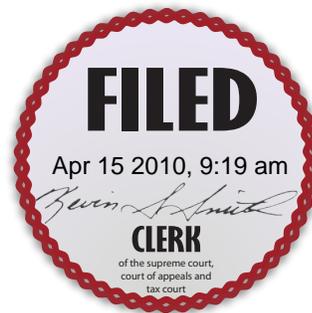


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

KEVIN CHRISMAN,)
)
Appellant-Defendant,)
)
vs.) No. 49A04-0911-CR-637
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Lisa Borges, Judge
Cause No. 49G04-0802-FC-43836

April 15, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Kevin Chrisman appeals the revocation of his probation, presenting the following restated issue for review: Was there sufficient evidence to establish that Chrisman violated his probation?

We affirm.

In November 2008, Chrisman was convicted of child solicitation as a class C felony and found to be a habitual offender. He was sentenced to 12 years in prison, with eight years executed and four years suspended to probation. The conditions of his probation included the following: “You shall not commit a criminal offense and shall promptly report all arrests to your probation officer.” *Appellant’s Appendix* at 51. Chrisman remained free after sentencing when he posted an appeal bond that was approved by the court.

Around midnight on or about April 22, 2009, Officer Edward Bottoms of the Indianapolis Metropolitan Police Department observed a semi-tractor trailer, later determined to be Chrisman’s, parked in a strip mall parking lot at 8939 East 38th Street. The back doors of the trailer were open and a Chevy Blazer was parked behind the trailer. Several people were moving back and forth from the back of the trailer and the Blazer. In the trailer, there were several skids of boxes of CDs and DVDs wrapped in plastic. Some of the boxes were open, revealing new merchandise inside them. One of the boxes contained ninety-two CDs and was shipped from A.E.C. Onestop Group, Inc. to “Universal Return Center” in Fishers, Indiana. *The Exhibits* at 12. Inside the trailer near the back, there were several trash bags containing new CDs and DVDs. There were also several trash bags in the Blazer containing new CDs and DVDs.

Officer Bottoms and another officer approached Chrisman and asked him what was going on. According to Officer Bottoms: “[Chrisman] stated to us that this is not the first time that he broke the seal of a truck and removed items from a trailer and sell them [sic] or give them away or whatever he normally does with them, but he said it is not the first time he’s done this.” *Transcript* at 10. Chrisman also informed Officer Bottoms that “It’s just – [I] did it because of an insurance issue. After they notice, you know, later on that items are missing from the skids.” *Id.*

On April 29, Chrisman was charged with, among other things, theft and receiving stolen property. On May 1, the State filed a notice of probation violation. The matter proceeded to an evidentiary hearing, after which the trial court found that Chrisman had violated the conditions of his probation and ordered that Chrisman serve the entire twelve-year sentence.

Chrisman contends the evidence was not sufficient to prove he violated the conditions of probation. Probation is a favor granted by the State rather than a right to which a criminal defendant is entitled. *Cooper v. State*, 917 N.E.2d 667 (Ind. 2009). A probation revocation hearing is civil in nature, and the State need only prove an alleged violation by a preponderance of the evidence. *Thornton v. State*, 792 N.E.2d 94 (Ind. Ct. App. 2003). We review a trial court’s decision to revoke probation for an abuse of discretion. *Id.* Upon appeal, we consider only the evidence most favorable to the judgment and do not reweigh the evidence or judge the witnesses’ credibility. *Id.*

As a condition of his probation, Chrisman was to refrain from committing another

criminal offense. Chrisman is correct in observing that, by itself, an arrest will not support the revocation of probation. *See Cooper v. State*, 917 N.E.2d 667. On the other hand, “proof that the defendant engaged in the alleged criminal conduct is sufficient to support revocation of probation.” *Id.* at 674. Moreover, “if the trial court after a hearing finds that the arrest was reasonable and there is probable cause to believe the defendant violated a criminal law, revocation will be sustained.” *Id.*

Chrisman complains that the evidence does not demonstrate that he did not own the CDs and DVDs that were transferred from the back of his truck to the Blazer. If there was no direct evidence of ownership, there was evidence that permitted a reasonable inference that Chrisman was not the owner. The activities that resulted in Chrisman’s arrest occurred around midnight in a strip mall parking lot, where Chrisman had parked his truck. Chrisman admitted to Officer Bottoms that he “broke the seal” on the trailer he was pulling in order to gain access to its contents. *Transcript* at 10. This supports a reasonable inference that his access to the contents of the trailer was unauthorized. The CDs and DVDs in the trailer were in boxes whose shipping labels indicated that the boxes were owned by A.E.C. Onestop Group, Inc., not Chrisman. Moreover, as the State notes, if Chrisman’s control over the contents of the trailer was authorized, there would be no “insurance issues” when it was discovered that the items were missing. *Id.* We conclude that the State proved by a preponderance of the evidence that Chrisman committed the criminal offense of theft and/or receiving stolen goods, in violation of the conditions of his probation. The court did not err in revoking probation.

Judgment affirmed.

KIRSCH, J., and ROBB, J., concur.