

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR08-1384

DEMETRIUS FLOWERS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered MAY 6, 2009

APPEAL FROM THE CRAIGHEAD
COUNTY CIRCUIT COURT
[NO. CR 2003-199]

HONORABLE CINDY THYER,
JUDGE

AFFIRMED

RITA W. GRUBER, Judge

On March 31, 2003, the Circuit Court of Craighead County convicted Demetrius Flowers upon his guilty plea of failure to stop after accident with injury. Flowers was sentenced to eighteen months' imprisonment in the Arkansas Department of Correction, to be followed by fifty-four months' suspended imposition of sentence. In an amended petition to revoke filed on October 11, 2007, the State alleged that Flowers had violated terms and conditions of his suspended sentence by failing to lead a law-abiding life and by possessing illegal drugs. The State further alleged that Flowers had possessed cocaine, had twice possessed drug paraphernalia with intent to use, and had tampered with physical evidence.

At the conclusion of a hearing on August 18, 2008, the circuit court granted the revocation petition and sentenced Flowers to thirty-six months' imprisonment. Flowers appeals the resultant judgment and commitment order of August 19, 2008. He contends that

the court erred by denying him his constitutional rights 1) to cross-examine a witness and 2) to testify in his own defense. For the reasons explained in this opinion, we affirm.

Officer Chris Perry of the Jonesboro Police Department testified that he transported Flowers to the county jail on April 4, 2007, after finding two cocaine pipes in his shirt pocket in a search incident to arrest. Perry testified that he left Flowers at the jail but was called back by jailer Denisa Jackson, who gave Perry a pill box containing a substance that later proved to be a small quantity of cocaine. Perry testified that Flowers blurted out that it was “his medicine.”

Perry testified on cross-examination that Flowers had “so much stuff with him” and that “the blue box may have been on him.” Perry testified that he did not know which pocket the box came from and did not know if Jackson, who was present to testify, was holding it or had received it. At this point in Perry’s testimony, defense counsel stated to the court that Flowers himself wanted “to ask the questions directly.” The court explained that Flowers had an attorney to represent him and should let his attorney ask any certain questions he wanted to pose. The court stated, “Mr. Flowers, you can tell your attorney what the questions are and he will ask them for you.”

Perry then testified that he had tried to go through all of Flowers’s effects when arresting him and had used a paper sack to hold all the things from his pocket. Perry remembered looking for drugs in a blue box that appeared to have medicine in it. He stated that he did not see any drugs but did not go through everything in the box. He said that the police chief, although first to arrive on the scene, “only observed.”

Officer Denisa Jackson testified that she booked Flowers into the detention center. She stated that she found a packet of sample medication in a blue plastic box that was among Flowers's personal possessions and, at the bottom of the container, found a white rock substance that appeared to be crack cocaine. She reiterated Detective Perry's testimony that Perry returned to the facility, that Perry's field test identified the substance as cocaine, and that Flowers had "a lot" of items on his person. She said that Flowers was wearing a coat and was handcuffed when she first came into contact with him, that she believed the container came from his coat pocket, and that the rock-like substance was "just loose" in the container.

Officer Jon Redman testified that the evidence turned over to him by Officer Perry contained a small amount of cocaine. Rick Davis testified that later in 2007 he seized a crack pipe from Flowers.

Flowers testified as the sole witness in the case for the defense. His testimony included such subjects as not knowing why Rick Davis did not like him and the fact that he had filed charges against the Jonesboro police for conspiracy to murder him (Flowers). He stated that there had been nothing in his blue pill box when it was checked "at the scene," that he did not know why he had been carrying the glass tubes that Officer Perry took from his pocket, and that he used the tubes "to smoke." The following colloquy occurred on re-direct examination:

Flowers: There is something I would like to tell the Judge. Praise Allah.
 Praise to God Allah. . . .

Court: I apologize for interrupting but this has gone on long enough.
 If you have any specific questions I will let you ask those but as
 far as his narrative, I am going to cut it off.

Cross-Examination

Flowers argues on appeal that the trial court denied him his Sixth Amendment right to confront a witness by restricting his cross-examination of Officer Perry. Flowers argues that this point is preserved for appeal because his objection at trial, while not direct, can be derived from the context of his indirect objection to the court's rejection of his request to cross-examine. We do not agree.

Flowers's first point on appeal is not preserved because at trial he made no mention of his constitutional right under the Confrontation Clause. The appellate court will not address an argument, even a constitutional one, that is raised for the first time on appeal. *Roston v. State*, 362 Ark. 408, 208 S.W.3d 759 (2005). Furthermore, we would reject Flowers's argument because he did indeed confront Perry, through further cross-examination by his attorney after the denial of his request to directly ask the questions. Although the Confrontation Clause guarantees an opportunity for effective cross-examination, it does not guarantee "cross-examination that is effective in whatever way . . . the defense might wish." *Bowden v. State*, 301 Ark. 303, 309, 783 S.W.2d 842, 844 (1990).

Right to Testify in One's Own Defense

Flowers also argues that the trial court violated his constitutional rights when it refused to let him testify. Fundamental to a personal defense is an accused's right to present his own version of events in his own words; a defendant's opportunity to conduct his own defense by calling witnesses is incomplete if he may not present himself as a witness. *Rock v. Arkansas*, 483 U.S. 44 (1987). A defendant in a criminal case has the right to testify in his own behalf

under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution. *Henson v. State*, 94 Ark. App. 163, 227 S.W.3d 450 (2006) (citing *Rock*, 483 U.S. 44). The right to present relevant testimony is not without limitation and may in appropriate cases bow to other legislative interests in the criminal trial process, but restrictions on the defendant's right to testify may not be arbitrary or disproportionate to the purposes they are designed to serve. *Henson, supra*. The standard of review when a court denies a defendant the opportunity to testify is abuse of discretion. *Id.*

Flowers points to his fundamental right to testify and asserts that he was prejudiced by not being allowed to conclude his "narrative form of testimony." Because he did not object below to the court's interrupting his testimony, he has failed to preserve this point on appeal. We also note that it is the trial court's duty to see that the trial proceeds efficiently and effectively and in keeping with the ends of justice; the court is therefore free to confine counsel to the actual issues in the case and to shut off long-winded and irrelevant testimony, statements, or questioning. *Kitchen v. State*, 271 Ark. 1, 607 S.W.2d 345 (1980).

Affirmed.

PITTMAN and ROBBINS, JJ., agree.