NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR07-467

	Opinion Delivered June 24, 2009
MACK LEONARD EASON APPELLANT	APPEAL FROM THE CRITTENDEN COUNTY CIRCUIT COURT [NO. CR-06-438]
V.	HONORABLE RALPH WILSON, JR., JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

JOHN MAUZY PITTMAN, Judge

Appellant pled guilty to delivery of a controlled substance, a Class "Y" felony, and was placed on probation. During the probationary period, the State filed a petition to revoke. After a revocation hearing, the trial court found that appellant had violated the terms and conditions of his probation by committing multiple criminal offenses arising out of an arson and sentenced him to thirty years' imprisonment on the underlying drug charge. On appeal, appellant argues that the trial court clearly erred in finding that he violated the conditions of his probation and in denying his Confrontation Clause objection. We affirm.

If a court finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of his probation, the court may revoke the probation at any time prior to the expiration of the period of probation. Ark. Code Ann. § 5-4-309(d) (Repl. 2008). The burden on the State is not as great in a revocation proceeding because the burdens of proof are different; evidence that is insufficient to support a criminal conviction

may thus be sufficient to sustain a probation revocation. *Bradley v. State*, 347 Ark. 518, 65 S.W.3d 874 (2002). On appeal, we do not reverse the trial court's decision unless it is clearly against the preponderance of the evidence. *Anglin v. State*, 98 Ark. App. 34, 249 S.W.3d 836 (2007). In making our review, we defer to the superior position of the trial court to determine questions of credibility and the weight to be given to the evidence. *Gossett v. State*, 87 Ark. App. 317, 191 S.W.3d 548 (2004).

Appellant's probation was conditioned, *inter alia*, upon the requirement that he be of good behavior and live a law-abiding life. At the revocation hearing, appellant testified that he knew Shequita Bell in the sense that she had given birth to four of his children. He stated that he and Shequita Bell had once lived together but no longer did so, although Shequita Bell sometimes stayed with him when he worked. Appellant said that he and Shequita Bell were together in his trailer on August 7, 2006, and that they walked together from there several blocks to the apartment of Ruby Hicks because Shequita was going to do Ruby Hicks's hair and be paid thirty dollars.

Appellant said that he went to the park for about one hour and returned to the apartment to meet Shequita because she was going to give him some of the money that she had earned. On his return, however, Ruby Hicks told appellant that Shequita had gone next door. Appellant testified that he began searching for her and heard Shequita's voice coming from a nearby apartment. Appellant testified that he knocked on the apartment door and asked if Shequita was coming out.

The apartment's resident, James Bass, testified that he knew appellant and believed that

Shequita was appellant's wife. Mr. Bass said that he had been seeing Shequita for a month. Mr. Bass testified that, on August 7, 2006, he and Shequita were inside Bass's apartment when appellant beat on the door and demanded that Shequita come out. Mr. Bass told appellant to leave the property, whereupon appellant said, "I mean business" and, to Shequita, said, "You don't want me, just tell me that." After Mr. Bass told appellant to leave again, appellant told him, "Well, I'll be back. You're not gonna come out? You're not gonna come out? I'll be back." Mr. Bass testified that his apartment caught fire about twenty minutes later. Rags and accelerants were found outside the house where the fire started, and expert testimony was elicited to show that the fire was intentionally set.

The crucial question is whether the trial judge, on this evidence, clearly erred in finding that appellant set the fire. We hold that he did not. Although the evidence is circumstantial, evidence of comparable weight has been found sufficient to support a criminal conviction for arson. *See, e.g.*, *Lowry v. State*, 364 Ark. 6, 216 S.W.3d 101 (2005); *Carpenter v. State*, 204 Ark. 752, 164 S.W.2d 993 (1942). Although the present case differs from those cited above in that, here, the accelerants found at the scene were not directly linked to appellant, those cases involved criminal convictions, which required proof beyond a reasonable doubt. In the present case, the State was only required to prove that appellant committed arson by a simple preponderance of the evidence. On this record, given the relationship of the parties, the recent dispute, and appellant's threat that he would "be back," we cannot say that the trial court clearly erred in finding that the fire was more likely than not set by appellant. We therefore hold that the trial court's finding that appellant violated the

conditions of his probation was not clearly erroneous. Because the State need only prove that appellant violated one condition of his probation in order to support revocation, *Cheshire v. State*, 80 Ark. App. 327, 95 S.W.3d 820 (2003), we need not address appellant's arguments regarding the sufficiency of the evidence to support findings that he also violated his probation by failing to pay fines and committing attempted murder.

Appellant also argues that he was denied his constitutional right to confront adverse witnesses because the trial court denied his objection to a witness's testimony concerning what Fire Inspector Dennis Brewer told the witness regarding the source of the fire. However, there was no Confrontation Clause violation in this case because Fire Inspector Brewer was present at the hearing and was in fact cross-examined by appellant. The Confrontation Clause places no constraints at all on the use of prior testimonial statements when the declarant is present and available for cross-examination. *Crawford v. Washington*, 541 U.S. 36 (2004).

Affirmed.

MARSHALL and HENRY, JJ., agree.