

**Affirmed and Opinion filed March 29, 2001.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-99-01187-CR**  
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**WAYNE JOYCE STEADMAN, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 184th District Court  
Harris County, Texas  
Trial Court Cause No. 707,778**

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**OPINION**

Wayne J. Steadman (“appellant”) appeals the revocation of his community supervision for the offense of indecency with a child. Specifically, appellant asserts that the evidence produced at the revocation hearing was insufficient to support the trial court’s finding of true on the allegation in the state’s motion to revoke community supervision. We affirm.

Appellant was charged by indictment with the offense of indecency with a child, and a jury found him guilty and assessed punishment at ten years’ confinement. The jury, however, recommended that the sentence be probated. In accordance with the jury’s recommendation,

the trial court placed appellant on community supervision for a period of ten years, and placed certain conditions on the community supervision.

One of the conditions placed on appellant's community supervision provided:

You are not to reside, go in, on or within 100 yards of a premises where children commonly gather, including a school, day-care facility, playground, public or private youth center, public swimming pool, or video arcade facility beginning January 23, 1997, for any reason except as specifically permitted by the Court.

The state contends that appellant violated this condition by going into the parking lot of West Memorial Junior High School on May 24, 1999. The sole witness to this violation was Debbie Grace Olsen ("Olsen"), who lives near the school.

At the revocation hearing, Olsen testified that she observed appellant driving around her neighborhood slowly, passing her house twice before turning off onto another street. Olsen then testified that approximately ten minutes later, she observed appellant's vehicle parked in the parking lot of West Memorial Junior High School. According to Olsen, while she was watching appellant's vehicle, appellant left West Memorial Junior High School and passed by Olsen, who was standing outside. Olsen then contacted the management company of the subdivision. Based on that conversation, Olsen called the police. She testified that she first spoke to a constable between 1:00 p.m. and 2:00 p.m. on May 24, 1999, and they "took a report."

On the cross examination of Olsen, and the direct examination of Sergeant Gonsoulin of the Precinct Five Constable's Office, it became clear that the testimony of Olsen differed in several respects from the information taken down by Sergeant Gonsoulin in his report. Sergeant Gonsoulin testified that Olsen made a report to him at approximately 8:00 p.m. on May 24, 1999. Sergeant Gonsoulin testified that Olsen told him that appellant was parked in the parking lot of West Memorial Junior High School watching children for approximately

two hours. At the revocation hearing, Olsen denied that she ever made these statements to Sergeant Gonsoulin.

Appellant testified that he was on Olsen's street, and actually spoke to Olsen on the day in question, but he never went to the school. Olsen denies that any conversation ever took place. Moreover, appellant, when questioned about the incident, before being placed in custody or arrested, stated to Sergeant Gonsoulin that he went to the school parking lot because he saw a truck he recognized. Appellant denies ever making this statement.

At the end of the hearing, the trial court determined that appellant did, in fact, violate a term of his community supervision, revoked his probation, and sentenced him to ten years' confinement in the Institutional Division of the Texas Department of Criminal Justice.

A probation revocation hearing is not a criminal prosecution and the degree of proof required to establish the truth of the allegations in a motion to revoke community supervision hearing is proof by a preponderance of the evidence that a defendant violated the terms of his community supervision. *Cobb v. State*, 851 S.W.2d 871, 873 (Tex. Crim. App. 1993).

In a probation revocation hearing, the trial court is the sole trier of fact and judge of the credibility of the witnesses and the weight to be given particular testimony. *Moore v. State*, 11 S.W.3d 495, 498 (Tex. App.—Houston [14th Dist.] 2000, no pet.). Appellate courts review an order revoking probation under the abuse of discretion standard. *Cardona v. State*, 665 S.W.2d 492, 493-94 (Tex. Crim. App. 1984); *Moore*, 11 S.W.3d at 498. In making this determination, we must view the evidence in the light most favorable to the verdict. *Moore*, 11 S.W.3d at 498.

The evidence in the record is sufficient to support the trial court's determination that appellant violated a condition of his community supervision. Olsen testified that she observed appellant in the parking lot of West Memorial Junior High School. While her account at the revocation hearing of what happened on May 24, 1999, differs from what Sergeant Gonsoulin attributed to her in his offense report, she consistently maintained that she saw appellant in the

parking lot of West Memorial Junior High School. Moreover, appellant's own testimony indicates that he did drive by Olsen's house on the day in question. Lastly, while appellant denies ever making a statement that would place him on the school grounds, Sergeant Gonsoulin testified that appellant admitted to being at West Memorial Junior High School.

The trial court, therefore, did not abuse its discretion in finding that appellant violated a condition of his community supervision. Appellant's sole point of error is overruled, and the judgment of the trial court is affirmed.

/s/ Norman Lee  
Senior Justice

Judgment rendered and Opinion filed March 29, 2001.

Panel consists of Justices Edelman, Frost, and Lee.<sup>1</sup>

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<sup>1</sup> Senior Justice Norman Lee sitting by assignment.