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ATTORNEY FOR APPELLANT:

MATTHEW J. MCGOVERN
Evansville, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

TAMARA WEAVER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

CORY BLOCKER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 31A04-1010-CR-635
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HARRISON SUPERIOR COURT
The Honorable Roger D. Davis, Judge
Cause No. 31D01-1007-FD-522
Cause No. 31D01-0602-FB-137

June 13, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Cory Blocker appeals his conviction for theft[1] and the revocation of his probation. Blocker raises two issues, which we revise and restate as:

I. Whether the trial court abused its discretion by excluding certain evidence; and

II. Whether the evidence is sufficient to support the revocation of his probation.

We affirm.

The relevant facts follow. On February 15, 2006, the State charged Blocker with battery as a class A misdemeanor, criminal deviate conduct as a class B felony, and rape as a class B felony under cause number 31D01-0602-FB-137 ("Cause No. 137"). Blocker pled guilty to criminal deviate conduct as a class B felony, and the court sentenced Blocker to ten years with five years suspended to probation.

On July 7, 2010, Blocker, who was thirty-four years old, drove in his mother's white Dodge Stratus with Tim Hatzman to a gas station in Palmyra, Indiana, at approximately 1:00 a.m. Blocker "kept coming into the parking lot and trying to . . . tell . . . other regular customers . . . to tell [the clerk of the gas station] to turn the pumps on." Transcript at 34. Blocker waited until the clerk became busy and then asked the clerk to turn on the pumps "not directly . . . but through a customer." Id. at 35. The clerk did not initially turn on the pump, and then Blocker told the clerk: "hey, turn the pump on." Id. at 36. The clerk thought that Blocker had requested four dollars worth of gas and turned on the pump for a "four dollar prepay." Id. at 40. The clerk then realized that Blocker had not placed any money on the counter and went to ask "why, or what's up." Id. at 36.

[1] Ind. Code § 35-43-4-2 (Supp. 2009).

Blocker told the clerk that he needed a "fill up," and the clerk turned the pump on again. Id. The clerk told two of his regular customers to "keep an eye on" Blocker's vehicle. Id. at 37. After Blocker was finished pumping gas, Blocker left the gas station without paying. Two receipts related to Blocker's gas amounted to four dollars and thirty-two dollars.

D.B., a part-time employee of the gas station that was present that evening, never saw Blocker pay for gas. D.B. offered to go over to Hatzman's residence because he knew where Hatzman lived. D.B. went to Hatzman's house, saw the same white car, knocked on the door repeatedly, and waited at the door for about ten minutes, but no one answered the door. D.B. returned to the gas station and told the clerk, and the clerk called the police.

Harrison County Sheriff's Deputy Terry Bartle was dispatched to the gas station, and witnesses observed Blocker's vehicle traveling south on 135 and pointed out the vehicle to Deputy Bartle. Deputy Bartle entered his patrol car and attempted to catch up to Blocker's vehicle. Deputy Bartle observed Blocker's vehicle "go south, then north, then south again on 135." Id. at 76. Deputy Bartle believed that Blocker's driving was evasive and "felt . . . like [Blocker] was trying to avoid . . . [c]ontact with the police." Id. at 81. Blocker eventually pulled over into a fire department, and Deputy Bartle pulled in behind Blocker's vehicle. Deputy Bartle informed Blocker that three witnesses observed him fill up his vehicle and leave. Blocker was "pretty adamant" that he did not do it, became belligerent, and was "cussing and stuff like that." Id. at 78. "In the same

sentence [Blocker] . . . stated he didn't do it and that he had the money and was gonna go back and pay for it and things like that." Id. Deputy Bartle took Blocker into custody.

On July 8, 2010, the State charged Blocker with theft as a class D felony under cause number 31D01-1007-FD-522 ("Cause No. 522"). On July 27, 2010, the State filed a petition to revoke Blocker's suspended sentence in Cause No. 137 and alleged that Blocker committed theft as a class D felony on July 7, 2010, failed to provide proof of employment, and owed probation user fees and other fines, costs, and fees.

On August 11, 2010, the court held a pretrial conference in Cause No. 522 at which the parties appeared.[2] On September 1, 2010, the State filed a motion in limine in Cause No. 522 requesting that Blocker, his counsel, and any of his witnesses be instructed not to mention or in any way refer to any evidence of Blocker's mother or any other person paying restitution to the gas station because it was immaterial and irrelevant. The court granted the State's motion in limine.

On September 2, 2010, the court held a jury trial and revocation hearing. The clerk, D.B., and officers testified to the foregoing facts. Betty Blocker, Blocker's mother, testified that she let Blocker use her vehicle that evening and told him that he had to be home by 10:00 or 11:00 P.M. because Blocker's father had to be at the hospital early the next morning for a chemotherapy appointment. Betty testified that she called Blocker several times and finally reached Blocker and told him to return home. Hatzman testified that he did not hear anyone knock on his door until the police arrived at his residence.

[2] The record does not contain a transcript of the pretrial conference.

Gina Wolfe, Hatzman's mother, testified that she lived with Hatzman and that no one came and knocked on her door that evening.

During the direct examination of the clerk, the prosecutor asked: "[D]id [Blocker] pay for the thirty-six dollars worth of gas he got from your establishment on July 7th?" Transcript at 41. The clerk responded: "Not that night and none to my knowledge." Id. Blocker's attorney later stated: "They want to keep out the fact that his mother paid for the gas. Which she would testify that she, in fact, did but for that motion in limine, that she paid for it the very next morning." Id. at 43. Blocker's attorney argued that the clerk "placed into evidence the fact that . . . that this gas has not been paid for." Id. Blocker's attorney also stated "I think the issue is that it . . . it shows, you know, I realize it's not a factual . . . it's not one of the factual elements of the case but nonetheless it kind of . . . it . . . it just leaves it out there hanging that, you know, my case . . . my . . . my piece of garbage client didn't bother to pay the restitution." Id. at 45. The court rejected Blocker's argument but stated that he would reconsider it further in the trial.

The jury found Blocker guilty of theft as a class D felony in Cause No. 522. After discharging the jury, the court asked the prosecutor if she wanted to present evidence regarding the petition to revoke probation and the prosecutor called Diane Harrison, the Chief Probation Officer. On cross-examination, Blocker's attorney asked Harrison: "[O]ther than obviously he's just been adjudicated to be guilty of this theft case? What other violations have occurred since February?" Id. at 165. The State moved to incorporate the "jury trial and conviction" under Cause No. 522, which the court granted without objection from Blocker. Id. at 166. After some discussion, the court stated that it

was taking judicial notice of the evidence in Cause No. 522, found that Blocker "committed the offense of theft for . . . for purposes of the revocation hearing," and revoked Blocker's suspended sentence in Cause No. 137 and ordered Blocker to serve four years at the Indiana Department of Correction. Id. at 180.

I.

The first issue is whether the trial court abused its discretion by excluding evidence that Blocker's mother reimbursed the gas station. Blocker argues that the trial court abused its discretion because "the State opened the door to this evidence" and "the evidence was relevant to Blocker's defense." Appellant's Brief at 6. The State argues that it did not open the door to this evidence because the clerk "did not leave a misleading impression because his response indicated that [Blocker] did not pay for the gasoline that evening or any other time." Appellee's Brief at 7. The State argues that the evidence that Blocker's mother reimbursed the gas station was not relevant because it did not make the existence of a material fact more or less probable. The State also argues that any error was harmless.

The admission and exclusion of evidence is a matter within the sound discretion of the trial court, and we will review only for an abuse of discretion. Wilson v. State, 765 N.E.2d 1265, 1272 (Ind. 2002). "An abuse of discretion occurs when the trial court's ruling is clearly against the logic, facts, and circumstances presented." Oatts v. State, 899 N.E.2d 714, 719 (Ind. Ct. App. 2009). When evidence is "only marginally relevant, it is within the sound discretion of the trial court to admit it." Houston v. State, 730 N.E.2d 1247, 1250 (Ind. 2000). Generally, errors in the admission or exclusion of evidence are

to be disregarded as harmless unless they affect the substantial rights of a party. Coleman v. State, 694 N.E.2d 269, 277 (Ind. 1998). In determining whether an evidentiary ruling affected a party's substantial rights, the court assesses the probable impact of the evidence on the trier of fact. Id.

The record reveals that Blocker attempted to ask the clerk to turn on the pumps through other customers. The clerk thought that Blocker had requested four dollars worth of gas and turned on the pump for a "four dollar prepay," and Blocker later indicated that he needed a "fill up." Transcript at 36, 40. Blocker later drove "like he was trying to avoid . . . [c]ontact with the police." Id. at 81. Moreover, the jury also heard Deputy Bartle's testimony that Blocker stated that he would pay for the gas. We conclude that the evidence that Blocker's mother reimbursed the gas station the following morning would not have had a probable impact on the jury, that the exclusion of this evidence did not affect Blocker's substantial rights, and that the trial court did not abuse its discretion in excluding this testimony. See Mathis v. State, 776 N.E.2d 1283, 1286-1287 (Ind. Ct. App. 2002) (holding that the trial court properly excluded evidence that would not have had any impact on the verdict), trans. denied.

II.

The next issue is whether the evidence is sufficient to support the revocation of Blocker's probation. A probation revocation hearing is civil in nature, and the State need only prove the alleged violations by a preponderance of the evidence. Cox v. State, 706 N.E.2d 547, 551 (Ind. 1999), reh'g denied. We will consider all the evidence most favorable to supporting the judgment of the trial court without reweighing that evidence

or judging the credibility of witnesses. Id. If there is substantial evidence of probative value to support the trial court's conclusion that a defendant has violated any terms of probation, we will affirm its decision to revoke probation. Id. The violation of a single condition of probation is sufficient to revoke probation. Wilson v. State, 708 N.E.2d 32, 34 (Ind. Ct. App. 1999).

The requirement that a probationer obey federal, state, and local laws is automatically a condition of probation by operation of law. Williams v. State, 695 N.E.2d 1017, 1019 (Ind. Ct. App. 1998); Ind. Code § 35-38-2-1(b) ("If the person commits an additional crime, the court may revoke the probation."). "A criminal conviction is prima facie evidence of a violation and will alone support a revocation of probation." 695 N.E.2d at 1019.

Blocker argues that his theft conviction must be reversed and because "this conviction was the only basis for the revocation of Blocker's suspended sentence in [Cause No. 137], this Court should reverse the probation revocation order." Appellant's Brief at 9. As previously mentioned, Blocker was convicted of theft as a class D felony in Cause No. 522. Based upon this conviction, the evidence is sufficient to support the trial court's revocation of Blocker's probation. See, e.g., Williams, 695 N.E.2d at 1019 (holding that evidence of the probationer's conviction was sufficient to support the revocation of his probation); Fields v. State, 676 N.E.2d 27, 31 (Ind. Ct. App. 1997) (noting that the trial court had the authority to revoke the defendant's probation as soon as he was convicted of additional crimes), trans. denied.

Blocker also argues that "[i]nstead of relying on independent evidence, the trial court simply took judicial notice of the evidence submitted in [Cause No. 522]," and that this "judicial notice was improper." Appellant's Brief at 11. Blocker cites Brown v. State, 458 N.E.2d 245, 250 (Ind. Ct. App. 1983), in which the court perceived "some question as to whether the court's judicial knowledge of the transcript from Brown's involuntary manslaughter trial could supply the evidence necessary to support revocation" because "[a]lthough it is well established that a court judicially knows its own records, . . . this principle does not apply to judicial notice of records in cases other than the one being tried."

We observe that Blocker concedes that the revocation hearing was consolidated with the theft proceeding and that Blocker did not object when the court granted the State's motion to incorporate the "jury trial and conviction" under Cause No. 522 or when the court stated that it was taking judicial notice of the evidence in Cause No. 522.[3] Transcript at 166. We also observe that this court has previously held that "the rule barring a trial court from taking judicial notice of other cases previously before that court has not been applied to probation revocation hearings." Whatley v. State, 847 N.E.2d

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[3] The record reveals the following exchange:

> [Blocker's Attorney]: And, Your Honor, in response to that, uh, you know it's . . . I'm in a tough spot because obviously we've just lost the jury trial and a jury has decided that Mr. Blocker is guilty. Uh . . . But I . . . .
>
> THE COURT: Well I've listened to the evidence too and I'm taking judicial notice of that.
>
> [Blocker's Attorney]: I acknowledge that.

Transcript at 179-180.

1007, 1009 (Ind. Ct. App. 2006). See also Henderson v. State, 544 N.E.2d 507 (Ind. 1989) ("[W]hile it is widely recognized that a trial court may not take judicial notice of its own records in another case previously before the court even on a related subject with related parties, this rule should not be fully applicable in probation revocation hearings. Given the nature of a revocation proceeding, to require technical procedural and evidentiary rules similar to those required at the pretrial and trial phases of our criminal justice system would unduly burden revocation proceedings.") (quoting Szymenski v. State, 500 N.E.2d 213, 215 (Ind. Ct. App. 1986)).[4] We conclude that it was not improper for the court to take judicial notice of Blocker's conviction in Cause No. 522.

For the foregoing reasons, we affirm Blocker's conviction for theft and the revocation of his probation.

Affirmed.

FRIEDLANDER, J., and BAILEY, J., concur.

[4] Further, even if all of Indiana's formal Rules of Evidence applied, we note that Ind. Evidence Rule 201, which was amended in 2009 and went into effect on January 1, 2010, provides that a court may now take judicial notice of "records of a court of this state," Ind. Evidence Rule 201(b)(5), that "[a] court may take judicial notice, whether requested or not," Ind. Evidence Rule 201(c), and that "[j]udicial notice may be taken at any stage of the proceeding." Ind. Evidence Rule 201(f).