

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2006-500

AUGUST TERM, 2007

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 2, Chittenden Circuit
Larkin Forney	}	
	}	DOCKET NOS. 6772-10-02 CnCr &
	}	2812-5-03 CnCr

Trial Judge: Brian J. Grearson

In the above-entitled cause, the Clerk will enter:

Defendant appeals the district court's order concluding that he violated his probation on December 27, 2005. On appeal, defendant argues that the trial court's conclusions are not supported by its findings. We affirm.

On March 30, 2005, defendant pled guilty to driving while intoxicated-third offense, reckless endangerment, sexual assault on a minor and several violations of conditions of release. As part of his sentence, the district court placed defendant on probation with conditions, including that he have no contact with his victim. In December 2005, defendant's probation officer filed a complaint alleging that defendant had violated his probation by deliberately having contact with his victim at bingo halls in Milton on December 2 and 27. A subsequent addendum included an additional violation, asserting defendant violated his probation on January 31, 2006 by having intentional contact with his victim at the same bingo hall.

The district court held a merits hearing over two days in March and October 2006. Defendant's victim testified concerning the three incidents of alleged contact. First, she testified that on December 2, 2005, she was at the Legion bingo hall in Milton with her boyfriend, when she saw defendant arrive. She explained that she had a friend ask defendant to leave. She testified that defendant walked out and then returned and deliberately made a rude gesture towards her before leaving. Second, defendant's victim recounted that on December 27, 2005, she was at the Grange bingo hall when defendant arrived. She testified that she was sitting at the snack bar when defendant purposefully walked past her, even though a different route was available, and brushed her chest. When she approached the bingo manager, the manager asked her to leave, which she did. Finally, defendant's victim explained that on January 31, she went to the Grange for bingo and noticed defendant was already there. When the owner asked her to leave, she complied.

Defendant also testified. He admitted that he was present at the bingo halls on the three occasions, but disputed that any contact with his victim was intentional. Defendant claimed that on December 2 he did not see his victim until he was asked to leave, and although he did return to the bingo hall to return his cards, he did not make any rude gestures. Regarding the December 27 incident, defendant recounted that he did not see his victim at the bingo hall, nor did he have any

physical contact with her. Similarly, defendant testified that he never saw his victim on January 31 at the bingo hall.

In an oral ruling, the district court made findings regarding each incident. The court found that there was no evidence to support a finding that defendant knew his victim was present at the bingo hall on January 31, and thus no basis to find he violated the no-contact condition. Regarding the December 2 incident, the court found that although the State had met its burden in demonstrating a violation, defendant successfully demonstrated the violation was not willful. In contrast, the court concluded that on December 27 there was intentional contact between defendant and his victim and consequently violated defendant's probation.

In a probation-revocation hearing, the State has the burden of proving a probation violation by a preponderance of the evidence. State v. Austin, 165 Vt. 389, 398 (1996). If the State meets its burden, then the burden shifts to the probationer to demonstrate that his failure to comply was not willful. Id. On appeal, we will uphold findings of fact fairly and reasonably supported by the evidence, and legal conclusions if reasonably supported by the findings. Id.

Defendant argues that the trial court failed to make specific findings of fact as to how it resolved the conflicting testimony regarding the December 27 incident and therefore its legal conclusions are unsupported by its findings. We disagree and conclude that the court's findings are sufficient to support its conclusion that defendant violated his probation on December 27 by having intentional contact with his victim. The court recognized that the conflicting testimony regarding defendant's contact with the victim. In summarizing the testimony, the court explained that the victim testified that while she was at the snack bar defendant brushed up against her, whereas defendant testified that he did not recall seeing her and denies any contact. In resolving this conflict, the court found that defendant "was in violation of the condition of probation that he was not to have contact with [the victim]." The court concluded that "the State has met its burden that there was contact between [defendant] and [the victim], contrary to the conditions of probation, and that there is a violation." Furthermore, the court explicitly stated that regarding the December 27 incident it found the victim's testimony more credible than defendant's. Although the court did not specifically find that defendant brushed against the victim, its findings that it credited victim's account of the events and found that defendant had intentional contact with the victim are sufficient to support its conclusion that defendant violated the no-contact provision of his probation. See State v. Coyle, 2005 VT 58, ¶ 16, 178 Vt. 580 (holding that trial court's finding that defendant did not leave after recognizing victim supported its conclusion that defendant violated a no-contact order).

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

