



Appellant-defendant Sonya Barger appeals the revocation of her probation, arguing that there is insufficient evidence supporting the revocation. Finding the evidence sufficient, we affirm.

### FACTS

On April 6, 2010, Barger pleaded guilty to one count of class C felony forgery. On May 7, 2010, the trial court sentenced Barger to two years, fully suspended to probation. The terms of her probation included requirements that she not commit a new criminal offense and that she submit to drug and alcohol testing.

On April 9, 2010, Barger failed to take a baseline drug test. On May 6, 2010, she reported to the drug testing lab twice but failed to submit a sample. On May 13, 2010, Barger again reported to the drug testing lab twice and failed to submit a urine sample. On May 14, 2010, she failed to take a urine test and failed to call the drug line.

On May 17, 2010, Officer Timothy Huddleston received a dispatch regarding an assault in progress. When he arrived, he spoke with the complaining witness, who was extremely upset and crying. The witness told Officer Huddleston that she and Barger had been in a verbal argument that turned into a physical altercation when Barger grabbed the witness around her throat, choking her and restricting her breathing. The witness had marks and redness on each side of her neck. Subsequently, Barger was arrested for class D felony strangulation and class D felony battery. The criminal charges against Barger were eventually dismissed because the complaining witness failed to appear.

On June 4, 2010, the State filed a notice alleging that Barger had violated the terms of her probation by virtue of her failure to submit samples for drug tests and the alleged strangulation and battery incident. At the June 25, 2010, hearing on the alleged violations, Officer Huddleston testified regarding the witness's statements to him on the night of the altercation as well as his own observations at the scene. Barger objected to the testimony regarding the witness's statements, arguing that those statements were inadmissible hearsay. The trial court overruled the objection. At the close of the hearing, the trial court revoked Barger's probation, and she now appeals.

#### DISCUSSION AND DECISION

Barger's sole argument on appeal is that there is insufficient evidence supporting the trial court's conclusion that she violated the terms of her probation. We will affirm a trial court's decision to revoke probation if there is substantial probative evidence supporting the trial court's conclusion that the probationer violated any condition of probation. Dawson v. State, 751 N.E.2d 812, 814 (Ind. Ct. App. 2001). The State must prove the alleged violation by a preponderance of the evidence. Ind. Code § 35-38-2-3(e). When reviewing the trial court's decision, we will neither reweigh the evidence nor assess witness credibility. Thornton v. State, 792 N.E.2d 94, 96 (Ind. Ct. App. 2003).

The record reveals that Barger failed to take drug tests on at least five separate occasions, which violated the terms of her probation. Barger emphasizes that there are possible permissible reasons that she failed to submit to the tests, but that amounts to a request that we reweigh the evidence and assess witness credibility. The State showed

that she violated the terms of her probation by failing to take the drug tests as required. This, alone, constitutes sufficient evidence to support the revocation.

Barger, however, emphasizes that in revoking probation, the trial court relied only on the alleged strangulation incident, so we will address that alleged violation as well. Barger argues that the trial court erred by permitting Officer Huddleston to testify about the statements of the complaining witness at the scene, contending that this testimony was inadmissible hearsay.

It is well established, however, that “[b]ecause the Rules of Evidence do not apply in probation revocation hearings, the general rule against hearsay is inapplicable.” Figures v. State, 920 N.E.2d 267, 271 (Ind. Ct. App. 2010) (internal citation omitted); see also Reyes v. State, 868 N.E.2d 438, 442 (Ind. 2007) (holding that to satisfy due process, the hearsay evidence must be substantially trustworthy). Here, the assault had just occurred and the victim was still extremely upset, bearing red marks on her neck from the incident, when she spoke to Officer Huddleston. We find that this situation indicates the substantial trustworthiness of the evidence. Consequently, the trial court did not err by permitting Officer Huddleston to testify in this regard.

The record reveals, therefore, that at the scene of the incident, the victim, who was upset and visibly wounded, told Officer Huddleston that Barger had grabbed her around the throat, choking her and restricting her breathing. We find that this evidence establishes probable cause to believe that Barger violated a criminal law. See Lightcap v. State, 863 N.E.2d 907, 911 (Ind. Ct. App. 2007) (noting that when the State alleges that a

probationer violated the conditions of probation by committing a new criminal offense, the State need not show that the defendant was actually convicted of a crime for the trial court to revoke probation; instead, a trial court may revoke if there is probable cause to believe that the defendant violated a criminal law). In other words, we find that the trial court properly found that the State established by a preponderance of the evidence that Barger had violated the conditions of her probation by committing a new criminal offense. Consequently, the trial court did not err by revoking Barger's probation.

The judgment of the trial court is affirmed.

VAIDIK, J., and BARNES, J., concur.