

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

**MICHAEL E. CAUDILL**  
Caudill and Associates  
Indianapolis, Indiana

**GREGORY F. ZOELLER**  
Attorney General of Indiana

**ANN L. GOODWIN**  
Special Deputy Attorney General  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

CHARLES KING,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

No. 49A02-0808-CR-767

---

APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Mark Jones, Judge Pro-Tempore  
Cause No. 49G05-0306-FB-104398

---

**April 7, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Judge**

## Case Summary and Issue

Charles King appeals the trial court's revocation of his probation, raising as the sole issue for our review whether the trial court properly revoked his probation. Concluding that sufficient evidence of probative value supports the finding that King had violated a term of his probation, we affirm.

## Facts and Procedural History

In June of 2003, the State charged King with two counts of burglary, both Class B felonies; two counts of theft, both Class D felonies; and two counts of auto theft, both Class D felonies. Later that year, King entered a plea of guilty to the two counts of burglary. Pursuant to the terms of the agreement, the remaining counts were to be dismissed and the initial executed sentence was not to exceed ten years. The trial court sentenced King to two concurrent twelve-year sentences, with six years suspended. Upon completion of his executed time, King was to serve three years on probation. In addition to the standard terms of probation – including not committing a criminal offense, refraining from the use of alcohol or drugs, and submitting to urine testing at the discretion of the probation department – King was ordered to obtain a general education diploma (“GED”), establish paternity for his unborn child, pay all court-ordered support, attend anger control counseling, and obtain full-time employment.

King began serving his probation on June 25, 2007.<sup>1</sup> On April 18, 2008, May 13, 2008, and May 28, 2008, the Marion County Probation Department filed notices of probation violation, collectively alleging that King had failed to obtain his GED, failed

---

<sup>1</sup> After King began serving probation, the employment condition was modified to require him to complete eight hours of community service each week that he was unemployed.

to report to the drug lab as ordered on two occasions, failed to attend anger control counseling, failed to comply with court-ordered financial obligations, submitted a urine sample that tested positive for cocaine, and was arrested on May 21, 2008, and charged with residential entry, a Class D felony, and possession of cocaine, a Class D felony. A contested probation violation hearing was held on July 23, 2008. The State presented testimony from Officer Aaron McDonough of the Indianapolis Metropolitan Police Department. Officer McDonough was involved in King's arrest that resulted in the residential entry and possession of cocaine charges. William Lacy of the Marion County Probation Department also testified. He was not King's probation officer and his testimony was therefore based on the file provided to him by King's probation officer, Travis Hodges. At the conclusion of the hearing, the trial court found that the evidence proved by a preponderance of the evidence that King was in possession of cocaine on May 21, 2008, that he failed to report to the drug lab on two occasions, failed to comply with court-ordered anger control counseling, and submitted a drug screen that tested positive for cocaine. The trial court revoked King's probation and ordered him to serve the previously-suspended six years at the Department of Correction. King now appeals the revocation of his probation.

### Discussion and Decision

#### I. Standard of Review

A probation hearing is civil in nature and the State need only prove the alleged violations by a preponderance of the evidence. Monroe v. State, 899 N.E.2d 688, 691 (Ind. Ct. App. 2009). We consider the evidence most favorable to the judgment of the

trial court without reweighing the evidence or judging the credibility of the witnesses. Id. If there is substantial evidence of probative value to support the trial court's decision that the defendant violated any terms of probation, we will affirm the revocation of probation. Id.

## II. Basis for Revocation Decision

King contends that the trial court's revocation decision was unsupported by substantial evidence of probative value. King challenges each of the trial court's five findings of violation.<sup>2</sup> We note that violation of a single condition of probation is sufficient to revoke probation. Brabandt v. State, 797 N.E.2d 855, 860 (Ind. Ct. App. 2003).

The trial court found that the State had proved by a preponderance of the evidence that King submitted a urine sample that tested positive for cocaine on May 7, 2008. The State offered the testimony of William Lacy, the liason between the probation department and the courts. Lacy testified that King failed on two occasions to report for drug screens and submitted a positive screen on a third occasion. Lacy did not have direct supervision of King and based his testimony on probation department records and the file regarding King. Through Lacy, the State introduced into evidence an exhibit consisting of a request for analysis and a laboratory report collectively showing that "Charles Thornton King," gallery number 527997, reported for a drug test on May 7, 2008, and that the sample tested positive for cocaine. See State's Exhibit 10. The May

---

<sup>2</sup> The Probation Department alleged seven violations, and King challenges each of those seven in his brief. See Brief for Appellant at 8. However, the trial court found only five violations, making no comment on the allegations that King failed to obtain his GED as ordered and failed to comply with his court-ordered financial obligations. See Transcript at 47-48.

7, 2008, request for analysis is accompanied by King's picture, sex, date of birth, and the cause number of the case for which he was on probation. It also bears his signature certifying the sample as his own and the signature of a witness. The accompanying laboratory report shows that a specimen collected on May 7, 2008, from "King, Charles T," donor identification number 527997, tested positive for cocaine, and that the test was repeated and reviewed. Lacy acknowledged that he did not personally generate the reports. King did not object to the admission of State's Exhibit 10.

King contends that State's Exhibit 10 has no substantial guarantee of trustworthiness because there was no evidence regarding how the reports were prepared, who prepared them, or the source and reliability of the information contained in the reports. The State notes that King did not object to the admission of Exhibit 10. Failure to object to the admission of evidence results in waiver of the issue on appeal. Brabandt, 797 N.E.2d at 861. We may remedy an unpreserved error when the trial court has committed fundamental error. Id. King, through citing the definition of fundamental error, see Mathews v. State, 849 N.E.2d 578, 587 (Ind. 2006) (the fundamental error exception "applies only when the error constitutes a blatant violation of basic principles, the harm or potential for harm is substantial, and the resulting error denies the defendant fundamental due process"), and relying on a case in which we found fundamental error in the admission of unreliable evidence, see Carden v. State, 873 N.E.2d 160 (Ind. Ct. App. 2007), argues that the trial court's admission of the urinalysis evidence is fundamental error.

Probation revocation deprives a probationer of a conditional liberty, and therefore, a probationer is not entitled to the full due process rights afforded a defendant at a criminal trial. Cox v. State, 850 N.E.2d 485, 488 (Ind. Ct. App. 2006). Most relevant to this case, the trial court may admit evidence in a probation revocation hearing that would not be permitted at a criminal trial. Reyes v. State, 868 N.E.2d 438, 440 (Ind. 2007). Courts in probation revocation hearings may consider “any relevant evidence bearing some substantial indicia of reliability. This includes reliable hearsay.” Cox v. State, 706 N.E.2d 547, 551 (Ind. 1999); see also Ind. Evidence Rule 101(c) (“The rules, other than with respect to privileges, do not apply . . . [to p]roceedings relating to . . . probation . . .”). However, our supreme court has recently cautioned that “this does not mean that hearsay evidence may be admitted willy-nilly in a probation revocation hearing.” Reyes, 868 N.E.2d at 440. Rather, the trial court must determine whether the hearsay evidence “reaches a certain level of reliability, or if it has a substantial guarantee of trustworthiness.” Id. at 441. “[I]deally, [the trial court should explain] on the record why the hearsay [is] reliable and why that reliability [is] substantial enough to supply good cause for not producing . . . live witnesses.” Id. at 442 (quoting United States v. Kelley, 446 F.3d 688, 692 (7th Cir. 2006)).

In Carden, a condition of the defendant’s probation was that he not be present at or enter within two blocks of any parks, schools, playgrounds, daycare centers or other locations where children are known to congregate. 873 N.E.2d at 161-62. The defendant’s reported address was not in violation of that condition of probation. When the defendant asked his probation officer if he could move in to his girlfriend’s home,

the probation officer ran a computer check of the girlfriend's address using a mapping system that showed the address was within two blocks of a daycare center and he told the defendant he could not move there. The probation officer relied on the information provided by the mapping system and felt it was not necessary for him to drive by the girlfriend's address to verify the information. The defendant was not at his reported address on two dates when the probation officer conducted field tests. When the probation officer finally located the defendant, the defendant said he had not been at his reported address because he had spent one night with his girlfriend and one night with a friend. At the probation revocation hearing, the defendant did not object to the probation officer's testimony about the mapping system, and the trial court found that, as alleged in the notice of probation violation, he had failed to refrain from entering within two blocks of a daycare center. On appeal, the defendant challenged the trial court's admission of the probation officer's testimony about the mapping system as fundamental error because the testimony lacked any indicia of reliability.<sup>3</sup>

We agreed that the testimony did not have a substantial guarantee of trustworthiness, noting that “[n]o evidence was presented regarding such basic things as the name and manufacturer of the mapping system, how the mapping system works, how often the mapping system is updated, and whether the alleged daycare center . . . was still in business when [defendant] spent the night at [his girlfriend's house].” *Id.* at 164. Thus, the only evidence the State presented to prove that the defendant violated his probation was “that some unidentified ‘mapping system’ showed that there was some

---

<sup>3</sup> The defendant filed his brief before the Indiana Supreme Court's decision in Reyes that clarified the test is whether the evidence has a substantial guarantee of trustworthiness and thus used the language from Cox regarding sufficient indicia of reliability. *Id.* at 163 n.4.

unnamed daycare center within two blocks of [his girlfriend's] address.” Id. Because the only evidence used to prove the probation violation did not bear a substantial guarantee of trustworthiness, its admission was so prejudicial to the defendant's rights as to make a fair trial impossible and constituted fundamental error requiring reversal of the defendant's probation revocation.<sup>4</sup> Id. at 164-65.

King likens the urinalysis report in his case to the mapping system in Carden, claiming that without foundational evidence the State failed to show the report had a substantial guarantee of trustworthiness. However, our supreme court has held that “the use in a probation revocation hearing of a regular urinalysis report prepared by a company whose professional business it is to conduct such tests” does not deny a defendant due process. Cox, 706 N.E.2d at 550 n.8. The report itself shows by whom it was generated and provides information regarding the source and integrity of the sample. The urine sample is linked to King by his identifying information, including his picture and birthdate, appearing on the request for analysis. King's signature on the request for analysis certifies that the sample accompanying the form is his own, that he provided it in the presence of the collector, and that he witnessed the sample being sealed. The collector also signed the form. The laboratory report showing the sample tested positive for cocaine was prepared by an identified agency in the business of conducting drug tests, was linked to the request for analysis by King's specific identifiers, and shows that the sample was tested and retested. The trial court specifically found, with regard to the

---

<sup>4</sup> The probation department had also alleged, and the trial court found, that the defendant had violated his probation by failing to maintain a single, verifiable residence by spending two nights away from his reported address. The court declined to find that spending the night away from home on two occasions was sufficient to violate this condition of probation. Id. at 165 n.6.

substantial trustworthiness of the report, that “[i]t not only shows positive amounts, it also shows Mr. King’s specific identifiers in addition to Mr. Lacy’s having identified Mr. King as being the same individual who was under probation in this cause number . . . .” Tr. at 47-48. The laboratory report bore a substantial guarantee of trustworthiness, the trial court explained its reasoning for admitting the report, and accordingly, the trial court did not commit error – let alone fundamental error – in admitting the laboratory report into evidence.

Because a single violation is sufficient to revoke probation, see Brabandt, 797 N.E.2d at 860, and because King has failed to demonstrate fundamental error in the trial court’s admission of the urinalysis report, on the basis of which there is sufficient evidence to support the trial court’s finding that King violated a term of his probation by using drugs, we need not address King’s remaining allegations of error.

#### Conclusion

The trial court did not err in revoking King’s probation. The trial court’s judgment is therefore affirmed.

Affirmed.

CRONE, J., and BROWN, J., concur.