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IN THE COURT OF APPEALS OF INDIANA

JAMES T. ROSS,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 49A04-0912-CR-710
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Michael Jensen, Magistrate
Cause No. 49G20-0406-FA-109648

December 21, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

James T. Ross ("Ross") challenges the Marion Superior Court's revocation of his probation and raises multiple issues for our review, which we consolidate, restate, and reorder as the following six:

> I. Whether the trial court abused its discretion in granting the State two continuances;
>
> II. Whether the trial court properly admitted evidence after the State allegedly committed a discovery violation;
>
> III. Whether the revocation of Ross's probation comported with the dictates of the Due Process clause;
>
> IV. Whether the trial court abused its discretion by admitting evidence obtained as a result of a seizure allegedly conducted in violation of the Fourth Amendment and Article 1, Section 11 of the Indiana Constitution;
>
> V. Whether the State presented sufficient evidence that Ross violated the terms of his probation; and
>
> VI. Whether the trial court erred when it failed to award Ross jail credit time for the time he spent incarcerated between his arrest and the trial court's revocation of his probation.
>
> We affirm and remand with instructions.

Facts and Procedural History

On June 2, 2006, Ross pleaded guilty in the Marion Superior Court to Class B felony dealing in cocaine and Class C felony possession of cocaine and a firearm. The trial court sentenced Ross to ten years, with eight years suspended. The trial court also ordered Ross to serve two years on probation.

At approximately 5:15 p.m. on May 14, 2009, Franklin Police Department Detective Bryan Burton ("Detective Burton") was dispatched to a Johnson County

Goodwill store after an anonymous tipster reported that a female employee of the store had just placed an order by phone to purchase cocaine and heroin from a black male. The tipster said that the employee's name was Tara and that she had blonde hair and was wearing a blue shirt. The tipster further reported that the transaction was to take place at 6:00 p.m. in the parking lot of the store, and that the dealer would be driving a "nice car with nice rims on it." Tr. p. 27.

Detective Burton went to the store, and while posing as a customer, he observed a female employee with blonde hair wearing a blue shirt and a nametag bearing the name "Tara." Tr. p. 28. The employee was later identified as Tara Rolle ("Rolle"). Detective Burton exited the store and waited in his vehicle, and a few minutes later, he saw Rolle exit the store, walk to a nearby bank, use the ATM, and then return to the store and sit on the curb. A few minutes later, a black Nissan with "fairly nice" rims pulled up to the curb, and Rolle got into the back seat. Tr. p. 29. Detective Burton witnessed an exchange between Rolle and the front-seat passenger, who was later identified as Ross, and Rolle then got out of the car with a paper towel in her hand.

After calling for backup to stop the car, Detective Burton followed Rolle into the store, where he stopped her and told her to give him the drugs. Rolle then handed Detective Burton the paper towel, which contained substances that Detective Burton recognized as crack cocaine and heroin. Rolle told Detective Burton that she had a cocaine and heroin habit and that Ross was supplying her with drugs. Ross was

subsequently arrested and charged in Johnson County with Class B felony dealing in a controlled substance.

On May 27, 2009, the State filed a notice of probation violation alleging that Ross had violated his probation by being charged in Johnson County with dealing in a controlled substance. On August 6, 2009, the scheduled date of the probation revocation hearing, the State moved for a continuance. The trial court granted the motion, reset the hearing for August 20, 2009, and released Ross on his own recognizance. On August 20, 2009, the State again moved for a continuance after Ross claimed that the State had not provided any discovery. The trial court granted the motion and again reset the revocation hearing.

At the October 1, 2009 evidentiary hearing, the State called Detective Burton as its sole witness. Detective Burton testified regarding the events leading up to Ross's arrest, including the statements made by Rolle. Additionally, the State offered into evidence a report prepared by the Indiana State Police Laboratory Division showing that the substances seized from Rolle contained heroin and cocaine. Ross objected, claiming that the admission of the report without the testimony of the toxicologist who performed the tests violated his right to confront and cross examine witnesses. The court took Ross's objection under advisement.

Ross then testified on his own behalf and denied selling drugs to Rolle. Ross claimed that on May 14, 2009, Justin Boochee ("Boochee") invited Ross to ride along with Boochee on a trip to visit Boochee's girlfriend. According to Ross, Boochee told

Ross that he would pay back some money Ross had loaned him if Ross accompanied him on the trip. When Boochee and Ross arrived at the Johnson County Goodwill store, Rolle got into the back seat of the car and began talking to Boochee. Ross testified that he saw Boochee hand something to Rolle, and that Rolle then placed money on the console. Boochee then told Ross to take the money, and Ross picked up the money and began counting it. Ross testified that Boochee then removed drugs from the car's air vent and handed them to Rolle. Ross admitted that he was aware that a drug deal had taken place between Rolle and Boochee.

At a subsequent hearing on November 5, 2009, the court overruled Ross's objection and admitted the lab report into evidence.[1] The trial court went on to conclude that Ross had violated his probation by "associat[ing] with known criminal activity." Tr. p. 115. The court then revoked Ross's probation and ordered him to serve four years of his suspended eight-year sentence. Ross now appeals.[2]

I. Continuances

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[1] Although the trial court ruled the lab report admissible, it was not included in the original Clerk's Record. On May 7, 2010, pursuant to Indiana Rule of Appellate Procedure 31, the State filed a motion to certify a statement of the evidence seeking to have the lab report and a supporting statement made part of the Clerk's Record. The trial court granted the motion on May 25, 2010. Thus, pursuant to Appellate Rule 31(C), the lab report was made part of the record on appeal.

Ross nevertheless argues that we should not consider the lab report as part of the record on appeal because the trial court erred by certifying the State's statement of the evidence. However, the Appellate Rules leave the certification decision to the trial court, providing that if a trial court certifies a party's statement of the evidence, the statement "*shall* become part of the Clerk's Record." Ind. R. App. P. 31(C) (emphasis added). Because the trial court certified the State's statement of evidence, the lab report is properly part of the record on appeal.

[2] Because the trial court's certification of the State's statement of the evidence altered the original Clerk's Record, Ross was granted leave to file an amended appellant's brief. Ross filed his Amended Appellant's Brief on August 12, 2010. In the Amended Appellant's Brief, Ross incorporates the Statement of Issues, Statement of the Case, Statement of Facts, and Summary of Argument from his original Appellant's Brief. He did not incorporate the Argument section of his original Appellant's Brief. However, because we prefer to address the merits of an appeal, we nevertheless address the issues presented in both the Appellant's Brief and the Amended Appellant's Brief.

Ross first contends that the trial court abused its discretion when it granted the State's motions for continuance, on August 6 and August 20, 2009, over his objections. Rulings on non-statutory motions for continuance lie within the sound discretion of the trial court, and we will reverse only for an abuse of that discretion and resulting prejudice. Lundquist v. State, 834 N.E.2d 1061, 1066 (Ind. Ct. App. 2005). An abuse of discretion occurs only where the decision is clearly against the logic and effect of the facts and circumstances before the trial court. Id.

A. *August 6, 2009 Continuance*

With respect to the August 6, 2009 continuance, Ross argues that granting the State's motion was an abuse of discretion because "the record does not reflect the continuance was timely, in writing, or that good cause established by affidavit or other evidence existed to support the continuance." Appellant's Br. at 12. The chronological case summary indicates that a hearing was held on August 6, 2009 and that the State's motion for continuance was granted. Appellant's App. pp. 31-32. However, because Ross has not provided us with a transcript of that hearing, we are unable to determine the State's reason for requesting a continuance, whether Ross objected to the motion, or the court's reason for granting the motion. It is the appellant's duty to present this court with an adequate record clearly showing the alleged error, and where he fails to do so, the issue is deemed waived. Davis v. State, 935 N.E.2d 1215, 1217 (Ind. Ct. App. 2010). Ross has therefore waived appellate review of this issue.

B. *August 20, 2009 Continuance*

Next, Ross claims that the trial court abused its discretion by granting the August 20, 2009 continuance because the State's motion did not satisfy the requirements of the Indiana Trial Rules and the Marion County Local Rules. Ross claims that he suffered prejudice as a result of the continuance because at the time of the August 20, 2009 hearing, the State did not have evidence to prove that the substances Ross was alleged to have sold to Rolle contained cocaine and heroin. Specifically, Ross points out that the lab report that was eventually admitted into evidence was not in existence at the time of the August 20, 2009 hearing and suggests that the true motivation behind the State's motion for continuance was the absence of this evidence. Ross argues that "without admissible evidence to support the violation by a preponderance of the evidence, the State could not have proven its case." Appellant's Br. at 13.

However, the transcript clearly indicates that the State was prepared to present evidence, in the form of Detective Burton's testimony, to establish that the substances had field-tested positive for cocaine and heroin.[3] Indeed, the State repeatedly indicated that it was ready to go forward with the hearing, stating "If we want discover[y], that's fine. If we want to go forward, that's fine. I'll play it either way." Tr. p. 14. And while the continuance allowed the State time to obtain the lab report that was eventually admitted into evidence, the trial court did not rely on the lab report in revoking Ross's

[3] Ross's appellate counsel accuses the prosecuting attorney of dishonesty in this regard, claiming that it is "unlikely the State would have offered field test evidence as it was not offered when Detective Burton testified at the evidentiary hearing on October 1, 2009." Appellant's Br. at 13-14. We will not question the prosecuting attorney's truthfulness based solely on appellate counsel's conjecture. We nevertheless note that the State may have concluded that the lab report was more reliable than the field test evidence, and therefore chose to introduce the lab report only.

probation. In ruling on the admissibility of the report, the trial court made the following observations:

> So the Court is going to allow the report into evidence. *But in the Court's view of the case, this doesn't matter in the long run because the Defendant said that he knew there was a drug deal going down in the car* and that he then took the proceeds of the drug deal.
>
> One of his conditions of probation is to not associate with known criminal activity. And he did. He could have got[ten] out of the car and walked away. He could [have], at the least, not taken the money from him. By his own admission, he decided that he wanted to take the money from what he said was a drug deal and he believed in his mind was a drug deal.
>
> So he is in violation of his probation based upon his testimony, regardless of what the officer saw or didn't see.

Tr. p. 115 (emphasis added). Thus, the trial court relied solely on Ross's own admissions to determine that Ross had violated the condition of his probation requiring him to refrain from associating with any person who is in violation of the law. Because the court did not rely on the lab report, Ross was not prejudiced by the continuance and is therefore not entitled to reversal on this basis.

II. Discovery Violation

Next, Ross argues that a discovery violation by the State necessitated the exclusion of the lab report. Specifically, Ross claims that the trial court abused its discretion by admitting the report because the State did not provide Ross with a copy of the report until moments before the evidentiary hearing. Trial courts are given wide discretion in dealing with discovery violations and may be reversed only for an abuse of that discretion involving clear error and resulting prejudice. Ware v. State, 859 N.E.2d 708, 721 (Ind. Ct. App. 2007), trans. denied. Where a discovery violation has occurred, a

continuance is the usual remedy; the exclusion of evidence is an extreme remedy to be used only if the State's actions were deliberate and prevented a fair trial. Id. "Failure to request a continuance, where a continuance may be an appropriate remedy, constitutes waiver of any alleged error pertaining to noncompliance with the trial court's discovery order." Id. (quoting Fleming v. State, 833 N.E.2d 84, 91 (Ind. Ct. App. 2005)).

With regard to the case before us, we first observe that probation revocation proceedings are civil in nature. Mateyko v. State, 901 N.E.2d 554, 558 (Ind. Ct. App. 2009), trans. denied. As such, they are governed by the Indiana Rules of Trial Procedure. See Ind. Trial Rule 1 (providing that the Trial Rules govern the "procedure and practice in all courts of the state of Indiana in suits of a civil nature"). The Trial Rules require the service of a request upon the party from whom one seeks discovery. Piper v. State, 770 N.E.2d 880, 883 (Ind. Ct. App. 2002), trans. denied; Ind. Trial Rule 26-37.

Here, however, Ross did not serve a discovery request on the State. As a result, he would not ordinarily have been entitled to pretrial discovery of the lab report. Nevertheless, Ross argues that by granting the August 20, 2009 continuance, the trial court "implied an order for the State to provide the discovery it promised." Appellant's Br. at 18. However, even assuming the existence of an implied discovery order, Ross has waived appellate review of this issue by failing to request a continuance. See Ware, 859 N.E.2d at 721.

Waiver notwithstanding, we conclude that Ross was not prejudiced by the admission of the lab report. As we explained in Section I, *supra*, the trial court did not

rely on the report in determining that Ross violated the terms of his probation; rather, the court relied solely on Ross's own testimony. Because Ross was not prejudiced by the admission of the report he is not entitled to reversal based on the alleged discovery violation.

III. Due Process

Next, Ross argues his procedural due process rights under the Fourteenth Amendment to the United States Constitution were violated during the revocation proceedings. "It is well settled that although a probationer is not entitled to the full array of rights afforded at trial, certain due process rights inure to a probationer at a revocation hearing." Hubbard v. State, 683 N.E.2d 618, 622 (Ind. Ct. App. 1997). At a minimum, due process requires:

> (a) written notice of the claimed violations of probation; (b) disclosure to the probationer of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a neutral and detached hearing body; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking probation.

Piper v. State, 770 N.E.2d 880, 882 (Ind. Ct. App. 2002), trans. denied.

A. *Notice and Disclosure of Evidence*

Ross first claims that his due process rights were violated because he was not provided sufficient written notice of the claimed probation violation or disclosure of the evidence against him. As noted above, due process entitles a probationer to written notice of the claimed violations and disclosure of the evidence against him. Id. The

written notice must contain sufficient detail to permit the probationer to prepare an adequate defense. Long v. State, 717 N.E.2d 1238, 1240 (Ind. Ct. App. 1999).

The notice of probation violation read, in relevant part, as follows:

> Mr. Ross:
> 1. on or about 5/14/09, was arrested and charged in Johnson County, IN with Dealing in Controlled Substance (FB) under cause number 41D03-0905-FB-00005. He is being held in the Johnson County Jail on a $4,000.00 cash only bond. A Pre-Trial Conference is scheduled for 7/2/09 at 1:30 p.m. and a Jury Trial is scheduled for 10/20/09 at 8:30 a.m.

Appellant's App. p. 89.

Ross asserts that the notice was deficient because it did not specify what types of controlled substances he was alleged to have sold. However, at the August 20, 2009 hearing, which took place more than a month prior to the evidentiary hearing, the State indicated that the charges in Johnson County were for dealing in cocaine and heroin. Tr. p. 7. We therefore conclude that this actual notice to Ross regarding the factual basis on which the State was seeking revocation, coupled with the written notice of probation violation, sufficiently apprised Ross of the claimed violation and the evidence against him to satisfy the requirements of due process. See Braxton v. State, 651 N.E.2d 268, 270 (Ind. 1995) (written notice of claimed probation violations, combined with actual notice that State was seeking revocation of probation satisfied due process notice requirement).

B. *Confrontation*

Next, Ross claims that the admission of hearsay evidence, in the form of the lab report and Detective Burton's testimony regarding statements made by Rolle, violated his

due process right to confront and cross-examine adverse witnesses.[4] Decisions regarding the admission of evidence are generally left to the sound discretion of the trial court. See Matkeyko v. State, 901 N.E.2d 554, 557 (Ind. Ct. App. 2009). But the limited due process rights afforded probationers in revocation proceedings allow for procedures that are more flexible than criminal prosecutions and, importantly for the case before us, allow courts to admit evidence that would not be permitted in full-blown criminal trials. Reyes v. State, 868 N.E.2d 438, 440 (Ind. 2007).

Indeed, the Indiana Rules of Evidence, including the rules against hearsay, do not apply in probation revocation hearings. See Cox v. State, 706 N.E.2d 547, 551 (Ind. 1999); Ind. Evid. Rule 101(c)(2). Rather, courts in probation revocation hearings may consider "any relevant evidence bearing some substantial indicia of reliability. This includes reliable hearsay." Cox, 706 N.E.2d at 551. And while the due process principles applicable in probation revocation hearings afford the probationer the right to confront and cross-examine adverse witnesses, this right is narrower than in a criminal trial. Figures v. State, 920 N.E.2d 267, 271 (Ind. Ct. App. 2010). "For these reasons, the general rule is that hearsay evidence may be admitted without violating a probationer's right to confrontation if the trial court finds the hearsay is 'substantially trustworthy.'" Id. (quoting Reyes v. State, 868 N.E.2d 438, 442 (Ind. 2007)).

[4] Ross also argues that the admission of the lab report and Rolle's statements violated his Sixth Amendment right to confront and cross-examine witnesses. However, because probation violation hearings are not criminal trials, the Sixth Amendment confrontation right is not implicated here. Reyes v. State, 868 N.E.2d 438, 440 n.1 (Ind. 2007). Thus, we need not address this argument.

Assuming *arguendo* that the lab report and Detective Burton's testimony were not substantially trustworthy, we are considering alleged violations of Ross's Fourteenth Amendment due process right to confront and cross-examine adverse witnesses. A federal constitutional error is reviewed *de novo* and must be found harmless beyond a reasonable doubt. Furnish v. State, 779 N.E.2d 576, 581 (Ind. Ct. App. 2002), trans. denied; accord Chapman v. California, 386 U.S. 18, 24 (1967); Alford v. State, 699 N.E.2d 247, 251 (Ind. 1998); see also Black v. State, 794 N.E.2d 561, 566 (Ind. Ct. App. 2003) (applying the federal harmless error standard to probation revocation proceedings). To conclude that such an error is harmless beyond a reasonable doubt, we must find that it did not contribute to the conviction, that is, that the error was unimportant in light of everything else considered by the trier of fact on the issue. Furnish, 779 N.E.2d at 582.

As we explained in Section I, *supra*, the trial court clearly indicated that it did not rely on the lab report in revoking Ross's probation. Rather, in determining that Ross had violated the condition of his probation requiring him to refrain from associating with any person who is in violation of the law, the trial court relied solely on Ross's own admissions. Consequently, we conclude that any error in the admission of the lab report or Detective Burton's testimony was harmless beyond a reasonable doubt. Therefore, we need not consider the merits of Ross's constitutional argument in this regard.

C. *Written Statement*

Next, Ross argues that the trial court violated his due process rights by failing to set forth in writing its reasons for revoking his probation. Due process requires a written

statement by the fact finder in a probation revocation hearing regarding the evidence relied upon and the reasons for revoking probation. Hubbard v. State, 683 N.E.2d 618, 620 (Ind. Ct. App. 1997). This requirement is intended to promote accurate fact finding and to ensure the accurate review of revocation decisions. Id. at 620-21. This court has held that placing the transcript of the evidentiary hearing in the record, while not the preferred way of fulfilling the writing requirement, is sufficient if the transcript contains a clear statement of the trial court's reasons for revoking probation. Id. at 621.

Here, the trial court did not issue a written order setting forth its reasons for revoking Ross's probation. However, the transcript of the revocation hearing has been included in the record, and it contains a clear statement of the trial court's reasons for revoking Ross's probation. Specifically, the trial court indicated that it was revoking Ross's probation because he violated the condition of his probation requiring him to refrain from associating with any person who is in violation of the law. Tr. p. 115. Moreover, the trial court clearly indicated that it relied solely on Ross's own testimony in coming to this conclusion. Tr. p. 115. The trial court's statement provides a sufficient basis for appellate review and is therefore adequate to satisfy the due process writing requirement.

IV. Seizure

Ross next argues that the trial court abused its discretion by admitting evidence obtained as a result of a seizure allegedly conducted in violation of the Fourth Amendment of the United States Constitution and Article 1, Section 11 of the Indiana

Constitution. The decision to admit or exclude evidence in a probation revocation hearing is reviewed on appeal for an abuse of discretion. Figures v. State, 920 N.E.2d 267, 271 (Ind. Ct. App. 2010). A trial court abuses its discretion if its decision is clearly against the logic and effect of the facts and circumstances before it. Id. In determining whether the trial court has abused its discretion, we do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court's ruling. Mogg v. State, 918 N.E.2d 750, 756 (Ind. Ct. App. 2009).

On appeal, Ross argues that the officers who arrested him lacked reasonable suspicion to stop him, and he was therefore subject to an unreasonable seizure of his person in violation of the Fourth Amendment of the United States Constitution and Article 1, Section 11 of the Indiana Constitution. See Lockett v. State, 747 N.E.2d 539, 544 (Ind. 2001) (under the Fourth Amendment, an officer may stop and briefly detain an individual for investigatory purposes if the officer has a reasonable suspicion that criminal activity may be afoot (citing Terry v. Ohio, 392 U.S. 1, 19-20 (1968)); Wilson v. State, 670 N.E.2d 27, 29 (Ind. Ct. App. 1996) (noting that we have previously adopted the Terry reasonable suspicion standard for determining the legality of investigatory stops under Article 1, Section 11). Ross therefore argues that the evidence obtained as a result of the stop should not have been admitted.

However, Ross fails to note that the exclusionary rule is not fully applicable in the context of probation revocation hearings. Pa. Bd. of Prob. & Parole v. Scott, 524 U.S. 357, 365 (1998) (holding that the exclusionary rule does not bar the introduction of

evidence seized in violation of a parolee's Fourth Amendment rights at a parole revocation hearing); Grubb v. State, 734 N.E.2d 589, 592 (Ind. Ct. App. 2000) (holding that the exclusionary rule did not bar the introduction of statements obtained in violation of a probationer's Fifth Amendment rights at a probation revocation proceeding); Plue v. State, 721 N.E.2d 308, 310 (Ind. Ct. App. 1999) (holding that the exclusionary rule did not bar the introduction of statements obtained as a result of an illegal search and seizure at a probation revocation proceeding); Szymenski v. State, 500 N.E.2d 213, 215 (Ind. Ct. App. 1986) (holding that the exclusionary rule is not fully applicable in probation revocation hearings); Dulin v. State, 169 Ind. App. 211, 221, 346 N.E.2d 746, 752 (Ind. Ct. App. 1976) (same). Rather, illegally seized evidence will be excluded from a probation revocation hearing only if it was seized as part of a continuing plan of police harassment or in a particularly offensive manner. Plue, 721 N.E.2d at 310; Szymenski, 500 N.E.2d at 215. But see Polk v. State, 739 N.E.2d 666, 669 (Ind. Ct. App. 2000) (applying the exclusionary rule to a probation revocation proceeding without concluding that evidence was seized as part of a continuing plan of police harassment or in a particularly offensive manner).

Here, Ross does not claim that he was harassed by the police or that the seizure was conducted in a particularly offensive manner. As a result, even if the seizure was illegal, the evidence obtained as a result of the seizure was properly admitted. Thus, the trial court did not abuse its discretion by admitting evidence obtained as a result of the stop.

V. Sufficiency of Evidence

Ross next contends there was not sufficient evidence to support the revocation of his probation. Probation is an alternative to incarceration and is granted in the sole discretion of the trial court. Davis v. State, 743 N.E.2d 793, 794 (Ind. Ct. App. 2001), trans. denied. A defendant is not entitled to serve a sentence on probation; rather, probation is a matter of grace and a conditional liberty that is a favor, not a right. Id. A probation revocation hearing is civil in nature, and the alleged violation must be proven by the State by a preponderance of the evidence. Mateyko v. State, 901 N.E.2d 554, 558 (Ind. Ct. App. 2009), trans. denied.

When reviewing a claim of insufficient evidence to support a trial court's decision to revoke probation, we consider only the evidence most favorable to the judgment and the reasonable inferences flowing therefrom, and we neither reweigh the evidence nor judge the credibility of witnesses. Richardson v. State, 890 N.E.2d 766, 768 (Ind. Ct. App. 2008). Revocation is appropriate if there is substantial evidence of probative value to support the trial court's conclusion that the probationer has violated probation. Id. It is well settled that the violation of a single condition of probation is sufficient to revoke probation. Gosha v. State, 873 N.E.2d 660, 663 (Ind. Ct. App. 2007).

Here, Ross claims that because the State failed to introduce a copy of his order of probation into evidence, the evidence was insufficient to support the conclusion that he violated any of the conditions imposed by that order. However, the requirement that a probationer not associate with any person who is in violation of the law is listed among

the "standard conditions" of probation in the standard Marion County order of probation. Appellant's App. p. 83. These standard conditions are customarily imposed on all probationers, unlike the "special conditions," which must be checked off by the judge. Id.; see Freije v. State, 709 N.E.2d 323, 325 (Ind. 1999). In was therefore reasonable for the trial court to infer that Ross was subject to the condition that he refrain from associating with persons who are in violation of the law.

Ross also argues that the trial court incorrectly found that Ross admitted to violating the terms of his probation. The trial court made the following relevant observations:

> [T]he Defendant said that he knew there was a drug deal going down in the car and that he then took the proceeds of the drug deal. One of his conditions of probation is to not associate with known criminal activity. And he did. He could [have], at the least, not taken the money from him. By his own admission, he decided that he wanted to take the money from what he said was a drug deal and he believed in his mind was a drug deal.

Tr. p. 115. Ross asserts that the court's conclusion is inaccurate because he did not admit to knowingly accepting the proceeds of a drug deal; rather, he claims that he testified that he accepted the money before discovering that it was payment for drugs. This alleged distinction is irrelevant. Ross was ordered not to associate with individuals who are in violation of the law, and whether he accepted the proceeds of a drug deal has no impact on the determination of whether he violated this term of his probation. Moreover, even if Ross was unaware at the time he accepted the money that it was payment for drugs, it is clear from his testimony that he retained the funds even after

discovering their illicit source. The evidence is sufficient to support the revocation of Ross's probation.

VI. Jail Time Credit

Finally, Ross contends that the trial court erred when it failed to credit toward his sentence the time he spent incarcerated between his arrest and the date the trial court released him on his own recognizance. A person imprisoned for a crime or confined awaiting trial or sentencing earns one day credit time for each day he is imprisoned for a crime or confined awaiting trial or sentencing. Ind. Code § 35-50-6-3 (2004); Stephens v. State, 735 N.E.2d 278, 284 (Ind. Ct. App. 2000), trans. denied. "Determination of a defendant's pretrial credit is dependent upon (1) pretrial confinement, and (2) the pretrial confinement being a result of the criminal charge for which sentence is being imposed." Id.

In the present case, the trial court concluded that Ross "ha[d] no credit time because he's coming off the street." Tr. p. 122. While the record establishes that Ross spent some time incarcerated prior to the revocation of his probation, it is unclear whether Ross was being held on the probation violation in this case, the new dealing in a controlled substance charge filed in Johnson County, or some other charge. Consequently, we remand this cause to the trial court to determine whether Ross is entitled to jail time credit.

Conclusion

Ross is not entitled to reversal based on the trial court's decision to grant the State two continuances or the State's alleged discovery violation. Ross's procedural due process rights were not violated during the probation revocation proceedings. Even assuming that Ross was illegally seized, the evidence obtained as a result of the seizure was properly admitted. The State presented sufficient evidence to support the revocation of Ross's probation. We remand this cause to the trial court to determine whether Ross is entitled to jail time credit.

Affirmed and remanded with instructions.

BAKER, C.J., and NAJAM, J., concur.