STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Greenville County
The Honorable G.D. Morgan, Jr., Circuit Court Judge

Appellate Case No. 2025-001490

THE STATE .....RESPONDENT

v.

MATTHEW DALE BARTON,.....APPELLANT

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. Should this Court apply the harmless error standard when the lower court erred in not allowing the cross-examination of the state's witness, but there was a sufficient evidentiary basis that Appellant had violated one or more conditions of probation?

2. Did the lower court correctly state the evidentiary standard for probation violations when the record shows that the court made its determination based on evidentiary showings of fact that established that Appellant had violated his probation?

STATEMENT OF THE CASE

On November 14, 2023, Appellant pled guilty to assault and battery in the first degree before the Honorable Perry H. Gravely in Greenville County. Judge Gravely sentenced Appellant under the Youthful Offender Act not to exceed six years, suspended to probation for three years. (R.p.30-31). Along with the standard conditions of probation, he was ordered to mental health counseling, anger management, and to pay restitution in an amount set forth in a separate order. (R.p.31).

On December 13, 2024, agents with the Department issued an arrest warrant alleging several violations of probation, including a conviction for petit larceny; being in possession of an AR style firearm, a shotgun, and ammunition; for making untruthful reports to his agent; and failing to make payments on his financial obligations. (R.p.25-p.26).

Appellant's violation hearing was heard on July 11, 2025 before the Honorable G.D. Morgan, Jr. At the hearing, Appellant admitted to the conviction for petit larceny, but denied the other allegations. The Department presented testimony about the discovery of the AR firearm with forty rounds of ammunition located within Appellant's bedroom. After hearing the evidence and the arguments by Appellant's counsel, Judge Morgan found that Appellant had violated his probation and revoked his suspended sentence. (R.p.27). Appellant filed his notice of appeal on July 21, 2025. Respondent's brief follows.

Standard of Review

The authority of the revoking court should always be predicated upon an evidentiary showing of fact tending to establish a violation of the conditions. *State v. White,* 218 S.C. 130, 134–35, 61 S.E.2d 754, 756 (1950); *State v. Miller*, 122 S.C. 468, 475, 115 S.E. 742, 745 (1923).

The decision to revoke probation is addressed to the discretion of the circuit judge. *White,* 218 S.C. at 134–35, 61 S.E.2d at 756; *State v. Proctor,* 345 S.C. 299, 546 S.E.2d 673 (Ct. App. 2001); *State v. Hamilton,* 333 S.C. 642, 511 S.E.2d 94 (Ct. App. 1999). A reviewing court will only reverse this determination when it is based on an error of law or a lack of supporting evidence renders it arbitrary or capricious. *Proctor,* 345 S.C. at 301, 546 S.E.2d at 674.

Arguments

1. Although the lower court erred by not allowing cross examination of the state's witness, the error was harmless because the evidence was sufficient to show that Appellant had violated one or more conditions of probation.

As an initial matter, Respondent concedes that probationers have a due process right to confront and cross examine witnesses at a probation hearing. *Morrissey v. Brewer*, 408 U.S. 471, 488-489 (1972)[1]. That right is not absolute, and a hearing officer may find good cause for not allowing the confrontation. *Id.* This Court correctly held that the Sixth Amendment right of confrontation does not apply to probation revocation proceedings. *State v. Pauling*, 371 S.C. 435, 639 S.E.2d 680 (Ct. App. 2006). The lower court's reliance on *Pauling* as prohibiting cross-examination admittedly failed to consider the more limited due process right of cross-examination afforded to probationers by *Morrissey* and *Gagnon.*

Respondent submits, however, that the lower court's error was harmless in the light of the ample evidence in the Record that Appellant had violated conditions of his probation. Reversal or remand is not warranted. "Most trial errors, even those which violate a defendant's constitutional

[1] *Morrissey* was decided in the context of parole hearings. A year later, the U.S. Supreme Court determined that the same due process rights applied to probationers in *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973). "[W]e hold that a probationer, like a parolee, is entitled to a preliminary and a final revocation hearing, under the conditions specified in *Morrissey v. Brewer*..."

rights, are subject to harmless-error analysis." *State v. Rivera*, 402 S.C. 225, 246, 741 S.E.2d 694, 705 (2013) (citing *Arizona v. Fulminante*, 499 U.S. 279, 306 (1991) and *Chapman v. California*, 386 U.S. 18, 23 (1967)). While the U.S. Supreme Court in *Chapman* did acknowledge some constitutional rights are so basic to a fair trial that the harmless error doctrine would not apply, the lower court's error in this case is not one of those. Consider that the right to cross-examine witnesses during probation violation hearings is not absolute. The tribunal may find good cause to not allow confrontation. *Morrissey*, 408 U.S. at 489. Further, the U.S. Supreme Court cautioned, "We emphasize there is no thought to equate this second stage of parole revocation to a criminal prosecution in any sense."[2] For these reasons, the lower court's error would have to have a severe impact upon the proceeding to warrant reversal.

This is not supported by the Record. Appellant did not contend that the firearm was not present in his bedroom; he argued about whether his possession of the firearm was actual or constructive.[3] The firearms' existence was undisputed. He argued that he didn't own them and instead they belonged to his girlfriend. A cross-examination of one of the agents who discovered the firearms would not have made a difference to his position that the firearms belonged to someone else.

Instead, the evidence showed that agents discovered firearms in Appellant's bedroom, and that he was living there for at least two days from his release from jail to the discovery of the weapons. (R.p.10; ll. 5-12). In light of that evidence, the lower court's error in not allowing the cross-examination should be considered harmless and not enough to warrant reversal or remand.

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[2] This statement would carry over to probation hearings per *Gagnon*.

[3] This is shown by Appellant pointing out that no forensics were performed on the weapon. (R.p.19; ll. 1-5, 19-22).

2. The lower court stated the correct evidentiary standard for violations of probation.

Appellant argues that because the lower court stated that the court could consider "any evidence" that showed a violation, it set forth an evidentiary standard that was lower than the threshold for probation violations as established by prior Supreme Court precedent. Respondent would argue that the lower court's statements reflected an awareness of the correct evidentiary standard and that, in any event, the evidence presented at the hearing and relied upon by the lower court in determining Appellant had violated his probation was sufficient.

Respondent concurs with Appellant's assessment of South Carolina jurisprudence in that the evidentiary standard is impliedly the preponderance of the evidence. "[T]he authority of the court of general sessions to revoke such suspension of sentence may not be capriciously or arbitrarily exercised, but should always be predicted upon an evidentiary showing of fact tending to establish violation of the conditions." *White*, 218 S.C. at 135, 61 S.E.2d at 756.

White was relied upon by the Court in *Hamilton*, which reiterated the "evidentiary showing of fact tending to establish a violation" language, and further stated, "before revoking probation, the circuit judge must determine if there is sufficient evidence to establish that the probationer has violated his probation conditions." *Id.*, 333 S.C. at 648-649, 511 S.E.2d at 97.

Appellant argues that the lower court erred when it stated, "the standard on the case law is in a probation revocation hearing, is there any evidence tending to show the violation." (R.p.21; ll. 3-6). Respondent would submit that the lower court's phrase, "any evidence *tending to show the violation*" mirrors the language in *White* and *Hamilton* which requires "facts *tending to establish a violation.*" Appellant raises a distinction without a difference, honing in on the "any evidence" statement when the lower court clearly recognized that the evidence still had to *tend* to

show a violation. This is further countered by the lower court's accurate statement that, "Also got to be facts tending to show that there was a violation. That's all the evidentiary – that's the standard of the evidentiary basis." (R.20; ll. 22-24).

Furthermore, the evidence presented at the hearing is sufficient for this Court's purposes. Appellate courts may only overturn a circuit court's decision to revoke probation if a lack of evidentiary support renders the circuit court's decision arbitrary and capricious. *Hamilton*, 333 S.C. at 647, 511 S.E.2d at 96, citing *White*, 218 at 135, 61 S.E.2d at 756. There should be no concern for a lack of evidence of violations in the record.

Initially, Appellant committed and was convicted of a new criminal offense while on probation. "We agree with the fact that he was convicted or that he committed the offense of petit larceny and he was convicted in September of last year." (R.p.4; ll. 16-18). That in and of itself is proof of a violation of the conditions of probation. See S.C. Code 24-21-430, "The probationer shall: (1) refrain from the violations of any state or federal penal laws."

Admittedly, the lower court's primary and understandable concern was the presence of firearms within Appellant's bedroom. The evidence provided a factual basis for the lower court's determination that Appellant had violated the conditions of his probation by having constructive possession of a firearm. The lower court stated, "I do find that that condition of him being in possession of a firearm is met by the testimony of the agent here. And based on the testimony and the evidentiary record here, I do find there's a violation." (R.p.22; ll. 13-17). The evidence before the court was sufficient, and the court's decision was definitely not arbitrary or capricious.

The lower court did not find just "any evidence," but evidence tending to establish a violation as required by *Hamilton*. The lower court's decision should be upheld.

Conclusion

The lower court may have erred in not allowing cross-examination of the agent's testimony, but in the light of all the evidence and the much lower evidentiary standard for probation violation hearings, the error should be considered harmless. Furthermore, the lower court did not misstate the evidentiary standard for probation revocation hearings, and properly revoked Appellant's probation based upon a showing of facts tending to establish a violation. This Court should dismiss the appeal and uphold the lower court's decision.

Respectfully submitted,

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Columbia, South Carolina
February 27, 2026

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, 407 S.C. 607, 607, 757 S.E.2d 421 (2014) (requiring redaction of social security numbers, names of minor children, financial account numbers, home addresses, and date of birth).

This 27th day of February, 2026.

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