



**NUMBER 13-16-00550-CR**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI - EDINBURG**

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**BRUCE HACKER,**

**Appellant,**

**v.**

**THE STATE OF TEXAS,**

**Appellee.**

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**On appeal from the 40th District Court  
of Ellis County, Texas.**

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**MEMORANDUM OPINION**

**Before Justices Rodriguez, Contreras, and Benavides  
Memorandum Opinion by Justice Rodriguez**

Appellant Bruce Hacker appeals the revocation of his community supervision. By his sole issue, appellant contends that there was insufficient evidence to identify him as

the same “Bruce Hacker” who was the consistent subject of witness testimony throughout the revocation hearing. We affirm.<sup>1</sup>

It is undisputed that on April 7, 2016, appellant pleaded guilty to the offense of attempted sexual assault.<sup>2</sup> The trial court deferred adjudication and placed appellant on community supervision.

The State filed a motion to adjudicate guilt on May 9, 2016. The motion alleged that appellant violated multiple terms and conditions of his community supervision in that (1) he committed the criminal offense of evading arrest on or about April 26, 2016; (2) he committed the offense of failure to register as a sex offender in that he failed to provide his vehicle identification information to the police department of Ovilla, Texas on or about April 26, 2016; (3) he failed to report to the community supervision department as scheduled on or about May 3, 2016; (4) he failed to complete a sex offender treatment program within thirty days of the order of deferred adjudication; and (5) he failed to register or show proof of registration with the local Sex Offender Registration Program within seven days after a change of residence.

The motion to adjudicate was heard on August 31, 2016. The State presented video, the testimony of seven witnesses, and documents which related to the conduct of “Bruce Hacker.” Based on evidence presented at the hearing, the trial court found that

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<sup>1</sup> This case is before the Court on transfer from the Tenth Court of Appeals in Waco pursuant to an order issued by the Supreme Court of Texas. See TEX. GOV'T CODE ANN. § 73.001 (West, Westlaw through Ch. 49, 2017 R.S.). Because this is a transfer case, we apply the precedent of the Tenth Court of Appeals to the extent it differs from our own. See TEX. R. APP. P. 41.3.

<sup>2</sup> We will not recite the law and the facts in this opinion except as necessary to advise the parties of the Court's decision and the basic reasons for it, both because of the nature of our disposition, see *id.* R. 47.1, and also because this is a memorandum opinion, the parties are familiar with the facts, and all issues of law presented by this case are well settled. See *id.* R. 47.4.

appellant violated the terms and conditions of his community supervision and ordered revocation.

On appeal, appellant does not dispute that there was ample evidence to show that “Bruce Hacker” committed the acts alleged or that those acts would violate the terms of appellant’s community supervision. Rather, appellant argues that there is no evidence to show that he is, in fact, the “Bruce Hacker” who committed the wrongful acts. In response, the State argues that appellant has waived this issue under the controlling precedent of *Barrow v. State*. 505 S.W.2d 808, 810–11 (Tex. Crim. App. 1974). We agree with the State.

In *Barrow*, the Texas Court of Criminal Appeals “held that an appellant who fails to make his identity an issue in the trial court during the probation revocation is precluded from raising the issue for the first time on appeal.” *Riera v. State*, 662 S.W.2d 606, 607 (Tex. Crim. App. 1984) (en banc); see *Johnson v. State*, 386 S.W.3d 347, 350 (Tex. App.—Amarillo 2012, no pet.); *Rice v. State*, 801 S.W.2d 16, 17 (Tex. App.—Fort Worth 1990, pet. ref’d); see also *Lucio v. State*, No. 13-96-077-CR, 1997 WL 33642757, at \*2 (Tex. App.—Corpus Christi July 3, 1997, no pet.) (op., not designated for publication) (applying the rule of *Barrow* to conclude that because the “issue of identity was brought up for the first time on appeal,” the issue “was not preserved and need not be considered by this court”).

The record reflects that appellant did not bring the issue of identity to the attention of the trial court. Just the opposite, appellant readily agreed that he was “the same Bruce Hacker” who had previously received deferred adjudication on the offense of attempted

sexual assault and was now the subject of a motion to adjudicate. Appellant also agreed to having been present for many of the violations alleged by the State, but denied them on their facts. For instance, appellant acknowledged that a video captured him getting into the front seat of a maroon van that, twenty seconds later, left a parking lot and was pursued by police at speeds exceeding sixty miles per hour down a residential street. Rather, Hacker testified that, during the twenty seconds after his entry into the driver side of the van, he changed places with a friend who was also in the van, and his friend then engaged in a flight from police. Because appellant did not raise the issue of identity before the trial court, he has waived his sole issue, and we need not consider it further. See *Barrow*, 505 S.W.2d at 810–11; *Riera*, 662 S.W.2d at 607.

We affirm the judgment of the trial court.

NELDA V. RODRIGUEZ  
Justice

Do not publish.  
TEX. R. APP. P. 47.2(b).

Delivered and filed the  
15th day of June, 2017.