ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
LARRY D. VAUGHT, JUDGE

DIVISION I

CACR06-1377

September 26, 2007

MONTE RASHAD GENTRY
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT
[CR2005-2399, CR2005-4252]

HON. JOHN W. LANGSTON, CIRCUIT JUDGE

AFFIRMED

On appeal, Monte Rashad Gentry argues that there was insufficient evidence to support his conviction for maintaining a drug premises and that he did not inexcusably violate the terms of his probation. We affirm.

Appellant first asserts that the trial court erred in its denial of his directed-verdict motion, which is a challenge to the sufficiency of the evidence. *Coon v. State*, 76 Ark. App. 250, 65 S.W.3d 889 (2001). On appeal, Gentry argues that the evidence supporting his conviction under Arkansas Code Annotated § 5-64-402(a)(2) (Supp. 2005) (setting out elements for drug-premises violation) is insufficient because the State failed to prove that he kept or maintained a drug premises at 1505 Gum Street in North Little Rock, Arkansas.

In our review of Gentry's claim, we consider whether the evidence presented at trial was sufficiently forceful to compel reasonable minds to reach a conclusion. *Goff v. State*, 329

Ark. 513, 953 S.W.2d 38 (1997). Further, when deciding whether the evidence was sufficient, we view the evidence in the light most favorable to the State, considering only the evidence tending to support the guilty verdict. *See, e.g.*, *Johnson v. State*, 337 Ark. 196, 987 S.W.2d 694 (1999).

The statute at issue in this appeal makes it unlawful for any person to knowingly keep or maintain premises resorted to by a person for the purpose of using or obtaining controlled substances *or* that is used for keeping controlled substances. Ark. Code Ann. § 5-64-402(a)(2). In this case, Gentry seemingly concedes that he kept or maintained the drug premises beginning on August 21, 2005 (the date he signed the rental application), but he argues that because two controlled buys occurred before this date the State failed to prove that the drug house was "resorted to by persons for the purpose of using or obtaining" controlled substances. In sum, he argues that because the State failed to prove that the drug house was visited by drug seekers *after* his name was on the rental application—only before—he did not meet the statutory definition of drug-house operator. However, Gentry overlooks the second portion of the statute, which alternatively defines a drug house as one being "used for keeping [controlled substances]."

At trial, North Little Rock Police Investigator Brad Abbot testified that on August 30, 2005, he participated in the execution of a search warrant at Gentry's house. Investigator Abbot testified that, as they entered the premises, they observed Gentry and a companion, Walter Chukes, lying on a large couch in the living room. Upon inquiry, Gentry indicated

that he was the party responsible for the Gum Street residence; as such, Gentry was served the search warrant.

Once the search commenced, the officers found six pieces of crack cocaine (totaling nearly one gram) at Gentry's side. Additionally, while searching a closet, officers found a bag of cocaine and a box of "standard lunch type baggies"—which officers noted are used "ninety-nine percent of the time" in the individual packaging and sale of narcotics. Another small bag of cocaine was found concealed in Chukes's hair. Further, Gentry was armed with a loaded firearm, which officers testified was consistent with the trafficking of narcotics. Based on this physical evidence and testimony, we are satisfied that the State presented sufficient evidence to show that Gentry kept or maintained a drug premises as defined by Arkansas law. Accordingly, we affirm the trial court's denial of his directed-verdict motion.

For his second point on appeal, Gentry argues that the trial court erred by granting the State's revocation petition because a preponderance of the evidence did not demonstrate that his "violations of the conditions of his probation were inexcusable." The term "inexcusable" is defined as "incapable of being excused or justified—Syn. unpardonable, unforgivable, intolerable." *Barbee v. State*, 346 Ark. 185, 56 S.W.3d 370 (2001). Because this determination turns on questions of credibility and the weight to be given testimony, we must defer to the trial judge's superior position to gauge those matters. *See Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (2004).

Here, during the revocation hearing, Gentry's probation officer, Curtis Blakely, testified that on November 10, 2005, Gentry reported four hours late to his scheduled

meeting. Blakely testified that because he was meeting with other clients at the time of Gentry's delayed arrival, he was told to appear on November 15, 2005, for a rescheduled meeting. The testimony revealed that Gentry failed to appear for the rescheduled November meeting, and Blakely never heard from, or saw, Gentry again, despite Blakely's attempts to contact Gentry by phone and mail. Based on Gentry's failure to appear at his scheduled probation meetings, Blakely prepared a petition to revoke.

In response, Gentry acknowledged that he was late for the November 10 meeting and that he did not appear for the rescheduled meeting on the 15th. He offered no excuse for either violation. Instead, he argued that he was unable to appear in January because he was incarcerated. However, after reviewing the record, we see no indication that he was scheduled to appear in January. Because a preponderance of the evidence supports the trial court's conclusion that Gentry inexcusably violated the terms and conditions of his probation, we affirm.

Affirmed.

GLOVER and HEFFLEY, JJ., agree.