Cite as 2024 Ark. App. 84

ARKANSAS COURT OF APPEALS

DIVISION III
No. CR-23-352

ANTHONY CARTER APPELLANT V. STATE OF ARKANSAS APPELLEE	Opinion Delivered February 7, 2024 APPEAL FROM THE GARLAND COUNTY CIRCUIT COURT [NO. 26CR-18-746] HONORABLE RALPH C. OHM, JUDGE AFFIRMED

CINDY GRACE THYER, Judge

Anthony Carter appeals a Garland County Circuit Court's order revoking his suspended imposition of sentence and sentencing him to five years' imprisonment. On appeal, he claims that there was insufficient evidence that he willfully violated the terms and conditions of his probation and that the court erred in admitting certain evidence in violation of his confrontation rights. We affirm.

On January 14, 2019, Carter pled guilty to one count of failing to register as a sex offender and received a five-year suspended imposition of sentence. As part of his suspended sentence, Carter agreed to not commit a criminal offense punishable by imprisonment and to pay his costs, fines, and fees.

In February 2022, the Hot Springs Police Department investigated a shooting incident in which Carter was implicated. His work truck—one that only he drove—was seen

on surveillance cameras approaching the victim's house just prior to the shooting and leaving shortly thereafter. The GPS tracking on his truck placed it within blocks of the victim's home at the time of the incident and near the hospital in Little Rock where the alleged shooter was taken. A substance, which appeared to be blood, was found in the passenger seat of his truck.

Carter was subsequently questioned about his involvement, but he denied any knowledge of the shooting incident. He did, however, provide a residential address different than the one listed on his sex-offender-registration forms. Based on the foregoing evidence, Carter was arrested on charges of aggravated residential burglary, first-degree battery, and failure to comply with the sex-offender-registration and reporting requirements.

On September 2, 2022, the State filed a motion to revoke Carter's suspended sentence, alleging that Carter had been arrested on the aforementioned charges and that he had failed to make payments on his court costs and fines as ordered by the court.

A revocation hearing was held on February 13, 2023. At the hearing, Hot Springs Police Officer Cash Murray and Detective Mark Fallis testified regarding their investigation into the shooting incident and how Carter was ultimately implicated in it. Holly Parsons, a bookkeeper with the Garland County Sheriff's Office testified that Carter was in arrears on his fines, costs, and fees.

After hearing the evidence presented above and after reviewing video of Carter's statements to the police, the circuit court revoked Carter's suspended sentence, finding he had had violated the terms of his suspended sentence by failing to comply with the sex-

offender-registration requirements and by his involvement in criminal activity resulting in aggravated-residential-burglary and first-degree-battery charges.[1] As a result, the court sentenced him to five years' imprisonment in the Arkansas Department of Correction. Carter now appeals, arguing the insufficiency of the evidence to support the revocation and the admission of evidence in violation of his constitutional right to confront the witnesses against him. Each are discussed in turn.

I. *Sufficiency of the Evidence*

Carter first argues that there was insufficient evidence to support the revocation of his suspended sentence. To revoke a suspended sentence, the State must prove that the defendant violated a condition of the suspended sentence. *Mathis v. State*, 2021 Ark. App. 49, 616 S.W.3d 274. The State does not have to prove every allegation in its petition, and proof of only one violation is sufficient to sustain a revocation. *Id.* The State bears the burden of proving a violation by a preponderance of the evidence, but evidence that is insufficient for a criminal conviction may be sufficient for revocation of a suspended sentence. *Lawrence v. State*, 2020 Ark. App. 285, 600 S.W.3d 670.

On appeal, we will affirm a circuit court's revocation of a suspended sentence unless the decision is clearly against the preponderance of the evidence. *Id.* Furthermore, because the determination of a preponderance of the evidence turns on questions of credibility and weight to be given to the testimony, we defer to the circuit court's superior position. *Id.*

[1]The circuit court granted Carter's motion to dismiss with respect to the failure-to-pay allegations.

Here, there was sufficient evidence to revoke Carter's suspended sentence due to his involvement in the shooting. At the hearing the court was presented with the following evidence:

In the early-morning hours of February 14, 2022, someone knocked on Anthony Gillespie's door and shot him twice in his leg and once in his left arm. When the officers arrived on the scene, they found Gillespie "bleeding profusely" and in and out of consciousness. The officers observed shell casings on the floor of the residence near Gillespie. Although Gillespie did not identify the shooter, he told the officers that he had returned fire and believed that he had injured the shooter.

Soon thereafter, investigators obtained a surveillance video from a business near Gillespie's residence. The video showed a white work truck with a box utility bed on the back driving toward the residence just prior to the shooting and then leaving the area of the residence immediately after the shooting.

During the course of the investigation, the detectives reached out to area law enforcement agencies asking to be notified if they received reports of anyone showing up to a hospital with gunshot wounds on the night of the shooting. Little Rock police thereafter advised the Hot Springs police that a gunshot victim had been treated at CHI St. Vincent Infirmary the morning of the shooting and that the victim had provided them with a business card belonging to Purcell Tire in Hot Springs. The gunshot victim was later identified as Tyrong Godbold, who was subsequently arrested and charged with shooting Gillespie.

Officers contacted Purcell Tire and discovered a work truck matching the vehicle the officers had seen on surveillance video driving toward Gillespie's home just prior to the accident and then driving away from the home shortly thereafter. That work truck was assigned to Carter. GPS evidence confirmed that Carter's work truck left the Seventh Street address where Carter was house sitting and drove within a block or two of Gillespie's residence prior to the shooting and that it left shortly thereafter. It then headed to Little Rock, where GPS placed it near CHI St. Vincent Infirmary on University Avenue. A subsequent search of Carter's work truck revealed what appeared to be blood stains in the passenger seat.

When questioned by the police, Carter admitted he was the only person who drove his truck but denied any knowledge or involvement in the shooting. Carter claimed that a friend lived in the area where the shooting occurred, that he was with a prostitute that evening, and that he dropped the prostitute off somewhere on University Avenue that morning. He denied anyone else was with him in the vehicle that evening.

Given this evidence, we cannot say that the circuit court's decision is clearly against the preponderance of the evidence. The court clearly found Carter's explanation for his whereabouts that evening not credible given the mountain of evidence connecting him to the location of the shooting and the accused shooter. It is important to note that in a revocation, the evidence presented need not rise to the level of that required for a criminal conviction; it need only support a conclusion that, more likely than not, Carter engaged in

a criminal offense punishable by imprisonment. Given the evidence presented, there was sufficient evidence from which the court could have concluded that he had done so.

II. *Confrontation Clause*

Carter next argues that the circuit court improperly allowed the admission of evidence over his Confrontation Clause objections. More specifically, he claims that the circuit court erred (1) in allowing Officer Murray to testify that Gillespie told him that "someone had knocked on his door and started shooting," (2) in allowing Detective Fallis to testify regarding the work truck's GPS data, and (3) in allowing Detective Fallis to testify to the address where Carter was registered to live as a sex offender.

Before we reach the merits of Carter's arguments, we must first determine whether the Confrontation Clause applies. Generally, a defendant in a revocation hearing is not entitled to the full panoply of rights that attend a criminal prosecution, but he or she is entitled to due process. *Goforth v. State*, 27 Ark. App. 150, 767 S.W.2d 537 (1989). As we recognized in *Goforth*, the United States Supreme Court has held that a defendant is entitled to the right to confront and cross-examine adverse witnesses unless good cause is shown for not allowing confrontation. *Id.* at 152, 767 S.W.2d at 538 (citing *Gagnon v. Scarpelli*, 411 U.S. 778 (1973)). This holding is codified at Arkansas Code Annotated section 16-93-307(c)(1) (Repl. 2016).

The Confrontation Clause of the Sixth Amendment states: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." The Fourteenth Amendment renders the Clause binding on the States. *Pointer v. Texas*,

380 U.S. 400 (1965). However, the Confrontation Clause's reach is limited to testimonial statements. *Crawford v. Washington*, 541 U.S. 36 (2004).

First, we must analyze whether Gillespie's statements to Officer Murray were testimonial in nature. Statements are nontestimonial when made in the course of a police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. *Davis v. Washington*, 547 U.S. 813 (2006). They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution. *Id.*

To determine whether the "primary purpose" of an interrogation is "to enable police assistance to meet an ongoing emergency," which would render the resulting statements nontestimonial, we objectively evaluate the circumstances in which the encounter occurs and the statements and actions of the parties. *Michigan v. Bryant*, 562 U.S. 344 (2011) (quoting *Davis*, *supra*).

In *Bryant*, *supra*, the United States Supreme Court held that a gunshot victim's identification and description of his shooter and the location of the shooting were not testimonial statements because they had a "primary purpose . . . to enable police assistance to meet an ongoing emergency." *Id.* at 378. Therefore, their admission at Bryant's trial did not violate the Confrontation Clause.

Our case is similar to that in *Bryant*. Here, Officer Murray was dispatched to a scene of a shooting where he found Gillespie bleeding and suffering from multiple gunshot wounds. As Officer Murray was rendering aid, he asked him what happened. Gillespie told him that someone had knocked on his door and started shooting and that he believed he shot his attacker. Officer Murray testified that his intent at the time was both investigatory and for purposes of rendering aid.

Analyzing the situation objectively, Officer Murray was aware that Gillespie had been shot, and the identity of his shooter was unknown as was the shooter's current location. As in *Bryant*, Gillespie's statement was necessary to meet and respond to an ongoing emergency. Thus, we find Gillespie's statements were not testimonial, and therefore, the Confrontation Clause does not apply to Officer Murray's testimony in this regard.

Next, we analyze Carter's complaints regarding the admission of the GPS data from his work truck. Our review of the record reveals Carter did not make a Confrontation Clause argument with respect to the GPS data below; instead, he argued that Detective Fallis's testimony regarding the GPS data was not the best evidence. Our court will not address arguments made for the first time on appeal; a party is bound by the scope and nature of the arguments made at trial. *Compton v. State*, 2023 Ark. App. 587, ___ S.W.3d ___; *Lewis v. State*, 2017 Ark. App. 442, 528 S.W.3d 312. Thus, his argument is not preserved for appeal.

In any event, the GPS data is not considered a testimonial statement; thus, its admission does not violate the Confrontation Clause. The Confrontation Clause applies to "witnesses" who provide testimony against the accused, with testimony typically being "[a]

solemn declaration or affirmation made for the purpose of establishing or proving some fact." *Crawford*, 541 U.S. at 51. In *Crawford*, the Supreme Court held that a "core class" of "testimonial" statements exists that include

> ex parte in-court testimony or its functional equivalent—that is, material such as affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine, or similar pretrial statements that declarants would reasonably expect to be used prosecutorially; extrajudicial statements . . . contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions; statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.

Crawford, 541 U.S. at 51–52.

GPS data simply does not fit into this category of evidence. In *Howard v. State*, 2016 Ark. App. 69, 482 S.W.3d 741, this court held that a pawn ticket and a store receipt were not statements but, instead, were the product of information gathered by an investigating officer who was available for cross-examination; hence, there was no violation of the right to confront witnesses. The same rationale holds true in this case. The GPS data introduced here is not the equivalent of a sworn affidavit that falls into the category of "testimonial statements" as described in *Crawford*. In fact, it is not a statement at all, sworn or otherwise. Instead, it was the product of information gathered by Detective Fallis, who was available to be cross-examined. Because this evidence was not testimonial in nature, there was no Confrontation Clause violation.

However, even if the Confrontation Clause did apply to the GPS data, its admission was harmless. The police already had surveillance video placing Carter's work truck near

Gillespie's apartment at the time of the shooting, and Carter admitted to being in Little Rock on University Avenue at the time the alleged shooter was dropped off at the hospital there. Thus, the GPS data was merely cumulative to other evidence admitted without objection.

Finally, we address Carter's objection to Detective Fallis's testimony regarding Carter's registered address for purposes of the sex-offender registry. Again, Carter did not specifically make a Confrontation Clause argument with respect to this testimony. Instead, he made a generic "hearsay" objection. Again, a party is bound by the scope and nature of the arguments made at trial, and our court will not address arguments made for the first time on appeal. *Compton*, *supra.* However, even if Carter had properly raised a Confrontation Clause objection, the admission of such evidence was harmless, since the revocation can be affirmed without finding that Carter violated the sex-offender-registration requirements.

Affirmed.

GRUBER and BROWN, JJ., agree.

Lassiter & Cassinelli, by: *Michael Kiel Kaiser*, for appellant.

Tim Griffin, Att'y Gen., by: *Jacob H. Jones*, Ass't Att'y Gen., for appellee.