

Rel: July 12, 2019

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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2018-2019

CR-18-0003

Jeremie Rashad Wright

v.

State of Alabama

Appeal from Montgomery Circuit Court
(CC-14-1214)

KELLUM, Judge.

Jeremie Rashad Wright appeals from the Montgomery Circuit Court's revocation of his probation. The record indicates that in February 2015 Wright pleaded guilty to receiving stolen

property in the second degree.¹ The circuit court sentenced Wright to 61 months' imprisonment, split to serve 12 months' imprisonment followed by 3 years' supervised probation.

On June 12, 2018, Wright's probation officer filed a delinquency report alleging that Wright had violated the terms and conditions of his probation based on his arrest on a new criminal charge of murder. The circuit court conducted a probation-revocation hearing on August 21, 2018, at which Wright was represented by counsel. At the hearing, probation officer Nicki Givhan testified that she was not Wright's "actual probation officer" but that she had assisted in the supervision of Wright. (R. 3.) Officer Givhan testified that Wright was informed of the terms and conditions of his probation, which included not being charged with another criminal offense. Wright acknowledged that he understood the conditions of his probation by signing an "Order of Probation." A copy of the Order of Probation and a copy of the

¹The record indicates that in February 2015 Wright also pleaded guilty to one count of robbery in the second degree, one count of theft of property in the first degree, two counts of burglary in the third degree, and one count of theft of property in the second degree. Wright, however, appeals only the circuit court's judgment revoking his probation in his receiving-stolen-property case.

delinquency report prepared by Wright's probation officer were admitted into evidence at the probation-revocation hearing.²

Corporal J.D. Stokes, a homicide investigator with the Montgomery Police Department, testified that he was assigned to investigate a murder that occurred on May 26, 2018, on East South Boulevard in Montgomery. Corporal Stokes testified that Michael Garland was being belligerent during an anniversary party when he was asked to leave. When Garland reached the door of his vehicle, Cpl. Stokes testified, Wright and others surrounded Garland's vehicle, engaged in a verbal altercation with Garland, and produced firearms, and, subsequently, Garland was shot to death. Another person standing across the parking lot from Garland's vehicle was shot but did not die from his injuries.

Corporal Stokes testified that, after the shooting, a witness came forward who identified Wright as a participant in the shooting. Wright was subsequently arrested. Corporal Stokes testified that he questioned Wright following his

²Copies of the Order of Probation and the delinquency report that were admitted as exhibits during the probation-revocation hearing were not included in the record on appeal. Pursuant to an order by this Court, the appellate record was supplemented to include copies of the Order of Probation and the delinquency report. See Rule 10(g), Ala. R. App. P.

arrest. After waiving his Miranda³ rights, Wright gave a statement in which he confirmed that he was at the party during the shooting but denied being outside when the shooting occurred. Wright told Corporal Stokes that he was inside the building when the shooting took place and that his mother was inside the building with him at the time the shooting occurred. Corporal Stokes subsequently questioned Wright's mother. According to Corporal Stokes, Wright's mother told him that she was inside when the shooting started but that she went outside during the shooting, retrieved her son, and brought him inside for safety. Corporal Stokes concluded that Wright was outside during the exact time of the shooting. Corporal Stokes testified that Wright stated that he left with his mother in his mother's vehicle after the shooting. Corporal Stokes asked Wright why he did not stay and talk to police, but Wright did not answer the question.

On cross-examination, Corporal Stokes testified that he had no physical evidence that linked Wright with the shooting. At the time of the probation-revocation hearing, ballistic

³Miranda v. Arizona, 384 U.S. 436 (1966).

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reports relating to the shooting had not come back from the Alabama Department of Forensic Sciences.

Detective Shannon, a homicide investigator investigating the murder, testified that he took a statement from Carlos Davis, a witness who had contacted police and stated that he had information in reference to the May 26, 2018, murder. Detective Shannon spoke with Davis, who told police that Garland became belligerent and left the party. Davis told Detective Shannon that Wright and another man, Amos Parks, pulled out a gun and shot Garland while Garland was walking toward his vehicle. Davis identified Wright and Amos from a photographic lineup "as the two people he saw shooting on the scene." (R. 19.)

At the conclusion of the hearing, the circuit court entered an order revoking Wright's probation. In its order, the circuit court stated that it was reasonably satisfied from the evidence and testimony presented that Wright committed the new offense of murder in violation of the terms and conditions of his probation. The court ordered Wright to serve the balance of his sentence in the custody of the Alabama Department of Corrections. This appeal followed.

Wright contends that the circuit court abused its discretion by revoking his probation based solely on hearsay evidence. Wright argues that the circuit court relied on hearsay evidence that originated from nontestifying witnesses who Wright was not allowed to confront and cross-examine in violation of his due-process rights.⁴

The following evidentiary standard applies to a probation-revocation proceeding:

"Probation or suspension of sentence comes as an act of grace to one convicted of, or pleading guilty to, a crime. A proceeding to revoke probation is not a criminal prosecution, and we have no statute requiring a formal trial. Upon a hearing of this character, the court is not bound by strict rules of evidence, and the alleged violation of a valid condition of probation need not be proven beyond a reasonable doubt."

Martin v. State, 46 Ala. App. 310, 312, 241 So. 2d 339, 341 (Ala. Crim. App. 1970) (quoting State v. Duncan, 270 N.C. 241, 154 S.E.2d 53 (1967) (citation omitted)). Under that standard, the trial court need 'only to be reasonably satisfied from the evidence that the probationer has violated the conditions of his probation.' Armstrong v. State, 294 Ala. 100, 103, 312 So. 2d 620, 623 (1975). Absent a clear abuse of discretion, a reviewing court will not disturb the trial court's conclusions. See Moore v.

⁴Wright raises two issues challenging the circuit court's reliance on hearsay. For purposes of appellate review, we have combined the issues raised by Wright in his brief on appeal.

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State, 432 So. 2d 552, 553 (Ala. Crim. App. 1983), and Wright v. State, 349 So. 2d 124, 125 (Ala. Crim. App. 1977)."

Ex parte J.J.D., 778 So. 2d 240, 242 (Ala. 2000).

"'[T]he law is clear that the formality and evidentiary standards of a criminal trial are not required in parole revocation hearings.'" Puckett v. State, 680 So. 2d 980, 981 (Ala. Crim. App. 1996) (quoting Ex parte Belcher, 556 So. 2d 366, 368 (Ala. 1989)). In a probation-revocation hearing, hearsay evidence may be admitted at the discretion of the circuit court. See Puckett, 680 So. 2d at 981-82. It is well settled, however, that

"hearsay evidence may not form the sole basis for revoking an individual's probation. See Clayton v. State, 669 So. 2d 220, 222 (Ala. Cr. App. 1995); Chasteen v. State, 652 So. 2d 319, 320 (Ala. Cr. App. 1994); and Mallette v. State, 572 So. 2d 1316, 1317 (Ala. Cr. App. 1990). 'The use of hearsay as the sole means of proving a violation of a condition of probation denies a probationer the right to confront and to cross-examine the persons originating information that forms the basis of the revocation.' Clayton, 669 So. 2d at 222."

Goodgain v. State, 755 So. 2d 591, 592 (Ala. Crim. App. 1999).

Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing,

offered in evidence to prove the truth of the matter asserted." Rule 801(c), Ala. R. Evid.

In this case, the State presented only hearsay evidence to support a finding that Wright had violated the terms and conditions of his probation by committing the new offense of murder. Corporal Stokes testified that he had investigated the murder and that a witness had identified Wright as a participant in the shooting. Detective Shannon also investigated the murder and testified that a witness had come forward and had identified Wright from a photographic lineup as one of the men who shot Garland. No witnesses to the shooting testified at the probation-revocation hearing, and no physical evidence was presented to show Wright's participation in the murder.⁵ Contrary to the State's assertion, it did not present any nonhearsay evidence corroborating the hearsay testimony of Corporal Stokes and Detective Shannon or connecting Wright to the offense. The inconsistent statement given by Wright's mother regarding whether Wright was inside

⁵The record indicates that the witness who identified Wright as the shooter was in Texas at the time of the probation-revocation hearing. Wright's mother, who was present in court during the hearing, was not called to testify as a witness.

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or outside at the time of the shooting was insufficient to connect Wright to the murder. Likewise, Wright's decision to leave the party with his mother before police arrived did not connect Wright to the murder.

Because the State failed to present any nonhearsay evidence to establish that Wright had violated the terms and conditions of his probation, the circuit court erred in revoking Wright's probation. Accordingly, this Court reverses the circuit court's order revoking Wright's probation and remands this cause for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

Windom, P.J., and McCool, Cole, and Minor, JJ., concur.