



(720 ILCS 5/12-4(b)(8) (West 2008)). Thereafter, the court sentenced him to 30 months' probation. The following are the conditions of the defendant's probation that are pertinent to this appeal: (1) the defendant was prohibited from committing any criminal offense; (2) he was required to report to the probation department as directed; (3) he was required to abstain from the possession, use, or consumption of alcohol, cannabis, or any other controlled substance; and (4) he was required to undergo an alcohol and/or drug evaluation within 45 days of the order, complete all treatment programs recommended as a result of any evaluation, and provide written confirmation of completion of the treatment as directed by his probation officer.

¶ 4 On April 28, 2010, the State filed a petition to revoke the defendant's probation, arguing he violated the conditions of his probation as follows: (1) he failed to provide written confirmation that he completed substance-abuse counseling; (2) he failed to report to the probation department on April 9, 2010, April 16, 2010, and April 20, 2010; and (3) he tested positive for the presence of THC on February 26, 2010. On May 3, 2010, the State filed an amended petition to revoke, arguing the defendant violated the terms of his probation by committing domestic battery on May 1, 2010.

¶ 5 On June 30, 2010, a hearing on both of the State's petitions to revoke probation was held and the following testimony was presented. Carrie Baldwin, the defendant's girlfriend of approximately two years, testified that at approximately 7:30 a.m. on May 1, 2010, she visited her friend, Amanda Tedrick, at work. According to Baldwin, she informed Tedrick that she had argued with the defendant earlier that morning, and she was so angry with him that she considered hitting herself. She testified she "was ready to hit" herself because the defendant would not leave her residence when she requested he leave. Tedrick informed her that she already had a black eye and subsequently called the police. Baldwin returned home before the police arrived.

¶ 6 Baldwin testified she did not remember how she obtained the injury to her eye, but she did remember throwing dishes at the defendant. She did not remember any physical contact between herself and the defendant during their argument. She vaguely remembered being interviewed by Officer Todd Wagner following her conversation with Tedrick. She did not remember telling Wagner that the defendant struck her in the eye with a closed fist while they were lying in bed having an argument. However, Baldwin did remember telling Wagner that she was going to hit herself.

¶ 7 On cross-examination, Baldwin testified that she was intoxicated the morning she spoke with Tedrick and Wagner. She started drinking between 11 a.m. and 2 p.m. the day before and continued throughout the night. At some point that night, she was kicked out of a bar for getting into an altercation with another woman. According to Baldwin, she was "drug out of the bar" by the bartenders. She did not remember the woman hitting her in the eye, but agreed it was possible that she sustained the black eye from this fight. She also did not remember getting home that night from the bar.

¶ 8 She further testified that the police were called to her residence after she arrived home because she tore the screen door off her house. She recalled throwing dishes at the defendant, but she did not recall him striking her. When she gave her statement to Wagner, she only had a few hours of sleep and was still under the influence of alcohol. She was not aware that she had an injury to her eye until Tedrick noticed it. Her conversation with Tedrick occurred approximately 10 to 15 minutes after she last saw the defendant.

¶ 9 According to Baldwin, on May 26, 2010, she went to the police department and signed a statement which indicated that she did not recall the defendant hitting her and that she was intoxicated on the night in question.

¶ 10 Eric Todd Wagner, a police officer with the Vandalia police department, testified he was dispatched to 309 South Coals on May 1, 2010, and observed Baldwin walking from the

south heading toward that residence. Wagner spoke with Baldwin, and she informed him that she and the defendant argued all night, and he hit her during the course of their argument. She informed Wagner that she wished to pursue charges against the defendant. He observed that Baldwin's left eye "had some redness and swelling, a light bruising." He testified that it appeared she had been hit in the left eye. When Wagner requested she further elaborate on how she obtained the injury, Baldwin stated that she had argued with the defendant. During the argument, she told the defendant that she would "just hit herself in the eye to get him in trouble." During a subsequent argument, the defendant hit her in the eye. Wagner testified that when he initially asked Baldwin how she obtained the injury, she said she was not sure. She later admitted she was arguing with the defendant while they were lying in bed, and he hit her left eye with a closed fist. Wagner testified that Baldwin's speech appeared "mumbly," she appeared "somewhat confused," and she appeared to be "under the influence." He opined that she was "very intoxicated."

¶ 11 On cross-examination, Wagner testified that dispatch received the phone call from Tedrick at approximately 7:33 a.m., and the officers arrived within a half hour of the call. He admitted that in his experience as a police officer, it was common for a bruise to turn "dark fairly quickly."

¶ 12 On May 1, 2010, Wagner discussed the incident with the defendant and also had an opportunity to inspect his hands. He did not observe any marks on the defendant's knuckles that indicated the defendant had struck someone. He located the defendant approximately seven or eight blocks from Baldwin's residence. Wagner spoke to the defendant within a few minutes of his conversation with Baldwin, and he observed that the defendant appeared calm and rational. Wagner testified that he also observed that the screen door at Baldwin's house appeared to be broken loose from the frame.

¶ 13 Ryan Parks, a probation officer in Fayette County, testified that the defendant was

ordered to complete counseling and provide written confirmation of completion of such counseling. He testified that he had an agreement with the defendant that the defendant was required to set up the counseling by March 26, 2010, and have the counseling completed by September 26, 2010. According to Parks, the defendant failed to provide any written proof of the counseling as directed. Additionally, Parks testified that the defendant failed to report to the probation department as directed on March 22, April 9, April 16, and April 20. Parks also reported that the defendant tested positive for THC on February 26, 2010.

¶ 14 On cross-examination, Parks testified that he directed the defendant to attend substance-abuse counseling, and he provided the defendant with a list of substance-abuse-counseling services. On April 19, 2010, he contacted one of the counselors on the list and learned that they did not have any record of the defendant contacting them. This was the only counselor that he contacted from the list. The defendant had until September 26, 2010, to complete the counseling, and the time limit had not yet expired. The State stipulated the defendant was arrested on May 1, 2010, for the domestic-battery case and had been incarcerated continuously since that date. Parks acknowledged that being incarcerated could make it difficult for the defendant to complete his ordered substance-abuse counseling. Parks testified that he had an appointment with the defendant on March 11, 2010, but Parks was unable to keep the appointment because he was unable to find the defendant's residence.

¶ 15 Parks testified that he notified the defendant of the appointments on April 9, 16, and 20 by mailing notice to Rural Route 2, Box 42, Brownstown. Notice mailed to the defendant regarding a February appointment was returned to Parks, but none of the notices for the April appointments were returned. Parks testified the defendant called him on April 20, 2010, after missing the appointment that day. The defendant told Parks that he was employed working construction in Highland, and he was staying in a Motel 8. Parks admitted the laboratory report on which he based his order that the defendant obtain substance-abuse counseling

indicated that no cannabinoids were detected in the test given to the defendant.

¶ 16 On redirect, Parks acknowledged that the laboratory report involved the same sample that Parks showed as testing positive for cannabis. Parks testified the defendant was directed to begin substance-abuse counseling by March 26, 2010, and he was required to provide written confirmation that he had started the counseling. The defendant failed to provide any written confirmation indicating he began the ordered substance-abuse counseling.

¶ 17 After the State rested its case, the defendant testified as follows. He testified that he was directed to attend anger-management counseling. He contacted a counseling service from the list of counseling services given to him by Parks and attended two counseling sessions sometime in 2009. In 2010, Parks directed him to attend substance-abuse counseling as a result of the February 2010 positive drug test. He admitted that he did not contact a counseling service regarding substance-abuse counseling.

¶ 18 The defendant admitted he had a March 22 visit with Parks, but he believed it was a home visit. He was at home waiting for Parks, but Parks was unable to find his residence. From April 9, 2010, to April 21, 2010, he was working in Highland and was unable to travel between home and work because his vehicle was inoperable. He did not know that he had an appointment on April 9 because the notice was sent by mail to his sister's residence. Although he was living with his sister at the time of the missed appointments, he was out of town working. When his sister informed him that he missed a probation appointment, he contacted Parks. According to the defendant, he asked Parks if he could have a few more days to report to the probation department so he could finish the construction job. Parks agreed and told the defendant to report when he was back in town. On April 21, 2010, the defendant reported to the probation department, took a drug test, and passed.

¶ 19 The defendant denied hitting Baldwin. According to the defendant, Baldwin was dropped off at her house at approximately 3 a.m. Before entering the house, she tore the

front door off the house and beat on the windows from the outside. The defendant assumed the neighbors called the police, and the defendant left the residence and went to his sister's residence. He did not return to Baldwin's house until approximately 7:30 a.m. He returned to the residence to get clothes for work. When he entered the house, Baldwin started throwing dishes at him. He was leaving when she ran outside and told him, "If you don't leave, I'm going to hit myself." The defendant testified that he subsequently left and did not hit Baldwin. He testified that he was not in bed with Baldwin anytime after 3 a.m. He further testified that Baldwin was intoxicated, and he believed she was upset over money.

¶ 20 On cross-examination, the defendant testified he was not living with Baldwin during the time the incident occurred. Instead, he was living with his sister in Brownstown.

¶ 21 After the defense rested its case, the State recalled Parks to the stand. Parks testified that the defendant failed to call him after missing the April 9 and April 16 appointments. However, the defendant did call him after missing the April 20 appointment. The defendant called him at 1 p.m. on April 20 and then reported to the probation department the following day.

¶ 22 Thereafter, the State withdrew its allegation that the defendant tested positive for THC. The trial court determined that the State proved by a preponderance of the evidence that (1) the defendant committed domestic battery against Baldwin; (2) he failed to report to the probation department as directed on April 9, April 16, and April 20; and (3) he failed to provide the probation department with proof that he attended substance-abuse counseling.

¶ 23 The trial court noted the following with regard to the domestic-battery allegation:

"In People's Exhibit No. 1, it is clearly displayed that Carrie Baldwin received a blow to the eye. And also the evidence came in that early—or that morning she called the police, reported to the police that the defendant \*\*\* had struck her in the eye. Those two pieces of evidence to me tip the scale in favor of the State. It is more

probably true than not that the defendant \*\*\* did commit domestic battery as to his girlfriend, Carrie Baldwin, whom she testified that [the defendant] was staying with from time to time in her home. \*\*\* I don't have to consider whether or not [the State] could have \*\*\* met the burden of proof beyond a reasonable doubt, and the defendant certainly did present evidence—well, it was in the State's case-in-chief as well, \*\*\* [of] Carrie Baldwin's level of sobriety or lack of sobriety at the time of this occurrence which would affect her ability to recall exactly what did happen. But to me, is it more probably true than not that [the defendant] struck Carrie Baldwin that morning? Yes, because of People's Exhibit No. 1, because of the statement that she made to the police at that time."

¶ 24 The trial court then stated the following concerning the failure-to-report allegation:

"When a person is on probation, it is the obligation of the probationer to keep probation informed as far as where you are at, where notice should be sent, showing up for appointments. And the evidence is that notice of appointments went to the Rural Route 2 address, the address of his sister's. He stated he was living with the sister. He also testified that the sister did, in fact, receive the mail, although a couple of days late, as I understood his testimony. But notice was sent. He had the obligation to appear not once, but at three separate times, and failed to appear. And that he has violated the order of probation in that manner."

¶ 25 Last, the trial court stated as follows with regard to the failure-to-provide-proof-of-counseling obligation:

"I find that the \*\*\* testimony was that after the positive drug test, the field drug test, he was ordered to obtain substance abuse counseling. And he acknowledged in his testimony he knew he was supposed to go to counseling, and/or to line up the counseling by a date certain, and he didn't. And as it turns out, when the

test—when the urine sample went to the lab, it came back, in fact, to be clean, but still there was an obligation. The obligation was acknowledged by the probationer \*\*\*, and he didn't comply with that term."

¶ 26 Accordingly, the trial court determined the defendant violated the conditions of his probation. On July 8, 2010, the defendant filed a motion to reconsider verdict, arguing that the State failed to prove the defendant violated the terms of his probation by a preponderance of the evidence. On September 7, 2010, the trial court denied the defendant's motion to reconsider verdict. Also, on September 7, 2010, the court resentenced the defendant to four years in prison to be followed by a one-year period of mandatory-supervised release.

¶ 27 On September 24, 2010, the defendant filed a motion to reconsider sentence, requesting the trial court reconsider his sentence, which was partly based on domestic-abuse allegations subsequently dismissed by the State. According to the defendant, the evidence indicated the alleged victim had been highly intoxicated during the time the alleged incident occurred, and she later admitted that she had no recollection of being struck by the defendant. On October 26, 2010, the trial court denied the defendant's motion. The defendant appeals.

¶ 28 On appeal, the defendant argues the trial court erred by revoking his probation where the State failed to prove by a preponderance of the evidence that he violated his probation by (1) failing to provide written confirmation that he had completed ordered substance-abuse counseling, (2) missing appointments scheduled by his probation officer, and (3) committing domestic battery against Baldwin.

¶ 29 Section 5-6-4(c) of the Unified Code of Corrections (730 ILCS 5/5-6-4(c) (West 2010)) requires the State to establish that the defendant violated a condition of his probation by a preponderance of the evidence. The preponderance-of-the-evidence standard requires the party with the burden of proof to establish that a proposition is more probably true than not true. *People v. Matthews*, 165 Ill. App. 3d 342, 344 (1988). The State only needs to

prove that the defendant violated one of the conditions of his probation by a preponderance of the evidence. *People v. Walsh*, 273 Ill. App. 3d 453, 458-59 (1995). When determining whether the State met this burden, the trial court is allowed to resolve inconsistencies in the testimony. *People v. Love*, 404 Ill. App. 3d 784, 787 (2010). A reviewing court will not disturb a trial court's determination to terminate a defendant's probation unless the finding is contrary to the manifest weight of the evidence. *People v. Prusak*, 200 Ill. App. 3d 146, 149 (1990). A finding is against the manifest weight of the evidence when the opposite result is clearly evident. *Matthews*, 165 Ill. App. 3d at 344-45.

¶ 30 First, the State argues the defendant violated his probation by failing to provide written confirmation that he completed substance-abuse counseling as directed by the probation department. According to the probation order entered on February 5, 2009, the defendant was required to complete all treatment programs recommended as a result of an alcohol and/or drug evaluation and provide written confirmation of completion of the treatment program upon demand by the probation department. The record indicates that Parks directed the defendant to complete substance-abuse counseling by September 26, 2010. Parks testified that he had an agreement with the defendant that the defendant would schedule his substance-abuse counseling by March 26, 2010, and provide written confirmation that he had started the counseling. The record reveals the hearing on the State's petitions to revoke probation occurred on June 30, 2010, approximately three months before the expiration of the deadline for the defendant to complete the substance-abuse counseling. Therefore, any determination that the defendant failed to comply with his conditions of probation by not completing substance-abuse counseling is premature.

¶ 31 Additionally, the February 5, 2009, probation order does not require the defendant to submit written confirmation that he started the counseling by March 26, 2010. Instead, the order provides that written confirmation of *completion* of the treatment program may be

required as directed by the probation department. Therefore, we find that the trial court's determination that the defendant violated a condition of his probation by failing to provide written confirmation that he started substance-abuse counseling was against the manifest weight of the evidence.

¶ 32 Next, the State argues the defendant violated the terms of his probation by failing to report to the probation department on March 22, 2010, April 9, 2010, April 16, 2010, and April 20, 2010. We first note that the record indicates that the State's petitions to revoke probation failed to allege that the defendant missed a probation appointment on March 22. Instead, the petitions alleged the defendant missed appointments scheduled for April 9, April 16, and April 20.

¶ 33 "A single instance of failure to report to the probation officer is sufficient grounds for probation revocation." *Walsh*, 273 Ill. App. 3d at 460. However, it is necessary that the defendant receive notice of the probation appointments before revocation can be based on a missed appointment.

¶ 34 The probation order required the defendant to report to the probation department as directed by the department, both in person and in writing. During the revocation proceeding, the trial court noted that the defendant's sister received the notices "a couple of days late." However, the trial court determined that the defendant was obligated to appear.

¶ 35 Parks testified that the notices for the April 2010 appointments were mailed to the defendant at the Brownstown address, which was his sister's residence. According to the defendant, he was living with his sister but was working out of town on a construction job from approximately April 9 until April 21. The defendant testified that he did not know about the April 9 appointment, but as soon as his sister notified him of the missed appointment, he explained the situation to Parks and requested additional time to report to allow him to finish the construction job. Parks told him to report as soon as he was back in

town, and the defendant reported to probation the following day. Parks testified the defendant called him on April 20 and reported to the probation department on April 21.

¶ 36 The record does not indicate the dates the appointment cards were mailed to the defendant. However, the defendant testified his sister did not receive the notice for the April 9 appointment in time for her to notify him of the appointment and for him to report. Also, we note the appointment dates were close in time (April 9, April 16, and April 20), and it is unlikely the appointment cards could be sent and received in time to notify the defendant that he had a new appointment and to allow him to appear at the appointment. We further note that once the defendant became aware that he had missed his probation appointments, he immediately called Parks and explained the situation.

¶ 37 Pursuant to the February 5, 2009, probation order, the defendant was required to be gainfully employed. Therefore, he was fulfilling another requirement of his probation at the time the appointment notices were mailed to his sister's residence. Accordingly, we find that the trial court's determination that the defendant violated a condition of his probation for his failure to report to the probation department on April 9, 2010, April 16, 2010, and April 20, 2010, was against the manifest weight of the evidence.

¶ 38 Last, the State argues the defendant violated a condition of his probation by committing domestic battery against his girlfriend, Baldwin. Pursuant to the February 2009 probation order, the defendant was prohibited from violating any criminal or traffic statute, or any ordinance of any jurisdiction. The evidence presented at the revocation hearing indicated that Baldwin reported to the police that the defendant struck her in the eye with a closed fist. However, the evidence also indicated that Baldwin was unaware that she had an injury when she talked with Tedrick, was highly intoxicated during the alleged incident and when she talked with police, initially reported to Wagner that she did not remember how she was injured, later contradicted her accusation by saying that she was unable to recall how she

obtained the injury, was admittedly involved in an altercation at a bar that same night which resulted in her being kicked out of the bar, and threatened to injure herself and blame the defendant. The evidence also revealed that Wagner inspected the defendant's knuckles shortly after the alleged incident and found no marks indicating that he had struck a person. Accordingly, we find that the trial court's determination that the defendant violated a condition of his probation by committing domestic battery was also against the manifest weight of the evidence. Further, we note at the conclusion of the September 2010 sentencing hearing, the trial court dismissed the domestic-battery charge following the State's motion to nol-pros the charge.

¶ 39 For the foregoing reasons, the judgment of the circuit court of Fayette County is hereby reversed.

¶ 40 Reversed.