NOT DESIGNATED FOR PUBLICATION

DIVISION IV

ARKANSAS COURT OF APPEALS

No.	CACR07-00188
MICHAEL DAVID SCOTT APPELLANT v. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** OCTOBER 24, 2007 APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT [NO. CR-2000-664-B] HONORABLE JAMES ROBERT MARSCHEWSKI, CIRCUIT JUDGE AFFIRMED

KAREN R. BAKER, Judge

A judge in Sebastian County Circuit Court revoked appellant Michael David Scott's suspended imposition of sentence and sentenced him to 120 months' imprisonment in the Arkansas Department of Correction. Appellant's sole argument on appeal is that the State failed to show that he violated the terms and conditions of his suspended sentence by a preponderance of the evidence. We disagree and affirm.

On September 29, 2000, appellant entered a guilty plea to fifteen counts of commercial burglary. Appellant was sentenced to eight years in the Arkansas Department of Correction with two years suspended on the first count and ten years suspended imposition of sentence on the remaining fourteen counts. Appellant was further ordered to pay restitution in the amount of $13,657.85, joint and several with his co-defendant, and a public defender fee of $50. A condition of appellant's suspended sentence was that he not violate any federal, state, or municipal law.

On September 19, 2006, the State filed a petition to revoke appellant's suspended imposition of sentence. In that petition, the State alleged that appellant committed the offense of residential

burglary in Sebastian County in the summer of 2006. The State also alleged that as of September 18, 2006, appellant had failed to pay restitution as ordered.

At the hearing on the petition to revoke, several witnesses testified that they had been the victims of burglaries in their homes. Quentin Brown testified that his home, located at 5300 Gary Street, was burglarized on July 7, 2006. He explained that he and his wife were in the process of selling their home and that the real estate agent had shown the house earlier that morning to a potential buyer. He discovered the burglary when he stopped by the home during the noon hour to ensure that the home was locked and secured. He found that the back door had been removed, and the entire house had been "ransacked." Every drawer had been emptied and personal items were taken. They "stole just about everything." An attempt was made to get into Brown's gun safe with electric hedge trimmers, a pry bar and a screwdriver; however, the attempt was unsuccessful. Brown testified that his home was again burglarized on August 8, 2006. It was his opinion that the perpetrators had returned to make a second attempt to steal the items in the gun safe. This time, however, the perpetrators brought a sledgehammer, or something of equal weight, to try to open the safe.

Daniel Hugon testified that he lived next door to the Brown family. After the second burglary, Brown asked Hugon if he had seen anything suspicious around the neighborhood. Hugon told Brown that on August 8, 2006, while Hugon was outside painting his garage, he saw a male driving around the neighborhood in a white car "acting kind of suspicious." He stated that the man was driving "erratically" and then he pulled up at a stop sign in front of Hugon's house. The car was positioned in such a way that while at the stop sign, the person in the vehicle could easily observe Brown's house. Hugon testified that the vehicle remained at the stop sign "for an extended period of time." Then, the vehicle "took off." He identified appellant in court as being the driver of the

vehicle.

The officers testified that they obtained "useable" fingerprints after both incidents at the Brown home. After the first incident, fingerprints were taken from the sliding patio door that had been removed during the burglary. After the second incident, prints were taken from a new hinged door that had replaced the old sliding patio door. On September 11, 2006, the fingerprints were compared to those belonging to appellant and Mark Vanderbush. Of the prints taken on July 10, 2006, from the sliding patio door, Detective Franklin Snell identified one print that belonged to Mark Vanderbush and two prints that belonged to appellant. From the August incident, Sergeant Luther Lonetree identified one print taken from the top of a cabinet inside the home as belonging to appellant and one print taken from the bathroom counter-top as belonging to Mark Vanderbush.

Michael Vanderbush, Mark Vanderbush's brother, testified that he pawned some items for his brother Mark. He stated that appellant was with Mark when Mark gave him the items to pawn. Appellant and Mark told him that the items were not stolen; they belonged to appellant's mother. Because Mark was under eighteen, Michael agreed to pawn the items.

At the conclusion of the testimony, the court found that appellant had violated the terms and conditions of his suspended sentence and sentenced him to a ten-year sentence, to run concurrently, for each of the fourteen counts of burglary.

Appellant's sole argument is that the trial court erred in revoking his suspended sentence because the State failed to prove that he violated the terms or conditions of his suspended sentence. 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. Ark. Code Ann. § 5-4-309(d) (Supp. 2003). The State bears the burden of proof, but need only prove that the defendant committed one violation of the conditions. *Richardson v. State*, 85 Ark. App. 347, 157

S.W.3d 536 (2004). Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation or suspended sentence. *Id.* 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. *Id.* 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. *Peterson v. State,* 81 Ark. App. 226, 100 S.W.3d 66 (2003).

In the case before us, appellant attempts to argue that because Mr. Brown's home was for sale and being shown by a realtor, "strangers had legal access to the house and it does not show that appellant committed the burglary." For support, he cites to *Standridge v. State,* 310 Ark. 408, 837 S.W.2d 447 (1992) (reversing the defendant's conviction for manufacture of marijuana where the only evidence to connect the defendant with the marijuana was an easily movable plastic cup containing the defendant's thumbprint, which was found beside a tent that was several feet from the marijuana plants), and *Holloway v. State,* 11 Ark. App. 69, 666 S.W.2d 410 (1984) (holding that fingerprints on a piece of glass located outside of the house where a burglary occurred was not sufficient to sustain a burglary conviction). Nonetheless, fingerprints, under some circumstances, may be sufficient to sustain a conviction. *See Brown v. State*, 310 Ark. 427, 837 S.W.2d 457 (1992) (holding that substantial proof that appellant committed the burglary was present where appellant's fingerprints were located on the inside bottom portion of the broken glass door, where the burglar gained entrance by reaching inside to pull out the glass).

Here, the State's evidence was sufficient, on a preponderance standard, to support that appellant violated the conditions of his suspended sentence by committing burglary. At the hearing on the revocation, Quentin Brown's neighbor, Daniel Hugon, testified that on the day of the second burglary, he saw a suspicious white car driving erratically up the street on which he and Brown

lived. The car then parked at a stop sign in front of his house. After remaining there for some time, the car sped off. He identified appellant as the person driving the vehicle that day. The investigators that took prints from the Brown home after both burglaries found prints that belonged to appellant. After the first burglary, prints matching those of appellant were found on the patio door, which was used to gain entry to the home. After the second burglary, prints matching those of appellant were found on the top of a cabinet inside the home. These circumstances constitute evidence sufficient to find that appellant failed to comply with the conditions of his suspended sentence. Thus, we affirm the revocation of appellant's suspended sentence.

Affirmed.

MARSHALL and MILLER, JJ., agree.