

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR09-1390

SAMUEL C. GLASS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 2, 2010

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
[NO. CR-06-785]

HONORABLE J. MICHAEL
FITZHUGH, JUDGE

REVERSED AND REMANDED

WAYMOND M. BROWN, Judge

Appellant Samuel Glass appeals the revocation of his suspended sentence. He argues on appeal that the trial court violated the Confrontation Clause by allowing a police officer's testimony that an informant told him that Glass delivered methamphetamine. The informant did not testify. The State concedes error; because we agree, we reverse and remand.

Glass pled guilty to possession of marijuana and possession of drug paraphernalia in 2007. He received an aggregate of five years' suspended sentence. The State filed a petition to revoke Glass's suspended sentence on July 15, 2009, alleging that Glass violated the terms of the suspension by delivering methamphetamine.

A hearing on the State's petition took place on September 16, 2009. Detective Ray Whitson of the Fort Smith Police Department, Narcotics Unit, testified that Glass delivered methamphetamine to a confidential informant on April 21, 2009. Glass continually objected

to Detective Whitson's testimony on confrontation grounds; however, the trial court overruled the objections. The trial court revoked Glass's suspended sentence and sentenced him to five years' imprisonment with an additional five years suspended. Glass filed a timely notice of appeal.

Glass argues that once he invoked his right to confront and cross-examine the confidential informant, who was not present, the court was required to make a "good cause" determination. Instead, the court overruled Glass's objection and made no effort to determine why the informant was not available to testify. Additionally, the State offered no explanation as to why the informant was unavailable.

It is well settled that the Arkansas Rules of Evidence, including the rules regarding hearsay, do not apply in revocation hearings.¹ However, a defendant retains the right to confront witnesses, even in a revocation proceeding.² Once a defendant invokes his confrontation rights, the trial court is required to enforce those rights absent a specific finding of good cause.³ The trial court must balance the probationer's right to confront the witness against the grounds asserted by the State for not requiring confrontation.⁴ The trial court must first assess the explanation offered by the State for why confrontation is undesirable or

¹*Jones v. State*, 31 Ark. App. 23, 786 S.W.2d 851 (1990).

²*Id.*

³*Graham v. State*, 2010 Ark. 162, at 1.

⁴*Goforth v. State*, 27 Ark. App. 150, 767 S.W.2d 537 (1989).

impracticable.⁵ The trial court should also consider the reliability of the evidence which the government offers in place of live testimony.⁶

Here, the trial court erred by allowing in Detective Whitson's testimony over Glass's objections, without making a specific finding of good cause. Since this testimony was the only thing linking Glass to the crime of delivering methamphetamine, it was not harmless error. Therefore, we reverse and remand this case for further proceedings consistent with this opinion.

Reversed and remanded.

KINARD and BAKER, JJ., agree.

⁵*Id.*

⁶*Id.*