

IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI

STATE OF MISSOURI

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vs.

)

[REDACTED]

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[REDACTED]

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DEFENDANT

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**ORDER**

A probation violation hearing was held in the above matter on December 28, 2017. The defendant pled guilty to domestic abuse on December 3, 2015. He was sentenced to 90 days in the Greene County Jail, and received a suspended execution of sentence. The defendant was placed on probation with certain conditions. The state filed a timely motion to revoke the defendant's probation and requested that his sentence be executed.

The state presented testimony from K.M., mother of D.H. This witness testified that she was previously married to defendant. She testified the defendant purchased alcohol during his probation, punched a wall and scared her, and punched her in the face. She further testified her daughter, D.H. informed her the defendant touched D.H. on the vagina, breasts, and buttocks. The state contends these actions violate the defendant's conditions of probation.

On cross-examination K.M. testified D.H. has mental problems, causing her to be defiant, not follow rules, and be untruthful. In fact, on one occasion this witness told the police officers not to believe D.H. This witness further testified she also has mental problems which include PTSD, social

anxiety disorder, borderline personality disorder, major depression, and she is bipolar. K.M. testified that her bipolar condition occasionally causes her to be confused and not be able to appropriately distinguish reality from fiction.

The State also presented testimony from Detective Scott Hendrickson of the Bolivar Police Department. He interviewed the defendant on April 7, 2017, who affirmed that he and his stepdaughter, D.H. wrestled for fun, he tickled her, he blew on her neck, and he gave her raspberries on her neck. He agreed that his stepdaughter sat on his lap and that they always played around. The detective interviewed the defendant a second time on September 13, 2017. The defendant informed the detective that he is always careful where he puts his hands when playing with his stepdaughter. The defendant admitted he punched holes in the walls of his home when he became mad. This witness testified he observed both CAC interviews of D.H. and in the second interview she stated the defendant had his hands down her pants near the top of her vagina.

On cross-examination Detective Hendrickson affirmed D.H. did not say anything about her vagina during the first CAC interview. Also, he was unaware of D.H.'s mental health issues. He testified that D.H. seemed to be of sound mind. This witness admitted there have been no criminal filings in Polk County, Missouri regarding the defendant's alleged conduct involving D.H. despite Detective Hendrickson authoring a probable cause statement. This witness also verified that D.H.'s mother told her not to provide certain information to authorities because she did not want defendant to go to prison.

The state next presented testimony from the defendant's probation and parole officer, Mr. Tittle. He testified that he authored a field violation report wherein he recommended revocation of the defendant's probation. On cross-examination this witness affirmed that he was the defendant's probation officer for the past two years and the defendant remained fully compliant and had no probation violations prior to the current allegations.

At the commencement of the hearing this court announced its willingness to allow hearsay testimony from the three state witnesses regarding statements by DH, and would take under advisement defendant's objection to such hearsay testimony. The court granted a continuing objection for all hearsay statements of D.H.

The Missouri Supreme Court in the case of State v Purkett, 825 S.W. 2d 851 (MO Sup. Ct. 1992), affirmed Missouri has not adopted a specific procedure applicable to parole violation hearings. The court indicated that the minimum requirements of due process in a final parole revocation hearing include: (a) written notice of the claimed violations of parole, (b) disclosure to the parolee of evidence against him, (c) opportunity to be heard in person and to present witnesses and documentary evidence, (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation), (e) a neutral and detached hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers, and (f) a written statement by the factfinders as to the evidence relied on and the reasons for revoking the parole. The court also indicated evidence that would violate the Sixth Amendment or would be inadmissible hearsay if presented at a criminal trial may, in proper circumstances, be considered at a probation revocation hearing without violating the due process right to confrontation. The exact boundaries of the right to confrontation in a parole revocation hearing are imprecise and can only be measured on a case-by-case basis.

The Southern District Court of Appeals in State v Carson, 789 S.W.2d 495, (Mo App 1990), stated that a probation revocation is not a part of the criminal prosecution process and, therefore, the evidence standard is not the reasonable doubt standard, but that the hearing judge need only be reasonably satisfied that terms of probation were violated; and, hearsay evidence may form a basis to revoke probation if the probationer or counsel may cross examine witnesses offering hearsay evidence.

After careful consideration of the balance between the parolee's right to confront witnesses against the

grounds asserted by the government for not requiring confrontation, this court concludes it would be a violation of the defendant's minimum requirements of due process to disallow him the right to confront and cross examine D.H. The testimony of the witnesses indicated D.H. is now 13 years old. The allegations, if accurate, or not so severe that this court finds irreparable harm would be imposed upon her to testify in court and be subject to cross-examination. This court finds the testimony of K.M. suspect and, at best, marginally credible. The testimony provided by the other witnesses are based solely on hearsay regarding allegations asserted by D.H.

In conclusion, after considering Missouri case law and the testimony of all witnesses, this court sustains the defendant's hearsay objections regarding all three witnesses. This court specifically finds that the state does not have good cause for not allowing the defendant the right of confrontation of D.H. the during the hearing. When considering the evidence, excluding the hearsay testimony, the state has failed to carry its burden of proof and the state's motion to revoke defendant's probation is denied. Defendant has now fully served his two years of probation without violation and this case is concluded.

January 5, 2018



Jerry A. Harmison Jr.  
Judge Associate Division 21