

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR 09-752

BOBBY L. FREEMAN

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered JANUARY 6, 2010

APPEAL FROM THE MISSISSIPPI
COUNTY CIRCUIT COURT,
CHICKASAWBA DISTRICT
[NO. CR-04-277]

HONORABLE RALPH WILSON, JR.,
JUDGE

AFFIRMED

M. MICHAEL KINARD, Judge

Appellant, Bobby L. Freeman, appeals from the circuit court's ruling that he violated the terms of his probation. We affirm.

Appellant was convicted of second-degree sexual assault in 2005. As a result of his conviction, appellant was placed on probation for a period of sixty months. In the judgment and commitment order, appellant was ordered to register as a sex offender. Among the conditions of his probation, appellant was forbidden to commit any offenses for which he could be imprisoned and to use controlled substances without a prescription. On February 16, 2009, appellant was charged with the offenses of burglary and theft of property. On February 27, 2009, the State filed a petition to revoke appellant's probation. In the petition, the State sought to revoke based on appellant's new criminal charges. In addition,

the State alleged that appellant admitted to using marijuana on November 14, 2008, failed to pay supervision fees and court costs, and failed to register as a sex offender.

At the revocation hearing, Detective Chris Lassley with the Blytheville Police Department testified that fingerprints were lifted off of a lamp taken from a home. Detective Lassley submitted the fingerprint cards to the Arkansas State Police Crime Laboratory and received a return from the crime lab. Detective Lassley testified that he did not personally take the fingerprint cards to the crime lab.¹ After receiving the return, Detective Lassley prepared an affidavit, and appellant was arrested on February 16, 2008. Fred Wright, appellant's probation officer, testified that appellant admitted to him that he had used marijuana on November 14, 2008, and that appellant signed a confession. Wright did not give appellant a drug test after his admission. Wright also testified that appellant had failed to register as a sex offender.

The State called Jamie Hartwick, a latent-print examiner with the crime lab, to testify. Appellant objected to Hartwick's testimony on the basis that the State had failed to demonstrate the proper chain of custody over the fingerprint evidence submitted to the crime lab. The trial court overruled the objection. Hartwick testified regarding the fingerprint analysis she had performed and the court admitted her report into evidence. Appellant testified that he registered as a sex offender whenever he received the form in the mail, but that he had not been receiving the form lately. He also stated that he failed to register because

¹The State did not call the individual or individuals who transported the cards to the crime lab to testify.

the form was being sent to his mother's post-office box. Appellant testified that he had been going to the police department to register, but that the building was locked every time he went there. Appellant testified that he saw the lamp in front of his brother's residence and touched it, but he denied committing a burglary.

Following the revocation hearing, the circuit court found that appellant had violated the terms of his probation by committing a burglary, failing to register as a sex offender, and using a controlled substance. The circuit court sentenced appellant to ten years' imprisonment followed by an additional ten years' suspended imposition of sentence. Appellant filed a timely notice of appeal to this court.

In a revocation proceeding, the State has the burden to prove a violation of a condition of probation or suspended imposition of sentence by a preponderance of the evidence. *Bradley v. State*, 347 Ark. 518, 65 S.W.3d 874 (2002). The findings of the trial court are upheld unless they are clearly against the preponderance of the evidence. *Id.* Because the burdens are different, evidence that would be insufficient for a criminal conviction may be sufficient for a revocation. *Id.* We defer to the trial court regarding questions of credibility. *Id.*

Appellant's first argument is that the trial court erred in admitting into evidence the testimony of Jamie Hartwick and her report. Appellant argues that because the State failed to call the individual or individuals who transported the fingerprint cards to the crime lab to testify, his rights under the Confrontation Clause of the Sixth Amendment to the Constitution of the United States were violated. Although appellant phrases his argument in an attempt

to invoke the Confrontation Clause, our review of his argument reveals that he is actually challenging the chain of custody of the fingerprint evidence.

We do not reverse a circuit court's ruling on the admissibility of evidence under the chain-of-custody rule absent a showing that the court clearly abused its discretion. *Kincannon v. State*, 85 Ark. App. 297, 151 S.W.3d 8 (2004). Detective Lassley testified that he had the fingerprint evidence sent to the crime lab and that he received a return from the crime lab indicating that the evidence had been received. Hartwick testified that she checked the evidence out of the crime lab's evidence section and performed the fingerprint analysis. There was no evidence presented of any irregularities in the handling of the evidence; appellant's only argument is that the person or persons who delivered the evidence to the crime lab was not called to testify. It is not necessary that every moment from the time the evidence comes into the possession of a law-enforcement agency until it is introduced at trial be accounted for by every person who could have conceivably come in contact with the evidence during that period. *Guydon v. State*, 344 Ark. 251, 255, 39 S.W.3d 767, 770 (2001). It is only necessary that the trial judge, in his discretion, be satisfied that the evidence presented is genuine and, in reasonable probability, has not been tampered with. *Id.* In addition, the Rules of Evidence do not apply to revocation proceedings. Ark. R. Evid. 1103(b)(3) (2009). We see no clear abuse of discretion by the circuit court in its decision to admit the fingerprint evidence.

Appellant's second argument is that the trial court erred in revoking his probation on the basis that he admitted using marijuana because there was no evidence to corroborate his

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confession. Arkansas Code Annotated section 16-89-111(d) (Repl. 2005) states that a confession of a defendant, unless made in open court, will not warrant a conviction unless accompanied with other proof that the offense was committed. However, our supreme court has ruled that an uncorroborated confession can be sufficient for a revocation. *Selph v. State*, 264 Ark. 197, 570 S.W.2d 256 (1978). Appellant's argument on this point is without merit.

Appellant's final argument is that the trial court erred in revoking his probation based on his failure to register as a sex offender because there was no evidence that his failure to register was willful. In the judgment and commitment order filed on June 30, 2005, following appellant's conviction on a charge of second-degree sexual assault, the trial court in that case ordered appellant to register as a sex offender. Failure to register as a sex offender is a Class C felony. Ark. Code Ann. § 12-12-904(a)(1)(A)(i) (Supp. 2009). Appellant's terms of probation stated that it was a violation of his probation for him to commit an offense punishable by imprisonment. A Class C felony is punishable by imprisonment of not less than three years but not more than ten years. Ark. Code Ann. § 5-4-401(4) (Repl. 2006). Although appellant argues that there was no evidence that his failure to register was willful, our supreme court has held that failure to register as a sex offender is a strict-liability offense, meaning proof of a particular culpable mental state is not required. *Adkins v. State*, 371 Ark. 159, 264 S.W.3d 523 (2007). The circuit court did not err in revoking appellant's probation on the basis that he failed to register as a sex offender.

Affirmed.

ROBBINS and GRUBER, JJ., agree.

Charles E. Ellis, Deputy Public Defender, for appellant.

Dustin McDaniel, Att'y Gen., by: *Brad Newman*, Ass't Att'y Gen., for appellee.