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IN THE
COURT OF APPEALS OF INDIANA

MARTIE ALLEN HENDERSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A03-1004-CR-207
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Roland W. Chamblee, Jr., Judge
Cause No. 71D08-0812-FD-01309
71D02-0004-CF-00196

DECEMBER 17, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Martie Allen Henderson appeals his convictions for possession of marijuana, a Class D felony, Indiana Code section 35-48-4-11 (1983), and resisting law enforcement, a Class A misdemeanor, Indiana Code section 35-44-3-3 (2006). He also appeals the revocation of his probation. We affirm.

ISSUES

Henderson raises three issues, which we consolidate and restate as:

I. Whether the trial court abused its discretion in admitting evidence.

II. Whether the trial court erred by revoking Henderson's probation.

FACTS

On December 19, 2008, shortly after 1 a.m., Officer Sheldon Scott of the South Bend Police Department responded to a report of shots fired. As Scott arrived in the area from which the report originated, he saw a green Chevrolet Tahoe. Scott activated his car's lights and siren to signal the Tahoe's driver to pull over. The driver of the Tahoe increased his speed to fifty-five or sixty miles per hour and disregarded a stop sign as he drove away. Several blocks later, the driver of the Tahoe stopped the vehicle in a front yard. Scott saw an individual who was later identified as Henderson get out of the passenger side of the vehicle, look at Scott, drop a plastic bag and run away. Scott identified himself as a police officer and shouted for Henderson to stop, but Henderson disregarded Scott's commands. Scott and another officer chased Henderson and arrested him. Next, Scott returned to the Tahoe and was informed that the plastic bag Henderson

had dropped appeared to contain marijuana. Scott performed a field test on the substance that was found in the bag and determined that it was marijuana.

The State charged Henderson with the offenses identified above and filed a request to revoke his probation. Henderson filed a motion to suppress the evidence of his flight from Scott and the marijuana that Scott recovered at the scene. The trial court denied Scott's motion, and the case went to trial. A jury convicted Henderson as charged, and the trial court revoked Henderson's probation. Henderson subsequently obtained the trial court's permission to pursue this belated appeal.

DISCUSSION AND DECISION

I. ADMISSION OF EVIDENCE

Rulings on the admission of evidence are subject to review for abuse of discretion. *McHenry v. State*, 820 N.E.2d 124, 128 (Ind. 2005). We reverse a trial court's evidentiary ruling only if it is clearly against the logic and effect of the facts and circumstances. *Smith v. State*, 730 N.E.2d 705, 708 (Ind. 2000).

Henderson contends that the trial court erred by admitting the marijuana into evidence because Scott's attempt to stop the Tahoe in which Henderson was a passenger violated the Fourth Amendment to the United States Constitution and Article I, Section 11 of the Indiana Constitution. Henderson presented these grounds in his motion to suppress but did not object at trial to the admission of the marijuana. The trial court's denial of a motion to suppress is insufficient to preserve error for appeal. *Britt v. State*, 810 N.E.2d 1077, 1080 (Ind. Ct. App. 2004). Rather, the defendant must make a contemporaneous objection to the admission of evidence at trial. *Id.* The failure to make

a contemporaneous objection at trial results in waiver of the error on appeal. *Jackson v. State*, 735 N.E.2d 1146, 1152 (Ind. 2000). Therefore, Henderson's search and seizure claims are waived. *See id.* (determining that a defendant's challenge to the admission of deposition exhibits was waived because the defendant failed to raise a contemporaneous objection at trial).[1]

Next, Henderson contends that the trial court should not have admitted the marijuana into evidence because the field test Scott used is scientifically unreliable. He acknowledges that our Supreme Court has held that the results of a field test alone can be sufficient to support a conviction for possession of illegal drugs. *See Houston v. State*, 553 N.E.2d 117, 119 (Ind. 1990). Henderson asserts that the holding in *Houston* "is erroneous and in need of reconsideration." Appellant's Br. p. 9. We may not disregard our Supreme Court's precedent. Therefore, we do not address Henderson's claim, and the trial court did not abuse its discretion by admitting the marijuana into evidence.

II. REVOCATION OF PROBATION

A trial court may revoke a sentence that has been suspended to probation if the State establishes by a preponderance of the evidence that the probationer has violated a condition of probation. *Saxton v. State*, 790 N.E.2d 98, 99 (Ind. 2003). Commission of an additional crime also provides grounds for probation revocation. Ind. Code § 35-38-2-1(b) (2006).

[1] In light of Henderson's waiver of his search and seizure claims, we do not address the parties' dispute regarding whether Henderson abandoned the marijuana for the purposes of the Fourth Amendment when he dropped it and fled.

In this case, Henderson's challenge to the revocation of his probation is based on his contention that the marijuana should have been suppressed, resulting in insufficient evidence to support revocation. We have determined that Henderson's challenges to the admissibility of the marijuana are waived or without merit. Consequently, the trial court properly admitted the marijuana into evidence, and there is sufficient evidence to sustain the revocation of Henderson's probation. *See Carter v. State*, 706 N.E.2d 552, 554 (Ind. 1999) (affirming the revocation of the defendant's probation for consumption of marijuana because the urinalysis test at issue was demonstrated to be scientifically reliable).

CONCLUSION

For the reasons stated above, we affirm the judgment of the trial court.

Affirmed.

NAJAM, J., and MATHIAS, J., concur.