Circuit Court for Baltimore City
Case Nos. 112199006, 113336018,
114273029

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 133

September Term, 2019

GARRICK POWELL

v.

STATE OF MARYLAND

Berger,
Arthur,
Reed,

JJ.

Opinion by Arthur, J.

Filed: March 30, 2020

While serving probation for three convictions that occurred in 2015, Garrick Powell, appellant, was charged with possession of cocaine with intent to distribute, possession of cocaine, possession of paraphernalia, and several traffic offenses. [R. 11-12, 14-17.] Although Powell was found guilty only of the traffic offenses, the State charged him with violating his probation because of his alleged possession of cocaine. [R. 11-12, 16-17, 62-63.]

At a probation revocation hearing, the State presented evidence that a police officer observed Powell discard a baggie that contained a substance that was later identified as cocaine by a police chemist. The State also presented remote testimony via Skype from the officer who submitted the baggie for testing. Defense counsel objected, arguing that the State was required to put on live, in-person testimony from the chemist and the officer. The Circuit Court for Baltimore City overruled those objections and found that Powell violated the terms of his probation [T3. 88.] The court sentenced Powell to 11 years of imprisonment in one case and concurrent terms of seven years, seven months, and 12 days in each of the other cases. [S. 29.]

Having been granted leave to appeal,[1] Powell presents the following two questions:

1. Whether, at the violation of probation hearing, the circuit court erred in allowing the State to introduce the chemist's report without the presence of the chemist, analyst, or other persons in the chain-of-custody over the

[1] "[A]ppellate review of a probation revocation order may be sought only by filing an application for leave to appeal." *State v. Brookman*, 460 Md. 291, 311-12 (2018). *See* Md. Code (1973, 2013 Repl. Vol.), § 12-302(g) of the Courts & Judicial Proceedings Article ("[r]eview of an order of a circuit court revoking probation shall be sought by application for leave to appeal[]").

(continued)

probationer's objection where the probationer had made a timely demand for the chemist's presence pursuant to § 10-914(f) of the Courts & Judicial Proceedings Article of the Maryland Code.

2. Whether the circuit court erred in allowing a State's witness, a retired police officer residing in another state, to testify via Skype at the probation revocation hearing.[2]

[Order granting leave to appeal, 4/8/19.]

We conclude that the court erred in denying Powell his statutory right, under Md. Code (1973, 2013 Repl. Vol.), § 10-914(e)-(f) of the Courts & Judicial Proceedings Article ("CJP"), to cross-examine the chemist who performed the test on which the violation finding was premised. Accordingly, we shall vacate the judgment and remand the case for further proceedings.

BACKGROUND

In 2015 Powell was convicted and sentenced as follows in the Circuit Court for Baltimore City:

[2] In his brief, Powell formulates these questions as follows:

1. Did the circuit court err by allowing an important State's witness to testify via a Skype connection in which he could not see the courtroom?

2. Did the circuit court err by admitting a chemical analysis report in lieu of live testimony by the analyst?

Offense	**Conviction**	**Case No.**	**Sentence**
Possession of cocaine with intent to distribute	June 15, 2015, guilty plea	No. 112199006	10 years, concurrent with sentence in No. 113336018, with credit for time served and the balance of seven years, seven months, and 12 days suspended in lieu of three years of probation
Possession of a weapon while confined	June 15, 2015, guilty plea	No. 113336018	10 years, concurrent with sentence in No. 112199006, with credit for time served and the balance of seven years, seven months, and 12 days suspended in lieu of three years of probation
Witness intimidation	August 3, 2015, jury trial	No. 114273029	15 years, all but four suspended in lieu of three years of probation

[R. 11, 14, 57, 69-70.]

The following year, on May 10, 2016, Powell was arrested in Baltimore County following a traffic stop. (T2.10) He was charged with possession of cocaine with intent to distribute, possession of cocaine, speeding, and driving with a learner's permit without supervision, in Case No. 03-K-16-002982 in the Circuit Court for Baltimore County. [R.

11-12.] As a result of those charges, the Division of Parole and Probation asserted that Powell had violated the terms of his probation in the three Baltimore City convictions listed above. [R. 11-40.]

On May 26, 2017, a Baltimore County jury found Powell guilty of the non-incarcerable driving offenses in Case No. 03-K-16-002982, but acquitted him of the drug-related charges. [R. 58, 62.] Despite the acquittals, the State gave notice that it intended to continue to pursue the revocation of probation case by presenting evidence of the conduct that gave rise to the charges in Baltimore County case. [R. 12, 57-58, 61-68.][3]

CJP § 10-914(f)(1) states that, "[o]n written demand of a defendant filed in the proceeding at least 5 days before the hearing to revoke a defendant's probation or work release, the prosecution shall require the presence of the chemist or analyst who performed the test or any individual in the chain of custody or control as a prosecution witness." Before the violation of probation hearing, Powell filed a timely demand, pursuant to CJP § 10-914(f)(1), for the State to call the chemist or analyst who tested the substance that was recovered during the Baltimore County traffic stop, as well as others in the chain of custody. [Supp. to record; R.70; T1.10; T2.5.]

[3] Collateral estoppel did not preclude the State from attempting to prove a violation of probation on the basis of the conduct that gave rise to the charges on which Powell was acquitted. *See Gibson v. State*, 328 Md. 687, 695-96 (1992). "A verdict of not-guilty is hardly tantamount to a finding that no wrong was done." *Id.* at 695. Powell's acquittal did "not necessarily prove his innocence; rather, it reflect[ed] the State's inability to prove its case beyond a reasonable doubt." *Id.* Although Powell was acquitted of the drug charges, "it does not follow that the State failed to assemble evidence sufficient to persuade the court that illegal acts probably occurred . . . under the less-exacting standard of the preponderance of the evidence." *Id.* at 695-96.

At a status conference on October 30, 2017, the day before the hearing was to begin, the prosecutor argued that the State should not be required to produce witnesses to prove the chain of custody. Although the State apparently could produce two of the necessary witnesses, the prosecutor proffered that one witness, who had initiated the traffic stop, transported the alleged cocaine to the precinct for a field test, witnessed the field test, and submitted the baggie for chemical analysis, had retired and moved to another state. [T1.6.] Another witness, the chemist who had analyzed the alleged cocaine, had retired and had not returned the prosecutor's call. [T1. 7.]

Over a defense objection, the court ruled that if additional witnesses were necessary, after the available witnesses testified the following day, it would schedule another date for the State to present those "technical witnesses." [T1.12-13.] The court expressed doubt about whether the chemist was a necessary witness in a probation revocation proceeding, which is a civil case in which the Sixth Amendment right of confrontation does not apply. *See generally Blanks v. State*, 228 Md. App. 335, 356-58 (2016).[4]

At the hearing the following day, the State called two police officers: one who observed Powell discard a baggie during the traffic stop and another who witnessed a positive field test on that evidence.

[4] As discussed in greater detail later in this opinion, however, a probationer does have a more limited right of confrontation under the Due Process Clause of the Fourteenth Amendment (*see Blanks v. State*, 228 Md. App. at 339) and under CJP § 10-914(f)(1).

Officer Savoy testified that she and Officer Webb "arrived for backup" during a May 10, 2016, traffic stop made by Officer Donovan. [T 2.8, 10, 21.] Officer Donovan informed her that he had stopped Powell's car for speeding and that "there was a potential warrant for" him. [T 2.10.] Officers Donovan, Savoy, and Webb removed Powell and his female passenger from the car. [T2. 10, 26.] Officer Donovan handcuffed Powell, patted him down, searched his pockets, and seated him on a curb while the officer awaited information about the warrant. [T2. 10, 26-27, 32.] The passenger was searched and seated as well. [T2. 28-29.] According to Officer Savoy, the area where both detainees were seated "was clear and free of debris[.]" (T2.10, 28)

After 20 to 30 minutes, Powell allegedly discarded what appeared to be a baggie of cocaine. [T2. 11-12, 32-33.] Officer Savoy described what happened as follows:

> [OFFICER SAVOY]: Mr. Powell was like kind of a little fidgety and he moved. He got up before he was told to get up. And in the meantime he had like a jerking motion. And something went flying in the air and heard it down on the ground. [Sic] Turned around and looked, and there was a white powdery substance and a black bag sitting on the curb.
>
> [PROSECUTOR]: So what specifically did you see?
>
> [OFFICER SAVOY]: I saw him get up from the seated position where he was told to stay. And, you know.
>
> [PROSECUTOR]: And then what else did you see?
>
> [OFFICER SAVOY]: And then he moved forward like in a jerking motion, and something caught the side of my eye, and it fell on the ground. I heard the sound of something falling on the ground.

[T2. 11.]

As Officer Webb picked up the item from the ground, Officer Savoy saw that it was "[a] white powdery substance wrapped in a plastic bag." [T2.11, 24-25, 33.] When asked whether the bag was his, Powell said that "it wasn't," and that "it fell out the tree." [T2. 12.] Officer Savoy testified that Officer Donovan took possession of the baggie and submitted it for analysis. (T2.12, 16-17) When the State moved for the admission of Officer Donovan's request for analysis (State's Exhibit 1) and the report of the results (State's Exhibit 2), the court sustained defense counsel's objection, stating, "[W]e'll discuss its admission later on." [T2. 17.]

Detective Day testified that he and Detective Wood responded to the police station where Powell was transported, to interview Powell and to conduct a field test of what was suspected to be a controlled dangerous substance ("CDS"). [T2.42-43.] Detective Day, who testified as an expert in the identification of narcotics and methods of distribution, [T2. 41-42] received a clear baggie from Officer Donovan, with a white, chunky substance inside of it that weighed approximately 15 grams. [T2. 43-44, 46.] When Detective Wood field-tested the substance in Detective Day's presence, it "reacted positively for the presence of cocaine." [T2. 44-45, 48-50.] Detective Day estimated that the substance had a street value of close to $1,000.

The detectives administered *Miranda* warnings to Powell. According to Detective Day, Powell initially stated "he didn't wish to speak with" the detectives. [T2. 47.] As the detectives walked away, however, Powell volunteered "that it was not his cocaine." [T2. 47.]

After the State's two witnesses finished testifying, the prosecutor addressed the State's obligation to produce the unavailable witnesses – Officer Donovan, who took the alleged cocaine to the precinct for testing, and the chemist or analyst who tested the substance and reported that it was cocaine. During that discussion, the court posited that the chemist's report would be admissible hearsay in a civil hearing concerning a violation of probation, in which the strict rules of evidence do not apply. *See generally Blanks v. State*, 228 Md. App. at 353-55. Apparently referring to the requirements of CJP § 10-914, defense counsel responded that he had "filed the appropriate forms" to require the State to produce the chemist and the witnesses in the chain of custody. The court ultimately agreed that the State was required to produce all witnesses in the chain of custody, including Officer Donovan, but it permitted the State to introduce what it called the "hearsay report" of the chemist.

The prosecutor proffered that Officer Donovan was living in another state and that she had not spoken to him about returning to Maryland to testify. She stated that she would "make contact with the officer" and "perhaps . . . file a notice of intent [for] him to testify, electronically, telephonically, by Skype" on November 13, 2017, when the court scheduled the hearing to resume. Over an objection in which the defense cited the postponements that the State had already received, the court ruled that if the officer was not available on that date, "[W]e'll see what we can do."

When the hearing resumed on November 13, 2017, the prosecutor advised the court that Officer Donovan was available to testify via Skype at any time during the

following three days. [T3. 3-4.] Defense counsel objected that the officer was not present in court, arguing that he was not "an 'unavailable' witness" and that the right of confrontation is limited when a witness testifies via a video-link. [T3. 4.] Counsel added that the State had not "filed any appropriate paperwork" to support its request to have the officer testify via Skype. The prosecutor replied that she would "file whatever paperwork is needed" and argued that there is no constitutional right to confrontation in a probation-revocation proceeding. During this discussion, the prosecutor disclosed that Officer Donovan had been in Maryland over the past weekend.

The court postponed the proceeding until December 18, 2017, ruling that this would be the State's "last chance."[5] Over a defense objection that the video testimony could not be justified "for a reason of mere convenience" and that "every person within the chain of custody has to be present and testify," the court allowed Officer Donovan to testify via Skype.

Officer Donovan's testimony was broadcast into the courtroom on a laptop screen, so that the witness was visible to the court, counsel, and Powell, who gathered around the computer. [T4. 4-6, 15-17.] Because the laptop did not have a speaker that permitted everyone to hear what the officer said, the audio portion of the testimony was transmitted by cell phone. Because the laptop did not have a functioning camera, Officer Donovan was not able to see anything in the courtroom. [T4. 16-19, 38-39, 71.]

[5] The court recognized that Powell had been jailed, awaiting the results of the violation of probation hearing, while the State was assembling its case.

In his testimony, Officer Donovan confirmed that he had stopped Powell's car for speeding, that Powell was driving, and that a woman was in the front passenger seat. [T4. 20, 23-24.] Each occupant of the vehicle had only a learner's permit. [T4.23-24.] When Officer Donovan checked the "warrant database," he discovered an active warrant for Powell's arrest, requested backup, and waited until Officers Savoy and Webb responded. [T4. 24-25.]

Powell complied with Officer Donovan's request that he exit the vehicle. [T4.25.] After handcuffing Powell and doing a pat-down of Powell and his passenger, the officer did not feel anything like the baggie that was later recovered in the street. [T4.25-26, 49-51.] The officer helped Powell to sit on the curb. [T4.25, 49.] Powell was seated near "a sidewalk with [a] grassy area approximately three feet between the curb and the road where the gutter meets to the sidewalk[.]" [T4. 27.]

After Officer Donovan informed Powell that there was an outstanding warrant and that he was under arrest, Officers Savoy and Webb started to raise Powell from the curb. At that point, "Officer Savoy saw him drop the white substance wrapped in cellophane clear plastic." [T4. 26.] Officer Donovan did not see the substance fall to the ground. [T4. 27.] Instead, as he was walking towards Powell, the officer heard him say, "[T]hat's not mine[;] it fell from the tree[.]" [T4. 27.] Officer Donovan "turned to see what he was talking about" and "saw [Officer Webb] as she bent over and picked up the object which Mr. Powell had said had fallen from the tree." [T4. 27.]

When Powell was arrested, he had almost $600 in cash, mostly in $20 dollar bills. [T4. 29.]

After Officers Savoy and Webb transported Powell to the precinct, Officer Donovan searched Powell's vehicle and proceeded to the precinct with the suspected CDS. [T4. 32.] He gave the baggie to Detectives Wood and Day, but was not present for their field test. [T4. 34-35.] When the detectives returned the baggie to him, Officer Donovan entered it into evidence and completed a "submission form" for an analysis. [T4. 36, 46; State's Ex. 1.]

After hearing Officer Donovan's testimony, the court, citing *White v. State*, 223 Md. App. 353 (2015), found that the State had not established that it was necessary, as opposed to merely expedient or convenient, for the officer not to testify in person in the courtroom.[6] [T4. 77.] The court offered to disregard all of Officer Donovan's testimony except the chain of custody evidence, because, the court said, "[t]hat is in no way accusatory." [T4. 76-77.]

Defense counsel objected, reiterating that none of Officer Donovan's testimony should be allowed. [T4. 78.] After some additional discussion, however, defense counsel agreed to the court's offer to consider Officer Donovan's testimony only as to the chain

[6] Among other things, *White v. State*, 223 Md. App. at 386-401, concerns the circumstances in which a court may permit a witness to testify by means of two-way video-conference in a criminal proceeding in which the defendant has a Sixth Amendment right of confrontation. As previously stated, the Sixth Amendment does not apply in a probation-revocation hearing. *Blanks v. State*, 228 Md. App. at 356-58. A defendant, however, may have some rights of confrontation under the Due Process Clause of the Fourteenth Amendment or a state statute such as CJP § 10-904.

of custody, as long as the defense was not deemed to have waived any issues for appellate review. The court agreed, saying that it would "try [its] hardest to forget" the other aspects of the officer's testimony in analyzing the evidence. [T4. 79.]

At the conclusion of the hearing, the court found by a preponderance of the evidence that Powell had violated the conditions of his probation because he "was in possession of a controlled dangerous substance[.]" [T4. 88.] The court cited both Officer Savoy's account of recovering the baggie and Officer Donovan's testimony that "he took that package, had it field[-]tested by Detective Day [sic] and then submitted it to the Evidence Control Unit where it was tested and found to be positive for cocaine." [T4. 87.]

On March 16, 2018, the court sentenced Powell to 11 years in Case No. 114273029 and to concurrent sentences of seven years, seven months, and 12 days in Case No. 112199006 and Case No. 113336018. [S. 29.]

DISCUSSION

I. Chemist as Witness

Powell contends that the court committed reversible error in denying his "request for the presence of the analyst" and instead "allow[ing] the State to introduce the chemical analysis report as substantive evidence that the alleged CDS was cocaine." For reasons that follow, we agree.

A probation revocation hearing is a civil proceeding to determine whether a respondent violated a condition of probation and, if so, whether that violation warrants

revoking probation. *See Bailey v. State*, 327 Md. 689, 695 (1992) (citation omitted). The State bears the burden of proving a violation by a preponderance of the evidence. *See id.* The decision to revoke probation is typically reviewed under the deferential standard for abuse of discretion (*see, e.g.*, *Hammonds v. State*, 436 Md. 22, 31-32 (2013)), but we may always conduct a plenary, de novo assessment into whether a circuit court exercised its discretion in accordance with the appropriate legal standards. *See Morton v. Schlotzhauer*, 449 Md. 217, 231 (2016).

Although neither the Confrontation Clause nor the strict rules of evidence apply during revocation hearings, "[t]he Due Process Clause of the Fourteenth Amendment to the United States Constitution imposes procedural and substantive limits on the revocation of the conditional liberty created by probation." *State v. Fuller*, 308 Md. 547, 552 (1987); *see Blanks v. State*, 228 Md. App. 335, 339 (2016) ("the right to confront witnesses as protected by the Due Process Clause of the Fourteenth Amendment does apply" to probation revocation proceedings).

Because a revocation of probation may result in a loss of liberty, due process requires that a probationer "have an opportunity for a hearing [with] certain components before the probation is revoked." *State v. Brookman*, 460 Md. 291, 315 (2018) (citing *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973); *Morrissey v. Brewer*, 408 U.S. 471 (1972)). "[T]he minimum requirements for a hearing concerning revocation of probation must include at least the following elements: (1) written notice of the alleged violation; (2) disclosure of the evidence on which the alleged violation is based; (3) an opportunity

to be heard and to present witnesses and documentary evidence; [and] (4) an opportunity to confront and cross-examine adverse witnesses." *Id.* at 315-16 (citing *Gagnon v. Scarpelli*, 411 U.S. at 786; Md. Rule 4-347(e)). Nonetheless, "due process does not require that such a hearing be conducted under the formal rules of evidence." *Id*. at 316.

"The procedures to be followed to implement these minimum due process rights are 'the responsibility of each State' to adopt, by legislation or judicial decision." *Blanks v. State*, 228 Md. App. at 353 (quoting *Morrissey v. Brewer*, 408 U.S. at 488). The General Assembly has codified specific protections for a probationer's right to confront those who conduct chemical analyses on which the State relies in revocation of probation proceedings.

At issue here is CJP § 10-914, which "provides for the admission of laboratory test reports in probation revocation hearings and permits confrontation of the chemists who conducted the tests." *McDonald v. State*, 314 Md. 271, 282 (1988). In pertinent part, the statute provides:

> (a) *In general.* – A laboratory test, performed by a laboratory certified by the Maryland Department of Health and approved by the Division of Parole and Probation of the Department of Public Safety and Correctional Services, indicating that the defendant has used a controlled dangerous substance as defined in § 5-101 of the Criminal Law Article . . . is sufficiently reliable to justify revocation of the defendant's probation or work release, without an expert witness from the laboratory testifying in court to support the contents of a report of the laboratory test. . . .
>
> (c) *Report of test prima facie evidence of test results.* – A report of a laboratory test is prima facie evidence of the results of the laboratory test. . . .

> (e) *Chemist or analyst subject to cross-examination.* – Subject to the provisions of subsection (f) of this section, if a laboratory report or statement is admitted in evidence, the chemist or analyst who performed the laboratory test is subject to cross-examination by any party to the proceeding.
>
> (f) *Written demand for presence of chemist or analyst at hearing.* – (1) **On written demand of a defendant filed in the proceeding at least 5 days before the hearing to revoke a defendant's probation or work release, the prosecution shall require the presence of the chemist or analyst who performed the test or any individual in the chain of custody or control as a prosecution witness.**
>
> (2) The provisions of subsections (a), (b), and (c) of this section concerning prima facie evidence do not apply to the testimony of a witness whose presence is required under this subsection.

(Emphasis added.)

In this case, the challenged report (State's Exhibit 2), dated September 1, 2016, is labeled "CHEMISTRY REPORT" adjacent to the following heading:

Baltimore County Police Department
Forensic Services Section
Laboratory Report

The report identifies the submitting officer's name ("DERECK DONOVAN"), the analyst's name ("Roger F. Covington #9885, Forensic Chemist II"), and the evidence received ("Plastic bag containing white substance," by item number). The stated "CONCLUSION" is that the tested substance is "Cocaine – CDS II Net weight 13.88 grams" as tested by "Gas Chromatography/Mass Spectrometry." The following words appear above the analyst's signature:

> I hereby certify that I am employed by the Baltimore County Police Department and am certified by the Maryland State Department of Health and Mental Hygiene as a chemist to perform tests to identify any and all controlled dangerous substances. I am qualified as a chemist under

> standards approved by the Maryland State Department of Health and Mental Hygiene to analyze controlled dangerous substances. The above listed substances were properly tested by me utilizing analytical and qualify control procedures approved by the Maryland State Department of Health and Mental Hygiene. The evidence submitted in this case is in essentially the same condition as when I received it, except for that material consumed in the analytical process. This report contains the opinions and interpretations of the undersigned analyst based on reliable scientific data and is a true and accurate record of the examination(s) conducted. If an item has a numerical weight recorded in this report, it is accurate to within +/-0.06 grams, at a coverage probability of 95.45%.

Citing CJP § 10-914, Powell contends that the court erred in denying him his right to cross-examine the chemist who conducted the test and produced this report. He points to the court's failure to make any "factual findings as to the reliability of the report or whether the State had shown good cause for admitting the report in lieu of live testimony." He argues that the report contains "conclusions which ought to be tested by cross-examination[,]" because it "contains no information about how the chemical test was conducted, other than a 'method code' that corresponds to the words 'Gas/Chromotography/Mass Spectrometry (GC/MS)'" and a statement by the chemist that he "properly tested" the "listed substances" according to "procedures approved by" the Health Department. Moreover, Powell argues, "there is insufficient evidence in this record upon which the trial court could have found good cause for admitting the report in the place of live testimony," because the prosecutor "gave no further information" beyond saying that she called a telephone number for the retired chemist, but no one answered. In Powell's view, "[i]t is difficult to imag[ine] that the State's Attorney's Office for Baltimore County would be unable to acquire any information – other than a

single phone number – regarding a recently-retired analyst who presumably had tested numerous samples to be used as evidence in pending criminal matters."

We agree that the court erred in ruling that the State was not required to produce the chemist. Pursuant to CJP § 10-914(e) and (f), once defense counsel filed a timely written demand invoking Powell's statutory right to confront the chemist or analyst who performed the chemical analysis, the State had an obligation to "require the presence of the chemist or analyst who performed the test or any individual in the chain of custody or control as a prosecution witness." As our detailed review of the record establishes, the State relied on the chemist's report to establish essential elements of its case, *i.e.*, the chain of custody for the baggie, the test procedures that were applied to its contents, and the results of that testing. Under CJP § 10-914(f), the defendant at a probation revocation hearing has the right to cross-examine the person who performed such testing. Focusing on precedent that reliable hearsay is generally admissible in a revocation of probation hearing, the court neither acknowledged the statutory right to cross-examine the chemist nor afforded Powell that statutory right.

The State contends that the chemist's report was admissible under *Blanks v. State*, 228 Md. App. at 358-62, in which this Court held that a probationer did not have a due process right to confront and cross-examine the lab technicians who tested his urine sample. We disagree that *Blanks* negates the statutory right in CJP § 10-914(f).

In contrast to this case, there was no indication in *Blanks* that the defendant filed a timely written demand under CJP § 10-914(f). Moreover, the State "presented live

testimony from two witnesses . . . detailing the collection and analysis of Blanks's urine sample." *Blanks v. State*, 228 Md. App. at 359. One was the officer who collected the sample and submitted it for analysis. *Id*. at 340. The other was the director of the laboratory who supervised testing of that sample, "using an 'assembly line' system, with different employees in different divisions performing the individual steps." *Id*. at 344. Here, the court ruled that the State was not required to produce anyone who was involved in testing the contents of the baggie that was submitted by Officer Donovan.

We cannot say that foreclosing that opportunity was harmless, because the chemist's work was an essential link in the chain of custody and, in turn, a necessary element of the State's proof that Powell was in possession of cocaine. *Cf. White v. State*, 223 Md. App. 353, 400 (2015) (characterizing a serologist as "a material witness in the chain of custody for the forensic evidence," so that "any error in allowing [that witness] to testify via videoconference" would not have been harmless). Indeed, the court expressly relied on the chemist's results in finding that Powell violated the conditions of his probation. Accordingly, we shall vacate the judgment and remand for further proceedings, including a new probation revocation hearing at which Powell may cross-examine the chemist in accordance with CJP § 10-914.

II. Skype Testimony

Our decision moots Powell's alternative assignment of error, in which he challenged the admission of Officer Donovan's testimony via Skype. Because that issue may arise on remand, however, we note that Maryland Rule 2-803, which went into

effect after the proceedings challenged here, expressly authorizes testimony by "remote electronic means," albeit with significant limitations and standards.

Unless the parties consent, Rule 2-803(c) requires a court to find that a remote witness is "an essential participant" who is not present in the courtroom "by reason of illness, disability, risk to the participant or to others, or other good cause," and that such participation "by remote electronic means will not cause substantial prejudice to any party or adversely affect the fairness of the proceeding" before the witness may testify by remote electronic means. Md. Rule 2-803(c). Although "the court may consider the distance involved and whether there are any significant impediments to the ability of the participant to appear personally[,]" "mere absence from the county or State" does not "constitute good cause[.]" Md. Rule 2-803, Committee Note.

Moreover, Rules 2-804 and 2-805 set forth express requirements for remote electronic participation. Among these are the following "minimum requirements":

> (1) All participants shall be able to communicate with each other by sight, hearing, or both as relevant.
>
> (2) Unless waived by the participants, all participants shall be able to observe all physical evidence and exhibits presented during the proceeding, and the program shall permit participants to transmit documents as necessary.
>
> (3) Video quality shall be adequate to allow participants and the fact-finder to observe the demeanor and non-verbal communications of other participants. Sound quality shall be adequate to allow participants to hear clearly what is occurring where each of the participants is located.

Md. Rule 2-805(c).

Officer Donovan's testimony did not satisfy these requirements. If the officer testifies from a remote location on remand, the State must satisfy these requirements and the other applicable requirements for his testimony to be admissible.

JUDGMENTS VACATED. CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE CITY FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.