

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR 12-443

GREGORY DONZELL REYNOLDS
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered December 12, 2012

APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT
[NO. CR-09-459-1]

HONORABLE BERLIN C. JONES,
JUDGE

AFFIRMED

DOUG MARTIN, Judge

Appellant Gregory Reynolds appeals from the Jefferson County Circuit Court's revocation of his suspended sentence based on his violations of the terms and conditions of the suspended sentence in that he was charged with committing eight crimes and failed to pay fines and costs.¹ The trial court sentenced Reynolds to eight years' imprisonment. Reynolds argues that the trial court erred by admitting statements at the revocation hearing that violated his Sixth Amendment right to confront witnesses.

On February 2, 2010, Reynolds pleaded guilty to failure to register as a sex offender and received a three-year suspended sentence. On October 26, 2011, the State filed a petition to revoke based on criminal charges filed against Reynolds. The State filed a supplemental petition

¹The State charged Reynolds with committing two counts of residential burglary, breaking or entering, three counts of theft of property, aggravated residential burglary, and aggravated robbery between August 17, 2011, and September 10, 2011.



on November 8, 2011, adding that Reynolds had failed to pay \$1,750 in fines and costs. A revocation hearing was held on January 10, 2012.

Probation Officer Demetria Rochelle testified that, at the time of his guilty plea, Reynolds agreed to pay fines and costs at forty-seven dollars per month, “not get in any trouble,” and complete 120 hours of community service. Rochelle testified that Reynolds had requested that his fines and costs be “converted” to community-service hours and that this meant Reynolds would be required to complete 250 community-service hours. Rochelle testified that Reynolds would have had to first complete the hours and then obtain documentation indicating that the fines and costs had been converted. According to Rochelle, Reynolds had completed only fifteen hours of community service as of May 20, 2011.

In August 2011, Patrick Saffold was a detective with the Pine Bluff Police Department and was assigned to investigate a burglary that occurred on August 17, 2011. Saffold referred to a report indicating that “Officer Johnson” had responded to the scene and was told by the victims that they were asleep when a wallet on the night stand next to their bed was stolen. Saffold testified that “Sergeant Williams” had processed the crime scene for fingerprints.

Defense counsel objected on the basis of hearsay, pointing out that Saffold did not collect the fingerprint evidence himself, but instead sought to read it from a report. Defense counsel argued that the State’s failure to present “Sergeant Williams” to testify violated Reynolds’s right to confront that witness. The trial court inquired about the report to determine Saffold’s role in the investigation, and Saffold testified that it was standard operating procedure for detectives to begin their investigations with reports authored by others. The trial court then overruled defense counsel’s objection.



Saffold continued, stating that he investigated a second burglary that occurred on September 7, 2011, at Southern Pines Drive. Saffold testified that Cathy Ruhl, a crime-scene technician, responded to and processed the crime scene for fingerprints. Defense counsel raised a similar objection concerning the State's failure to produce Ruhl for cross-examination. The trial court pointed out that Reynolds was not being tried on the charges at the revocation hearing and that Saffold had used the reports in his investigation to develop a case file that was forwarded to the prosecutor. The trial court again overruled the objection.

Saffold testified that he became involved in both burglary investigations based on fingerprints collected at the crime scenes by "Sergeant Williams" and Ms. Ruhl. Saffold testified that latent fingerprints collected from both crime scenes were compared to and matched Reynolds's fingerprints.

Frank Thomas Williams, Jr., testified that, on September 10, 2011, he was awakened at 5:30 a.m. by his dog and heard glass breaking. Williams went into the kitchen and saw Reynolds in possession of the homeowner's purse that had been sitting on the kitchen counter. Reynolds fled, and Williams chased him to the door. Williams grabbed Reynolds by his shirt, but Reynolds slipped out of the shirt and escaped. Williams testified that he was able to see Reynolds very well, given that he had held Reynolds at arm's length. Williams identified Reynolds at the defense table.

At the conclusion of the revocation hearing, the trial court found that, with regard to the crimes committed on August 17 and September 7, 2011, fingerprints found at the crime scenes matched Reynolds's. Regarding the crimes involving Williams, the trial court noted that Williams had positively identified Reynolds in a photo line-up and that Williams was "just as



convincing today that it was [Reynolds] that he struggled with” over a purse belonging to the homeowner. The trial court also found that Reynolds failed to pay his fines and costs and complete community-service hours as required and further failed to complete the process of converting the fines and costs into community-service hours. The trial court concluded that, “when we put all of that together,” Reynolds violated the terms and conditions of his suspended sentence. Thus, the trial court revoked Reynolds’s suspended sentence and sentenced him to serve eight years’ imprisonment.

In order to revoke a suspended sentence or probation, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of suspension or probation. *Muldrew v. State*, 2012 Ark. App. 568. In revocation cases, the State has the burden of proof by the preponderance of the evidence but needs to prove only one violation; we will not reverse the trial court’s decision to revoke unless it is clearly against the preponderance of the evidence. *Id.* When the determination of a preponderance of the evidence turns on questions of credibility and weight, we defer to the superior position of the trial court to decide these matters. *Id.*

Although in a revocation hearing a defendant is not entitled to the full panoply of rights that attend a criminal prosecution, he is entitled to due process. *Goforth v. State*, 27 Ark. App. 150, 767 S.W.2d 537 (1989). Certain rules of evidence, including the rule against hearsay, are not applicable in revocation proceedings as they would be in a trial. *Id.* Arkansas Code Annotated section 16-93-307(c)(1) (Supp. 2011) provides that, in revocation proceedings, a defendant has the right to counsel and to confront and cross-examine an adverse witness unless the court specifically finds good cause for not allowing confrontation. According to *Goforth*, the



trial court must balance the probationer's right to confront witnesses against grounds asserted by the State for not requiring confrontation. First, the court should assess the explanation offered by the State for why confrontation is undesirable or impractical. *Id.* A second factor that must be considered is the reliability of the evidence that the State offers in place of live testimony. *Id.*

Reynolds argues that the trial court erred in permitting Saffold to testify with regard to a report authored by individuals who did not testify at the revocation hearing. Reynolds argues that the trial court made no finding of good cause for denying his right to confrontation. According to Reynolds, the trial court's inquiry fell far short of the two-prong analysis required by *Goforth*.

The State relies on *Lemmond v. State*, 2012 Ark. App. 390, in which a police officer testified with regard to a disturbance involving Lemmond and Amy Holloman that ended with Lemmond's arrest for harassment and disorderly conduct. The officer then testified with respect to Holloman's statement, and defense counsel objected to hearsay and argued that the officer's testimony violated his right to confront the witness. This court held that there was no violation of Lemmond's right to confront the witness because Holloman testified at the revocation hearing and was subject to cross-examination by Lemmond. This court concluded that there was no need for a *Goforth* analysis because Holloman was available for cross-examination.

The present case is distinguishable from *Lemmond* in that "Sergeant Williams" and Ms. Ruhl did not testify, and Reynolds's hearsay objection and alleged violation of his right to confront witnesses involved those individuals. Even if the trial court committed error in admitting Saffold's testimony, the error was harmless.



Even when error occurs at revocation proceedings involving the constitutional right to confront adverse witnesses, those errors are subject to harmless-error analysis. *Lemmond, supra*. Among the factors for the court to consider in determining whether a Confrontation Clause violation is harmless error are the importance of the witness's testimony in the State's case; whether the testimony was cumulative; the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points; the extent of cross-examination otherwise permitted; and the overall strength of the State's case. *Cannon v. State*, 2010 Ark. App. 698, 379 S.W.3d 561 (citing *Delaware v. Van Arsdall*, 475 U.S. 673 (1986)). This court does not reverse unless prejudice has been shown. *Lemmond, supra*.

We conclude that any error was harmless because the trial court did not rely solely on Saffold's testimony with respect to burglaries committed on August 17 and September 7 but also relied on Williams's testimony with respect to the charges of aggravated residential burglary, theft of property, and aggravated robbery that occurred on September 10. Williams's testimony provided the State with a strong case against Reynolds, regardless of the crimes testified to by Saffold. Reynolds cannot show prejudice resulting from admission of Saffold's testimony because Williams's testimony provided an independent basis on which to revoke Reynolds's suspended sentence.

Reynolds raised an alternative argument in the event that this court found harmless error. Reynolds maintains that the trial court erred in revoking his suspended sentence based on his failure to pay fines and costs, given that Rochelle testified that there was still time within Reynolds's three-year suspended sentence to complete community-service hours. This



argument, however, is misplaced because the State had to prove only one violation of Reynolds's suspended sentence, and Williams's testimony alone supported the revocation.

In any event, Reynolds was ordered to make monthly payments on the fines and costs, and there was no indication that Reynolds had made any such payments. Further, Rochelle's testimony implied that Reynolds remained obligated to pay the fines and costs as ordered until he had completed all of the community-service hours and submitted documentation to the court regarding the conversion, and Reynolds failed to follow through on that process. Accordingly, we affirm the revocation of Reynolds's suspended sentence.

Affirmed.

PITTMAN and ABRAMSON, JJ., agree.

Potts Law Office, by: *Gary W. Potts*, for appellant.

Dustin McDaniel, Att'y Gen., by: *Nicana C. Sherman*, Ass't Att'y Gen., for appellee.