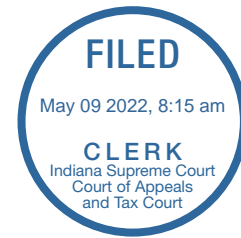


MEMORANDUM DECISION

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

Maverick Wells-Tennison,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 9, 2022

Court of Appeals Case No. 21A-
CR-2316

Appeal from the Marion Superior
Court

The Honorable James B. Osborn,
Judge

Trial Court Cause No.
49D21-1409-F4-45630

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Maverick Wells-Tennison (Wells-Tennison), appeals the trial court's revocation of his community corrections placement.

[2] We affirm.

ISSUE

[3] Wells-Tennison presents this court with one issue, which we restate as:
Whether the State proved by a preponderance of the evidence that he violated a condition of his community corrections placement.

FACTS AND PROCEDURAL HISTORY

[4] On March 30, 2015, Wells-Tennison pleaded guilty to Level 4 felony possession of a firearm by a serious violent felon and was sentenced to seven years in the Department of Correction (DOC). On June 14, 2021, the trial court granted Wells-Tennison a sentence modification and allowed him to serve the remainder of his sentence with Marion County Community Corrections (MCCC) at the Duvall Residential Center (Duvall). On June 16, 2021, Wells-Tennison was transferred from the DOC to Duvall to begin his community corrections placement. As part of his orientation at Duvall, Wells-Tennison was provided with Duvall's resident handbook that outlined the facility's rules. One of Duvall's rules prohibited inmates from "being under the influence of any intoxicating substance . . ." (Supp. Exh. Vol. I, p. 59).

[5] Around 12:30 a.m. on June 17, 2021, MCCC Officer Abdurrasheed Abdul-Haqq (Officer Abdul-Haqq) received a report of a possible medical emergency in the facility. Officer Adbul-Haqq responded and found Wells-Tennison at his bunk surrounded by vomit and vomiting into a trashcan. Lieutenant Jeffrey Sutt (Lt. Sutt) also responded. Both officers recognized the chemical-like smell of spice, or synthetic marijuana, when in close proximity to Wells-Tennison. Lt. Sutt observed that Wells-Tennison’s vomit had a red hue, a phenomenon which the officer knew from experience indicated spice ingestion. Wells-Tennison was swaying, shaking uncontrollably, and had glossy, bloodshot eyes. Wells-Tennison was unable to walk, and his speech was slurred. Wells-Tennison was transported to Eskenazi Hospital, where he tested negative for a variety of street drugs but was not administered a test for spice. Wells-Tennison’s condition quickly stabilized at the hospital.

[6] On June 21, 2021, the State filed a notice of community corrections violation, alleging that Wells-Tennison violated Duvall’s rules by being under the influence of an intoxicating substance on June 17, 2021. On October 8, 2021, the trial court convened a hearing on the State’s notice of violation. Officer Abdul-Haqq, who related that he had smelled spice on approximately seventy-five occasions and had received training on how to identify intoxicated people, related that the spice smell he perceived got stronger as he moved closer to Wells-Tennison. Officer Abdul-Haqq described the smell as being “directly on his person. The smell was coming from his clothes and his area. It wasn’t near – it wasn’t a bunk next to him, or above, behind him. It was directly on him as

I approached him.” (Transcript p. 23). Regarding Wells-Tennison’s vomiting and other symptoms, Officer Abdul-Haqq had seen a similar reaction from other residents who had admitted they had ingested spice. Lt. Sutt, who had smelled burning spice as part of his drug identification training and had smelled spice on over 100 occasions while on duty, related that he smelled spice when standing “right next to” Wells-Tennison. (Tr. p. 43). Lt. Sutt had previously observed inmates overdosing on spice and testified that Wells-Tennison’s symptoms were consistent with those of someone who had ingested spice. Wells-Tennison testified on his own behalf and characterized the Duvall facility as smelling like a bar. Wells-Tennison denied ingesting spice and attributed his June 17, 2021, medical incident to having eaten ramen noodles mixed with ketchup and mayonnaise, a combination which had made him ill. Wells-Tennison’s medical records from Eskenazi Hospital indicated that he did not report having abdominal pain, diarrhea, or nausea.

[7] At the close of the evidence, the trial court observed the following:

So, none of us here is a doctor, or that I know of. And so – I – and there’s sort of a conflicting evidence, or you know, conclusions, inferences, whatever from the symptoms and the what’s been exhibited. Um, the – I will note the medical, and as I said, I’m no doctor, the medical doesn’t say anything else that sort of corroborative of food poisoning and talks about vomiting, but no other symptoms that’s – you kind of think of as – going with food poisoning. But I’m not going to make any conclusion about that as the evidence here. The color of the vomit here could be consistent with either – well, explanation that’s been offered. But the thing that’s – that’s uncontroverted here is the two experienced officers who say they smelled [spice] on him;

not just in the dorm, but on him. And so I don't think they would – I mean I don't see any reason why they would confuse the smell of the dorm in general with him[.]

(Tr. pp. 70-71). The trial court ruled that the State had proven that Wells-Tennison had violated Duvall's rule on being under the influence of an intoxicating substance at the facility and ordered Wells-Tennison to execute the remainder of his sentence at the DOC.

[8] Wells-Tennison now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

[9] Wells-Tennison challenges the evidence supporting the trial court's determination that he violated Duvall's rules by being under the influence of spice on June 17, 2021. A defendant is not entitled to serve any portion of his sentence in a community corrections program; rather, a community corrections placement is a matter of grace on the part of the trial court. *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999). If a trial court determines that a defendant has violated the terms of his community corrections placement, it may revoke the placement and order that the defendant serve the remainder of his sentence at the DOC. Ind. Code § 35-38-2.6-5(4). We review the evidence supporting a community corrections placement revocation as we do other sufficiency matters, that is, by considering all the evidence most favorable to the judgment, without reweighing the evidence or rejudging the credibility of the witnesses. *Holmes v. State*, 923 N.E.2d 479, 483 (Ind. Ct. App. 2010). Because a

community corrections violation matter is civil in nature, the State need only prove the alleged violation by a preponderance of the evidence. *State v. Rivera*, 20 N.E.3d 857, 860 (Ind. Ct. App. 2014), *trans. denied*. If there is substantial evidence of probative value to support the trial court's conclusion that a defendant has violated any term of his community corrections placement, we will affirm. *Holmes*, 923 N.E.2d at 483.

II. *Analysis*

[10] Here, the evidence showed that, as a condition of his community corrections placement at Duvall, Wells-Tennison was required to refrain from being under the influence of any intoxicating substance. The record reveals that, on June 17, 2021, within hours of arriving at Duvall, Wells-Tennison was found vomiting, shaking uncontrollably, glossy-eyed, and slurring his speech. The responding officers recognized the scent of spice coming from Wells-Tennison, and both officers testified that Wells-Tennison's symptoms and the color of his vomit were consistent with spice ingestion. We conclude that this was substantial, probative evidence that Wells-Tennison was under the influence of an intoxicating substance on June 17, 2021, in violation of Duvall's rules. *See id.*

[11] On appeal, Wells-Tennison does not present this court with any authority indicating that evidence of symptoms consistent with spice ingestion combined with officer testimony that a defendant smelled like spice cannot support a community corrections placement revocation for being under the influence of an intoxicating substance. Rather, he contends that the trial court based its

revocation decision only on evidence that he smelled like spice and that the trial court's statements prior to rendering its determination indicated that it did not consider the evidence of his symptoms to be probative of the State's case. However, the trial court did not completely discount the evidence of Wells-Tennison's symptoms. Rather, the trial court indicated that it recognized that the evidence of Wells-Tennison's symptoms could be subject to differing interpretations and that it did not consider that evidence to be the determining factor. Put another way, the trial court found that evidence to be probative but not definitively persuasive. The trial court also noted that Wells-Tennison's medical records showed no other indicia of food poisoning apart from vomiting. This indicates that the trial court discredited Wells-Tennison's explanation for his symptoms and, therefore, that its revocation decision was not based solely on the officers' testimony that they smelled spice on him.

[12] In addition, Wells-Tennison argues that the officers' testimony that he smelled of spice was unpersuasive, drawing our attention to evidence that spice use was common at Duvall and his own testimony comparing the smell of the facility to a bar. Wells-Tennison contends that he could have picked up the smell of spice from just being in the facility and that the spice smell on him only established that he was near spice smoke, not that he had consumed spice. However, Officer Abdul-Haqq provided detailed testimony that the spice smell was coming directly from Wells-Tennison, and the trial court expressly found that the officers could discern the difference between the general smell of the facility and an odor of spice specifically emanating from Wells-Tennison. We agree

with the State that Wells-Tennison's arguments are essentially merely an invitation to reweigh the evidence before the trial court and to draw the inference suggested by Wells-Tennison. This is contrary to our standard of review which requires us to consider the evidence in the light most favorable to the trial court's determination. *See id.* Accordingly, we do not disturb the trial court's judgment.

CONCLUSION

[13] Based on the foregoing, we conclude that the State proved by a preponderance of the evidence that Wells-Tennison violated a condition of his community corrections placement.

[14] Affirmed.

[15] May, J. and Tavitas, J. concur