



**In The  
Court of Appeals  
Seventh District of Texas at Amarillo**

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No. 07-21-00111-CR  
No. 07-21-00112-CR

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**FABIAN VALDERAS, APPELLANT**

**V.**

**THE STATE OF TEXAS**

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On Appeal from the 286th District Court  
Hockley County, Texas,  
Trial Court Nos. 14-01-7970 & 20-12-9971, Honorable Pat Phelan, Presiding

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August 15, 2022

**MEMORANDUM OPINION**

Before QUINN, C.J., and PARKER and DOSS, JJ.

Appellant, Fabian Valderas, appeals the trial court's judgments in two causes revoking his community supervision and assessing punishment of two years' confinement in two causes, with the sentences to run concurrently. Appellant asserts the trial court erred when it relied on two sworn statements used by the State to impeach a witness pursuant to Texas Rule of Evidence 613 as substantive evidence in support of revocation. We affirm the trial court's judgments as reformed.

## Background

In June 2015, in Cause No. 14-01-7970, Appellant pleaded guilty to the offense of Driving While Intoxicated with a Child under Fifteen Years of Age.<sup>1</sup> He was sentenced to two years of confinement in state jail, suspended and probated for four years. His release on community supervision was subject to multiple terms and conditions, including the requirement that Appellant “commit no offense against the laws of the State of Texas.” The record indicates that Appellant’s period of supervision was thereafter extended numerous times.

In September 2020, while still on community supervision in the -7970 matter, Appellant was charged by information in Cause No. 20-12-9971 with committing the offense of Possession or Use of Fraudulent Identification Information, Less than Five Items.<sup>2</sup> In December 2020, Appellant pleaded guilty to the offense. He was sentenced to confinement for two years, suspended and probated for five years. Again, one condition throughout the term of Appellant’s community supervision was that he “shall commit no offense against the laws of the State of Texas.”<sup>3</sup>

On October 7, 2020, the State filed a Motion to Revoke in the -7970 matter, alleging numerous violations of the terms and conditions of his community supervision including the alleged illegal activity that was the subject of the -9971 case and alleged battery against Amber Gutierrez. On the same day that Appellant pleaded guilty in the -9971

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<sup>1</sup> Tex. Penal Code Ann. § 32.315(e)(1).

<sup>2</sup> Tex. Penal Code Ann. § 49.045(b).

<sup>3</sup> The terms of his community supervision also required that he report to his community supervision officer monthly, and make monthly payments on his fines, court costs, and probation fees.

matter, the trial court considered the Motion to Revoke in -7970 and granted the motion. The trial court then ordered an extension of Appellant's community supervision in -7970 for one year, beginning December 17, 2020, so that Appellant could attend the Batterers Intervention Prevention Program.

On February 26, 2021, the State filed Motions to Revoke in both the -7970 and -9971 matters. As part of the basis for requesting revocation of Appellant's community supervision in the two matters, the State alleged:

- On or about February 2, 2021, Appellant restricted the movements of Amber Gutierrez without her consent by, among other things, "locking complainant in the bedroom and putting a dresser in front of the door";
- On or about February 2, 2021, Appellant intentionally, knowingly, and recklessly caused bodily injury to Amber Gutierrez by slapping her;
- On or about February 24, 2021, Appellant intentionally, knowingly, and recklessly caused bodily injury to Amber Gutierrez by impeding her breath; and
- On or about February 24, 2021, Appellant intentionally, knowingly, or recklessly impeded the normal breathing or circulation of blood to Amber Gutierrez by applying pressure to her throat or neck.

On May 3, 2021, the trial court held a combined hearing on the State's Motions to Revoke. Regarding the -9971 community supervision, Rodriguez testified Appellant failed to make installment payments on court costs and attorney fees for January and February 2021 as required by the conditions of community supervision.

At the hearing, Levelland Police Department Officer Rocio Gameros testified that on February 2, 2021, he responded to a call by a woman who alleged she was being kidnapped at Appellant's apartment. Gameros saw only two individuals in the apartment: Appellant and Gutierrez. Appellant acted "calm, a little nervous" when coming out of the

apartment. When Gameros met with a pregnant Gutierrez,<sup>4</sup> he observed her right eye was black and swollen, her lip was busted, and she had a lot of red scratches on her face and neck area. Appellant was arrested.

Over Appellant's hearsay objection, the trial court admitted into evidence a February 2, 2021 text exchange between Gutierrez and her mother. In that exchange, Gutierrez said, in part:

12:21 pm: Come get me now call cops he's abusing me

12:21 pm: I'm locked n room

12:22 pm: Don't txt my phone he has it please come get me mom please

12:22 pm: Now!!

Also over Appellant's vague objection,<sup>5</sup> the trial court admitted into evidence a sworn written statement by Gutierrez in which she said in relevant part:

Today Fabian got out of control meaning he hit me on the side of my face about three times, because he assumed I was cheating w/his brother while he was out of the house one day.

\* \* \*

he took my phones away & put the dresser in front of the door so that I wouldn't leave & he fell asleep. I found his phone & contacted Michelle the landlord & my mother [] to come help me because I wasn't able to get out w/out waking him up & him getting mad.

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<sup>4</sup> Gutierrez's mother testified that Gutierrez was seven or eight months pregnant at the time.

<sup>5</sup> Counsel for Appellant presented a multifarious objection sounding in hearsay: I'm going to object it's hearsay. She's already testified that she – she wrote that and that she gave a statement. So it's not an issue of that for laying the foundation for impeachment hearing. So I'm going to object under [Rule] 803, hearsay.

At trial, Gutierrez testified she was lying when she made the aforementioned statements.

According to the testimony of Levelland Police Officer Ivan Baeza, officers were again dispatched to the residence on February 24, 2021 due to “a female [calling 911 and] yelling for help.” Inside the residence, officers found Appellant and a shaking, crying Gutierrez whom Baeza described as having red scratch marks on her neck and face, a bump in-between her eyes, and “dried blood coming from her mouth on the right side.” Officer Dakota Moody testified of observing Gutierrez’s physical injuries consisting of dark marks approximately two to three inches in length on the side of Gutierrez’s throat. Baeza additionally observed from Gutierrez’s reactions while Appellant was in the room that Gutierrez was afraid of Appellant.

Following the February 24 incident, Gutierrez made and signed another sworn written statement. After Appellant’s hearsay objection was overruled, Gutierrez’s written statement was admitted into evidence. In part, Gutierrez reported that Fabian “put his hands on my throat & finally let go.” As with the other alleged reports of acts by Appellant, Gutierrez again testified that she was lying when she made this statement.

At the hearing’s conclusion, the trial court found Appellant violated the terms and conditions of his community supervision in both causes and sentenced Appellant to confinement for two years in each cause to run concurrently.

#### Standard of Review

We examine a trial court’s order revoking community supervision for abused discretion. *Hacker v. State*, 389 S.W.3d 860, 865 (Tex. Crim. App. 2013). A trial court abuses its discretion when its decision (1) lies outside the zone of reasonable

disagreement, (2) is arbitrary or unreasonable, or (3) is without reference to any guiding rules or principles. See *Rhomer v. State*, 569 S.W.3d 664, 669 (Tex. Crim. App. 2019); *Chastain v. State*, No. 10-18-00152-CR, 2021 Tex. App. LEXIS 3226, at \*11 (Tex. App.—Waco Apr. 28, 2021, pet. ref'd) (mem. op., not designated for publication).

Evidence that a defendant violated a single condition of community supervision is sufficient to support revocation. *Garcia v. State*, 387 S.W.3d 20, 26 (Tex. Crim. App. 2012). In a revocation proceeding, we view the evidence in a light most favorable to the trial court's ruling; *Garrett v. State*, 619 S.W.2d 172, 174 (Tex. Crim. App. [Panel Op.] 1981), and the trial court is the "sole judge of the credibility of the witnesses and the weight to be given their testimony." *Hacker*, 389 S.W.3d at 865. If the record supports conflicting inferences, it must be presumed the trial court resolved any such conflict in favor of its findings. See *Temple v. State*, 390 S.W.3d 341, 360 (Tex. Crim. App. 2013).

#### Analysis

Appellant's complaint on appeal is that the trial court reversibly erred in admitting Gutierrez's statements, per Texas Rule of Evidence 613, because use of the statements constitutes improper impeachment. We disagree. Regarding two of the exhibits<sup>6</sup> reflecting Gutierrez's statements, Appellant did not assert an objection to complain that impeachment evidence was being used improperly. Appellant thus waived error of the same. TEX. R. EVID. 103(a); TEX. R. APP. P. 33.1(a)(1); *Nguyen v. State*, No. 14-18-00063-CR, 2021 Tex. App. LEXIS 3608, at \*27 (Tex. App.—Houston [14th Dist.] May 11, 2021,

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<sup>6</sup> It is unnecessary to determine whether Appellant's objection to Gutierrez's February 2 sworn statement preserved review because any alleged error would be harmless in light of the other admitted evidence. See *Brown v. State*, 692 S.W.2d 497, 501 (Tex. Crim. App. 1985).

no pet.) (mem. op., not designated for publication) (holding that hearsay objections did not preserve error regarding alleged improper impeachment). Notwithstanding Gutierrez's subsequent statements that she had been untruthful, the trial court could consider the admitted testimony and exhibits that on February 2, 2021, Gutierrez asked for police assistance because Appellant was "abusing" her and had locked her in a room. The testimony further shows that upon arrival, police observed that Gutierrez had suffered injuries with such alleged abuse: her right eye was black and swollen, her lip was busted, and she had a lot of red scratches on her face and neck area.

As for the February 24, 2021 altercation, police arrived on scene to find Gutierrez and Appellant alone in the home. Gutierrez was crying, suffering from red scratch marks on her neck and face, a bump in-between her eyes, and "dried blood coming from her mouth on the right side." Gutierrez's sworn affidavit said Appellant had put his hands on her throat.

Further still, as to the -9971 community supervision, the trial court heard testimony without objection that Appellant had not complied with other conditions of his supervision, including making installment payments on court costs and attorney fees for January and February 2021. Again, as noted above, violating a single condition of community supervision is sufficient to support the revocation order. *Garcia*, 387 S.W.3d at 26. In light of the applicable standard of review and the evidence in the record, we find the trial court did not abuse its discretion by revoking Appellant's community supervision in both causes. We therefore overrule Appellant's single issue.

## Reformation of Judgment

We raise one issue on our own motion. This Court has the power to modify a trial court's judgment to make the record speak the truth when we have the necessary information to do so. TEX. R. APP. P. 43.2 (b); *Ramirez v. State*, 336 S.W.3d 846, 852 (Tex. App.—Amarillo 2011, pet. ref'd). Appellate courts have the power to reform whatever the trial court would have corrected by a judgment nunc pro tunc where the evidence necessary to correct the judgment appears in the record. *Asberry v. State*, 813 S.W.2d 526, 529 (Tex. App.—Dallas 1991, pet. ref'd). The power to reform a judgment is “not dependent upon the request of any party, nor does it turn on the question of whether a party has or has not objected in the trial court.” *Id.* at 529–30.

The judgments in Cause Nos. 14-01-7970 and 20-12-9971 reflect that Appellant's “Plea to Motion to Revoke” was “TRUE” when the reporter's record of the May 3, 2021 hearing on the State's motions in both causes reflects Appellant pled “NOT TRUE” in each cause. As such, the trial court's judgments are reformed to reflect the correct plea entered in both causes. Furthermore, the trial court is ordered to prepare and file a judgment reflecting each reformation.

## Conclusion

As reformed, the trial court's judgments are affirmed.

Lawrence M. Doss  
Justice

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