any time. Robinson informed Allen of his right to remain silent, his right to an attorney, and his right to have an attorney appointed if he could not afford one. He also told Robinson that the interview was being audio and video recorded and that anything he said could be used against him in a court of law. Robinson testified that after he read Allen these rights, Allen acknowledged them by writing his initials next to each one. Finally, Robinson asked Allen if he wanted to waive his rights, and Allen signed the waiver. Therefore, with regard to the alleged threats and coercive suggestions made by Robinson, we hold that none of these render Allen's incriminating statements involuntary. *See State v. Howard*, 378 S.W.3d 535, 542 (Tex. App.—Fort Worth 2012, pet. ref'd) (holding statements were voluntary where defendant chose to meet with detective, was not under arrest or otherwise restrained, was told he was free to leave at any time, was not denied food or drink or restroom breaks, willingly agreed to polygraph exam, was informed of his rights and waived them, and voluntarily answered the detective's questions).

Allen also contends that Robinson made the following promises, causing Allen to incriminate himself:

1. I can talk to, I'll talk to the investigators about you, about letting

them know how I feel about you as a person. I have no problem doing that.

2. I can't help you once you leave out of this door, but while we are here and can [c]ontrol it, let's control it. Ok?
3. I want to make sure you give an explanation before you leave here today, because once you leave from here, I can't do anything for you. I have had people come, call me back up here and say, hey Mr. Robinson, look, I want to go ahead and lay it all out to you as to what happened. They are trying to give me all kinds of types of punishments or something I want to go ahead and talk to somebody. I can't do nothing for them.
4. I have known about people getting counseling to deal with this a couple of times, Ok, you might know some people yourself. Ok. I deal with this on a daily basis. Ok, I see some of the worst, ok, and if I had to put you in a spectrum of worst being over here and good over here [gesturing with his hands], I will put your further down this way [indicating the good end of the spectrum].

Again, we determine that these alleged promises were not sufficient to render Allen's incriminating statements involuntary. For a promise to invalidate a confession under article 38.21, the promise must have been positive, made or sanctioned by someone in authority, and of such an influential nature that it would cause a defendant to speak untruthfully. *Martinez v. State*, 127 S.W.3d 792, 794 (Tex. Crim. App. 2004). The truth or falsity of the statement is immaterial; the question is whether the promise likely would induce a false confession. *Id.* at 794–95. General, unspecific offers to help are not likely to induce one to make an untruthful statement and will not invalidate a confession. *Dykes v. State*, 657 S.W.2d 796, 797 (Tex. Crim. App. 1983). Similarly, general statements made to a suspect regarding how a confession can sometimes result in leniency are not promises and do not render a confession involuntary. *Muniz v. State*, 851 S.W.2d 238, 253–54 (Tex. Crim. App. 1993). A prediction about future events is not a promise. *Mason*, 116 S.W.3d at 260–61 (holding that an officer's statements that

the situation would "go better" for appellant by giving a confession was a prediction about a future event that did not amount to a promise).

Here, Robinson's comments during the interviews were not promises, but were at most general offers to help Allen or expressions of opinion. These do not render Allen's statements inadmissible. *See Dykes*, 657 S.W.2d at 797; *see also Coursey v. State*, 457 S.W.2d 565, 568–69 (Tex. Crim. App. 1970) (statements that it would be best for appellant to make a statement or it would be better if appellant "[got] his business straightened up" did not render confession involuntary), *Smith v. State*, 237 S.W. 265, 267 (Tex. Crim. App. 1922) (statement admissible despite officer's comment that it would be best to tell the truth). Therefore, examining the undisputed facts, we conclude that Robinson made no promises to Allen.

Because we have determined that Robinson did not promise, coerce, or threaten Allen in order to elicit his incriminating statements, we reject Allen's contention that his subsequent statements to Officers Childs and Alvarez were "fruit of the poisonous tree" and should have been suppressed. We hold that the motion to suppress was properly denied, and we overrule Allen's first issue.

II. Legal Sufficiency Challenge

In his second issue, Allen contends that the trial court abused its discretion because the evidence is legally insufficient to conclude that Allen committed a crime and thus violated the terms of his community supervision. Specifically, the trial court found that "on or about August 2, 2013," Allen "unlawfully, intentionally[,] and knowingly cause[d] SERIOUS BODILY INJURY to [A.B.], hereinafter styled the Complainant, a child younger than fifteen years of age, by CAUSING THE COMPLAINANT TO STRIKE A BLUNT OBJECT." *See* Tex. Penal Code § 22.04.

A. Standard of Review

On violation of a condition of community supervision imposed under an order of deferred adjudication, the defendant is entitled to a hearing limited to the determination by the court of whether it proceeds with an adjudication of guilt on the original charge. Tex. Code Crim. Proc. art. 42.12, § 5(b). The State bears the burden of showing by a preponderance of the evidence that the defendant violated the conditions of community supervision. *Rickels v. State*, 202 S.W.3d 759, 763–64 (Tex. Crim. App. 2006).

The trial court's order revoking community supervision is reviewed under an abuse of discretion standard. *Id*. at 763. The trial court is the sole judge of the credibility of the witnesses and the weight given to their testimony, and the evidence is reviewed in the light most favorable to the trial court's ruling. *Naquin v. State*, 607 S.W.2d 583, 586 (Tex. Crim. App. 1980); *Greer v. State*, 999 S.W.2d 484, 486 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd). If the State fails to meet its burden of proof, the trial court abuses its discretion in revoking the community supervision. *Cardona v. State*, 665 S.W.2d 492, 493–94 (Tex. Crim. App. 1984). Proof by a preponderance of the evidence of any one of the alleged violations of the conditions of community supervision is sufficient to support a revocation order. *Garcia*, 387 S.W.3d at 26.

Allen argues that the State has not met its burden because "there was no evidence or inference at all that creates a reasonable belief that Appellant violated any condition of his community supervision." *See Rickels*, 202 S.W.3d at 763–64. We disagree.

B. A.B.'s Injuries

At the hearing on the motion to adjudicate, the judge heard testimony from

Dr. Rebecca Girardet, the medical director of the Division of Child Protection Pediatrics at the University of Texas medical school in Houston. Dr. Girardet examined A.B. on August 14, 2013 and reviewed x-rays taken the previous day. Dr. Girardet testified that A.B. had a lacerated spleen, a lacerated pancreas, nine broken ribs, and a broken breastbone. In her opinion, A.B. had at least two, but probably three, severe episodes of trauma.[4]

C. A Preponderance of the Evidence Supports the Trial Court's Determination that Allen had Access to A.B. When Her Injuries Occurred.

With regard to the pancreas laceration, Dr. Girardet estimated that the injury was at least a week old at the time of her examination. She stated that although there was no way to date the spleen injury, it was possible that both lacerations occurred at the same time. Dr. Girardet then testified that a more specific date of injury would be August 2 or August 3, because that is when A.B.'s mother ("Mother") told Girardet that A.B. began vomiting. According to Dr. Girardet, the pancreas injury resulted from some type of "penetrating trauma" such as "a punch or a kick." She stated that while the spleen injury could also have resulted from this type of trauma, it could also have been from a more generalized blunt trauma.

According to Mother, A.B. was at the sitter's house from July 25 to July 31. Allen claims that he could not have caused A.B.'s spleen and pancreas injuries because Mother testified that A.B. began vomiting on August 1, after Mother picked A.B. up from the babysitter but before Allen kept her on August 2. However, Dr. Girardet testified that at the hospital, Mother informed her that A.B. began showing symptoms of an abdominal injury on August 2 or August 3. As the

[4] Girardet testified that the spleen and pancreas injuries could have resulted from the same incident of trauma. Based on A.B.'s x-rays, Girardet concluded that the rib fractures were older than the spleen injury and the breastbone fracture.

sole trier of fact in a revocation proceeding, the trial judge is responsible for determining the credibility of witnesses and the weight to be given their testimony. *Naquin*, 607 S.W.2d at 586. Therefore, the trial judge was free to afford more weight to the doctor's testimony that Mother told her A.B. became symptomatic on August 2 or August 3, not on August 1 as Mother later claimed at the hearing. The trial judge could have found that the doctor was more credible than Mother, whose inconsistent testimony might have been motivated by the fact that she did not want the father of her unborn child to go to prison.

Dr. Girardet then testified about the injuries she observed from A.B.'s x-rays. She stated that A.B.'s rib fractures occurred two to four weeks prior to the date of the x-rays. Therefore, the rib injuries took place between July 16 and July 30. Girardet based this determination on the amount of healing she observed from the x-rays. She stated that all nine fractures likely occurred at the same time. According to Mother's chart, Allen had access to A.B. for five and a half hours on July 24. Thus, despite his claim to the contrary, it is possible Allen could have caused A.B.'s rib injuries.

Finally, Dr. Girardet testified about the injury to A.B.'s breastbone. She stated that in over twenty years of examining children, she had never seen another breastbone fracture. Dr. Girardet described the breastbone as "a very resistant bone" and stated that it would take "high velocity trauma directly onto the chest, like a really hard punch or a kick directly onto the center of the chest" to cause such injury. She stated that because the breastbone injury showed "absolutely no evidence of healing," it was most likely an acute injury that was suffered a short time before the x-rays were taken. Mother's chart indicates that Allen babysat A.B. on August 10 and August 11, just a few days before her x-rays.

Furthermore, Mother testified that although she first noticed A.B.'s stomach

was swollen around August 1, A.B.'s condition seemed to have improved when Mother picked her up from the sitter on August 9. However, Mother testified that she noticed A.B.'s stomach began swelling again on August 11. Mother admitted that Allen kept A.B. on August 10 and August 11, and Dr. Girardet testified that the fluctuation in the stomach swelling could indicate that the pancreas injury had been re-aggravated. Therefore, the trial judge could have inferred that Allen caused the breastbone fracture on August 10 or August 11, thereby aggravating the pancreas laceration. Under these circumstances, we cannot say that the trial judge abused his discretion by finding that Allen violated the terms of his community supervision.

D. A Preponderance of the Evidence Supports the Trial Court's Finding that Allen Caused A.B. to Strike a Blunt Object.

Allen further contends that "there was no evidence or inference that [he] caused [A.B.] to strike a blunt object." However, Allen admitted the following during his post-polygraph interview with Officer Robinson:[5]

> **Allen**: Like I said, I did not actually do anything to her if anything I probably threw her to her brother or something like that. You know but nothing else happened.
>
> **Robinson**: You threw her to her brother what do you mean?
>
> **Allen**: Like I'm in the bed, he on the ground, on the covers and stuff and I threw her to him. That's about it. I know I did nothing crazy to this girl.
>
> **Robinson**: Ok. What did you feel you could have done to cause this?
>
> **Allen**: I am thinking about when I threw her to her brother that's the only thing that I could say.
>
> **Robinson**: Did she hurt herself when you did that?

[5] Again, we accept Allen's transcription of the interview, unobjected to by the State, and reproduce it verbatim, including typographical and grammatical errors. We have reviewed the videotape and confirm that Allen's version is substantively indistinguishable.

Allen: She did not show any hurt. She did a little whining but she did not show no hurt she went right there and laid down.

Robinson: Tell me all about that situation because that could be all that caused it. If that's the case, I'll say it all can be explained. It does not make you a bad person. Tell me about it.

Allen: I was in the bed watching TV. She was in the bed with me. Her brother was down on floor watching TV, and I think she did something and I threw her to her brother.

Robinson: Ok. You on the bed?

Allen: on the bed, yeah.

. . .

Robinson: How long ago was that?

Allen: Probably about one month ago.

Robinson: Was it right before her stomach got swollen or after?

Allen: Probably before.

Robinson: About how long before?

. . .

Allen: Probably about 9 days.

Robinson: Probably about 9 days? About a week and a half?

Allen: About 9 days, 10 days like I said, I aren't did anything crazy to this baby. I know that and that's why I stick around.

. . .

Robinson: When she landed, do you think she landed on her stomach or on her back?

Allen: She landed on [her brother].

Robinson: She landed on him? On her stomach on him?

Allen: I think it was on her back or side or something like that. I think it was on her side.

We have already determined the statements Allen made before and after his polygraph examination were voluntary and are thus admissible. In the statement above, Allen admitted that he caused A.B. to strike her brother when he threw her

to the floor. Although Dr. Girardet testified that A.B.'s injuries could not have been caused by such an incident, the trial judge's findings of fact state that he did not find Allen to be credible and did not accept his testimony as true. Therefore, the trial judge could have concluded that Allen did cause A.B. to strike some blunt object, albeit not in the manner Allen described to police.

E. A Preponderance of the Evidence Supports the Trial Court's Conclusion That Allen Acted Intentionally.

Allen also argues that the State has not demonstrated that Allen "unlawfully, intentionally, or knowingly" caused any injuries to A.B. as required by section 22.04(a). Injury to a child is a result-oriented crime. *Alvarado v. State*, 704 S.W.2d 36, 39 (Tex. Crim. App. 1985). That means the culpable mental state relates to causing the result rather than merely engaging in the conduct. *See Cook v. State*, 884 S.W.2d 485, 490 (Tex. Crim. App. 1994). Mental culpability usually must be inferred from circumstances of the act or words. *Moore v. State*, 969 S.W.2d 4, 10 (Tex. Crim. App. 1998). It can be inferred from "the extent of the injuries to the victim, the method used to produce the injuries, and the relative size and strength of the parties." *Herrera v. State*, 367 S.W.3d 762, 771 (Tex. App.—Houston [14th Dist.] 2012, no pet.) (citing *Patrick v. State*, 906 S.W.2d 481, 487 (Tex. Crim. App. 1995)).

Here, Dr. Girardet testified that although the spleen injury could have been accidental, the other injuries were not. She stated that there must be some "penetrating trauma to the abdomen" to cause the pancreas injury because "it has to be something that pushes into the abdomen and squishes the pancreas up against the spine." With regard to the breastbone fracture, Dr. Girardet stated that "it's rare to see fractures of the breastbone . . . unless . . . you have a history of like a car accident or something like that" because it is a "very resistant bone." She testified

that in order to break a breastbone, there must be some "high velocity trauma directly onto the chest." Dr. Girardet stated that such an injury was "certainly not compatible with any type of minor household fall or play." Furthermore, Dr. Girardet specifically refuted Allen's proffered explanation, stating that even if an adult threw a child to the floor, she would not expect to see any injuries. The doctor ultimately concluded that "[A.B.] was certainly abused and she was abused by a person with the strength and coordination of an adult. This was not accidental."

Based on the doctor's testimony about the severity of A.B.'s injuries and the force necessary to cause them, the judge could have found that the State proved by a preponderance of the evidence that Allen violated a condition of his community supervision. The crux of Allen's legal sufficiency argument is that many other adults had access to A.B. during the relevant time periods.[6] However, Allen provides no evidence indicating that any of these other adults ever harmed A.B. The only evidence of harm to A.B. during the relevant time frame points to Allen and is based on his own voluntary statements to police.

The State demonstrated that (1) A.B., a 20-month-old child, was in Allen's care during the times Dr. Girardet stated that the injuries occurred; (2) the injuries were severe and thus intentional; and (3) Allen could have injured A.B. by causing her to strike some blunt object. Viewing the trial court's decision in the light most favorable to its ruling, we conclude that the State proved by a preponderance of the evidence that Allen violated the conditions of his community supervision by committing a crime. We overrule Allen's second issue.

[6] Allen contends that as many as ten adults had access to A.B. during the time frame provided by Dr. Girardet, including the sitter, other adults who lived in or visited the sitter's apartment, and the other adults living with Allen and Mother.

III. Factual Sufficiency Challenge

In his third issue, Allen claims the evidence was also factually insufficient to conclude that he violated a term of his community supervision by committing a crime. However, this court has previously declined to conduct a factual sufficiency review in the community supervision context. *See Joseph v. State*, 3 S.W.3d 627, 642 (Tex. App.—Houston [14th Dist.] 1999, no pet.) (holding *Clewis* factual sufficiency standard inapplicable in revocation cases) (citing *Johnson v. State*, 943 S.W.2d 83, 85 (Tex. App.—Houston [1st Dist.] 1997, no pet.)). Although the Court of Criminal Appeals has yet to address the issue, several of our sister courts have also found that a factual sufficiency analysis is inappropriate in such cases. *See, e.g.*, *Antwine v. State*, 268 S.W.3d 634, 636–37 (Tex. App.—Eastland 2008, pet. ref'd) (collecting cases); *Davila v. State*, 173 S.W.3d 195, 198 (Tex. App.—Corpus Christi 2005, no pet.) (collecting cases). Therefore, we hold that a factual sufficiency review is inapplicable here, and we overrule Allen's third issue.

CONCLUSION

We conclude that the trial court properly denied Allen's motion to suppress and that the evidence is sufficient to support the trial judge's determination that Allen violated a term of his supervision. Accordingly, we affirm.

/s/ Ken Wise
Justice

Panel consists of Justices Jamison, McCally, and Wise.
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