

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-09-00139-CR

JOHNNY ALAN ROWE A/K/A JOHNNIE ROWE, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause No. 94526**

MEMORANDUM OPINION

The trial court revoked Johnny Alan Rowe's unadjudicated probation and sentenced him to twenty years in prison for manslaughter. In one issue, Rowe contends the trial court erred in failing to grant a continuance of the hearing. Appellant does not challenge the sufficiency of the evidence to support the trial court's findings of true to three revocation grounds presented in both the original and amended motions. No written motion for continuance was filed. We affirm the judgment.

Pursuant to a plea bargain agreement, Rowe pled guilty to manslaughter. The trial court found the evidence sufficient to find Rowe guilty, but deferred further proceedings, placed Rowe on community supervision for ten years, and assessed a fine of \$1,000.

The State filed a motion to revoke Rowe's unadjudicated community supervision. Seven days prior to the hearing on the motion to revoke, the State added an allegation of a sixth violation of probation. The first five allegations in the original motion to revoke were identical to the first five allegations in the amended motion to revoke.

The amended motion added the allegation that Rowe committed the offense of driving while intoxicated on "the 16th day of June, 2008, in the County of Walker[.]" At the revocation hearing, Rowe requested a continuance, arguing that he was not given adequate notice of the filing of the amended motion.

The trial court denied Rowe's request for a continuance. Rowe pled "not true" to all six allegations. After hearing evidence, the trial court found four of the six alleged violations to be true, including the newly added allegation.

"In a felony case, the State may amend the motion to revoke community supervision any time up to seven days before the date of the revocation hearing[.]" TEX. CODE CRIM. PROC. ANN. art. 42.12 § 21(b) (Vernon Supp. 2009). The amended motion here was filed seven days prior to the hearing date as allowed by section 21(b).

We review a trial court's grant or denial of a continuance under an abuse-of-discretion standard. *Janecka v. State*, 937 S.W.2d 456, 468 (Tex. Crim. App. 1996). A

revocation hearing may be continued on a showing of good cause. TEX. CODE CRIM. PROC. ANN. art. 42.12 § 21(b). Generally, motions for continuance are to be in writing and “must be sworn to by a person having personal knowledge of the facts relied on for the continuance.” TEX. CODE CRIM. PROC. ANN. art. § 29.08 (Vernon 2006); *see also Dewberry v. State*, 4 S.W.3d 735, 755 (Tex. Crim. App 1999). Nevertheless, a trial court has discretion to consider an oral motion for continuance. *See Munoz v. State*, 24 S.W.3d 427, 431-432 (Tex. App.--Corpus Christi 2000, no pet.).

In *Campbell v. State*, 456 S.W.2d 918, 920 n.3 (Tex. Crim. App. 1970), the Court of Criminal Appeals stated in a footnote that “[m]ost cautious trial judges now require that a copy of revocation motion be served upon the probationer at least 10 full days before the hearing unless the same is personally waived by the probationer and his counsel[,]” and that “[s]uch practice would seem to be more fully in accord with the provisions of Articles 27.11 and 27.12[.]”¹ The Court acknowledged in the same footnote that “[t]here is no statutory requirement as to the length of time a probationer must have a copy of the revocation motion served upon him prior to a hearing thereon.” *Campbell*, 456 S.W.2d at 920 n.3.

The new allegation in the amended motion asserted that Rowe committed the offense of driving while intoxicated “on or about the 16th day of June 2008, in the

¹Texas Code of Criminal Procedure Article 27.11 provides that a defendant shall be allowed ten days after arrest to file written pleadings. TEX. CODE CRIM. PROC. ANN. art. 27.11 (Vernon 2006). In cases where the defendant is entitled to service of an indictment, the ten days run from the time of service. *Id.* art. 27.12 (Vernon 2006).

County of Walker, State of Texas[.]” The original motion to revoke, however, gave Rowe notice that intoxication on June 16th would be at issue in the hearing. The third alleged violation in both the original and amended motions asserted that on June 16, 2008, Rowe “failed to never become intoxicated[.]”

At the revocation hearing, the State abandoned two of the alleged violations in the original motion. The violations from the original motion that the State proceeded on were that (1) he failed to immediately report his arrest to the Community Supervision Officer in violation of the conditions of his community supervision, (2) he “failed to never become intoxicated or be under the influence of any intoxicating substance on or about the 16th day of June, 2008,” in violation of the conditions of his community supervision, and (3) he “was at a location other than his residence at approximately 12:25 a.m. on or about the 16th day of June, 2008,” in violation of the conditions of his community supervision.

The trial court found “true” the allegation in the amended motion that Rowe committed the Walker County offense, and also the allegations that Rowe was intoxicated on June 16, that he failed to report his arrest, and that he was at a location other than his home on that date at 12:25 a.m. in violation of the terms of his probation. Only one violation is necessary to support the revocation of community supervision. *Sanchez v. State*, 603 S.W.2d 869, 871 (Tex. Crim. App. 1980). Any error in denying the

continuance request does not support reversal of the judgment. *See* TEX. R. APP. P. 44.2(b). We overrule appellant's issue. The trial court's judgment is affirmed.

AFFIRMED.

DAVID GAULTNEY,
Justice

Submitted on February 24, 2010
Opinion Delivered March 17, 2010
Do Not Publish

Before McKeithen, C.J., Gaultney and Horton, JJ.