

**IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA**

DEXTER JEROME BIGLOW,)	
)	
Appellant,)	NOT FOR PUBLICATION
)	
v.)	Case No. RE-2018-1217
)	
THE STATE OF OKLAHOMA,)	
)	
Appellee.)	

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

DEC 19 2019

JOHN D. HADDEN
CLERK

SUMMARY OPINION

KUEHN, VICE-PRESIDING JUDGE:

Appellant Dexter Jerome Biglow appeals from the revocation of his suspended sentences in Oklahoma County District Court Case No. CF-2017-3262. On February 14, 2018, Appellant entered negotiated guilty pleas to Aggravated Attempting to Elude and Possession of a Controlled Dangerous Substance (marijuana). He was sentenced to five years imprisonment on the eluding count and to one year of incarceration on the drug charge. The terms were ordered to be served concurrently and were suspended. On November 6, 2018, the State filed an application to revoke the suspended sentences alleging Appellant committed the new crimes of domestic

abuse by strangulation and domestic abuse resulting in great bodily injury.

On November 27, 2018, a hearing on the application to revoke was held before the Honorable Ray C. Elliott, District Judge. Judge Elliott granted the State's application and revoked Appellant's suspended sentences in full. On appeal, Appellant asserts the State failed to present sufficient evidence to prove the allegations contained in the application to revoke. We disagree.

ANALYSIS

At a hearing where the State seeks revocation of a suspended sentence, the question is whether the suspended portion of the sentence imposed should be executed, and the court makes a factual determination as to whether the terms of the suspension order have been violated. *Robinson v. State*, 1991 OK CR 44, ¶ 3, 809 P.2d 1320, 1322. The violation "need be proven only by a preponderance of the evidence." *Tilden v. State*, 2013 OK CR 10, ¶ 5, 306 P.3d 554, 556. A trial court's decision to revoke a suspended sentence should not be overturned absent a finding of an abuse of discretion. *Jones v. State*, 1988 OK CR 20, ¶ 8, 749 P.2d 563, 565. An abuse of discretion is any unreasonable or arbitrary action taken without proper consideration

of the facts and law pertaining to the matter at issue or a clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented. *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170.

Officers Taylor and Mueggenborg each separately interviewed the alleged victim of the domestic abuse. The officers testified at the revocation hearing and the court found their testimony bore “substantial guarantee[s] of trustworthiness.” The court was thus permitted to consider out of court statements of the alleged victim in its decision-making calculus. *See Hampton v. State*, 2009 OK CR 4, ¶ 19, 203 P.3d 179, 185 (“we hold the substantial trustworthiness test is a procedure upon which Oklahoma trial judges may rely in deciding when hearsay evidence can be considered over an objection to a probationer’s right of confrontation”).

Though the testimony at the revocation hearing was contradictory, the court did not abuse its discretion in concluding the state adequately proved its case for revocation. *See State v. Kudron*, 1991 OK CR 92, ¶ 19, 816 P.2d 567, 570-71 (“the credibility of witnesses and the weight given their testimony is within the exclusive province of the trier of fact, who may believe or disbelieve

the witnesses as it desires”).

DECISION

The order of the District Court of Oklahoma County revoking Appellant’s suspended judgments and sentences in Case No. CF-2017-3262 is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2019), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY
THE HONORABLE RAY C. ELLIOTT, DISTRICT JUDGE**

**APPEARANCES AT
REVOCATION**

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OPINION BY: KUEHN, V.P.J.:
LEVIS, P.J.: CONCUR
LUMPKIN, J.: CONCUR
HUDSON, J.: CONCUR
ROWLAND, J.: CONCUR

RA/F