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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-495

Filed 19 February 2025

Watauga County, Nos. 22CRS050365–66, 22CRS050371

STATE OF NORTH CAROLINA

v.

GREGORY DAMAR FINGER

Appeal by defendant from judgment entered 24 January 2024 by Judge Gary Gavenus in Watauga County Superior Court. Heard in the Court of Appeals 15 January 2025.

Attorney General Jeff Jackson, by Assistant Attorney General Christopher J. Stipes, for the State.

Jeffery M. Hedrick for defendant-appellant.

ZACHARY, Judge.

Defendant Gregory Damar Finger appeals from the trial court’s judgment revoking his probation and activating his suspended sentence. After careful review, we affirm.

I. Background

STATE V. FINGER

Opinion of the Court

On 9 August 2023, Defendant entered an *Alford* plea¹ to one count of possession of a firearm by a felon and two counts of attempting to discharge a firearm within an enclosure to incite fear. The trial court accepted Defendant's plea, consolidated the charges, and entered judgment, imposing a term of 19 to 32 months' imprisonment in the custody of the North Carolina Department of Adult Correction. The court suspended the sentence and placed Defendant on supervised probation for a term of 24 months.

On 14 December 2023, Defendant's probation officer, Officer Ethan Henson, filed a violation report alleging that Defendant had willfully violated the conditions of his probation by testing positive for cocaine and defrauding a drug test that was administered the previous day. On 3 January 2024, Defendant submitted to another drug test and again tested positive for cocaine. That same day, Officer Henson filed another violation report alleging that Defendant had willfully violated the conditions of his probation by testing positive for cocaine.

The trial court held a probation violation hearing on 24 January 2024. At the hearing, Officer Henson testified that he requested a drug screen sample from Defendant on 13 December 2023, as permitted pursuant to the conditions of Defendant's probation. Defendant's first sample tested positive for cocaine, which he

¹ An *Alford* plea is a guilty plea in which the defendant does not admit to any criminal act, but admits that there is sufficient evidence to convince the judge or jury of the defendant's guilt. *See North Carolina v. Alford*, 400 U.S. 25, 37, 27 L. Ed. 2d 162, 171 (1970); *State v. Baskins*, 260 N.C. App. 589, 592 n.1, 818 S.E.2d 381, 387 n.1 (2018), *disc. review denied*, 372 N.C. 102, 824 S.E.2d 409 (2019).

denied using. Because Defendant denied using cocaine, he was required to provide a second sample for further testing at a laboratory. When Officer Henson handed Defendant the second sample cup, he saw “in the sleeve of [Defendant’s] shirt what appeared to be a condom with a liquid in it.” Officer Henson asked Defendant to remove his jacket and verified that Defendant had concealed in his sleeve “a condom with a yellow liquid inside it.”

By judgment entered on 24 January 2024, the trial court found that Defendant had willfully violated the terms and conditions of his probation by committing a new criminal offense, revoked Defendant’s probation, and activated his original sentence. Defendant timely appealed to this Court.

II. Discussion

Defendant raises one issue on appeal: whether the trial court reversibly erred by revoking his probation for committing a new criminal offense.

A. Standard of Review

“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). “A trial court abuses its discretion when a ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *Id.* (cleaned up).

B. Analysis

Defendant argues that the trial court erred in revoking his probation because there was insufficient evidence for the court “to find it more probable than not that [he] had committed a new criminal offense.” We disagree.

Our Supreme Court has explained that an “alleged violation of a valid condition of probation need not be proven beyond a reasonable doubt.” *State v. Murchison*, 367 N.C. 461, 464, 758 S.E.2d 356, 358 (2014) (citation omitted). Instead, the evidence need only “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. Krider*, 258 N.C. App. 111, 112–13, 810 S.E.2d 828, 829 (citation omitted), *modified and aff’d per curiam*, 371 N.C. 466, 818 S.E.2d 102 (2018). “The judge’s finding of such a violation, if supported by competent evidence, will not be overturned absent a showing of manifest abuse of discretion.” *Id.* at 113, 810 S.E.2d at 829 (citation omitted).

“Probation violation hearings are generally informal, summary proceedings” *State v. Johnson*, 246 N.C. App. 132, 135, 782 S.E.2d 549, 552 (2016). Nevertheless, “[t]he burden of proof rests upon the State to show a defendant willfully violated his probation conditions.” *Id.*

A trial court’s authority to revoke probation is statutorily limited. *See* N.C. Gen. Stat. § 15A-1344(a) (2023).

A trial court may only revoke a defendant’s probation in

circumstances where the defendant: (1) commits a new criminal offense, in violation of N.C. Gen. Stat. § 15A-1343(b)(1), (2) absconds by willfully avoiding supervision or by willfully making [his or] her whereabouts unknown to the supervising probation officer, in violation of § 15A-1343(b)(3a), or (3) violates any condition of probation after previously serving two periods of confinement in response to violations, pursuant to § 15A-1344(d2).

Melton, 258 N.C. App. at 136–37, 811 S.E.2d at 680–81.

In this case, Defendant was alleged to have committed a new criminal offense, in violation of N.C. Gen. Stat. § 15A-1343(b)(1). Specifically, Defendant allegedly violated N.C. Gen. Stat. § 14-401.20 by defrauding a drug test. Section 14-401.20 provides, in relevant part, that it is illegal to “[p]ossess adulterants that are intended to be used to adulterate a urine or other bodily fluid sample for the purpose of defrauding a drug or alcohol screening test.” N.C. Gen. Stat. § 14-401.20(b)(2). An adulterant is “[a]ny foreign material added to another substance to create impurity.” *Adulterant*, Black’s Law Dictionary (12th ed. 2024).

The State concedes that “Defendant did not have an opportunity to actually spike, substitute, dilute, or otherwise contaminate his second urine sample.” Yet Defendant need not have actually *used* an adulterant to defraud his drug test to have violated § 14-401.20, though this, too, would have been a crime for which his probation could have been revoked. *See* N.C. Gen. Stat. § 14-401.20(b)(1). Rather, Defendant merely needed to *possess* an adulterant *that is intended to be used to*

defraud a drug test in order to violate § 14-401.20(b)(2), and thereby commit a new criminal offense. *See id.* § 14-401.20(b)(2).

At Defendant’s probation revocation hearing, Officer Henson described the circumstances surrounding the discovery of the condom containing yellow liquid inside Defendant’s sleeve:

On 12/13 I requested a drug screen sample from [Defendant] as part of the condition[s] of his probation. [Defendant] provided me with a sample, and I tested that sample and it was positive for cocaine. [Defendant] denied using cocaine. . . . And so I then advised him that I needed another sample so I could send it to the lab. . . . And when I brought him into the office, I handed him the drug screen cup, and *I could see in the sleeve of his shirt what appeared to be a condom with a liquid in it.*

So at that point I advised [Defendant] to take his jacket off and I placed him in handcuffs, and that’s when *I did locate a condom with a yellow liquid inside it.*

(Emphases added).

Defendant does not deny that he was in possession of a condom filled with yellow liquid at his drug test on 13 December 2023. And indeed, Defendant correctly states that N.C. Gen. Stat. “§ 14-401.20 does not make it a crime to possess urine.” However, Defendant neglects to address the statutory provision in its entirety—that *possession of an adulterant that is intended to be used to defraud a drug test* constitutes a crime. *Id.*

“Intent is a mental attitude seldom provable by direct evidence. It must ordinarily be proved by circumstances from which it may be inferred.” *State v. Lamp*,

383 N.C. 562, 570, 884 S.E.2d 623, 628 (2022) (citation omitted). Therefore, in determining the presence or absence of the requisite intent, the factfinder “may consider the acts and conduct of the defendant and the general circumstances existing at the time of the alleged commission of the offense charged.” *State v. Bennett*, 84 N.C. App. 689, 691, 353 S.E.2d 690, 692 (1987) (cleaned up).

As shown by Officer Henson’s testimony, on the day in question, Defendant had already failed his first drug test by testing positive for cocaine. Officer Henson further testified that as Defendant was reaching for the sample cup for his second drug test, Officer Henson observed a condom containing yellow liquid hidden inside Defendant’s sleeve. It is therefore apparent that at the probation violation hearing, the trial court considered all of the evidence, including “the acts and conduct of . . . [D]efendant and the general circumstances existing at the time,” *id.* (citation omitted), and

further ma[de] an independent finding to the [c]ourt’s reasonable satisfaction that on or about December 13th of 2023, . . . [D]efendant did commit the criminal offense of defrauding a drug test. He committed this offense while he was on probation. It’s a willful violation of the terms and conditions of his probation. It’s also grounds for the revocation of his probation.

(Emphasis added).

This determination—that Defendant’s possession of a condom filled with yellow liquid, stealthily secreted inside his sleeve, when he was preparing to submit to a second mandatory drug test (having already failed his first that day) constituted

unlawful possession of an adulterant intended to be used to defraud a drug test—was not “manifestly unsupported by reason.” *Melton*, 258 N.C. App. at 136, 811 S.E.2d at 680 (citation omitted); *see also* N.C. Gen. Stat. § 14-401.20(b)(2). Defendant’s argument to the contrary is without merit.

III. Conclusion

For the foregoing reasons, we conclude that the trial court did not abuse its discretion in finding that Defendant had willfully violated a valid condition of his probation by committing a new criminal offense, or in revoking his probation on that basis. Accordingly, we affirm the trial court’s judgment.

AFFIRMED.

Judges TYSON and FLOOD concur.

Report per Rule 30(e).