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ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR10-271

SHAWN MICHAEL SIMS-NAVARRE APPELLANT	**Opinion Delivered** November 17, 2010 APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT, FORT SMITH DISTRICT [NOS. CR-2003-29(B); CR-2003-715]
V.	HONORABLE STEPHEN TABOR, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

JOHN MAUZY PITTMAN, Judge

Appellant pled guilty to drug-related criminal offenses and was sentenced to three years' imprisonment plus periods of suspended imposition of sentence on all counts. After his release from prison but before the periods of suspension of sentence expired, the State filed a petition to revoke his suspensions, alleging that he violated the conditions thereof by committing additional criminal offenses, *i.e.*, possession of marijuana, possession of drug paraphernalia, and four counts of endangering the welfare of a minor. After a hearing, the trial court found that appellant violated the conditions of the suspensions and sentenced him to five years' imprisonment on each charge, with an additional suspended sentence of twelve years. On appeal, he argues that the evidence is insufficient to support the finding that he

violated the conditions of his suspensions and that the trial court denied him his constitutional right to confront witnesses against him with respect to certain items of evidence. We affirm.

We consider sufficiency of the evidence before addressing alleged trial errors. *Anglin v. State*, 98 Ark. App. 34, 249 S.W.3d 836 (2007). In a revocation proceeding, the burden is on the State to prove the violation of a condition of the suspension by a preponderance of the evidence; on appeal, we defer to the trial court's superior opportunity to assess witness credibility, and the trial court's findings will be upheld unless they are clearly against a preponderance of the evidence. *Gossett v. State*, 87 Ark. App. 317, 191 S.W.3d 548 (2004). Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation or suspended sentence. *Lamb v. State*, 74 Ark. App. 245, 45 S.W.3d 869 (2001). Circumstantial evidence may be sufficient to warrant revocation. *Id.*; *Needham v. State*, 270 Ark. 131, 640 S.W.2d 118 (Ark. App. 1980).

Appellant does not dispute that marijuana and drug paraphernalia were found in the house that was searched, or that the condition of the dwelling and the children found therein was sufficient to show criminal endangerment of the welfare of the minors. His sole argument on this point is that the evidence was insufficient to prove that the house was his dwelling. We do not agree.

Officer Leavitt of the Fort Smith Police Department testified that his dispatcher was called by Washington County officials asking that an officer be sent to 2901 Spradling to serve a warrant on appellant. Officer Leavitt went to that address and knocked on the door; after

a long delay, a young girl answered the door. After she informed the officer that appellant was not there, Officer Leavitt asked for and received her permission to come in to make sure. While inside, he found that the home was in extreme disarray, that pornography was scattered in plain view of the minors present, that the home smelled of feces and that feces was smeared on the walls, and that a three-year-old and infant found in the home were covered with untreated sores. In the upstairs master bedroom, near a bedside table, was found a bag containing a green vegetable substance, baggies with white residue, and a burn-marked glass pipe in an ashtray. All were accessible to the children in the home. Officer Leavitt, based on his training and experience, testified that he believed the vegetable substance to be marijuana, the residue in the baggies to be methamphetamine, and the pipe to be of a type almost exclusively used to ingest narcotics. Appellant was not found during Officer Leavitt's search, but he was found on the upper floor of the house approximately one hour later and was arrested on an unrelated matter. Booking documents from that arrest show 2901 Spradling to be the place of appellant's arrest at that time and that both appellant and his wife resided at that address. Although appellant argues that this evidence is insufficient to show that this was in fact his address, the State was required to prove this element by a preponderance of the evidence in this revocation proceeding. On this record, we cannot say that the trial court clearly erred in finding that this was most likely appellant's residence.

Next, appellant argues that he was not permitted to confront testimonial evidence in the form of the intake documents produced when he was booked after his arrest. This issue

is not properly before us. When this evidence was offered, appellant objected on hearsay grounds. However, the rules of evidence, including the hearsay rule, do not apply to revocation proceedings, Ark. R. Evid. 1101(b)(3); *see also K.N. v. State*, 360 Ark. 579, 203 S.W.3d 103 (2005), and the trial court properly overruled the objection. Appellant did not raise the Confrontation Clause issue that he argues on appeal until his closing argument, and the issue is therefore waived. *See Green v. State*, 365 Ark. 478, 231 S.W.3d 638 (2006); *Swanigan v. State*, 336 Ark. 285, 984 S.W.2d 799 (1999).

Affirmed.

GLADWIN and KINARD, JJ., agree.