

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.



ATTORNEY FOR APPELLANT

Lisa M. Johnson
Brownsburg, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Myriam Serrano-Colon
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

K.P.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner.

February 2, 2022

Court of Appeals Case No.
21A-JV-1508

Appeal from the Gibson Circuit
Court

The Honorable Jeffrey F. Meade,
Judge

Trial Court Cause Nos.
26C01-2101-JD-181
26C01-2009-JD-192

Shepard, Senior Judge.

Statement of the Case

[1] After numerous failed opportunities at rehabilitation within the juvenile justice system, K.P.'s probation was revoked, and his placement was modified from

the Southwest Indiana Regional Youth Village to a commitment within the Department of Correction. K.P. appeals from the juvenile court's order, contending that the hearsay evidence establishing his violation was insufficient to support his revocation and that the court abused its discretion by ordering K.P. to serve the remainder of his probation at DOC. We affirm.

Facts and Procedural History

- [2] Thirteen-year-old K.P. was first referred to the Gibson County Probation Office in 2018 for battery and theft and was detained at the Youth Village for a few nights before being released to the care of his mother. He was placed on an informal adjustment for six months. Two years later, in September 2020, K.P. was involved in an incident leading to his placement outside the home for two weeks and the filing of charges for acts that if committed by an adult would be intimidation and theft under cause number 26C01-2101-JD-181 (JD-181).
- [3] Two weeks after being released from the Youth Village, K.P. vandalized a newspaper vending machine and stole the change. He was detained and placed at the Evansville Youth Care Center. He faced one count of theft as a Class A misdemeanor if committed by an adult under 26C01-2009-JD-192 (JD-192) for that incident. Upon his release to his mother's care, K.P. violated the court's condition that he have contact with a juvenile, S.C., only by phone. During that time, K.P. was offered home-based case management, a relapse prevention program, and drug screens.

- [4] Next, K.P., who was thought to be overdosing on the illegal drug K2, threw a microwave full of knives at his caseworker and threatened to instigate a fight with his brother, forcing law enforcement to remove him from the home. When firefighters and police officers arrived on the scene, K.P. fought with them, strangling a police officer, before the officer was able to break K.P.'s grasp. The officers eventually controlled and restrained K.P., but he actively resisted and tried to break free before being restrained in a cot for transport by ambulance.
- [5] Charges were then filed against K.P. alleging acts that if committed by an adult would be strangulation, three counts of battery against public safety officials, resisting law enforcement, battery resulting in bodily injury, battery, and criminal mischief under cause number 26C01-2101-JD-18 (JD-18). K.P. was placed at the Youth Village where he continued his pattern of misbehavior and aggressive, violent, and destructive behavior.
- [6] K.P. admitted to the charges in JD-181 and JD-192. The court entered a suspended sentence to the DOC with terms of probation including completion of programs addressing K.P.'s substance abuse, behavior modification, and anger management issues. Upon transfer to the Youth Village, he received services but continued to behave badly. He attempted to enter a room to attack a peer and when staff intervened, he pushed, kicked, and punched staff members as they tried to restrain him. The State filed to revoke K.P.'s probation based on those incidents. The court held a hearing after which it

found that K.P.'s probation should be revoked and that K.P.'s suspended commitment to the DOC should be executed.¹

Discussion and Decision

Hearsay and Sufficiency

[7] K.P. says that the evidence supporting his revocation is insufficient because the court trusted unreliable hearsay evidence. Probation revocation in juvenile proceedings is civil in nature, requiring the allegations to be proven by a preponderance of the evidence. *C.S. v. State*, 735 N.E.2d 273 (Ind. Ct. App. 2000). The court's decision to revoke is reviewed for an abuse of discretion and, during our review, we neither reweigh the evidence nor reassess the credibility of witnesses. *Id.* The Rules of Evidence are inapplicable to probation revocation proceedings, and the court may consider any relevant

¹ After the State rested, the court explicitly asked K.P.'s counsel if he had any witnesses. *See* Tr. Vol. 2, p. 48. Counsel replied,

Your Honor, I would just ask to make summary arguments. I would, as a matter of course, if there was going to—depending on how the Court rules, I would ask the disposition not proceed today. But at this time, I would simply ask to make argument on the validity or non-validity of the petition to revoke hearing that we just had. . . now that the State has closed.

The court replied that, "I would make argument assuming the Court's going to go to disposition." Closing arguments then ensued. *See id.* at 48-49.

On appeal, K.P. argues that "[a]fter the State rested, defense counsel asked to present testimony from three witnesses, regarding the issue of disposition, if the court found that K.P. violated his probation. However, the court did not allow defense counsel to present this testimony." Appellant's Br. p. 7. K.P.'s appellate counsel cited Transcript Volume 2, pages 55 through 57 in support of that statement. However, review of that portion of the transcript shows that during argument, K.P.'s trial counsel represented what he thought the witnesses who were present, but he had not called to testify, might say. This appellate argument misrepresents the record and the court's actions.

evidence bearing some substantial indicia of reliability, including reliable hearsay. *Cox v. State*, 706 N.E.2d 547 (Ind. 1991).

[8] As an initial matter we observe that though other objections were made during the hearing, K.P. did not object to the admission of the hearsay testimony he now challenges on appeal as unreliable. *See* Tr. pp. 18-19. The failure to object results in waiver of the issue for our consideration on appeal. *See J.V. v. State*, 766 N.E.2d 412 (Ind. Ct. App. 2002), *trans. denied*.

[9] Notwithstanding this waiver, we conclude that the State’s hearsay evidence was reliable. The test used in this situation involves the determination “whether the evidence reaches a certain level of reliability, or if it has a substantial guarantee of trustworthiness.” *Reyes v. State*, 868 N.E.2d 438, 441 (Ind. 2007). We observe that while “ideally [the court] should have explained on the record why the hearsay was reliable and why that reliability was substantial enough to supply good cause for not producing . . . live witnesses,” we have not required explicit reliability and good cause findings. *U.S. v. Kelley*, 446 F.3d 688, 693 (7th Cir. 2006). Instead, the admission of the evidence will be affirmed if “the record is sufficiently clear for us to conclude the [witnesses’] hearsay was substantially trustworthy so as to establish good cause for not producing them as live witnesses.” *Id.* Such is the case here.

[10] Though K.P. argues that State’s witness Deborah Bryant, K.P.’s probation officer, “paraphrase[d]” the “report compiling the statements of unknown individuals at the Youth Village,” the record reflects that she read verbatim

from the synopsis of a report prepared by a staff member of the Youth Village about the incident. *See* Appellant’s Br. p. 10; Tr. pp. 18-19. Bryant identified the author of the report who signed it. We conclude that the evidence met the required standard of reliability and substantial trustworthiness.

[11] K.P. argues for the first time on appeal that there was no evidence that he violated Rule 13, which provided that “[K.P.] should complete a substance abuse program at [Youth Village]. [K.P.] shall cooperate with services following discharge.” Tr. Vol. 2, p. 20. He claims that he did not fail to complete the program. *See* Appellant’s Br. pp. 6, 9. Once again, that argument is waived. *See King v. State*, 799 N.E.2d 42 (Ind. Ct. App. 2003) (on appeal defendant limited to grounds advanced at trial), *trans. denied*.

[12] Nonetheless, the evidence established that K.P.’s 2021 suspended sentence was conditioned on his completion of “1 year at the residential program for Substance Abuse, including behavior modification and anger management[.]” Appellant’s App. Vol. II, p. 96. K.P. was advised that “if there is any violation of said rules, the Court will execute” K.P.’s sentence. *Id.* The uncontroverted evidence showed that K.P. repeatedly pushed an employee of Youth Village to gain access to a room where another youth was resting, shoved an employee to the ground, kicked an employee multiple times and punched her in the head as other employees attempted to secure him, all in contravention of Youth Village’s rules. His noncompliance with Youth Village rules and directions from Youth Village staff, resulting in injuries to staff members, is sufficient evidence to revoke K.P.’s probation. There is no error here.

Commitment to DOC

- [13] Next, K.P. says that the court abused its discretion by failing to consider alternative placements. The court had advised K.P., in its previous disposition order placing him at Youth Village on a suspended sentence, that violation of any rule would result in an executed sentence. The court reiterated its position at the start of the revocation hearing.
- [14] The choice of a specific disposition of a juvenile adjudicated a delinquent child is left to the sound discretion of the court and will be reversed only for an abuse of discretion. *J.S. v. State*, 881 N.E.2d 26 (Ind. Ct. App. 2008). That discretion is subject to statutory considerations: the welfare of the child, the safety of the community, and the policy favoring the least harsh disposition. Ind. Code § 31-37-18-6 (1997); *see also, id.* An abuse of discretion occurs when the court's action is clearly erroneous and against the logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual inferences that can be drawn therefrom. *J.S.*, 881 N.E.2d 26.
- [15] At the onset of both cases JD-181 and JD-192², K.P. was given the opportunity to participate in services while placed in his parents' home. Instead of taking advantage of that opportunity, K.P. became more aggressive and violent, and

² The allegations in JD-181 stemmed from K.P.'s threatening behavior toward his grandmother. K.P. called his grandmother derogatory names, threatened to kill her, threatened to destroy her car, and told her that he and his friends, one who was known to carry weapons, would be "back for her." Appellant's App. Vol. II, p. 53. He displayed a bottle of pills to her and suggested they do drugs together, stating that he preferred to be high. The allegations in JD-192 stemmed from the incident where K.P. vandalized and stole change from a newspaper vending machine.

was beyond his parents' control. K.P.'s mother believes K.P. has anger management issues and "will beat her up if she takes K.P.'s phone." *Id.* at 53. One example of K.P.'s violent behavior was the incident where he threw a microwave full of knives at his caseworker. K.P. continued to use drugs, and while high and possibly overdosed on K2, attacked his family and a friend, was combative with firefighters and police officers who arrived on the scene, and strangled a police officer. Multiple officers were necessary to restrain him as he actively resisted arrest, and he was strapped to a cot in the ambulance due to his combative behavior. K.P. disobeyed the court's order about having contact with a juvenile, S.C., despite the court's limitation of only telephonic contact.

[16] Next, K.P. was placed in secure detention at the Evansville Youth Care Center. While there he wrote a letter to the court, urging that it grant him a chance to prove that he had changed his behavior. However, K.P. continued to misbehave and display aggressive behavior while in secure detention by flooding the unit with water from his toilet, punching and hitting a staff member, and threatening to "beat the staff's ass." Appellant's App. Vol. II, p. 73.

[17] After K.P.'s delinquency adjudication, he was placed at the Youth Village, another less-restrictive placement, for participation in its substance abuse program, including behavior and anger management treatment. K.P. failed to take advantage of those services, acting aggressively and violently toward staff members. When staff intervened, attempting to prevent K.P. from attacking a peer, he repeatedly pushed, kicked, and hit staff members.

[18] Despite the many opportunities short of commitment to DOC that were offered to K.P., his behavior escalated in severity and his behavior was not altered. The record shows that his behavior is not only harmful to himself but also to that of his peers and the Youth Village staff. He attacked family members, a case worker, and first responders when placed in his parents' home. K.P.'s behavior was not altered even though the court had warned him that violation of the rules would result in a commitment to the DOC. The court did not abuse its discretion in its disposition here.

Conclusion

[19] Based on the foregoing, we conclude that the evidence was reliable and sufficient to sustain the court's finding and that the court did not abuse its discretion by committing K.P. to the DOC.

[20] Affirmed.

Bailey, J., and Molter, J., concur.