

Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

SUPREME COURT DOCKET NO. 2019-080

NOVEMBER TERM, 2019

In re N.L., Juvenile*

} APPEALED FROM:
}
} Superior Court, Rutland Unit,
} Family Division
}
} DOCKET NO. 8-1-16 Rdjv

Trial Judge: Cortland Corsones

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

N.L. appeals the family division’s decision concluding that she violated one of the probation conditions of her youthful offender status. We affirm.

In March 2016, the then-seventeen-year-old N.L. was placed on youthful offender probation following the State’s filing of a delinquency petition alleging domestic assault. One of her probation conditions, in relevant part, was that she not “engage in any criminal, delinquent, violent or threatening behavior.” N.L.’s probation was set to expire in June 2016 on her eighteenth birthday, but because of multiple probation violations in the interim, additional conditions were added, and her term of probation was extended four more years until June 2020. In October 2017, N.L.’s probation officer filed a probation violation complaint alleging that, during a September 24, 2017 incident, N.L. violated the above condition by striking law enforcement officers who were performing their lawful duties. At a hearing on the complaint, one of the police officers involved in the September 24 incident and N.L.’s probation officer testified. Following the hearing, the family division concluded that defendant had violated her probation by pushing and punching a police officer in the chest, “knowing that he was a police officer.” In finding that N.L. knew she was striking a police officer, the court relied on circumstantial evidence presented at the hearing. At a later hearing, the court denied the State’s motion to revoke N.L.’s youthful offender status.

N.L. appeals the family division’s determination that she violated her probation, arguing that the evidence does not support the court’s finding that she knew she was striking a police officer or the court’s related implicit finding that her conduct was willful. The State responds that the evidence was sufficient to support the challenged findings and that, in any event, striking a police officer is not an element of the condition N.L. violated.

“[T]he State bears the burden of proving a probation violation by a preponderance of the evidence.” State v. Anderson, 2016 VT 40, ¶ 11, 202 Vt. 1. “If the State meets this initial burden, the burden shifts to the probationer to prove the violation was not willful but rather resulted from factors beyond [her] control and through no fault of [her] own.” Id. (quotation omitted); see State

v. Stern, 2018 VT 36, ¶ 12, 207 Vt. 479 (“In other words, defendant has the burden to show that the actions underlying the violation were unintentional.”). “Whether a defendant’s probation violation was willful is a question of fact, and we will not disturb a trial court’s determination that the defendant acted willfully unless that determination was clearly erroneous.” Anderson, 2016 VT 40, ¶ 13. For the trial court to find a probation violation, it must first “make a factual determination of the probationer’s actions, followed by an implicit legal conclusion that the probationer’s actions violated [her] probationary terms.” Id. ¶ 11 (quotation omitted). “We will not disturb the court’s findings if they are fairly and reasonably supported by credible evidence, and we will uphold the court’s legal conclusions if reasonably supported by the findings.” State v. Provost, 2014 VT 86A, ¶ 12, 199 Vt. 568.

In this case, the police officer whom N.L. struck testified as follows. Late in the evening of September 24, 2017, the officer was dispatched to a rooming house in the City of Rutland to respond to a possible domestic assault or noise disturbance. While waiting outside the rooming house for another officer to arrive, the testifying officer heard a man and woman arguing and the man said to the woman that he was going to punch her. Shortly thereafter, the two officers entered the house and walked down a hallway to the door beyond which they could hear arguing. The other officer was positioned by the door and the testifying officer was five or six feet from him down the hall. As the other officer started to knock on the door, N.L. burst through the door yelling and screaming. She appeared to be emotionally distraught and intoxicated. The other officer attempted to grab hold of her as she came through the door, but she pulled free and continued toward the testifying officer, whom she punched in the chest when he tried to stop her. When the officer forced N.L. to the ground and told her he was arresting her for assaulting a police officer, she stated that she did not know he was a police officer. At the time of the incident, the officer was wearing a blue police uniform, with a badge on his left chest, a name tag and medals on his right chest, a radio microphone on his left shoulder, a gun belt containing a gun, a taser, pepper spray, handcuffs, and a radio.

Based on the circumstantial evidence—including that the officer was highly visible in a well-lit hallway in full uniform five feet beyond the doorway from which N.L. emerged—the court found that N.L. knew she was striking a police officer.* In challenging this finding, N.L. points to undisputed evidence that she did not know police had been called or that anyone was standing outside her door, that she was intoxicated and emotionally distraught from being assaulted, that the entire incident lasted only a matter of seconds, and that after being taken to the ground and told she was being arrested for assaulting a police officer, she stated that she did not know he was a police officer. Essentially, N.L. is asking this Court to reweigh the facts in her favor. This we will not do. State v. Young, 2010 VT 97, ¶ 9, 189 Vt. 37 (stating that “it is within the province of the trial court to assess witness credibility and the weight of the evidence,” and that trial court findings of fact will be upheld “unless, taking the evidence in the light most favorable to the prevailing

* The State argues that it is immaterial whether the victim of N.L.’s assault was a police officer. We need not address this argument, given our resolution of the appeal. We note, however, that although the condition of probation N.L. violated does not differentiate between potential victims, the State’s complaint alleged that N.L. violated the condition “by striking law enforcement officers while they were performing their legitimate duties.” We further note that the question of whether N.L. engaged in violent or threatening behavior under the circumstances here might be different if the person she struck had not been a law enforcement officer.

party, and excluding the effect of modifying evidence, there is no reasonable or credible evidence to support them” (quotation omitted)). This is not a situation in which the evidence demonstrates, as a matter of law, that N.L. did not know she was assaulting a police officer. Moreover, the same facts upon which N.L. relies for her second argument support the court’s implicit finding that N.L.’s underlying actions which formed the basis of the complaint were willful.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Karen R. Carroll, Associate Justice