

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs March 7, 2023

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Appellate Courts

STATE OF TENNESSEE v. MARLON JACKSON

Appeal from the Criminal Court for Shelby County
No. 20-00393 James M. Lammey, Jr., Judge

No. W2022-01288-CCA-R3-CD

The Defendant, Marlon Jackson, appeals the trial court’s revocation of his three-year probationary sentence for attempted possession of methamphetamine with the intent to sell or deliver. The trial court revoked the Defendant’s probation after determining that he materially violated his probation sentence for engaging in criminal activity and being charged with new offenses. On appeal, the Defendant asserts that the trial court abused its discretion when it revoked his probation because the evidence to support the violation was “inconclusive, contradictory, and based upon unreliable hearsay.” After review, we conclude that the record supports the trial court’s finding that the Defendant violated the terms of his probation sentence.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN and ROBERT H. MONTGOMERY, JR., JJ., joined.

Phyllis Aluko, Shelby County Public Defender, Barry W. Kuhn, Assistant Public Defender (on appeal), and John Zastrow, Assistant Public Defender (at hearing), Memphis, Tennessee, for the appellant, Marlon Jackson.

Herbert H. Slatery III, Attorney General and Reporter; Ronald L. Coleman, Assistant Attorney General; Steven J. Mulroy, District Attorney General; and William Cranford, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Facts

On December 10, 2021, the Defendant pleaded guilty to an amended charge of criminal attempt to possess heroin with the intent to sell or deliver¹ for an agreed-upon sentence of three years, to be served on probation. In relevant part, the conditions of the Defendant's probation sentence required that he: (1) not violate any laws; (2) not possess any firearms, ammunition or illegal weapon; and (3) pay all required court fees.

On May 24, 2022, a State probation officer, Melissa Stevens, filed an affidavit alleging that the Defendant: (1) was arrested on May 8, 2022, for attempted second degree murder, employing a firearm with the intent to commit a felony, reckless endangerment, unlawful possession of a weapon, and false offense report; (2) possessed a black handgun; and (3) failed to pay supervision fees and court costs. Based upon these allegations, the trial court issued a warrant on the same day for the Defendant's arrest.

The trial court held hearings on the probation violation on July 26, July 27, and August 17, 2022. At the initial hearing, the State announced that the basis of the violation was the Defendant's new arrest involving possession of a weapon. According to the State, the Defendant exchanged gunfire with another individual at Nana's Market that resulted in gunfire injuries. A female sitting nearby the exchange, the other shooter, and the Defendant all suffered gunshot injuries.

Memphis Police Department ("MPD") Officer Markieta Richardson reported to the scene and observed the Defendant, who wore jeans and a white shirt, seated in a silver car. Officer Richardson recalled that the Defendant said that he had been shot.

The State played surveillance video footage of the shooting that showed a man wearing a "reddish or orange outfit" firing a gun and another man, wearing a white shirt and jeans, returning gunfire then "ducking and running." Officer Richardson confirmed that the Defendant was the man in the video wearing the white shirt and jeans and was the same man seated in the silver car when she arrived. Officer Richardson had viewed the recording shown at the hearing, but also had viewed another video recording that provided "more of a full-on view of the actual shooting." The surveillance video recording showed the Defendant get into the silver car Officer Richardson found him in when she arrived at the crime scene.

Officer Richardson agreed that the surveillance video showed that the Defendant left the crime scene after he was shot and then later returned. The surveillance footage showed the silver car returning and parking in the location where Officer Richardson found it upon her arrival.

¹ Both parties refer to the conviction as attempted possession of methamphetamine; however, the judgment indicates the Defendant was convicted of attempted possession of heroin.

On cross-examination, Officer Richardson testified that she spoke with the Defendant very briefly because medical personnel were attending to his injuries. She could not recall whether the Defendant admitted involvement in a “shootout.” On redirect examination, Officer Richardson clarified that she had learned from another officer at the scene that the Defendant had been “involved in a shooting.” In contradiction of her prior testimony, Officer Richardson testified that she did not recall if the clothing worn by the man in the surveillance video was the same clothing worn by the Defendant when she arrived at the scene.

Defense Counsel objected to Officer Richardson’s testimony about the Defendant’s statement to another officer as hearsay. The trial court inquired about testimony from the other officer and the State responded that a subpoena had been issued but there was no return on the subpoena. The trial court continued the hearing to the following day to allow the State time to locate the officer.

On July 27, 2022, the State announced that the subpoenaed officer had been sick for two weeks and would not return for several more days. The trial court reset the hearing.

On August 17, 2022, the hearing resumed and MPD Sergeant Tuboris Martin testified that he investigated the shooting that occurred at Nana’s Market. He reviewed surveillance video recovered from the scene. He explained that two individuals engaged in a disagreement resulting in the exchange of gunfire in the parking lot with multiple bystanders. The video showed one man, later identified as the Defendant, run around the parking lot to the rear of the store while firing his gun. He then entered a silver car and drove away before later returning. Sergeant Martin identified the individuals who were involved through verification of officers on the scene, witnesses, vehicle registration, and “multiple databases.”

The State played the surveillance video footage, and Sergeant Martin identified the two vehicles involved with the shooting: a black SUV and a silver sedan. As part of his investigation, he determined that the Defendant was in the silver sedan. Sergeant Martin narrated as the video played. He noted the man exiting the silver sedan wore a white shirt, tan pants, and white tennis shoes. He stated that this man was the Defendant. The Defendant and another individual entered the store and went to the ATM machine. In another portion of the video, Sergeant Martin noted that it appeared that the Defendant had a pistol in his hand. The State replayed that portion, and the trial court stated, “That’s definitely a pistol.” Sergeant Martin identified a portion of the video where the Defendant and the other individual were exchanging gunfire. As the Defendant ran around toward the back of the building, he placed the gun in his waistband and got into his vehicle and drove away. About four minutes later, the silver sedan returned to the scene where medical

personnel soon began treating his gunshot wound. Sergeant Martin confirmed that the Defendant did not have a gun in his possession when he returned to Nana's Market. Sergeant Martin stated that the Defendant made no statements about his involvement at the crime scene.

On cross-examination, Sergeant Martin agreed that he did not witness the event but based his knowledge about the crime on the surveillance footage. Sergeant Martin identified the Defendant as the person in the footage based upon: several Crime Stopper tips identifying the Defendant; officers at the scene who verified the Defendant's identification; the vehicle the Defendant drove; the clothing worn at the time of the shooting; and medical records admitting the Defendant to the hospital for gunshot wounds. Sergeant Martin viewed additional surveillance footage taken inside the store, and the man inside the store at the ATM wore the same clothes as the shooter seen in the outside surveillance video, and the same clothes worn by the Defendant at the time he was being treated for the gunshot wound.

The Defendant objected to Sergeant Martin's testimony as hearsay. The trial court then asked specific questions about Sergeant Martin's investigation and the information obtained during the course of the investigation. Sergeant Martin reiterated that he identified the man at the scene in the silver car through multiple sources, including medical records for treatment of his gunshot wound, even though he personally was not at the scene. The trial court overruled the Defendant's hearsay objection, noting that reliable hearsay is admissible in probation revocation hearings.

After hearing the evidence, the trial court found by a preponderance of the evidence that the Defendant, who was treated at the scene, was the same person who was firing the gun in the surveillance video and, therefore, the Defendant had violated his probation by possessing a handgun. After the trial court ruled, the Defendant was sworn in and testified that he "was the victim" and that he never violated his probation sentence.

II. Analysis

The Defendant asserts that the trial court abused its discretion when it revoked his probation sentence. The State responds that the trial court properly exercised its discretion in revoking probation. We agree with the State.

A trial court's authority to revoke a suspended sentence is derived from Tennessee Code Annotated section 40-35-310 (2019), which provides that the trial court possesses the power "at any time within the maximum time which was directed and ordered by the court for such suspension, . . . to revoke . . . such suspension" and cause the original judgment to be put into effect. A trial court may revoke probation upon its finding by a

preponderance of the evidence that a violation of the conditions of probation has occurred. T.C.A. § 40-35-311(e) (2019). “In probation revocation hearings, the credibility of witnesses is to be determined by the trial judge.” *State v. Mitchell*, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). If a trial court revokes a defendant’s probation, options include ordering confinement, ordering the sentence into execution as originally entered, returning the defendant to probation on modified conditions as appropriate, or extending the defendant’s period of probation by up to two years. T.C.A. §§ 40-35-308(a), (c), -310 (2018); *see State v. Hunter*, 1 S.W.3d 643, 648 (Tenn. 1999).

The judgment of the trial court in a revocation proceeding, including the consequences of the revocation, is entitled to a presumption of reasonableness unless there has been an abuse of discretion. *See State v. Dagnan*, 641 S.W.3d 751, 759 (Tenn. 2022); *see also State v. Shaffer*, 45 S.W.3d 553, 554 (Tenn. 2001); *State v. Smith*, 909 S.W.2d 471, 473 (Tenn. Crim. App. 1995). The credibility of the witnesses is for the determination of the trial judge. *Bledsoe v. State*, 387 S.W.2d 811, 814 (Tenn. 1965); *State v. Delp*, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980). On review, the findings of the trial judge have the weight of a jury verdict. *Carver v. State*, 570 S.W.2d 872, 875 (Tenn. Crim. App. 1978). For this Court to find an abuse of discretion by the trial court in a probation revocation case, a defendant must demonstrate “that the record contains no substantial evidence to support the conclusion of the trial judge that a violation of the conditions of probation has occurred.” *Delp*, 614 S.W.2d at 398.

The Defendant’s arguments on appeal largely center around the credibility of the State’s two witnesses. As earlier stated, credibility of witnesses is within the trial court’s determination. *Bledsoe*, 387 S.W. 2d at 814. As such, we do not assess the credibility of the witnesses, rather we review the evidence presented at the hearing. The record in this case supports the trial court’s finding, by a preponderance of the evidence, that the Defendant violated his probation. First, the Defendant does not contest his presence at the shooting scene. He acknowledged that he was a victim of the shooting. The trial court viewed surveillance footage that showed the Defendant arriving in a silver sedan and wearing a white shirt and tan jeans. A man wearing the same clothing began firing at another man whom the Defendant had earlier spoken with and gone with to the ATM inside the store. After the shooting, the man wearing the white shirt and tan jeans got back in the silver sedan and left for approximately four minutes before returning to the scene where medical personnel treated the Defendant for gunshot injuries and transported him to the hospital.

The Defendant makes a cursory mention of “unreliable hearsay” with no further argument or authority in support of this contention. “Strict rules of evidence do not apply at revocation hearings.” *State v. Lewis*, 917 S.W.2d 251, 257 (Tenn. Crim. App. 1995) at 257 (citing *Practy v. State*, 525 S.W.2d 677, 680 (Tenn. Crim. App. 1974); *Barker v. State*,

483 S.W.2d 586 (Tenn. Crim. App. 1972)). “Reliable hearsay has been held admissible in a probation revocation hearing so long as the defendant had a fair opportunity to rebut the evidence.” *Id.* (citing *State v. Carney*, 752 S.W.2d 513 (Tenn. Crim. App. 1988)). In order for hearsay evidence to be deemed admissible, a trial court must find that “good cause” exists to justify the denial of the right to confront witnesses and that the hearsay evidence is reliable. *State v. Wade*, 863 S.W.2d 406, 409 (Tenn. 1993). The trial court made a specific finding that the hearsay was reliable. Although the trial court did not make a specific finding of “good cause” for the admission of the officer’s hearsay testimony, such a finding was implicit in the trial court’s words and findings. *See State v. Roy Cherry*, No. W2015-01084-CCA-R3-CD, 2016 WL 520304 at *1 (Tenn. Crim. App., at Jackson, Nov. 3, 2015), *perm. app. denied* (Tenn. Feb. 8, 2016). Further, the Defendant had the opportunity to rebut the officer’s testimony; however, he confirmed his presence at the shooting as a “victim.”

The record reflects that the Defendant violated the terms of his probation by possessing a weapon and committing a new offense while on probation. Accordingly, the trial court was justified in revoking the Defendant’s probation, and it was within the trial court’s authority to order the Defendant to serve his original sentence upon revoking the Defendant’s probation sentence. The Defendant is not entitled to relief.

II. Conclusion

Based on the foregoing reasoning and authorities, we affirm the trial court’s judgment.

ROBERT W. WEDEMEYER, JUDGE