UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2106

September Term, 2015

IN RE: DEANGELO H.

Krauser, C.J.,
Woodward,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: August 23, 2016

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On October 21, 2015, following a hearing, the Circuit Court for Prince George's County, sitting as the juvenile court, found Deangelo H., appellant, in violation of his probation. In this appeal, appellant raises the following question:

Did the juvenile court err in finding appellant in violation of probation based on hearsay?

Finding no error, we shall affirm the judgment of the circuit court.

BACKGROUND

On November 21, 2014, the State filed a juvenile petition alleging that appellant, then 15 years old, was a passenger in a vehicle pursued by police in connection with an armed robbery in Washington, D.C. ("D.C."). During the pursuit, the driver of the vehicle intentionally struck a police vehicle, causing damage to the police vehicle. The occupants of the vehicle then fled on foot and were apprehended.

At a hearing on January 9, 2015, appellant admitted his involvement to the charge of fleeing and eluding on foot. The court ordered him to pay $327.32 restitution by the disposition hearing, scheduled for February 12, 2015. At the disposition hearing, the court released appellant to his legal guardians and placed him on probation for an indefinite period with conditions, including, that he obey all laws, attend school regularly, complete 40 hours of community service, and abide by a 7:00 p.m. curfew.

On July 6, 2015, the Department of Juvenile Services ("DJS") filed a request for a violation of probation hearing, alleging that appellant had violated his probation by incurring new charges in D.C., failing to attend school daily, being suspended from school,

and failing to comply with his curfew. Following a hearing on October 21, 2015, the court found appellant in violation of his probation.

STANDARD OF REVIEW

A probation revocation hearing generally consists of the factual question of whether the probationer has violated a condition of probation, and the discretionary determination of whether the violation warrants a revocation of probation. *Bailey v. State*, 327 Md. 689, 695 (1992) (citation omitted). The State must prove the violation by a preponderance of the evidence. *Wink v. State,* 317 Md. 330, 332 (1989). The determination to be made on appellate review is whether the trial court's discretion was abused for want of any reasonable basis for the revocation. *Id.* at 338-39. A probation revocation will not be overturned on appeal unless it is "'clearly erroneous or legally insufficient.'" *Thompson v. State*, 156 Md. App. 238, 243 (2004) (quoting *Gibson v. State*, 328 Md. 687, 697 (1992)).

DISCUSSION

I.

Preservation

Appellant contends that the trial court erred in admitting: (1) the testimony of Aurora Capps, the Case Management Specialist with the Department of Juvenile Services, and (2) the D.C. probation report ("probation report"), because the testimony and report constituted inadmissible hearsay and violated appellant's right to confrontation. The State responds that appellant's objections to Capps' testimony and the probation report are unpreserved, because appellant failed to make timely objections to the testimony and

report. Alternatively, the State contends that appellant's claim fails on the merits because (1) the testimony and probation report did not violate appellant's confrontation rights; (2) the testimony was reliable and trustworthy; and (3) the report was admissible pursuant to the public records exception to the hearsay rule set forth in Maryland Rule 5-803(b)(8)(A)(iii).

An appellate court generally reviews a trial court's ruling on the admissibility of evidence for an abuse of discretion. *Hall v. Univ. of Md. Med. Sys. Corp.*, 398 Md. 67, 82 (2007). A trial court's decision to admit or exclude hearsay, however, is an issue of law that is reviewed *de novo*. *Id.* at 83.

With respect to the challenged hearsay, Capps testified that appellant "picked up two new charges," eliciting an objection from defense counsel as follows:

> [PROSECUTOR]: Did you learn anything about the District - - from the District of Columbia as to [appellant's] activities?
>
> [THE WITNESS]: Yes.
>
> [PROSECUTOR]: What did you learn?
>
> [THE WITNESS]: I received two quarterly progress reports on how he is doing. They have let me know that he has picked up two new charges.
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Basis?
>
> [DEFENSE COUNSEL]: Your Honor, it is hearsay and as in the case of new charges we have a confrontation clause right to confront where this information is coming from. I have not - - I - - I have not [been] showed [sic] two documents, if I could see if those documents are in fact the ones that Ms. Capps is relying on.

THE COURT: Okay. You may continue. Overruled. You may approach.

But when the prosecutor continued to question Capps regarding appellant's new charges, defense counsel failed to object:

> [PROSECUTOR]: Were you able to learn from D.C. what happened with the - - with any of those two charges?
>
> [THE WITNESS]: Yes.
>
> [PROSECUTOR]: And what happened?
>
> [THE WITNESS]: One of the charges as - - because he pled in one - -
>
> THE COURT: He did what?
>
> [THE WITNESS]: He took a plea in one of the matters. And because of that they dismissed the second case.

Because Capps continued to testify regarding the D.C. charges without objection, appellant's objection to the testimony is waived. *See* Md. Rule 4-323(a) ("An objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived."); *Wimbish v. State,* 201 Md. App. 239, 261 (2011) (holding that appellant's objection to testimony was waived when he failed to object to the testimony following the denial of his motion *in limine* and failed to request a continuing objection), *cert. denied*, 424 Md. 293 (2012); *Ridgeway v. State,* 140 Md. App. 49, 66 (2001) ("A challenge to the trial court's decision to admit testimony is not preserved unless an objection is made each time that a question eliciting that testimony is posed."), *aff'd*, 369 Md. 165 (2002).

Defense counsel also failed to object to Capps' subsequent testimony that appellant's compliance had been a "consistent problem" during the probationary period because appellant had not followed his curfew and had attendance issues at school, including several suspensions between February and June. Thus appellant's challenge to the testimony concerning appellant's "compliance" is also unpreserved.

Defense counsel did object to the probation report when the State moved to admit it into evidence. But because Capps had already testified to the contents of the report, namely the alleged violations of his probation, appellant's objection to the admission of the report was waived. *See Vandegrift v. State*, 82 Md. App. 617, 637-38 (where evidence of the contents of a document had already been admitted without objection, appellant's complaint as to the admissibility of the document was not preserved for appellate review), *cert. denied*, 320 Md. 801 (1990).

Even if preserved, appellant's challenge to the admission of Capps' testimony and the report fails. We shall explain below.

II.

Confrontation Clause

Appellant contends that the admission of Capps' testimony and the probation report violated his right to confront witnesses pursuant to the Sixth Amendment of the U.S.

Constitution.[1] The State responds that appellant did not have a Sixth Amendment right to confrontation at the probation revocation hearing. We agree with the State.

Following the submission of appellant's brief, this Court decided in *Blanks v. State*, 228 Md. App. 335 (2016), that the Confrontation Clause of the Sixth Amendment does not apply to probation revocation proceedings. *Id*. at 339. In *Blanks,* the State alleged that Blanks had violated his probation by testing positive for marijuana and failing to report to his probation officer as directed. *Id*. at 340. At the revocation hearing, the State introduced testimony from the director of the laboratory and the positive laboratory testing report, and Blanks was found in violation of his probation. *Id.* at 340-41. Blanks argued on appeal that the introduction of the laboratory report violated his confrontation rights under the Sixth Amendment because the laboratory report contained inadmissible testimonial hearsay. *Id.* 347-48.

In determining that the Sixth Amendment did not apply to exclude hearsay at Blanks' probation revocation hearing, this Court explained:

> A revocation of probation hearing is a civil proceeding, not a criminal prosecution . . . In the twelve years since *Crawford* [*v. Washington*, 541 U.S. 36 (2004)] was decided, ten federal courts of appeals have addressed whether the *Crawford* standard for admissibility of testimonial hearsay applies in a revocation of probation (or parole) proceeding. All ten courts have held that because the rights guaranteed by the Sixth Amendment only apply to "criminal prosecutions," neither the Sixth Amendment right to confrontation

[1] The Sixth Amendment guarantees the right of a criminal defendant "to be confronted with the witnesses against him." U.S. Const. amend VI.

> nor the *Crawford* Court's interpretation of that right applies in such a proceeding.

Id. at 350 (citations omitted).

Accordingly, we held:

> We have no problem concluding, as all ten federal courts of appeals have concluded, that the Sixth Amendment does not apply to probation revocation proceedings, and therefore the Confrontation Clause of the Sixth Amendment, as interpreted by the Supreme Court in *Crawford* and its progeny, does not apply.

Id. at 356.

We conclude, consistent with our holding in *Blanks*, that probation revocation proceedings are civil proceedings to which the Confrontation Clause of the Sixth Amendment does not apply. Accordingly, the Sixth Amendment did not preclude the introduction of hearsay at appellant's probation revocation hearing.

III.

Due Process Confrontation

Although we conclude that Sixth Amendment did not apply to appellant's probation revocation hearing, appellant was nonetheless entitled due process confrontation protections. *See Id*. at 358-59. Pursuant to the Fourteenth Amendment's guarantee that "no person shall be deprived of liberty without due process of law," a probationer is entitled to many of the constitutional protections afforded to criminal defendants, including the right to cross-examine adverse witnesses, unless good reason exists for not allowing confrontation. *Hersch v. State*, 317 Md. 200, 207-08 (1989) (citations omitted). Although that confrontation right "is not quite as broad as that afforded a defendant in a criminal

proceeding," it nonetheless "remains a valuable and fundamental right." *Id*. at 208 (citation omitted).

Hearsay violates the right of confrontation unless it "is cloaked with a substantial indicium of reliability[,]" and the declarant is unavailable. *Ward v. State*, 76 Md. App. 654, 659 (1988) (citation omitted). The Court of Appeals set forth in *Fuller v. State*, 308 Md. 547, 553 (1987), and further explained in *Bailey v. State,* 327 Md. 689, 698-99 (1992), the following two-part test for determining the admissibility of hearsay at a probation revocation proceeding:

> The hearsay evidence is tested against the formal rules of evidence to determine whether it fits any of the firmly rooted exceptions to the hearsay rule . . . If so, it will be admitted. If not, the court may admit it upon finding that it is reasonably reliable *and* . . . that there is good cause for its admission.

Blanks, at 353-54 (internal quotations and citations omitted) (emphasis in original).

Appellant recognizes that the rules of evidence, including the rules against the admission of hearsay, are relaxed at probation revocation proceedings, but he contends that the State failed to demonstrate that the proffered evidence met a hearsay exception or was reasonably reliable such that good cause existed to dispense with his right to confrontation. The State responds that the probation report was admissible pursuant to Maryland Rule 5-803(b)(8)(A)(iii) as the report of a "public agency" "setting forth . . . factual findings resulting from an investigation made pursuant to authority granted by law[,]" and that Capps' testimony about the contents of the report was reliable.

Capps testified that she had requested that the D.C. probation department supervise appellant's probation and that she had received the report from that department. The

probation report indicated that appellant was arrested on June 26, 2015, on two counts of "simple assault, threats[,]" and that the information was "verified by Courtview[.]" The report further indicated that appellant "has had difficulties complying with his court-imposed curfews and school attendance. He has been suspended on numerous of [sic] occasions." Capps testified that appellant's suspensions occurred during the probationary period between February and June 2015.

Here, the evidence demonstrated that the report was prepared by a public agency (the D.C. probation department) for the specific purpose of reporting on the status of appellant's compliance with the terms of his probation. The report consisted of factual findings made by the probation officer as part of the investigation into appellant's compliance with his probation. We are persuaded, therefore, that the probation report falls within the public records exception set forth in Rule 5-803(b)(8)(A)(iii), and thus Capps' testimony about the contents of the report was reliable. "[I]f evidence is admissible under a firmly rooted exception to the hearsay rule or 'has substantial guarantees of trustworthiness, the hearsay is admissible without the need to establish any additional good cause[.]'" *Blanks*, 228 Md. App. at 360-61 (quoting *Bailey*, 326 Md. at 699). Accordingly, the trial court did not abuse its discretion by admitting into evidence Capps' testimony and the D.C. probation report.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.