IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs March 21, 2023

STATE OF TENNESSEE v. MICHAEL WOJNAREK

Appeal from the Circuit Court for Montgomery County
Nos. 63CC1-2019-CR-634, 63CC1-2020-CR-453 Robert Bateman, Judge

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No. M2022-00326-CCA-R3-CD

The Defendant, Michael Wojnarek, appeals the revocation of his probation and reinstatement of his original sentence in confinement, arguing that the trial court erred by considering evidence found in violation of the Fourth Amendment and by failing to make adequate findings in support of its decision. Based on our review, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

JOHN W. CAMPBELL, SR., J., delivered the opinion of the court, in which TIMOTHY L. EASTER and TOM GREENHOLTZ, JJ., joined.

Kendall Stivers Jones, Franklin, Tennessee (on appeal), and Shelby S. Silvey, Clarksville, Tennessee (at hearing), for the appellant, Michael Leon Wojnarek.

Jonathan Skrmetti, Attorney General and Reporter; Courtney N. Orr, Senior Assistant Attorney General; Robert Nash, District Attorney General; and Chris W. Dotson, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS

On January 4, 2021, a probation violation report was filed in the Montgomery County Circuit Court alleging that the Defendant had violated several of the conditions of his probation in case numbers CC2019-CR-634 and CC2020-CR-453 by his December 4, 2020 arrest for being a convicted felon in possession of a firearm, possession of a firearm

during the commission of a dangerous felony, possession of drug paraphernalia, and possession of methamphetamine.

The record reflects that the Defendant pled guilty in February 2020 in case number CC2019-CR-634 to a felony drug conviction and was sentenced on August 21, 2020, to eight years. That same day, August 21, 2020, the Defendant pled guilty to felony escape and criminal impersonation in case number CC2020-CR-453, with the two-year effective sentence for those convictions to be served consecutively to the eight-year sentence for case number CC2019-CR-634 and the sentences in both cases suspended to supervised probation.

The "History of Supervision" portion of the probation violation report states that the Defendant had received a three-year probationary sentence, since expired, in an earlier case, CC2018-CR-481, and violated his probation in that case by leaving the probation office without a mandatory drug screen and by not reporting to the probation officer since "his intake on 8/23/18." The "History of Supervision" further states that the Defendant "struggles to stay clean and out of trouble" and that the Defendant "moves around from one residence to another" and "does not keep a steady job."

A probation violation warrant was issued, and a revocation hearing was held on July 29, 2021. At the July 29, 2021 hearing, Billy Joe Hale, a bail bondsman with 911 Bail Bonding, testified that he was searching for 911 Bail Bonding client Christina Miller, who had outstanding warrants, when he received a tip from a confidential informant that she was living with the Defendant at the WoodSpring Motel. He stated that he and his partner spoke with an employee of guest services at the motel, who confirmed that both Ms. Miller and the Defendant were staying at the motel and provided their room number. He said the employee accompanied them to the room, knocked on the door, and announced herself. When the Defendant answered the door, the motel employee stepped aside, and Mr. Hale and his partner entered the room.

Mr. Hale testified that he immediately saw what appeared to be a "crack pipe" on the coffee table. During their subsequent search of the room, he and his partner found women's clothing in a corner of the room, a white powdery substance and a set of digital scales on a table, a gun and a metal box that contained a large bag of marijuana and a large amount of what appeared to be either methamphetamine or crack cocaine underneath a mattress, a second gun in one of the dresser drawers, and a ledger. He testified that they typically searched for "any evidence with names" such as "debit cards or receipts" to prove "that [they were] dealing with the right people in the right place." He stated that the Defendant eventually divulged that Ms. Miller had gone to the emergency room.

Mr. Hale testified that his purpose in going to the motel was to locate Ms. Miller to return her to custody. He said he did not work for any state or government organization. He stated that he called the Montgomery County Sheriff's Department and his partner called Detective Ayrest of the Clarksville Police Department due to the quantity of drugs and the weapons they found in the room. He identified a photograph of the items found in the room, which was admitted as an exhibit to the hearing.

On cross-examination, Mr. Hale testified that the room was registered in the Defendant's name. He had no idea if the Defendant had ever contracted with 911 Bail Bonding and acknowledged that he never saw Ms. Miller enter or leave the room. He testified, however, that the Defendant confirmed to them that Ms. Miller lived there. He said they explained why they were there and asked if they "could come in to search." He stated that the Defendant gave them permission, but he added that the consent was unnecessary due to Ms. Miller's contractual relationship with 911 Bail Bonding. He testified that the Defendant admitted the items were his and told them that he was a convicted felon. Mr. Hale stated that he and his partner placed the items on a table in the room before the arrival of law enforcement. He acknowledged that he opened the door for law enforcement and agreed that the items were all visible from the doorway at that time.

At the conclusion of the July 29, 2021 hearing, the trial court found by a preponderance of the evidence that the Defendant had violated his probation by his new charges. However, at the request of defense counsel, the trial court withheld disposition pending resolution of those charges. On February 9, 2022, a second hearing was held before a different trial court on the Defendant's motion to suppress the evidence, which had apparently been filed in December 2021,[1] and for a disposition of the probation violation. At the time of that later hearing, the charges stemming from the December 4 arrest were still pending, but defense counsel expressed her belief that she and the prosecutor would be able to work out a settlement "depending on what the ruling of Court is on the violation of probation[.]"

At the beginning of the February 9, 2022 hearing, the trial court indicated familiarity with the record and stated that it had read the transcript of the July 29, 2021 hearing. After summarizing the evidence presented at that earlier hearing, the trial court denied the Defendant's motion to suppress, finding that the Defendant had consented as a condition of his probation to a "warrantless search of his person, vehicle, property or place of residence by any Probation/Parole officer or law enforcement officer at any time." The trial court relied on *United States v. Poe*, 556 F.3d 1113 (10th Cir. 2009), in rejecting the

[1] The motion to suppress is not included in the record on appeal, and a separate hearing on the motion to suppress was apparently never held.

Defendant's argument that Mr. Hale and his partner were state actors whose search violated the Fourth Amendment, stating:

> Likewise, another issue is that, in this case, the bounty hunter would not be considered state actors. Apparently this issue has not been decided by a Tennessee court, however, federal authority follows this opinion, relied upon *United States v. Poe*, 556 F.3d 1113, that unless a bounty hunter seeks assistance from law enforcement that they are not state actors and so there would not be a violation of the Fourth Amendment, so your motion to suppress will be denied.

In an allocution to the court, the Defendant said that he had been regularly reporting to his probation officer until his arrest. He acknowledged that "the company [he] ke[pt]" had been "a big problem[,]" and stated his desire to change his life. He said his mother wanted him to have his probation transferred to Texas and that they had been working toward that end before his arrest.

At the conclusion of the hearing, the trial court revoked the Defendant's probation and ordered that he serve his sentence in confinement with credit for time served since his December 4 arrest. In reaching its decision, the trial court noted that the December 4, 2020 violation occurred only a few months after the Defendant was granted probation in the cases. The trial court's order states in pertinent part:

> [T]he Court in case number 2019-CR-634 shows that [the Defendant] entered an agreed disposition by a plea of guilty on February 5th of 2020 and received an eight-year sentence to be served on supervised probation. That was to run consecutive to prior case 2018-CR-481 which he was on probation for. The Court finds in case 2020-CR-453 [the Defendant] entered a guilty plea and received an 11-month and 29-day sentence to be served consecutive to 2019-634. He also received a sentence of two years under 2020-CR-453 for a felony escape that had to be served consecutive to 2019-CR-634. He was allowed to be on probation and he has now been charged - - that occurred on August 21st of 2020, and by December he received a new charge - - actually, December 4th of 2020 received this new charge. The Court finds under - - that he's admitted he's in violation.[2] The Court believes that probation should be terminated and he'll have to serve his sentence.

[2] Although the Defendant never directly admitted at the hearing that he was in violation of his probation, neither the Defendant nor defense counsel objected when the trial court stated during its review of the case history that the Defendant had admitted his violations.

ANALYSIS

The Defendant argues that the trial court erred by considering evidence obtained by the bail bondsmen in violation of the Fourth Amendment and by not making adequate findings in support of its decision to order a full revocation of probation. The State notes that the exclusionary rule has limited application to probation revocation proceedings and argues that the trial court properly considered Mr. Hale's testimony, placed sufficient findings on the record in support of its decision, and properly exercised its discretion in its decision to fully revoke the Defendant's probation and order the Defendant to serve the balance of his sentence in confinement.

Standard of Review

A trial court has the discretionary authority to revoke probation upon a finding by a preponderance of the evidence that the defendant has violated the conditions of his or her probation. *See* Tenn. Code Ann. §§ 40-35-310; -311(e); *State v. Shaffer*, 45 S.W.3d 553, 554 (Tenn. 2001). "The proof of a probation violation need not be established beyond a reasonable doubt, but it is sufficient if it allows the trial judge to make a conscientious and intelligent judgment." *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991). The trial court is also vested with the discretionary authority to determine the consequences of a defendant's violation of his or her probation, among which is the full revocation and execution of the sentence as originally entered. *See* Tenn. Code Ann. §§ 40-35-310 (a); -311(e)(1)(A).

Our supreme court has clarified that "probation revocation is a two-step consideration on the part of the trial court." *State v. Dagnan*, 641 S.W.3d 751, 757 (Tenn. 2022). "The first [step] is to determine whether to revoke probation, the second [step] is to determine the appropriate consequence upon revocation." *Id.* Each of these is a separate and distinct decision, although there is no requirement that two separate hearings be held. *Id.* at 757-8. However, "[s]imply recognizing that sufficient evidence exist[s] to find that a violation occurred does not satisfy [the two-step consideration]." *Id.*at 758. The standard of review for a probation revocation case is

> abuse of discretion with a presumption of reasonableness so long as the trial court places sufficient findings and the reasons for its decisions as to the revocation and the consequences on the record. It is not necessary for the trial court's findings to be particularly lengthy or detailed but only sufficient for the appellate court to conduct a meaningful review of the revocation decision. This serves to promote meaningful appellate review and public confidence in the integrity and fairness of our judiciary. When presented with a case in which the trial court failed to place its reasoning for a

> revocation decision on the record, the appellate court may conduct a de novo review if the record is sufficiently developed for the court to do so, or the appellate court may remand the case to the trial court to make such findings.

Id. at 759 (internal quotations and citations omitted).

A. Consideration of Evidence Found by Bail Bondsmen

We begin this discussion with the understanding that the exclusionary rule has only limited application in a revocation proceeding. See *State v. Hayes*, 190 S.W.3d 665, 671 (Tenn. Crim. App. 2005) ("In the absence of any evidence of police harassment or that the evidence was obtained in a particularly offensive manner, we conclude that the exclusionary rule is not applicable in this case."). The Defendant has made no showing that he was the subject of police harassment or that any evidence used against him was obtained in a particularly offensive manner. As such, he is not entitled to the benefit of the exclusionary rule in this revocation proceeding. However, even if we were to consider the merits of the Defendant's Fourth Amendment argument, his claim still fails.

The Defendant contends that the trial court erred in revoking his probation based on evidence obtained in violation of the Fourth Amendment. Specifically, he argues that "the trial court erred by using the federal test and not the Tennessee test to determine whether the bail bondsmen were state actors, and also in finding that the bail bondsmen were not state actors." The Defendant asserts that the bail bondsmen were state actors under the two-prong test articulated in *State v. Burroughs*, 926 S.W.2d 243 (Tenn. 1996), because law enforcement was aware of and tacitly acquiesced in the search, and the bondsmen had no legitimate independent motivation for the search after Ms. Miller was not found in the motel room. The Defendant further argues that under S*tate v. Hamm,* 589 S.W.3d 765 (Tenn. 2019), the search by the bail bondsmen operating as state actors was unreasonable because the bail bondsmen had no knowledge at the time of the search that the Defendant was on probation.

In *Burroughs*, our supreme court adopted the "legitimate independent motivation" test to determine whether a private individual was acting as an agent of the State for the purposes of the Fourth Amendment's prohibition against unreasonable search and seizure. 926 S.W.2d at 246. The "critical factors" in this analysis are: "'(1) the government's knowledge and acquiescence, and (2) the intent of the party performing the search.'" *Id.* (quoting *United States v. Walther*, 652 F.2d 788, 792 (9th Cir. 1981)). "A private party acting for a reason independent of a governmental purpose does not implicate the Fourth Amendment." *State v. Cowan*, 46 S.W.3d 227, 232 (Tenn. Crim. App. 2000).

In the "bounty hunter" case cited by the trial court in support of its conclusion that the bail bondsmen were not state actors, the Tenth Circuit Court of Appeals applied essentially the same test - - "[f]irst, . . . whether the government knew of and acquiesced in the individual's intrusive conduct[,]" and "[s]econd, . . . whether the party performing the search intended to assist law enforcement efforts or to further his own ends." *Poe*, 556 F.3d at 1123 (internal quotations and citations omitted). The *Poe* court concluded that the bounty hunters in that case, who were hunting for a "bail jumper[,]" *id.* at 1117, were not state actors because the government agent did not know of the search until it was completed, and the bounty hunters' primary purpose was to further their own interests rather than to assist the state officials. *Id.* at 1124.

Similarly, in the case at bar, there was no evidence that the law enforcement officers knew anything about the search until the bail bondsmen contacted them after finding the drugs and weapons, and the bail bondsmen's primary purpose in going to the motel and searching the motel room was to locate Ms. Miller to return her to custody. Moreover, the Defendant acknowledged to the bail bondsmen that the items were his. He also failed to object at the beginning of the February 9, 2022 hearing when the trial court stated in its recitation of the case history that the Defendant had admitted the probation violation. We, therefore, conclude that the trial court did not err in considering the evidence found in the motel room as part of its revocation decision.

B. Adequacy of Trial Court's Findings

The Defendant contends that "[t]he trial court erred when it failed to place sufficient findings on the record as to the consequences of [the Defendant's] probation violation." He argues that the trial court's findings were "little more than a restatement of the bases for revocation" and that the trial court gave "no consideration to whether the act of ordering a full revocation would serve the ends of justice and be in the best interests of both [the Defendant] and the public."

We agree with the Defendant that the trial court did not make sufficient findings in support of its decision to order a full revocation of the Defendant's probation. However, based on our de novo review of the record, we conclude that there is ample support for that decision. The record reflects that the Defendant admitted ownership of a large quantity of illegal drugs and two firearms only a few months after being placed on probation for a felony drug offense. The record further reflects that he was living in a motel room with a woman who had outstanding warrants and was being actively hunted by bail bondsmen. Moreover, according to the "History of Supervision" section of the probation officer's report, the Defendant failed to comply with the conditions of probation in an earlier case by not taking a mandatory drug test and not reporting as required to the probation officer, did not have a steady job, and struggled to remain out of trouble. These facts demonstrate

that the Defendant has been unsuccessful with measures less restrictive than confinement and that his potential for rehabilitation is poor. *See* Tenn. Code Ann. § 40-35-103 (1)(C); (5). We, therefore, affirm the trial court's revocation of the Defendant's probation and reinstatement of his original sentence.

CONCLUSION

Based on our review, we affirm the judgment of the trial court.

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JOHN W. CAMPBELL, SR., JUDGE