Cite as 2010 Ark. App. 284

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR09-772

	Opinion Delivered April 7, 2010
JAMES R. LOWE APPELLANT	APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT [NO. CR-08-1152]
V.	HONORABLE STEPHEN TABOR, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

LARRY D. VAUGHT, Chief Judge

Appellant James Robert Lowe pled guilty to a felony charge of failing to register as a sex and child offender. The trial court withheld imposition of sentence for a ten-year period, so long as Lowe met certain terms and conditions. On appeal, Lowe claims that the State failed to prove by a preponderance of the evidence that he violated the terms and conditions of his suspended sentence. We disagree and affirm.

The facts that give rise to this case are as follows. On February 23, 2009, the State filed a petition to revoke Lowe's suspended sentence, which included the requirements that he not violate any state law and that he pay certain fines, fees, and costs at the rate of $55 per month, beginning three months after his release. As such, Lowe's first fee payment was due on December 24, 2009. In its revocation petition the State claimed that Lowe had violated the terms and conditions of his release in two respects—he committed the offense of possession of drug

paraphernalia with the intent to manufacture methamphetamine and he failed to pay court-ordered fees (including fines, costs, a DNA fee, and public-defender fees).

The State called one witness at trial. Wayne Barnett, a narcotics detective with the Fort Smith Police Department, testified that he received information from a "reliable confidential informant" that Lowe had been manufacturing methamphetamine. According to Detective Barnett, the informant reported that Lowe had been sending text messages proposing an arrangement where the informant would provide money to purchase methamphetamine supplies and Lowe would cook the methamphetamine for the informant to sell. Then, the two would split the proceeds from the sale.

After meeting with Detective Barnett, the informant agreed to work with law enforcement in executing Lowe's plan—but under the police's direction. The informant was given $200 to fund the supply purchase and his vehicle was equipped with a covert digital audio transmitter so that his conversation with Lowe could be recorded. Additionally, the informant allowed his telephone conversations with Lowe to be recorded. In one recorded conversation, Lowe set the time and place for the parties' meeting at a hotel in Muldrow, Arkansas. Detective Barnett followed the informant to the hotel and observed Lowe (and his girlfriend) get into the informant's car. The police listened as the three discussed the necessary ingredients they would need to acquire to make methamphetamine. According to Detective Barnett, the informant was asking what was needed for a "cook" and Lowe offered a detailed explanation of the necessary components.

Detective Barnett followed and observed Lowe and the informant as they meticulously

acquired items associated with methamphetamine manufacturing from several stores—including iodine, camping fuel, matches, hoses, Pyrex dishes, coffee filters, ammonia, Draino, muriatic acid, and ephedrine pills. After the shopping spree was complete, Detective Barnett stopped the informant's car and arrested Lowe for possession of drug paraphernalia with the intent to manufacture.

Photographs of the drug paraphernalia were introduced at the revocation proceeding, where Barnett related how each was used in the manufacture of methamphetamine process. He also stated that Lowe and the informant had acquired all necessary items to make methamphetamine and that there would be no legitimate reason to have these items together otherwise. The State also introduced a fine-payment log showing that Lowe had failed to pay *any* fines associated with his release and that he had an unpaid balance of $1250. The trial court found that Lowe had violated two provisions of his conditional release—he had violated Arkansas law, and he had neglected his financial obligation.

On appeal, Lowe argues that because he was "entrapped," he did not willfully possess the illegal substances and the trial court's finding that he violated the terms of his release is not supported by substantial evidence. He also argues that the trial court's alternative ground for revocation—failure to pay fines—is not supported by the evidence. Specifically, he claims that a mere month of arrearage cannot support a finding that he "willfully" failed to pay as required.

In order 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. *Peterson v. State*, 81 Ark. App. 226, 100 S.W.3d 66 (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). We do not reverse a trial court's findings on appeal unless they are clearly against the preponderance of the evidence, *Sisk v. State*, 81 Ark. App. 276, 101 S.W.3d 248 (2003), and, because a determination of a preponderance of the evidence turns on questions of credibility and weight to be given to the testimony, we defer to the trial judge's superior position. *Jones v. State*, 355 Ark. 630, 144 S.W.3d 254 (2004). Further, under Arkansas law, it is a felony to possess drug paraphernalia with the intent to manufacture methamphetamine. Ark. Code Ann. § 5-64-403(c)(5) (Repl. 2005).

First, Lowe argues entrapment as a defense to revocation. Assuming arguendo that entrapment is a valid affirmative defense in a revocation proceeding, the entrapment still must be proven by a preponderance of the evidence. Entrapment occurs when a law-enforcement officer, or any person acting in cooperation with him, induces the commission of an offense by using persuasion or other means likely to cause a normally law-abiding person to commit the offense. Ark. Code Ann. § 5-2-209 (Repl. 2006). However, the conduct of a law-enforcement officer or his agent that merely affords the accused an opportunity to do that which he is otherwise ready, willing, and able to do is not entrapment. *Guinn v. State*, 27 Ark. App. 260, 268–69, 771 S.W.2d 290, 293–94 (1989).

Here, the evidence showed that a reliable source had tipped off the police to the fact that Lowe, contrary to the terms and conditions of his release, was continuing to manufacture methamphetamine. The evidence at trial showed that Lowe directed the purchases and provided an explanation for each component of the methamphetamine recipe. Likewise, it was shown that

Lowe conceived and proposed the methamphetamine cook, buy, and sell arrangement for the manufacture and distribution of the illegal substance. Further, simply by asserting the defense of entrapment, Lowe has necessarily admitted committing the offense. *Young v. State*, 308 Ark. 647, 826 S.W.2d 814 (1992). As such, the evidence supports a revocation on this ground alone, and we need not discuss the merit—or lack thereof—of his claim that a preponderance of the evidence did not support the trial court's finding that he willfully failed to pay fees and fines.

Finally, as to Lowe's contention that the circuit court also ordered revocation based on a third, uncharged ground— Lowe's failure to comply with the reporting requirements of the sex-offender-registration act as set out in Arkansas Code Annotated section 12-12-904 (Repl. 2009), we disagree with the premise of the argument. The record shows that the trial court did not utilize Lowe's failure to register as an additional ground to support the revocation. Instead, the trial court merely entered a judgment that declared Lowe "guilty" of that charge and pronounced a prison sentence on the registration violation for which he was originally given a suspended sentence. Imposition of this sentence was separate and apart from the revocation and was well within the discretion of the trial court.

Affirmed.

PITTMAN and BROWN, JJ., agree.