

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1356**

State of Minnesota,
Respondent,

vs.

Michael Paul Wooten,
Appellant.

**Filed April 2, 2018
Affirmed
Rodenberg, Judge**

Watonwan County District Court
File No. 83-CR-14-584

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Stephen J. Lindee, Watonwan County Attorney, St. James, Minnesota (for respondent)

Thomas K. Hagen, Steven P. Groschen, Rosengren, Kohlmeyer & Hagen Law Office,
Chtd., Mankato, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Bjorkman, Judge; and
Smith, Tracy M., Judge.

U N P U B L I S H E D O P I N I O N

RODENBERG, Judge

Appellant Michael Paul Wooten challenges the district court's conclusion that clear
and convincing evidence proved he violated a condition of his probation. We affirm.

FACTS

Appellant was convicted of two separate criminal offenses in early 2015. The district court stayed execution of sentence and placed appellant on probation with conditions that included that appellant not possess or use alcohol or controlled substances, and that he submit to random drug testing to ensure his compliance with this and other probation conditions.

On Friday, February 10, 2017, appellant met with his probation agent, Neil Johnson, at Johnson's office. Johnson requested that appellant provide a urine sample. Johnson wore rubber gloves during the testing process. He required appellant to wash his hands and checked appellant for any means of falsifying the sample. Johnson testified, "I got in there and from what I remember [appellant] couldn't go. . . . [H]e kind of fumbled or dropped the cup. . . . He gave me the cup back. And then I just said, well, we'll try it—We'll try it in a little bit." Johnson did not remember the cup hitting the urinal or dropping on the floor.

They waited for some time, and appellant eventually provided a urine sample. The sampling process was uneventful this time. Johnson field-tested the sample and it was positive for amphetamine but negative for methamphetamine. This was not a typical result, so Johnson left appellant in the hallway and took the sample to consult another probation-department employee. Johnson decided to send the sample to a laboratory for further analysis, but he allowed appellant to leave his office and not be taken into custody despite the positive, but somewhat anomalous, field-test result. Johnson placed the urine sample on a table in his office, left his office to retrieve appellant, and then escorted appellant back

into his office to seal the urine cup and complete paperwork concerning the sample. Johnson sealed the sealed urine cup in a plastic bag and placed it in a refrigerator, where it remained over the weekend before being sent to the laboratory. The laboratory later reported that testing revealed the sample to contain more than 1,000 ng/mL of methamphetamine and more than 400 ng/mL of amphetamine. Johnson later reported the result and apparent probation violation to the district court.

At the probation-violation hearing, the state called three witnesses: Johnson, another probation agent, and a secretary in the probation department. Only Johnson had handled appellant's urine sample. The laboratory report concerning the sample was received in evidence. Based on that report, Johnson testified that he believed appellant had violated a condition of his probation by using amphetamine and methamphetamine.

The district court issued a written order on June 12, 2017. The district court found that appellant "dropped or fumbled the cup" during the first attempt at providing a urine specimen, that he may have "caught the cup or somehow trapped it against his body and the urinal," and that "Johnson had the cup in his office and left momentarily to get the worksheet to prepare to ship the sample." But the district court nevertheless found that the "procedures for urine collection were substantively followed, and there is no evidence the test was invalid. There was no credible evidence, or inference, that the test was not accurate." The district court concluded that clear and convincing evidence proved that appellant violated his probation, and it reinstated him to probation with the additional condition that he serve 60 days in jail.

This appeal followed.

DECISION

Appellant challenges the district court's decision that he violated a condition of his probation. He argues that the state did not prove a violation by clear and convincing evidence because the urine sample may have been compromised.¹

The burden of proof at a probation-violation hearing requires clear and convincing evidence that a condition of probation was violated. Minn. R. Crim. P. 27.04, subd. 2(1)(c)(b). For evidence to be clear and convincing, there must be "more than a preponderance of the evidence but less than proof beyond a reasonable doubt." *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998) (quotation omitted). "Clear and convincing evidence may be established by the testimony of a single witness." *State v. Oates*, 611 N.W.2d 580, 585 (Minn. App. 2000).

Here, the district court concluded that appellant had violated his probation by using illegal drugs. Record evidence supports the district court's findings of fact. Johnson testified that, although appellant dropped or fumbled the cup during the first sample attempt, Johnson saw no need to use another cup because nothing about what he saw gave him concern about contamination. Appellant speculates that the cup could have become contaminated, but there is no record evidence of contamination. Johnson required appellant to wash and dry his hands before approaching the urinal, he inspected appellant's body for things that could falsify the sample, and he stood beside appellant near the privacy screen as appellant urinated. Johnson testified that he had no reason to believe that the

¹ Appellant does not separately challenge the district court's disposition of the probation violation by imposing 60 days in jail as an intermediate sanction.

sample had been contaminated. The preliminary field test showed amphetamine, and a “real light line for meth.” Johnson sealed the sample and sent it to a laboratory for chemical testing, which indicated that appellant’s urine contained both substances.

Appellant argues that Johnson violated Department of Corrections (DOC) procedures for obtaining a urine sample because Johnson did not “[k]eep the collection bottle in full view of the offender at all times” or freeze the urine sample before shipping it to the laboratory. The district court explained that, although “[t]here was a period of time between the sample attempts that the cup was in a box, . . . that is irrelevant as the sample wasn’t provided and [appellant] would have had the opportunity to see the cup before the second attempt.” Additionally, the district court found that there was “a minute or so when the cup was on Johnson’s desk while Johnson got the forms for preparing the sample for shipping and [appellant] then returned to complete the process.” The laboratory test showed the “actual levels of chemicals in the sample.” The district court, in accepting the test as accurate, implicitly concluded that Johnson’s decision to refrigerate the urine sample did not compromise the sample. The district court concluded that such a “minor deviation from [DOC] protocol” did not invalidate the test result.

The record supports the district court’s findings, and those findings support the conclusion that appellant violated a probation condition.

Affirmed.