

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
DIVISION II

CA CR 05-766

March 15, 2006

JOHN GARVER

APPELLANT

APPEAL FROM THE CIRCUIT COURT OF
GARLAND COUNTY
[NO. CR-02-708]

V.

HONORABLE JOHN HOMER WRIGHT,
JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

TERRY CRABTREE, Judge

In this revocation case, appellant pled guilty to the offense of failure to appear and was placed on probation for five years. The State subsequently filed a petition to revoke alleging that appellant had violated the conditions of his probation by possessing drug paraphernalia and a controlled substance. After a hearing, the trial court found that appellant had inexcusably violated the terms of his probation by committing those two offenses, and appellant was sentenced to two years in prison to be followed by a five-year suspended imposition of sentence. For reversal, appellant advances several arguments contesting the sufficiency of the evidence to support the revocation decision. We affirm.

At the hearing, it was disclosed that the conditions of appellant's probation included not committing a criminal offense punishable by imprisonment, and not using, selling, distributing or possessing any controlled substance. Eric Clendening, appellant's probation officer, testified that he reported these probation violations after appellant's arrest in another county on charges of possessing drug paraphernalia and marijuana. He spoke with appellant at the jail and later at his office after appellant's release. On both occasions, appellant admitted that he smoked marijuana, calling himself an "old pothead." During the office visit, appellant confided that he would not pass a drug test

because he had been smoking marijuana.

Mike Thomas, a deputy with the Grant County Sheriff's Office, testified that he was on duty on October 14, 2004, when at around 10:30 p.m. he saw a vehicle parked at a church. Because he felt it unusual for a vehicle to be parked there at that time of night, Thomas conducted a welfare check and found appellant asleep behind the wheel. He asked for and received appellant's identification, and he ran a check which revealed an outstanding warrant for appellant's arrest. Thomas then placed appellant under arrest.

Thomas did an inventory of the vehicle, a Camaro, that belonged to appellant's father. He found a silver and black pipe in the driver's seat that contained a substance which Thomas identified as marijuana residue. In the console, Thomas found a bag of a green leafy substance, which he identified as marijuana. A back pack was found behind the driver's seat. It contained a glass pipe and a blue lighter. In the hatchback area, he found a ceramic pipe and a green bank-style bag, which contained a silver spoon. A flashlight was also found in the hatchback. Inside the light were two hypodermic syringes and a straw.

The standards which guide our review are as follows:

In order to revoke probation or a suspension, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that probation or suspension. The State bears the burden of proof, but need only prove that the defendant committed one violation of the conditions. When appealing a revocation, the appellant has the burden of showing that the trial court's findings are clearly against the preponderance of the evidence. Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation or suspended sentence. Since the determination of a preponderance of the evidence turns on questions of credibility and the weight to be given testimony, we defer to the trial judge's superior position.

Richardson v. State, 85 Ark. App. 347, 350, 157 S.W.3d 536, 538 (2004) (citations omitted).

Appellant first argues that the evidence is not sufficient because Officer Thomas did not specifically identify appellant as the person he took into custody and whose vehicle he searched the evening of October 14, 2004. There is no merit in this argument. To be sure, it is essential to every case that the defendant be shown as the one who stands accused of the criminal wrongdoing. *See*

Williams v. State, 308 Ark. 620, 825 S.W.2d 826 (1992); *Womack v. State*, 301 Ark. 193, 783 S.W.2d 33 (1990). However, that connection can be inferred from all the facts and circumstances of the case. *Standridge v. State*, 357 Ark. 105, 161 S.W.3d (2004); *Holloway v. State*, 312 Ark. 306, 849 S.W.2d 473 (1993). Here, the appellant was tried alone for the revocation of his probation, and Officer Thomas referred to appellant as “Mr. Garver” throughout his testimony and was not heard to say that the wrong man was standing before the court. Such evidence has been deemed sufficient proof of identity to support a criminal charge. *Becker v. State*, 298 Ark. 438, 768 S.W.2d 527 (1989); *see also Standridge v. State, supra; Holloway v. State, supra; Williams v. State, supra; Womack v. State, supra.* We find it sufficient in this revocation case.

Appellant next argues that the evidence is insufficient because there was no evidence that appellant possessed marijuana. Appellant contends that the substance was not tested by a chemist and that the officer’s testimony that the substance was marijuana is not sufficient. He also contends that there was no testimony establishing that there was a useable amount of marijuana. Along the same vein, appellant argues that there was insufficient evidence that he possessed drug paraphernalia with regard to the pipe that was found in the driver’s seat of the vehicle. He again asserts that the officer was not competent to testify that the pipe contained marijuana residue.

Appellant’s arguments ignore that there were other items found in the vehicle, namely the pipe found in the back pack sitting behind the driver’s seat, and the ceramic pipe, silver spoon, and flashlight that contained two syringes and a straw, all of which were found in the hatchback. Appellant makes no argument on appeal that he was not in possession of these items, nor does he contend that these items were not drug paraphernalia. Inasmuch as appellant’s possession of any one item of paraphernalia violated the terms of his probation, appellant’s failure to contest the evidence with regard to all of the items found in the vehicle renders the arguments he makes on appeal moot. *See Pugh v. State*, 351 Ark. 5, 89 S.W.3d 909 (2002).

Nevertheless, we will say that the trial court’s finding that appellant possessed drug paraphernalia is not clearly erroneous. Officer Thomas testified as to the training he received to

identify marijuana and its burned residue. Although the officer was fairly new at his job, his ability to identify marijuana residue was subject to a credibility determination by the trial court. The trial court was permitted to believe the officer's testimony that the pipe found in the driver's seat contained marijuana residue. There was also testimony that appellant admitted that he smoked marijuana. Thus, we cannot say that the trial court's finding that appellant possessed drug paraphernalia is clearly against the preponderance of the evidence. Again, a finding of this one violation is sufficient to support the revocation decision. We need not express any opinion with respect to appellant's argument concerning the marijuana.

Affirmed.

BIRD and GLOVER, JJ., agree.