

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2006

KEVIN DAVIS,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D06-1440

[December 13, 2006]

WARNER, J.

Appellant, Kevin Davis, appeals the trial court's order revoking probation. The court found violations for both committing burglary of a dwelling and possession of marijuana. Davis argues the evidence presented was insufficient to connect him to the burglary, and the state failed to provide non-hearsay evidence that the marijuana came from him. With respect to the possession of marijuana claim, an officer testified that he was present when Davis was apprehended and arrested. A search incident to arrest revealed a bag of suspect marijuana, which was then field tested by the testifying officer and came back positive as marijuana. Our reading of the record convinces us that the officer was present when the marijuana was discovered. Therefore, his testimony was not hearsay as to the discovery of marijuana. Because the record discloses sufficient evidence that Davis violated his probation by possession of marijuana, we need not address Davis' other claim. See, e.g., *Davis v. State*, 478 So. 2d 112 (Fla. 2d DCA 1985); *Randolph v. State*, 292 So. 2d 374 (Fla. 3d DCA 1974). The trial court made it abundantly clear that possession of marijuana alone was sufficient to revoke Davis' probation.

Affirmed.

GUNTHER and FARMER, JJ., CONCUR.

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Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Ilona M. Holmes, Judge; L.T. Case No. 04-5668 CF10A.

Carey Haughwout, Public Defender, and Tatjana Ostapoff, Assistant Public Defender, West Palm Beach, for appellant.

Charles J. Crist, Jr., Attorney General, Tallahassee, and James J. Carney, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.