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IN THE
COURT OF APPEALS OF INDIANA

TERRY T. MILES, SR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 18A04-1103-CR-117
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable John M. Feick, Judge
Cause No. 18C04-0907-FA-7

August 9, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Terry T. Miles, Sr. appeals the trial court's determination that he violated the terms of his home detention. Specifically, Miles challenges the sufficiency of the evidence to support the revocation of his placement on home detention. Miles also challenges the admissibility of certain evidence supporting the revocation of his placement on home detention. We affirm.

FACTS AND PROCEDURAL HISTORY

On July 14, 2009, Miles was charged with Class A felony dealing in cocaine, Class A felony possession of cocaine, and Class A misdemeanor possession of marijuana. The State subsequently alleged that Miles was a habitual offender. On October 5, 2009, Miles entered into a plea agreement in which he agreed to plead guilty to Class D felony maintaining a common nuisance and admit that he was a habitual offender in exchange for the dismissal of the remaining counts. As a result of Miles's guilty plea, the State amended the charging information to include a charge that Miles committed Class D felony maintaining a common nuisance on October 6, 2009. On October 14, 2009, Miles was sentenced, pursuant to the terms of the plea agreement, to four years of incarceration, which was to be served on home detention.

On October 5, 2010, the State filed a petition to revoke Miles's home detention, alleging multiple rules violations. On March 2, 2011, the trial court found that Miles had violated the terms of his home detention, revoked his placement on home detention, and ordered that he serve the remainder of his previously-suspended sentence in the Department of Correction. Miles now appeals.

DISCUSSION AND DECISION

On appeal, Miles challenges the sufficiency of the evidence to support the revocation of his placement on home detention. Specifically, Miles claims that the evidence is insufficient to prove that he was informed of the terms of his home detention. Miles also challenges the admissibility of the forensic laboratory report admitted during the revocation hearing.

> Our standard of review of an appeal from the revocation of a community corrections placement mirrors that for revocation of probation. *Id.* A probation hearing is civil in nature and the State need only prove the alleged violations by a preponderance of the evidence. *Id.* 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 the 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.*

Monroe v. State, 899 N.E.2d 688, 691 (Ind. Ct. App. 2009).

I. Sufficiency of the Evidence

Miles challenges the revocation of his home detention placement by arguing that there was insufficient evidence to support the trial court's determination that he violated the terms of his home detention. In making this challenge, Miles does not contest the trial court's determination that he committed the alleged violations, but rather argues only that "the State offered no evidence that [he] was advised of the conditions" of his home detention. Appellant's Br. p. 6. Again, because a probation hearing is civil in nature, the State needed only to prove the alleged violation by a preponderance of the evidence. *Monroe*, 899 N.E.2d at 691. Upon review, we consider the evidence most favorable to the determination of the

trial court, and will affirm the trial court's determination if there is substantial evidence of probative value to support the trial court's determination that Miles violated any of the terms of his home detention. *Id*.

The evidence most favorable to the trial court's decision includes testimony from Miles's Community Correction Case Manager Richard Little that Miles was previously given a copy of the rules which he was required to following during his home detention and was warned of the consequences of not following the rules. Little further testified that Miles indicated that he understood and agreed to comply with the rules. The evidence established that Miles violated the conditions of his home detention by leaving his home without permission on two separate occasions, admitting to cocaine use despite a negative test result, testing positive for alcohol and cocaine, testing positive for marijuana on multiple occasions, and owing outstanding home detention fees. Little's testimony that Miles was informed of the conditions of his home detention together with the evidence of Miles's numerous violations of those conditions provides substantial evidence of probative value in support of the trial court's determination, and thus, we will not disturb the trial court's determination in this regard.

II. Admission of Forensic Laboratory Report

Miles also contends that the trial court abused its discretion in admitting the forensic laboratory report into evidence during the home detention revocation hearing. Specifically, Miles argues that the forensic laboratory report is unreliable hearsay because it was admitted "without a proper foundation of the report being reliable." Appellant's Br. p. 5. Generally,

the admission of evidence is within the trial court's discretion, and its decisions are only reviewed for an abuse of that discretion. *State v. Seabrooks*, 803 N.E.2d 1190, 1193 (Ind. Ct. App. 2004). An abuse of discretion occurs if a decision is clearly against the logic and effects of the facts and circumstances before the court or if the court has misinterpreted the law. *Id*. However, if the trial court abuses its discretion in admitting evidence, the defendant is not entitled to a new trial unless he demonstrates that the improperly admitted evidence contributed to the trial court's determination. *Id*.

The due process right applicable in a hearing relating to the revocation of probation or a community corrections placement allows for procedures that are more flexible than in a criminal prosecution. *Reyes v. State*, 868 N.E.2d 438, 440 (Ind. 2007). Such flexibility allows courts to enforce lawful orders, address an offender's personal circumstances, and protect public safety, sometimes within limited time periods. *Id*. Within this framework, and to promote the aforementioned goals of a hearing relating to the revocation of probation or a community corrections placement, courts may admit evidence during the hearing that would not be permitted in a full-blown criminal trial. *Id*. However, this does not mean that hearsay evidence may be admitted "willy-nilly" in a hearing relating to the revocation of probation or a community corrections placement. *Id*.

In *Reyes*, the Indiana Supreme Court adopted the substantial trustworthiness test as the means for determining whether hearsay evidence should be admitted during a hearing relating to the revocation of an individual's probation or community corrections placement. *Id*. at 441. The substantial trustworthiness test requires that the trial court evaluate the

reliability of the hearsay evidence. *Id*. at 442. In support of its holding adopting the substantial trustworthiness test, the Supreme Court noted that the need for flexibility combined with the potentially onerous consequences of mandating a balancing inquiry for every piece of hearsay evidence in every probation revocation hearing in Indiana weighs strongly in favor of the substantial trustworthiness test. *Id*. at 441.

In *Reyes*, the State filed a notice of probation violation alleging that the Defendant violated his probation by testing positive for cocaine. *Id*. at 439. During a hearing on the matter, the State sought to submit into evidence the affidavit of the scientific director of the laboratory that conducted the test on urine samples provided by the defendant, the results of the urinalysis tests on the samples provided by the defendant, and other related documents. *Id*. The scientific director did not testify at the hearing, but affirmed under the penalties of perjury that he was familiar with the procedures employed to ensure the chain of custody of samples, the testing of those samples, and the validity of the test procedures employed by the lab. *Id*. at 439, 442. Based on the results of the tests on the defendant's urine sample, the scientific director concluded that the defendant had used cocaine within seventy-two hours of providing the sample. *Id*. at 442. Defendant's counsel objected to the admission of the affidavit as hearsay and claimed that the admission of the affidavit without live testimony from the affiant would violate the defendant's right to confrontation. *Id*. The trial court admitted the affidavit and revoked the defendant's probation. *Id*. The Indiana Supreme Court concluded that the evidence adequately supported a finding that the scientific director's affidavit was trustworthy, and affirmed the revocation of the defendant's probation. *Id*. at

443.

In *Holmes v. State*, 923 N.E.2d 479, 483 (Ind. Ct. App. 2010), the appellant challenged the admission of a urinalysis report, arguing that the results were unreliable hearsay because neither the toxicologist nor the certifying scientist testified during the home detention revocation hearing. The State presented the affidavits of the toxicologist and the certifying scientist who affirmed under the penalties of perjury that the appellant's urine sample was received, handled, and analyzed in accordance with all applicable standards. *Id*. at 484. In addition, the Miami County Community Corrections field officer assigned to the appellant's case testified in detail about how the urine sample was secured and sealed, how it was transmitted to AIT Laboratories, and how the Miami County Community Corrections office received the test results, and that he followed the standard process employed by the Miami County Community Corrections office in securing and testing such samples. *Id*. at 485. Upon review, we concluded that the field officer's testimony, in conjunction with his testimony that the test result indicated that the appellant had consumed alcohol in violation of the terms of his home detention, provided "substantial indicia of reliability" and that the urinalysis test results were properly admitted. *Id*.

In *C.S. v. State*, 817 N.E.2d 1279, 1281 (Ind. Ct. App. 2004), the appellant challenged the propriety of permitting the probation officer's limited knowledge to establish the results of the drug screen.[1] The trial court determined that the testimony of the operations manager

[1] In *C.S.*, the juvenile court's adjudication that the juvenile was delinquent was reversed on other grounds not relevant to the instant appeal. *See C.S.*, 817 N.E.2d at 1281-82.

of the work release center regarding a urine screening test for marijuana and his sponsoring of the exhibit showing the test results was proper. *Id*. Upon appeal, this court concluded that the evidence was properly admitted because "the probation officer testified in detail about how the sample was secured and sealed, how it was transmitted to the laboratory and how [the officer] received the results." *Id*. The officer further testified that she followed a standard process in securing, sealing, and transmitting the sample for testing. *Id*. This court concluded that, in light of the probation officer's testimony, the results of the drug screen provided substantial indicia of reliability. *Id*.

The Indiana Supreme Court's holding in *Reyes* and our conclusions in *Holmes* and *C.S.* are instructive here because we are faced with a similar factual scenario. With respect to the forensic laboratory report at issue here, Miles's home detention case manager, Richard Little, testified that he administered a mouth swab on Miles, sealed the swab in a bag, and mailed the swab to Forensic Fluids Laboratories in accordance with the department's standard operating procedure. Little further testified that the report received by the Delaware County Community Corrections Office, which was sent on Forensic Fluids Laboratories letterhead, is a valid and accurate laboratory report similar to the reports that he receives from Forensic Fluids Laboratories on a regular basis. We conclude that Little's testimony, in conjunction with the test result indicating that Miles tested positive for marijuana and cocaine in violation of the terms of his home detention, provided "substantial indicia of

reliability" and that the test results were properly admitted.[2] *See generally*, *C.S.*, 817 N.E.2d at 1281.

The judgment of the trial court is affirmed.

ROBB, C.J., and BARNES, J., concur.

[2] We note that even if the test results would have been found to be unreliable, sufficient unchallenged evidence remains to prove that Miles violated the terms of his home detention. The State presented evidence that Miles violated the terms of his home detention by leaving his home without permission on two separate occasions, admitting to using cocaine, testing positive for alcohol and marijuana, and owing outstanding home detention fees.