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Alabama Court of Criminal Appeals

OCTOBER TERM, 2020-2021

CR-19-1128

Ladarius L. Knight

v.

State of Alabama

Appeal from Montgomery Circuit Court
(CC-19-864)

WINDOM, Presiding Judge.

Ladarius L. Knight appeals the circuit court's revocation of his community-corrections sentence. Knight was originally convicted of

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second-degree assault, see § 13A-6-21, Ala. Code 1975. On December 9, 2019, the circuit court sentenced Knight to 10 years in prison; that sentence was split, and he was ordered to serve 2 years in community corrections followed by 2 years of probation.

On April 6, 2020, a delinquency report was filed alleging that Knight had violated the terms and conditions of his community-corrections sentence: 1) by failing to report; 2) by possessing a firearm; and 3) by committing the new offense of second-degree domestic violence-assault.

On May 4, 2020, the circuit court held a revocation hearing at which only one witness, Detective A.T. Usen, testified. Det. Usen testified that on April 1, 2020, she, along with another detective, were dispatched to a residence in Montgomery as a result of an altercation between Knight and his girlfriend, Shanikaque Everett, that resulted in Everett's sustaining a gunshot wound. When she arrived at the residence, Det. Usen took photographs of the scene and collected shell casings. Det. Usen spoke with Everett's sister, Erin Johnson, and Everett's 13 year-old niece, who both gave recorded statements that Everett and Knight were outside "tussling over a phone." (R. 6.) According to those statements, Knight

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drew a handgun during the altercation. When Johnson grabbed Knight to separate the two, Knight fired several rounds at Everett. Johnson asked Knight if he was trying to kill Everett, and Knight said "yes." After leaving the scene, Det. Usen went to the police precinct to secure a warrant for Knight's arrest.

Another detective went to the hospital to obtain a statement from Everett. Everett provided a statement, which was recorded and given to Det. Usen. According to Det. Usen, Everett stated that she was at her sister's house and that Knight "came to her arguing about a phone." (R. 8.) Knight snatched the phone from her, and the couple began fighting. Knight put his hand around her neck, and Everett drew a can of pepper spray and sprayed it at Knight. Then Knight drew his gun and shot Everett twice, causing a fracture to Everett's left leg. After Knight was arrested, he denied the shooting. Knight admitted that he did talk to Everett but stated that he had walked away before the shooting.

At the conclusion of Det. Usen's testimony, defense counsel asked if the detective had the case file with her at the hearing. Defense counsel stated that he had not received "anything" and that put him at a

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disadvantage having the revocation hearing via video conference. (R. 14.) Det. Usen did not have the case file with her; the file was with a supervisor. The circuit court told defense counsel that the file would be sent to counsel and that it would reserve ruling until counsel had reviewed the file. The hearing was adjourned.

On June 11, 2020, Knight filed a motion styled as a "Brief in Opposition to the Revocation of Community Corrections." (Supp. C. 18.) In his motion, Knight stated that the circuit court had allowed time for counsel to review discovery and to file a brief in opposition to Knight's being removed from community-corrections. Knight argued that the sole evidence before the circuit court on which to revoke his community-corrections sentence was the hearsay evidence of Det. Usen. On June 16, 2020, the circuit court entered an order denying Knight's motion.

On July 10, 2020, Knight filed a motion to set a hearing on the community-corrections violations. On September 10, 2020, another hearing was held, during which defense counsel stated that he had requested a hearing because he was unclear whether Knight's community-corrections sentence had been revoked when the circuit court denied his

brief. The parties, along with the circuit court, agreed that a clear statement of revocation needed to be recorded. At the hearing, Knight acknowledged that his statement to police constituted non-hearsay evidence but argued that the statement did not connect him to the offense and did not justify a revocation. The circuit court revoked Knight's community-corrections sentence. (C. 10.)

Knight contends that the circuit court abused its discretion by revoking his community-corrections sentence based solely on hearsay evidence. Knight argues that the circuit court's reliance on hearsay evidence from nontestifying witnesses violated his due-process rights because he was not allowed an opportunity to confront and cross-examine those witnesses.¹

"[T]he revocation of a sentence served under a community-corrections program is treated the same as a probation revocation." Ex parte Hill, 71 So. 3d 3, 8 (Ala. 2009).

¹Knight raises these arguments as two issues challenging the circuit court's reliance on hearsay. This Court has combined the issues raised by Knight in his brief on appeal.

" "A probation-revocation hearing is a bench trial and the trial court is the sole fact-finder." " Smiley v. State, 52 So. 3d 565, 568 (Ala. 2010) (quoting Ex parte Abrams, 3 So. 3d 819, 823 (Ala. 2008)).

" "Absent a clear abuse of discretion, a reviewing court will not disturb a trial court's conclusions in a probation-revocation proceeding, including the determination whether to revoke, modify, or continue the probation. A trial court abuses its discretion only when its decision is based on an erroneous conclusion of law or where the record contains no evidence on which it rationally could have based its decision." "

"McCain v. State, 33 So. 3d 642, 647 (Ala. Crim. App. 2009) (quoting Holden v. State, 820 So. 2d 158, 160 (Ala. Crim. App. 2001) (citations omitted)). Furthermore, we review de novo those cases that involve only issues of law and the application of the law to the undisputed facts. Ex parte Walker, 928 So. 2d 259, 262 (Ala. 2005). "

Walker v. State, 294 So. 3d 825, 829 (Ala. Crim. App. 2019).

"To determine whether the evidence presented at a probation-revocation hearing is sufficient to revoke a defendant's probation for committing a new offense, the Alabama Supreme Court has set out the following standard:

" " '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 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. 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] at 242 [(Ala. 2000)]. See Rule 27. 6(d)(1), Ala. R. Crim. P.

(providing that at a revocation hearing the "court may receive any reliable, relevant evidence not legally privileged, including hearsay," and the court must be reasonably satisfied from the evidence that a violation of probation occurred before revoking probation). Whether to admit hearsay evidence at a probation-revocation hearing is within the discretion of the court. Puckett v. State, 680 So. 2d 980, 981 (Ala. Crim. App. 1996). However,

" "[i]t is well settled 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 the 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).

" 'To summarize, at a probation-revocation hearing a circuit court must examine the facts and circumstances supporting each alleged violation of probation. The court may consider both hearsay and nonhearsay evidence in making its

determination. The hearsay evidence, however, must be reliable, and it cannot be the sole evidence supporting the revocation of probation. Thus, a circuit court must assess the credibility of the particular witnesses at the probation-revocation hearing, the reliability of the available evidence, and the totality of the evidence in each individual case to determine whether it is reasonably satisfied that the probationer has violated a term of his or her probation and that revocation is proper. Moreover, an appellate court will disturb a circuit court's decision only if the record establishes that the circuit court exceeded the scope of its discretion.

"Sams v. State, 48 So. 3d 665, 667-68 (Ala. 2010).

"Recently, in Ex parte Dunn, 163 So. 3d 1003 (Ala. 2014), the Supreme Court refined this standard, explaining that, when the State presents a mixture of hearsay and nonhearsay evidence to show that a defendant violated his probation by committing a new offense, the circuit court cannot revoke a defendant's probation for that violation unless the nonhearsay evidence connects the defendant to the alleged offense. In that case, the Supreme Court reversed this Court's decision upholding the circuit court's revocation of Dunn's probation for committing a new offense because 'the State [had] not corroborated by nonhearsay evidence the hearsay evidence connecting the pants, and by extension Dunn, to the burglary.' 163 So. 3d at 1006. See also Wright v. State, [292 So. 3d 1136] (Ala. Crim. App. 2019) (reversing the circuit court's revocation of Wright's probation for committing a new offense because the nonhearsay evidence that Wright was merely present at a party at the time a shooting occurred did not sufficiently connect him to the alleged murder); and Miller v.

State, [273 So. 3d 921] (Ala. Crim. App. 2018) (reversing the circuit court's revocation of Miller's probation because 'the State failed to present any nonhearsay evidence indicating that Miller had, in fact, committed the alleged arson').

"In sum, Sams and Dunn establish that hearsay is admissible at a probation-revocation hearing to show that a defendant committed a new offense and that the circuit court can rely on hearsay to revoke a defendant's probation. But those cases warn that hearsay cannot serve as the sole basis for revoking a defendant's probation, and instruct that, although the State does not have to prove every element of the alleged new offense with nonhearsay evidence, the State must present sufficient nonhearsay evidence connecting the defendant to the commission of the alleged new offense."

Walker, 294 So. 3d at 831-32 (footnotes omitted).

In this case, the State presented only hearsay evidence to support a finding that Knight had violated the terms and conditions of his community-corrections sentence by committing the new offense of domestic violence-assault. As set forth above, Det. Usen testified that she had interviewed two witnesses who identified Knight as the shooter and that another detective had obtained a recorded statement from Everett that, after she sprayed Knight with pepper spray during an altercation over a phone, Knight shot her. Contrary to the State's assertion, it did not present any nonhearsay evidence corroborating the hearsay testimony of

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Det. Usen or connecting Knight to the offense. Knight's statement that he had talked to Everett and subsequently walked away was insufficient to connect him to the shooting. See Wright v. State, 292 So. 3d 1136, 1139 (Ala. Crim. App. 2019) (nonhearsay evidence indicating that Wright was merely present at a party at the time a shooting occurred did not sufficiently connect him to the alleged murder) .

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

REVERSED AND REMANDED.

Kellum, McCool, Cole, and Minor, JJ., concur.