NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR08-853

LAWRENCE ANDERSON, III, APPELLANT V. STATE OF ARKANSAS, APPELLEE	**Opinion Delivered** APRIL 15, 2009 APPEAL FROM THE CRAIGHEAD COUNTY CIRCUIT COURT, [NO. CR-2007-707] HONORABLE VICTOR LAMONT HILL, JUDGE, AFFIRMED

KAREN R. BAKER, Judge

Appellant, Lawrence Anderson, III, challenges the revocation of his suspended imposition of sentence asserting two points of error: (1) The trial court erred when it denied the motion for a directed verdict, specifically in that the State had failed to preserve the audio/video tapes that may have been exculpatory in proving that the auto incident, which precipitated the new charges, may not have been due to any criminal activity by appellant; (2) The trial court erred when it overruled defendant's objection to the statements of the passengers as being hearsay when it actually violated the appellant's right to confrontation. We find no error and affirm.

On December 7, 2007, appellant was served with a petition to revoke his suspended imposition of sentence. The petition alleged that appellant had failed to lead a law-abiding life as a result of being charged with endangering the welfare of minors, resisting arrest, DWI, and being a felon in possession of a firearm. The events leading to the imposition of those charges began with appellant traveling by car to pick his children up from their grandmother's house. Appellant was

returning home with the children in the vehicle when Officer Jo Carol Carter observed appellant hitting a parked car with the vehicle he was driving. Officers pursued appellant with blue lights activated, and appellant had ample opportunity to stop. Officers testified that when appellant finally stopped the car, appellant resisted arrest by moving towards the back of the car. In contrast appellant testified he immediately stopped the car as soon as he saw that he was being pursued.

After the stop was initiated, the officers then realized that there were three children in the back seat of the car. The officers observed one child holding a pill bottle and dropping a gun which prompted the officers' immediately securing the items. Appellant argued that the gun must have been left by one of his friends who had been riding with him that day and that he had no knowledge of how the pills came to be in the car. The children, when asked at the site of the stop, stated that appellant had handed the items to them to hold when he realized that he was being stopped by law enforcement. The statements were allowed in over the hearsay objection of appellant. At trial, one child recanted the majority of the statements and testified that his brother had taken the bottle of pills from his grandmother's house and the gun was found in the floorboard.

The trial court found by a preponderance of the evidence that appellant was in possession of a firearm, was driving while intoxicated, and had endangered the lives of his three children. The court further found that for the purposes of revocation, appellant had not resisted arrest. Based upon these findings, appellant's suspended sentence was revoked and he was sentenced to 48 months' imprisonment.

Appellant argues that the trial court erred in failing to dismiss the case on his motion for a directed verdict as the State had failed to preserve the audio/video tapes of the arrest on the new charges. Appellant asserts that the tapes may have proven exculpatory. The State responds that it

is only required to preserve evidence that is expected to play a significant role in appellant's defense, and then only if the evidence possesses both (1) an exculpatory value that is apparent before it was destroyed; and (2) a nature such that an accused would be unable to obtain comparable evidence by any other reasonably available means. *Autry v. State*, 90 Ark. App. 131, 142, 204 S.W.3d 84, 89-90 (2005). If the police fail to preserve essential evidence, a defendant is entitled to a negative inference only if there is evidence of bad faith in the destruction or loss of the evidence. *Id*.

Appellant argued at the revocation hearing that had the video been shown to the court, the outcome would have been different in that it would have shown that appellant was seeking the cause of the traffic incident, in which he hit a parked car; that the children did not make statements to the officers regarding their father handing them the gun and pill bottle; and that appellant was not trying to disobey the officers when they tased him.

Even if the videotapes would have shown that appellant cooperated with the officers, the trial court did not revoke the suspended sentence based on a resisting-arrest charge. Accordingly, preservation of the video would have been irrelevant for that purpose.

Similarly, the tapes would have been irrelevant in refuting the evidence to the charge of driving while intoxicated. A video of the arrest could not have refuted testimony that appellant hit a parked car drawing the officers' attention to appellant's driving on the street, that he smelled of intoxicants, and that he had blood-shot eyes. Neither does appellant dispute that he refused blood-alcohol tests, which the court found demonstrated "a consciousness of guilt."

As to the endangerment charges, appellant never disputed that his three children were with him or that a loaded gun was found in possession of one child. Regardless of whether he provided the loaded gun to the children, he was nevertheless driving while intoxicated with a loaded gun

accessible to his three minor children, one of whom gained possession of the gun. Appellant owned the car where the gun was located in plain sight, accessible to him and the three children, and within his care and control. Accordingly, appellant demonstrates no evidence or argument that the tapes could logically provide an exculpatory explanation. We affirm on this point.

Appellant's second point fails as well. Appellant contends that the trial court committed reversible error by allowing a police officer to recount statements made by appellant's son shortly after appellant's arrest regarding his father's entrustment of the gun and pill bottle. As discussed above, the allegation is not necessary to support the endangerment charge. Even if it were, when a declarant testifies at trial and is subject to unbridled cross-examination, the Confrontation Clause is not violated by the admission of additional hearsay statements made by the declarant. *Watson v. State*, 308 Ark. 444, 825 S.W.2d 569 (1992). Furthermore, the rules of evidence with respect to the admission of hearsay are not strictly applied in revocation hearings. *Jones v. State*, 31 Ark. App. 23, 786 S.W.2d 851 (1990).

Affirmed.

ROBBINS and KINARD, JJ., agree.