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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-981

Filed: 7 April 2020

Cumberland County, Nos. 16 CRS 53144, 15 CRS 63304

STATE OF NORTH CAROLINA

v.

CABOT TYREE COTTRELL

Appeal by defendant from judgment entered 1 July 2019 by Judge Claire V. Hill in Cumberland County Superior Court. Heard in the Court of Appeals 17 March 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Heather Haney, for the State.

Sigler Law PLLC, by Kerri L. Sigler, for defendant.

ARROWOOD, Judge.

Cabot Tyree Cottrell (“defendant”) appeals from judgment revoking his probation and activating his suspended sentence. Defendant contends the trial court abused its discretion by revoking his probation for absconding where there was not sufficient and reliable evidence that he absconded, and by considering events not alleged in the violation reports and incorrectly alleged to be violations. Defendant

also contends the trial court erred in denying his right to confrontation without a finding of good cause. For the following reasons, we find no abuse of discretion and affirm the judgment of the trial court.

I. Background

On 5 July 2016, a grand jury indicted defendant on charges of robbery with a dangerous weapon and attempted first-degree murder. On 15 March 2018, defendant entered into a plea agreement in which he pled guilty to common law robbery and false imprisonment. Defendant was given a suspended sentence of 13 to 25 months imprisonment and placed on supervised probation for 30 months. In addition to regular conditions of probation, defendant was also subject to certain special conditions, including a curfew and the requirement that he remain gainfully employed.

On 12 April 2018, Probation Officer Shakiria McGahee (“Officer McGahee”) filed a violation report alleging three non-revocable violations. Specifically, defendant had failed to report to Officer McGahee’s office on 6 April 2018, refused to have an electronic monitor installed, and had failed to be present during two of Officer McGahee’s visits to the addresses provided by defendant. On 16 April 2018, the Honorable Gale Adams ordered defendant to serve a 90-day confinement due to his violation of the conditions of his probation.

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Following his release from confinement, defendant reported to Officer McGahee on 26 July 2018. Officer McGahee requested that defendant sign a Security Risk Group Agreement (“SRG agreement”) due to his admitted affiliation with the “Bloods” gang. Upon defendant’s refusal to sign, Officer McGahee filed a second violation report alleging defendant violated a condition of probation by refusing to sign the SRG agreement. The report listed a Raeford, North Carolina address for defendant. A hearing was scheduled for 30 July 2018 to address defendant’s latest violation, but defendant failed to appear. The Court subsequently issued an order for defendant’s arrest.

On 27 August 2018, Officer McGahee filed a third violation report. Officer McGahee alleged defendant absconded supervision on 15 August 2018 by leaving his place of residence and failing to make his whereabouts known. In addition, defendant failed to report as instructed on 23 August 2018. At the time of the violation report, defendant’s whereabouts remained unknown. On 27 June 2019, defendant was arrested at the Raeford address for failing to appear at the 30 July 2018 hearing.

On 1 July 2019, a hearing regarding the probation violations was held. At the hearing, defendant waived counsel and waived notice requirements regarding his receipt of the violation reports. Defendant admitted he had refused to sign an SRG agreement, but denied absconding supervision and failing to report to Officer McGahee on 23 August 2018. Probation Officer Brian Hunt (“Officer Hunt”), who

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replaced Officer McGahee as defendant's probation officer, testified for the State using the file maintained by Officer McGahee. Officer Hunt testified that Officer McGahee filed the 26 July 2018 violation report after defendant had refused to sign an SRG agreement. When defendant subsequently failed to appear for his 30 July 2018 hearing, probation officers in Hoke County attempted to serve an order for arrest at the Raeford address provided by defendant.

Upon arriving at the Raeford address, the officers spoke with an individual named Shantae Millandel ("Millandel") and her boyfriend. Millandel informed the officers that defendant had stayed at that address off and on, but that he had taken all of his belongings with him when he left earlier that day. Millandel's boyfriend further informed the officers that he had dropped defendant off at Fayetteville State University to perform a paint job earlier, but would not be picking him up from work that day.

The Hoke County probation officers sent the information to Fayetteville State University police to see if they could locate defendant on the campus, and also notified Officer McGahee. Probation officers later also attempted to contact defendant's relatives using the phone numbers provided by defendant, but were unable to get in touch with anyone. Additionally, they noted that defendant was neither incarcerated nor checked in as a patient at the hospital during that time. The last contact Officer McGahee had with defendant was on 26 July 2018.

Defendant testified that following his release from his 90-day confinement, he gave his case worker his Raeford address and she informed him she would provide this information to Officer McGahee and transfer his probation to Hoke County. Defendant believed the transfer never occurred because he had refused to sign the SRG agreement. Defendant further testified that he told Officer McGahee that he would not have transportation to get back and forth to Cumberland County because he would no longer be a resident. Defendant also admitted he was aware an order for his arrest had been issued after he failed to appear for his 30 July 2018 court date, and failed to turn himself in.

The trial court found that defendant violated his probation by refusing to sign the SRG agreement. It further found that defendant absconded for the reasons listed on the 27 August 2018 report, and noted in its oral findings that defendant had no contact with his probation officer for at least ten months, up until the time of his arrest, despite knowing there was an order issued for his arrest. The trial court revoked defendant's probation and activated his suspended sentence. Defendant gave oral notice of appeal in open court.

II. Discussion

On appeal, defendant contends the trial court abused its discretion by: (1) revoking defendant's probation for absconding without sufficient evidence of such; (2) basing its finding that defendant absconded on events outside the scope of the

violation reports; (3) admitting unreliable evidence; (4) finding defendant failed to report on 23 August 2018 without any evidence; and, (5) accepting defendant's admission that he violated an invalid condition of his probation. In addition, defendant contends the trial court erred in denying defendant's right to confrontation without first making a finding of good cause to do so. We disagree.

"We review a trial court's decision to revoke a defendant's probation for abuse of discretion." *State v. Melton*, 258 N.C. App. 134, 136, 811 S.E.2d 678, 680 (2018) (citing *State v. Miller*, 205 N.C. App. 291, 293, 695 S.E.2d 149, 150 (2010)). An abuse of discretion occurs when the trial court's ruling is "'manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.'" *State v. Campbell*, 359 N.C. 644, 673, 617 S.E.2d 1, 19 (2005) (quoting *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988)). "An alleged violation by a defendant of a condition upon which his sentence is suspended need not be proven beyond a reasonable doubt." *State v. Johnson*, 246 N.C. App. 132, 134, 782 S.E.2d 549, 551 (2016). All that is required is "'that the evidence be such as to reasonably satisfy the judge in the exercise of his sound discretion that the defendant has willfully violated a valid condition of probation or that the defendant has violated without lawful excuse a valid condition upon which the sentence was suspended.'" *State v. Young*, 190 N.C. App. 458, 459, 660 S.E.2d 574, 576 (2008) (quoting *State v. Hewett*, 270 N.C. 348, 353, 154 S.E.2d 476, 480 (1967)).

1. Absconding From Supervision

A trial court may revoke probation and activate a defendant's suspended sentence if the defendant: (1) commits a new criminal offense in violation of N.C. Gen. Stat. § 15A-1343(b)(1); (2) absconds supervision in violation of N.C. Gen. Stat. § 15A-1343(b)(3a); or, (3) violates a condition of probation after serving two prior periods of confinement in response to violations under N.C. Gen. Stat. § 15A-1344(d2). N.C. Gen. Stat. § 15A-1344(a) (2019). In the present case, the trial court revoked defendant's probation and activated his suspended sentence based upon a finding that defendant absconded from supervision. Pursuant to N.C. Gen. Stat. § 15A-1343(b)(3a), a defendant must "[n]ot abscond by willfully avoiding supervision or by willfully making [his] whereabouts unknown to the supervising probation officer, if the defendant is placed on supervised probation." N.C. Gen. Stat. § 15A-1343(b)(3a) (2019).

Defendant first argues the trial court abused its discretion in finding he absconded from supervision because insufficient evidence shows he absconded. Defendant cites to several cases in support of his argument, including *State v. Krider*, 258 N.C. App. 111, 810 S.E.2d 828 (2018), *State v. Jakeco Johnson*, 246 N.C. App. 139, 783 S.E.2d 21 (2016), and *State v. Williams*, 243 N.C. App. 198, 776 S.E.2d 741 (2015).

In *Krider*, the defendant failed to be present during the probation officer's visit to the address provided by the defendant, and the officer was advised by an unknown woman at the residence that the defendant no longer resided there. 258 N.C. App. at 115-16, 810 S.E.2d at 830-31. The officer made no further attempts to contact the defendant and filed a violation report alleging the defendant had absconded by failing to make his whereabouts known. *Id.* However, following his arrest for absconding, the defendant contacted and met with the officer at the residence, maintained regular contact with the officer until the expiration of his probation period, and satisfied the other conditions of his probation. *Id.* at 116, 810 S.E.2d at 831.

We held that the defendant's actions did not rise to the level of absconding supervision in violation of N.C. Gen. Stat. § 15A-1343(b)(3a). *Id.* at 118, 810 S.E.2d at 832-33. *See also Williams*, 243 N.C. App. 198, 776 S.E.2d 741 (holding the defendant did not abscond where he failed to report to his probation officer as instructed, failed to be present during the officer's visit to his listed address, and traveled out of state without permission, but maintained phone contact with the probation officer throughout the period of his alleged violations).

In *Jakeco Johnson*, the defendant failed to attend an appointment with his probation officer but had previously informed the officer that he would be unable to attend the appointment because he did not have transportation and asked to reschedule. 246 N.C. App. at 141, 783 S.E.2d at 23. There, we held the defendant

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did not abscond, explaining that “a defendant informing his probation officer he would not attend an office visit the following day and then subsequently failing to report for the visit, does not, without more, violate N.C. Gen. Stat. § 15A-1343(b)(3a)” *Id.* at 146, 783 S.E.2d at 26. In addition, we noted that because the defendant submitted to electronic monitoring in accordance with the special conditions of his probation, the defendant’s whereabouts were never unknown to his probation officer. *Id.* at 147, 783 S.E.2d at 27.

The cases relied on by defendant are notably distinct from the case at bar. Unlike the defendants in *Krider* and *Williams*, defendant did not maintain regular contact with his probation officer, by phone or otherwise, and did not attempt to contact his probation officer even after learning of the order for his arrest. In addition, while the probation officer in *Krider* visited the defendant’s residence only once and made no further attempts to contact him before filing a violation report, several attempts were made to contact defendant here.

Following defendant’s failure to appear for his 30 July 2018 court date, Hoke County probation officers visited defendant’s Raeford address in an attempt to locate him but discovered he was not there. The officers also enlisted Fayetteville State University police officers to search for defendant on that campus, where defendant was alleged to have been working at the time. Though defendant was instructed to report to his probation officer on 23 August 2018, he failed to do so. Moreover, after

the violation report was filed and defendant had still not contacted his probation officer or turned himself in, probation officers attempted to contact defendant's relatives, but were unsuccessful.

Furthermore, though defendant may have made a general statement to his probation officer that he "wouldn't have transportation to get back and forth to Cumberland County being that I -- being that I wasn't a resident now[,] there was evidence he did have transportation to Cumberland County, as defendant was able to travel to work at Fayetteville State University in the county. Even if he did not have transportation, however, this did not excuse him from fulfilling the requirements of his probation. Unlike the defendant in *Jakeco Johnson*, defendant here did not maintain contact with his probation officer to let her know that he would miss a specific meeting, nor did he ask her to reschedule any of their meetings. In addition, because defendant did not keep in contact with his probation officer and also refused to wear an electronic monitor, his probation officer had no way of knowing his whereabouts. Thus, we disagree with defendant that the circumstances of his case mirror those in which we have found a defendant did not abscond from supervision.

Instead, our reasoning in *State v. Trent*, 254 N.C. App. 809, 803 S.E.2d 224 (2017) and *State v. Nicholas Johnson*, 246 N.C. App. 132, 782 S.E.2d 549 (2016) is more applicable here. In *Trent*, the defendant twice failed to be present during his

probation officer's visits to his known address, and his wife informed the officer she did not know where he was. 254 N.C. App. at 811, 803 S.E.2d at 226. We held the defendant absconded from supervision because, even after learning about his probation officer's visits, he still did not attempt to contact her. *Id.* at 821, 803 S.E.2d at 232. In addition, though the defendant was allegedly absent from his known residence because he went to work in a neighboring city, he failed to notify his probation officer he would be traveling for an employment opportunity. *Id.* at 818, 803 S.E.2d at 230.

Similarly, in *Nicholas Johnson*, we held that the defendant was an absconder where he failed to keep in contact with his probation officer and notify him of his whereabouts, and did not turn himself in, even after realizing he was wanted for violating the conditions of his probation. 246 N.C. App. at 137-38, 782 S.E.2d at 553-54.

In the present case, defendant was not present during the Hoke County probation officers' visit to his listed address on 15 August 2018. Residents at the address indicated defendant only stayed there off and on and had left earlier that day, and took all of his belongings. Though there was evidence defendant was absent from the residence because he was completing a paint job at Fayetteville State University, similar to the defendant in *Trent*, defendant here failed to notify his probation officer that he would be away for work. Moreover, defendant admitted that

even after he learned there was an order for his arrest because he failed to appear for his 30 July 2018 hearing, he failed to turn himself in.

Defendant also presented no evidence that he attempted to contact his probation officer at any time after their 26 July 2018 meeting, and gave no reasons why he was unable to do so. Thus, there was sufficient evidence from which the trial court could find defendant willfully absconded from supervision in violation of N.C. Gen. Stat. § 15A-1343(b)(3a).

Defendant argues he did not abscond because his whereabouts were known, and points to his eventual arrest at the Raeford address and the probation officers' knowledge of his employment at Fayetteville State University as proof. However, there was sufficient evidence that probation officers were unable to locate defendant despite multiple attempts, and defendant had failed to contact and keep his probation officer apprised of his location. Thus, the trial court did not abuse its discretion in finding defendant willfully absconded from supervision.

Defendant further argues that the trial court in its oral finding improperly considered events that both occurred outside of the timeframe established in the violation report and that were not alleged in the report, such as his failure to appear on 30 July 2018 and failure to contact his probation officer for at least ten months. Relying on this Court's holding in *State v. Melton*, 258 N.C. App. 134, 811 S.E.2d 678 (2018), defendant asserts the trial court could only base its finding that defendant

absconded on events that occurred between the date defendant allegedly absconded and the date the violation report was filed. Contrary to defendant's assertions, however, it is clear from the trial court's written findings, which are controlling on appeal, that it did base its findings on adequately alleged events that occurred within the relevant timeframe.

The trial court's written findings incorporate by reference the violation reports filed 26 July 2018 and 27 August 2018. The 27 August 2018 violation report specifically alleges defendant absconded when: (1) defendant left his residence in Raeford, North Carolina on 15 August 2018 without prior approval or knowledge of his probation officer, failed to make his whereabouts known, and efforts to locate defendant had been unsuccessful as of the date of the report; and (2) defendant failed to report to his probation officer as instructed on 23 August 2018. As previously discussed, there was sufficient evidence to support these findings, including defendant's own testimony.

In addition, the trial court's oral finding that "[defendant] did abscond by having no contact with probation for at least ten months until he was arrested, even knowing that there was an order for his arrest out for not coming to court on July 30th of 2018" is not controlling on appeal. Nevertheless, this oral finding was also not improper, as it encompassed the two-week period of abscondment alleged in the violation report. Moreover, this Court has previously upheld a trial court's

consideration of whether a defendant contacted his probation officer or turned himself in after a violation report was filed. *See Krider*, 258 N.C. App. at 116, 810 S.E.2d at 831; *Trent*, 254 N.C. App. at 821, 803 S.E.2d at 232; *Nicholas Johnson*, 246 N.C. App. at 137-38, 782 S.E.2d at 553-54. Thus, the trial court did not abuse its discretion by considering such evidence, and defendant's assignment of error is overruled.

Defendant next contends the trial court abused its discretion by revoking his probation based on unreliable hearsay. Defendant argues that Officer Hunt's testimony constituted triple hearsay because he testified based on Officer McGahee's file on defendant, which in turn included some information about defendant that was provided by other parties. Defendant asserts that such evidence was thus not competent evidence. However, it is well settled that at a revocation of probation hearing, "the court is not bound by strict rules of evidence[.]" *State v. Pratt*, 21 N.C. App. 538, 540, 204 S.E.2d 906, 907 (1974). This is because "[a] proceeding to revoke probation is not a criminal prosecution" and is "often regarded as informal or summary." *Hewett*, 270 N.C. at 353, 154 S.E.2d at 479. Our Supreme Court has thus recognized that a trial court has great discretion to admit any evidence relevant to the revocation of a defendant's probation. *See State v. Murchison*, 367 N.C. 461, 465, 758 S.E.2d 356, 359 (2014) (holding the trial court did not abuse its discretion to revoke probation even though it relied on hearsay evidence because the evidence was relevant for determining whether the defendant violated a condition of his probation).

Because the trial court in a revocation of probation proceeding is not bound by the rules of evidence and has great discretion to admit any relevant evidence, we are not persuaded by defendant's argument. The narrative Officer Hunt used to testify was written and compiled by Officer McGahee, who was defendant's probation officer at the time of the alleged violations. Though Officer McGahee also reported on information gleaned from other parties, those parties were fellow probation officers who attempted to help locate defendant. Thus, we do not agree with defendant that Officer Hunt's testimony was not based on competent evidence. In addition, though defendant questions the reliability of Millandel and her boyfriend, whom Hoke County probation officers spoke with at the Raeford residence, defendant himself corroborated their statements. Defendant testified that Millandel's boyfriend dropped him off at Fayetteville State University to perform a paint job, which is why he was absent from the residence on 15 August 2018. He further admitted he did not contact his probation officer after 26 July 2018, even after learning of the order for his arrest. Thus, Officer Hunt's testimony was based on competent and reliable evidence that was relevant to determining whether defendant violated a condition of his probation. We therefore find the trial court did not abuse its discretion in admitting such testimony.

Defendant next contends the trial court abused its discretion by finding he failed to report to his probation officer as instructed on 23 August 2018 because the

State presented no evidence in support of that allegation. However, this Court has previously held that “the sworn probation violation report constitute[s] competent evidence sufficient to support the order revoking [the defendant’s] probation.” *State v. Gamble*, 50 N.C. App. 658, 661, 274 S.E.2d 874, 876 (1981) (citing *State v. Duncan*, 270 N.C. 241, 246, 154 S.E.2d 53, 58 (1967)). In addition, there was ample evidence from both the State and defendant himself that defendant did not contact his probation officer after their 26 July 2018 meeting.

According to defendant, he did not have transportation to Cumberland County and did not believe he needed to comply with the probation rules of Cumberland County once he began living in Hoke County. Thus, by defendant’s own admission, his last meeting with his probation officer occurred on 26 July 2018, and he did not report for any later meetings with his probation officer, including the one scheduled for 23 August 2018. Accordingly, defendant’s argument is without merit.

2. Right to Confrontation

Defendant lastly contends that the trial court erred by denying his statutory right to confrontation without a finding of good cause for the denial. Specifically, he argues he was not afforded the right to cross-examine Officer McGahee, who wrote the violation reports forming the basis of the allegations against him. Though defendant failed to raise the issue at trial, “[w]hen a trial court acts contrary to a statutory mandate, the defendant’s right to appeal is preserved despite the

defendant's failure to object during the trial." *State v. Lawrence*, 352 N.C. 1, 13, 530 S.E.2d 807, 815 (2000). An "[a]lleged violation of a statutory mandate presents a question of law, which we review *de novo* on appeal." *State v. Lyons*, 250 N.C. App. 698, 705, 793 S.E.2d 755, 761 (2016) (citation and quotation marks omitted).

N.C. Gen. Stat. § 15A-1345(e) provides that, at a revocation of probation hearing, "the probationer may appear and speak in his own behalf, may present relevant information, and may confront and cross-examine adverse witnesses unless the court finds good cause for not allowing confrontation." N.C. Gen. Stat. § 15A-1345(e) (2019). In support of his argument he was denied his statutory right to confrontation, defendant cites to *State v. Coltrane*, 307 N.C. 511, 299 S.E.2d 199 (1983). There, the trial court conducted an extremely short hearing in which it heard no witnesses and did not allow the defendant to speak or present evidence. *Id.* at 515-16, 299 S.E.2d at 202. Noting that the "[d]efendant was allowed to confront neither the prosecuting attorney who claimed that the probation officer had told him that [the] defendant had not procured employment nor the probation officer herself[.]" and the trial court made no finding of good cause for not allowing confrontation, the *Coltrane* court held that the trial court violated the defendant's rights under N.C. Gen. Stat. § 15A-1345(e). *Id.*

The present case is easily distinguishable from *Coltrane*. Here, the trial court heard evidence from both the State and the defense, and allowed defendant to cross-

examine the witnesses presented against him, including his current probation officer. In *Coltrane*, the defendant was not even given the opportunity to cross-examine the prosecutor who relayed her probation officer's statement that she allegedly violated a condition of her probation. In contrast, defendant here was allowed to cross-examine Officer Hunt, who effectively relayed Officer McGahee's narratives regarding defendant's alleged violations, and in fact did cross-examine him.

In addition, although defendant complains that he was not afforded the right to confront Officer McGahee in particular, who was no longer his probation officer, he does not cite to any authority giving him that right. We also note that defendant did not at any point in the proceeding request that Officer McGahee be subpoenaed and required to testify. *See State v. Terry*, 149 N.C. App. 434, 438, 562 S.E.2d 537, 540 (2002) (rejecting defendant's right to confront an absent witness where defendant did not request that the witness be subpoenaed); *Gamble*, 50 N.C. App. at 662, 274 S.E.2d at 877 (rejecting a defendant's right to confrontation claims where the defendant failed to request to cross-examine his probation officer). We therefore hold defendant's rights under N.C. Gen. Stat. § 15A-1345(e) were not violated.

Defendant additionally asks this Court to employ plain error review in the event we find his statutory right to confrontation was not violated. However, defendant fails to show how a cross-examination of Officer McGahee might have led to a more favorable outcome, especially given the fact defendant's own testimony

supported the trial court's finding that defendant absconded. *See Terry*, 149 N.C. App. at 438, 562 S.E.2d at 540 (holding defendant's own testimony rendered meritless her contention that she had a right to cross-examine her professor, who provided evidence she violated a condition of her probation but was absent from her revocation hearing). Without showing prejudice, defendant's assignment of error is overruled.

We thus hold the trial court did not abuse its discretion in finding that defendant absconded from supervision and revoking defendant's probation. Accordingly, defendant's contention the trial court erred in accepting his admission that he violated a condition of his probation by refusing to sign an SRG agreement is moot, and we do not address it.

III. Conclusion

For the foregoing reasons, we affirm the judgment of the trial court.

AFFIRMED.

Judges BRYANT and TYSON concur.

Report per Rule 30(e).