

No. 14-24-00898-CR

**IN THE COURT OF APPEALS
FOR THE FOURTEENTH DISTRICT OF TEXAS**

FILED IN
14th COURT OF APPEALS
HOUSTON, TEXAS

MAY 1 2025 12:53:07 PM

DEBORAH M. YOUNG
Clerk of The Court

KADERICKA WASHINGTON
Appellant

v.

THE STATE OF TEXAS
Appellee

On Appeal from Cause No. 1697536
From the 230th District Court of Harris County, Texas

BRIEF FOR APPELLANT

Alexander Bunin
Chief Public Defender

Miranda Meador
Assistant Public Defender
SBOT 24047674

Harris County Public Defender's Office
1310 Prairie, 4th Floor
Houston, Texas 77002
Phone: (713) 274-6700

Counsel for Appellant
Kadericka Washington

IDENTITY OF PARTIES AND COUNSEL

APPELLANT:

Kadericka Washington
TDCJ #02532381
Plane State Jail
904 FM 686
Dayton, Texas 77535

DEFENSE COUNSEL:

Cynthia Hale (at revocation hearing)
701 N. Post Oak Road, Suite 615
Houston, Texas 77024

Stephanie Martin (at trial)
P.O. Box 270446
Houston, Texas 77277

Miranda Meador (on appeal)
Assistant Public Defender
Harris County, Texas
1310 Prairie, 4th Floor
Houston, Texas 77002

PRESIDING JUDGE:

Hon. Chris Morton
230th District Court
Harris County, Texas
1201 Franklin
Houston, Texas 77002

TRIAL PROSECUTORS:

Keegan Childers
Laurie Beth Jackson
Wesley Stafford
Assistant District Attorneys
Harris County, Texas
1201 Franklin Street, 6th Floor
Houston, Texas 77002

TABLE OF CONTENTS

| | |
|--|----|
| Identity of Parties and Counsel..... | 2 |
| Table of Contents | 3 |
| Index of Authorities | 4 |
| Statement of the Case..... | 5 |
| Statement Regarding Oral Argument..... | 6 |
| Issues Presented..... | 7 |
| Statement of Facts | 7 |
| Summary of the Argument..... | 11 |
| Argument..... | 12 |
| I. Standard of Review for Issues One and Two | 12 |
| II. Applicable Law for Issues One and Two..... | 12 |
| III. Issue One: The State failed to prove by a preponderance of the evidence that Ms. Washington committed the offense of aggravated assault | 14 |
| IV. Issue Two: The State failed to prove by a preponderance of the evidence that Ms. Washington committed the offense of aggravated robbery and possessed a firearm | 16 |
| Prayer..... | 18 |
| Certificate of Service..... | 19 |
| Certificate of Compliance..... | 19 |

INDEX OF AUTHORITIES

Cases

Black v. State, 411 S.W.3d 25

(Tex. App.—Houston [14th Dist.] 2013, no pet.) 13

Cardona v. State, 665 S.W.2d 492 (Tex. Crim. App. 1984)..... 13

Carreon v. State, 548 S.W.3d 71

(Tex. App.—Corpus Christi 2018, no pet.)..... 12

City of Keller v. Wilson, 168 S.W.3d 802 (Tex. 2005)..... 13

Garcia v. State, 387 S.W.3d 20 (Tex. Crim. App. 2012) 13

Hacker v. State, 389 S.W.3d 860 (Tex. Crim. App. 2013)..... 12, 16

Marathon Corp. v. Pitzner, 106 S.W.3d 724 (Tex. 2003)..... 13

Rickels v. State, 202 S.W.3d 759 (Tex. Crim. App. 2006) 12

York v. State, 342 S.W.3d 528 (Tex. Crim. App. 2011)..... 13

Statutes

TEX. PENAL CODE § 22.01(a) 14

TEX. PENAL CODE § 22.02(a) 14

TEX. PENAL CODE § 29.02(a) 16

TEX. PENAL CODE § 29.03(a)(2) 16

STATEMENT OF THE CASE

Kadericka Washington was accused by indictment of aggravated assault, which allegedly happened on November 9, 2020. CR at 32. She was indicted on March 1, 2021. CR at 32.

Ms. Washington pleaded guilty on June 3, 2021, and the case was reset for a Presentence Investigation Hearing. CR at 35, 310. The case was later reset for a jury trial. CR at 310. Jury selection commenced on May 6, 2022, and a jury was empaneled that day. CR at 311. Ms. Washington was arraigned and pleaded not guilty. CR at 311. On the first day of evidence presentation, the trial court conducted a *Faretta* hearing, at the conclusion of which Ms. Washington decided to continue being represented by her trial counsel. CR at 312; 4 RR at 8. At the conclusion of the second day of evidence, court is adjourned until the following day, but the trial did not continue. 5 RR at 127.

There is no record of Ms. Washington's decision to discontinue her jury trial. The record resumes with Volume 6 containing Ms. Washington's guilty plea on May 10, 2022. CR at 193; 6 RR at 5. In exchange for her plea, she was placed on deferred adjudication for a period of five years, and ordered to pay

\$5,000 in restitution, to have no contact with three named individuals, and to follow all conditions recommended by probation. CR at 205; 6 RR at 8–9.

The State filed its first *Motion to Adjudicate Guilt* on July 15, 2024, and filed an amended version of that motion on July 18, 2024. CR at 214, 219. A *Second Amended Motion to Adjudicate Guilt* was filed September 4, 2024. CR at 224. On November 20, 2024, Ms. Washington was adjudicated guilty and sentenced to fifteen years of incarceration. CR at 276. She filed her notice of appeal November 20, 2024. CR at 284.

STATEMENT REGARDING ORAL ARGUMENT

The issues in this case are not complex and the Court would not be aided by oral argument. Ms. Washington does not request oral argument.

ISSUES PRESENTED

Issue One: The State failed to prove by a preponderance of the evidence that Ms. Washington committed the offense of aggravated assault

Issue Two: The State failed to prove by a preponderance of the evidence that Ms. Washington committed the offense of aggravated robbery and possessed a firearm

STATEMENT OF FACTS

Ms. Washington's community supervision

On May 10, 2022, Kadericka Washington pleaded guilty to the offense of aggravated assault and entered into an agreement with the State to be placed on deferred adjudication for five years. CR at 106; 7 RR at 12. On September 4, 2024, the State filed its *Second Amended Motion to Adjudicate Guilt*, alleging multiple violations of Ms. Washington's community supervision, including new law violations. CR at 224–23; 7 RR at 15. The State abandoned one of the alleged new law violations but proceeded with two others: aggravated assault with a deadly weapon and aggravated robbery with a deadly weapon. 7 RR at 9, 16. Additionally, the State alleged that Ms. Washington violated the condition that she not “ship, transport, possess, receive or purchase a firearm,” and that she

failed to pay various fees, costs, and restitution. 7 RR at 16–20. These technical violations were not found to be true by the trial court. 7 RR at 125.

Up until May of 2024, excluding her monetary obligations, Ms. Washington was in compliance with her supervision. 7 RR at 21. She had completed a parenting class, an anger management class, a “Thinking for a Change” class, and a mental health evaluation. 7 RR at 21–22. Although Ms. Washington has mental health diagnoses, including bipolar disorder, she was not carried on a mental health probation caseload. 7 RR at 22.

Alleged new law violation: aggravated assault

On May 10, 2024, the manager of a lounge was working on the patio when he heard arguing. 7 RR at 42. He saw a man and a woman step outside, arguing something about “they momma.” 7 RR at 42–43. The women stayed outside but the man went back inside the lounge. 7 RR at 43. Moments later, the woman then went back inside the lounge, at which time the manager directed the security guard to search her purse. 7 RR at 60. Security searched her purse at that time. 7 RR at 60.

A few minutes later, the manager heard a gunshot. 7 RR at 43. He ran inside the lounge and saw that a man had been shot. 7 RR at 44. The manager also saw the women who had been arguing with the man leaving the lounge, and as she passed, the manager claimed he saw a gun visible inside her purse. 7 RR at 45. The manager identified Ms. Washington as the woman with the gun, who had been in the argument with the man who was shot. 7 RR at 46.

The manager grabbed the gun out of the purse and wrestled it away from the woman, who ran away. 7 RR at 47–48. She tried to go to her car, but the manager grabbed her keys away, so she ran on foot. 7 RR at 49. Her car was left behind and police ran the license plates. 7 RR at 33.

Davion Albro-Phillips was at the lounge with friends when he saw Ms. Washington, whom he knows as Sky. 7 RR at 64, 66. The two had seen each other many times at clubs and Albro-Phillips had no prior problems with Washington. 7 RR at 66. At the lounge that day, Albro-Phillips claimed that Sky was “belittling” him, calling him “broke” and saying his “mom was a crackhead.” 7 RR at 68. At some point in the confrontation, Albro-Phillips says he was slapped by Washington, and he slapped her back. 7 RR at 70–71. State’s Exhibit 33, surveillance video from inside the lounge, shows the two hitting each other back and forth, just before Albro-Phillips runs out of view of the camera. 7 RR

at 70; 8 RR at St. Ex. 33. Albro-Phillips testified that he ran because he had been shot. 7 RR at 71. He was facing Washington at the time he was shot, but did not see her holding a gun or see a muzzle flash. 7 RR at 79.

Alleged new law violation: aggravated robbery

About a year before the hearing, Donald Smith dated a woman he knew as Sky for a few months. 7 RR at 94. He identified Sky as Ms. Washington. 7 RR at 94–95. While they were dating, Washington visited his apartment on several occasions. 7 RR at 95. After they stopped dating, the two lost touch and did not speak for over six months. 7 RR at 96. Then on the night of May 6, 2024, According to Smith, Ms. Washington came to Smith’s apartment and accused him of owing her money. 7 RR at 97. Smith said that she “cocked a pistol” at him and “made me give her Cash App.” 7 RR at 97. The complainant showed a screenshot from his phone for \$150 sent to Sky via Cash App. 7 RR at 106; 8 RR at St. Ex. 47. Smith testified that he disputed the Cash App transaction and got his money back. 7 RR at 102. Text messages from Sky show that she denied robbing him. 7 RR at 107; 8 RR at St. Ex. 49.

The findings of the trial court

The trial court found that State proved by a preponderance of the evidence that Ms. Washington violated her community supervision by possessing a firearm and by committing aggravated assault and aggravated robbery. 7 RR at 125. Ms. Washington was sentenced to fifteen years in prison. 7 RR at 125.

SUMMARY OF THE ARGUMENT

The evidence presented at Ms. Washington's hearing on the State's *Second Amended Motion to Adjudicate Guilt* was insufficient to prove that she violated the terms of her community supervision as alleged by the State and found by the trial court. The State failed to show by a preponderance of the evidence that Ms. Washington committed the offenses of aggravated assault or aggravated robbery, or that she possessed a firearm on May 6, 2024.

ARGUMENT

I. Standard of Review for Issues One and Two

A trial court's order revoking community supervision is reviewed for abuse of discretion. *Hacker v. State*, 389 S.W.3d 860, 865 (Tex. Crim. App. 2013). A trial court does not abuse its discretion if the greater weight of the credible evidence creates a reasonable belief that the defendant violated a condition of his community supervision. *Rickels v. State*, 202 S.W.3d 759, 763–64 (Tex. Crim. App. 2006).

II. Applicable Law for Issues One and Two

It is the State's burden to prove violations of community supervision by a preponderance of the evidence. *Carreon v. State*, 548 S.W.3d 71, 77 (Tex. App.—Corpus Christi 2018, no pet.). “Preponderance of the evidence means ‘the greater weight of the credible evidence which would create a reasonable belief that the defendant has violated a condition of his community supervision.’” *Id.* at 77 (quoting *Rickels*, 202 S.W.3d at 763–64).

Although a lower standard than “beyond a reasonable doubt,” preponderance of the evidence is a much higher standard than the search-and-

seizure standards of “probable cause” and “reasonable suspicion.” *Hacker*, 389 S.W.3d at 865 (citing *York v. State*, 342 S.W.3d 528, 543, n. 86 (Tex. Crim. App. 2011)). Evidence does not meet this standard when “the evidence offered to prove a vital fact is so weak as to do no more than create a mere surmise or suspicion of its existence.” *Id.* (citing *City of Keller v. Wilson*, 168 S.W.3d 802, 813 (Tex. 2005)). “Some suspicion linked to other suspicion produces only more suspicion, which is not the same as some evidence.” *Id.* (citing *Marathon Corp. v. Pitzner*, 106 S.W.3d 724, 728 (Tex. 2003)).

Proof of a single violation is sufficient to support revocation of community supervision. *Black v. State*, 411 S.W.3d 25, 28 (Tex. App.—Houston [14th Dist.] 2013, no pet.) (citing *Garcia v. State*, 387 S.W.3d 20, 26 (Tex. Crim. App. 2012)). If the State fails to meet its burden of proof, the trial court abuses its discretion in revoking community supervision. *Cardona v. State*, 665 S.W.2d 492, 493 (Tex. Crim. App. 1984).

III. Issue One: The State failed to prove by a preponderance of the evidence that Ms. Washington committed the offense of aggravated assault

A. The elements of aggravated assault

To prove that Ms. Washington committed aggravated assault with a deadly weapon, the State must show by a preponderance of the evidence that she (1) intentionally, knowingly, or recklessly caused bodily injury to another person; or intentionally or knowingly threatened another person with bodily injury, and (2) used or exhibited a deadly weapon while doing so. TEX. PENAL CODE §§ 22.01(a), 22.02(a).

B. The State did not prove the elements by a preponderance of the evidence

To support this allegation, the State presented testimony of two witnesses — the lounge manager and the complainant. 7 RR at 42, 64. According to the manager, Ms. Washington's purse was searched by security only a few minutes before the complainant was shot. 7 RR at 60, 43. He did not see the shooting. He testified that Ms. Washington walked by him after the shooting, and he saw a gun lying visible in her open purse. 7 RR at 45. He also denied being able to see the portion of the surveillance footage immediately after the shooting where a

woman is seen handing something to Ms. Washington that she then places inside her purse. 7 RR at 62.

The complainant in the aggravated assault knew Ms. Washington before this incident and had no previous problems with her. 7 RR at 66. The complainant said that on the day he was shot, he and Ms. Washington were arguing, and she was belittling him. 7 RR at 68. Surveillance footage shows the two slapping and hitting each other. 8 RR at St. Ex. 33. Although the complainant was facing Ms. Washington when he was shot, he did not see her holding a gun. 7 RR at 79. He did not see who shot him.

Even if it is assumed, as was found by the trial judge, that both the complainant and the manager are credible witnesses, their testimony is insufficient to prove the elements of aggravated assault with a deadly weapon. There is no direct evidence that Ms. Washington shot the complainant, and no evidence she is the perpetrator who caused bodily injury to the complainant or exhibited a deadly weapon while doing so. The evidence is insufficient to support the trial judge's finding that Ms. Washington committed aggravated assault in violation of the conditions of her community supervision. There is certainly suspicion she is the perpetrator, but this amounts to nothing more than "some suspicion linked to other suspicion [producing] only more suspicion

which is not the same as some evidence.” *Hacker*, 389 S.W.3d at 865. This ground for revocation is not supported by the evidence.

V. Issue Two: The State failed to prove by a preponderance of the evidence that Ms. Washington committed the offense of aggravated robbery and possessed a firearm

A. The elements of aggravated robbery

To prove the commission of aggravated robbery, the State must show that a person (1) committed robbery, by intentionally or knowingly threatening or placing another in fear of imminent bodily injury or death while committing theft, and (2) that the person used or exhibited a deadly weapon during that robbery. TEX. PENAL CODE §§ 29.02(a), 29.03(a)(2).

B. The State did not prove the elements by a preponderance of the evidence

The state did not prove that a theft occurred. The complainant claimed he was forced to send Ms. Washington money via Cash App, but she consistently denied she stole this money from him. The State also did not prove that a deadly weapon was used or exhibited during this confrontation. The complainant claimed that this alleged robbery was on camera (St. Ex. 49), but no camera footage was admitted during the hearing. The complainant maintained that he had a Ring doorbell but “the subscription had went out right before...she showed up and it didn’t record.” 7 RR at 113.

C. The State did not prove possession of a firearm

The State alleged that Ms. Washington possessed a firearm on May 6, 2024, the day she was also supposed to have committed aggravated robbery. CR at 224. The only evidence presented was the conflicting statements of the complainant — who claimed a gun was pointed at him — and a jail call where a woman says she had a gun on her but did not show it. 7 RR at 99; 8 RR at St. Ex. 43. Text messages sent by Ms. Washington that also show her denying robbing the complainant. 7 RR at 107; 8 RR at St. Ex. 49. The State did not prove Ms. Washington had a gun on that day by a preponderance of the evidence.

PRAYER

Ms. Washington prays this court reverse her conviction and remand this case to the trial court for a new hearing.

Respectfully submitted,

Alexander Bunin
Chief Public Defender

/s/ Miranda Meador
Miranda Meador
State Bar No. 24047674
Assistant Public Defender
Harris County Public Defender's
Office
1310 Prairie, 4th Floor
Houston, Texas 77002
Miranda.Meador@pdo.hctx.net
713-274-6700

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing brief was e-filed with the Fourteenth Court of Appeals, was served electronically upon the Appellate Division of the Harris County District Attorney's Office, and was sent on the same date by first-class mail to:

Kadericka Washington
TDCJ #02532381
Plane State Jail
904 FM 686
Dayton, Texas 77535

/s/ Miranda Meador

Miranda Meador

CERTIFICATION OF COMPLIANCE

Pursuant to Rule 9.4(i)(3), undersigned counsel certifies that this brief complies with the type-volume limitations of Tex. R. App. Proc. 9.4(e)(i). Exclusive of the portions exempted by Tex. R. App. Proc. 9.4 (i)(1), this brief contains 2,177 words printed in a proportionally spaced typeface.

/s/ Miranda Meador

Miranda Meador

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

David Serrano on behalf of Miranda Meador

Bar No. 24047674

David.Serrano@pdo.hctx.net

Envelope ID: 100330195

Filing Code Description: Brief Not Requesting Oral Argument

Filing Description: Brief for Appellant

Status as of 5/1/2025 1:13 PM CST

Case Contacts

| Name | BarNumber | Email | TimestampSubmitted | Status |
|----------------|------------------|-----------------------------|---------------------------|---------------|
| Miranda Meador | 24047674 | miranda.meador@pdo.hctx.net | 5/1/2025 12:53:07 PM | SENT |
| Jessica Caird | 24000608 | caird_jessica@dao.hctx.net | 5/1/2025 12:53:07 PM | SENT |