

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

Andrew W. Foster
The Law Office of Andrew W. Foster, LLC
Rockport, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Steven J. Hosler
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Maria G. Rocha,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 31, 2022

Court of Appeals Case No.
21A-CR-1551

Appeal from the Spencer Circuit
Court

The Honorable Jon A. Dartt,
Judge

Trial Court Cause No.
74C01-1909-F5-5270

Najam, Judge.

Statement of the Case

- [1] Maria G. Rocha appeals the trial court’s revocation of her probation. Rocha raises one issue for our review, namely, whether the court abused its discretion when it admitted certain evidence at her probation revocation hearing.
- [2] We affirm.

Facts and Procedural History

- [3] In June 2020, Rocha pleaded guilty to dealing in methamphetamine, as a Level 5 felony. The trial court accepted her guilty plea and sentenced her to 1,319 days, with 224 days executed and 1,095 days suspended to probation. As a condition of her placement, Rocha agreed to the following: “You shall not commit or be arrested where probable cause exists for your arrest for any violation of any federal or state law which constitutes a crime.” Ex. at 3.
- [4] After Rocha began her placement on probation, Sergeant Kameron Cron with the Rockport Police Department arrested Rocha based on her alleged commission of new offenses. He then prepared and filed an Affidavit in Support of Arrest Without Warrant. According to the affidavit:

On Saturday, June 27, 2020, at approximately 0302 hours, I, Sergeant Kameron Cron of the Rockport Police Department, was dispatched to 827 Sycamore Street, Lot 14, in reference to a possible home invasion and robbery. Dispatch advised that the suspects, two females, had left the scene in a grey Dodge Ram traveling west on State Road 66, leaving the Rockport area. Deputy Trevor Vaal and Deputy Austin Hagan traveled west out of Rockport on SR 66, while I went to the scene.

Upon arrival at the scene, I made contact with Anthony James Jackson . . . and Bobbi Jo Spencer Both stated that while they were asleep in bed, they woke up to a female, with dark, curly hair, standing in their bedroom and yelling at them. Jackson stated that he knows the female as “Maria.” Spencer stated that the female in the bedroom was brandishing a knife that had a light color handle and appeared to be tapered near the tip of the blade. Jackson stated that he did not see the knife, but that “Maria” was threatening to use the knife against both Spencer and Jackson. Both victims stated that “Maria” was yelling at them to give them money or give them Jackson’s car. Both victims also stated that a taller female with reddish color hair was standing inside the doorway of the residence Spencer stated that when she began to call 911, the females left the residence and traveled west on SR 66. . . . While I was on scene, Deputy Vaal made a traffic stop, on a grey, Dodge Ram, belonging to Maria Guadalupe Rocha Deputy Hagan arrived with Deputy Vaal, soon after, Deputy Vaal identified the second female in the truck as Crystal McGown Nunez . . . I requested that dispatch send photographs of Rocha and Nunez. I received the photographs of Nunez and Rocha. For immediate officer safety concerns, I asked Spencer and Jackson if they could identify the females in the photographs. Both immediately identified both females as the “Maria” that had robbed them, and the red-haired female that was with “Maria.” Spencer advised me that the set of keys that were stolen had two vehicle keys for a Chevrolet car, a house key for their residence, and a red clip. At that point, I left the scene and traveled to the location of Deputy Vaal’s traffic stop.

Upon arrival, . . . I then asked Nunez to step out of the vehicle. . . . Nunez then told me what had happened. . . . Nunez did state that she heard an argument about money between Jackson and Rocha, and that she also heard another female voice in the same room. Nunez stated that she did not hear threats or see a knife. Nunez then added that when the police were called,

she and Rocha left. Nunez stated that she did not see Rocha leave the residence with anything but her own phone. . . .

I then spoke with Rocha. . . . I read Rocha the Miranda warning, she stated that she understood her rights and stated that she would speak to me. Rocha stated that she and Nunez had come from Owensboro, were going to Evansville, and had not stopped anywhere. I told Rocha that I wanted her to be honest with me, and she stated that she was. I told Rocha that I knew she had been in Rockport, and she denied that. Rocha then stated that she wanted a lawyer, did not want to speak anymore, and to take her to jail if I had to. I placed Rocha in handcuffs and had her sit in the back seat of my patrol vehicle.

At that point, I advised Rocha that she was under arrest for burglary and robbery with a deadly weapon as the initial charges. . . . During the search of Rocha's vehicle, . . . I located a large, folding knife, with a light colored handle, with a blade that tapered, in the driver seat, directly next to where the driver's right leg would be. The set of keys stolen from Jackson's residence were located on the floor of the vehicle directly in front of the front, bench seat in the center of the vehicle. I also located a syringe that contained a clear liquid, in the front pocket of Rocha's purse. In the same front pocket of Rocha's purse, I located a clear bottle, unlabeled, with a metal cap on it. The bottle contained a clear liquid. The liquid in the syringe and the liquid in the bottle both field tested positive for methamphetamine.

Id. at 7-9. The affidavit contained Sergeant Cron's signature and a statement that it was "sworn upon his[] oath." *Id.* at 6

[5] On June 30, the State filed an Information and charged Rocha with: burglary, as a Level 2 felony; robbery, as a Level 3 felony; intimidation, as a Level 5

felony; residential entry, a Level 6 felony; possession of methamphetamine, as a Level 6 felony; unlawful possession of a syringe, as a Level 6 felony; theft, as a Class A misdemeanor; and possession of paraphernalia, as a Class C misdemeanor. The State then filed a petition to revoke Rocha's placement on probation. Specifically, the State alleged that Rocha had violated the terms of her placement when she was arrested and charged with the new offenses.

[6] At a hearing on the State's petition, the State called as a witness Maralee Ruark, the Chief Probation Officer. During Ruark's testimony, the State moved to admit Sergeant Cron's affidavit. Ruark acknowledged that she did not create the affidavit or have "any contact with anybody named or listed in" it. Tr. at 13. However, Ruark testified that the affidavit had been filed in the Spencer Circuit Court and that "probable cause was found at that time." *Id.* Rocha objected to the admission of the affidavit on the ground that it contained "triple hearsay" and there was not "substantial trustworthiness" to forgo Sergeant Cron's live testimony. *Id.* at 14. The court overruled Rocha's objection and admitted the affidavit but noted that it was not "going to find every fact within that Affidavit is correct." *Id.* at 15.

[7] Following the hearing, the court issued an order in which it observed that the "State did not call witnesses about the alleged events that resulted in the filing of the alleged offense[,] but this Court had previously found probable cause for [Rocha's] arrest on said charges." Appellant's App. Vol. 2 at 30. The court further stated that it "did not rely on [Rocha's] arrest alone or the mere filing of the new criminal charges but also on the Affidavit in Support of Arrest Without

Warrant.” *Id.* And the court determined that “there was sufficient evidence presented” in the affidavit based on the “relaxed evidence rules[.]” *Id.* The court also noted that

[Rocha] was identified by the alleged victim (from photographs) as the person who broke into her house and threatened her at knifepoint and took her property. [Rocha’s] friend and passenger also implicated [Rocha] as being at the victim’s residence. Furthermore, in a search incident to arrest, law enforcement stated they located the victim’s keys and a large folding knife in the vehicle [Rocha] had been driving near where [Rocha] had been sitting. Finally, law enforcement claimed they found a syringe and a clear bottle with liquid in [Rocha’s] purse that field tested positive for methamphetamine.

Id. at 30-31.

[8] The court concluded that the “evidence is sufficient to prove that [Rocha] committed the alleged offenses by a preponderance of the evidence as much of the evidence was observed, documented and affirmed by” Sergeant Cron, “who the court has found to be credible in the past.” *Id.* at 31. Accordingly, the court found that Rocha had violated the terms of her probation and ordered her to serve the balance of her previously suspended sentence. This appeal ensued.

Discussion and Decision

[9] Rocha asserts that the trial court abused its discretion when it admitted Sergeant Cron’s affidavit at her probation revocation hearing. Probation is a matter of grace, not a right to which a criminal defendant is entitled. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). Thus, the trial court’s decision to admit

or exclude evidence in a probation revocation proceeding is reviewed on appeal for an abuse of discretion. *See Votra v. State*, 121 N.E.3d 1108, 1113 (Ind. Ct. App. 2019). A court on appeal will reverse only where the decision of the court is clearly against the logic and effect of the facts and circumstances. *Id.*

[10] The Indiana Rules of Evidence, other than those with respect to privileges, do not apply in probation revocation proceedings. Ind. Evid. Rule 101(d)(2). As such, courts may admit evidence, including hearsay evidence, during probation revocation hearings that would not be permitted in a full-blown criminal trial. *See Reyes v. State*, 868 N.E.2d 438, 440 (Ind. 2007). However, that “does not mean that hearsay evidence may be admitted willy-nilly[.]” *Id.* Rather, hearsay evidence may be admitted during a probation revocation proceeding if it is “substantially trustworthy.” *Id.* at 442. The substantial trustworthiness test requires the trial court to evaluate the reliability of the hearsay evidence. *Id.*

[11] On appeal, Rocha asserts that Sergeant Cron’s affidavit contains “double hearsay” and, as a result, was unreliable. Appellant’s Br. at 8. To support her contention, Rocha relies on this Court’s opinions in *Mateyko v. State*, 901 N.E.2d 554 (Ind. Ct. App. 2009) and *Robinson v. State*, 955 N.E.2d 228 (Ind. Ct. App. 2011).

[12] In *Mateyko*, Mateyko’s probation officer was informed of an incident that had occurred at one of Mateyko’s therapy sessions. 901 N.E.2d at 556. Specifically, Mateyko’s therapist informed his probation officer that he had used some vulgar language and that the therapist had felt unsafe. *Id.* Following

the incident, the State filed a notice of probation violation. At the ensuing hearing, the State called as a witness Lynn Fishburn, a probation officer who was not Mateyko's probation officer. *Id.* Fishburn then testified about what Mateyko's probation officer had told her. *Id.* Mateyko objected to the testimony as hearsay, but the court overruled that objection. *Id.* at 557. The court then found that Mateyko had violated the terms of his probation.

[13] On appeal, Mateyko challenged the court's admission of the hearsay statements. This Court stated that it was "not dealing with simple hearsay" but was "dealing with 'triple hearsay,' i.e. hearsay within hearsay within hearsay." *Id.* at 558. Specifically, the Court noted that the State had "relied solely upon the testimony of a witness, Fishburn, who had no direct involvement with Mateyko or the events which the State alleged constituted a violation of the terms of his probation" and that "Fishburn was removed by several steps from the events at issue." *Id.* Accordingly, the Court concluded that the hearsay statements were not substantially reliable and that the trial court had erred when it admitted that evidence. *Id.*

[14] In *Robinson v. State*, Robinson, while on probation for a prior offense, was arrested after Latonia Green called police and reported that Robinson had beaten and choked her. 955 N.E.2d at 229. Green "related her story to the investigating officer, Lawrence Police Officer Brian Sharp, who then related her story to Lawrence Police Detective Thomas Zentz, who subsequently related the story in the probable cause affidavit." *Id.* According to the affidavit, Green told Officer Sharp that Robinson had pushed her against a wall, squeezed her

throat, and struck her in the back of the head such that she fell on her elbows. *Id.* at 230. The affidavit also stated that Green had an abrasion on her elbow. *Id.* The State then filed an information charging Robinson with various offenses and several notices of probation violation based on Robinson's arrest and new charges. *Id.* at 229-30. At a hearing on the notice of probation violation, the State called the court-assigned probation officer as a witness and moved to admit Detective Zentz' probable cause affidavit. *Id.* at 230. Robinson objected on the ground that it constituted "unreliable multiple hearsay." *Id.* The court overruled his objection, admitted the affidavit, and found that he had violated the terms of his probation.

[15] On appeal, this Court acknowledged the relaxed rules of evidence in probation revocation proceedings. *Id.* at 232. But the Court noted that "Detective Zentz, the affiant, neither observed the abrasion on Green's elbow nor any other fact or circumstance of the alleged attack upon Green." *Id.* at 233. Further, the Court stated that "the unsworn statement given to Detective Zentz about the abrasion is less than definitive." *Id.* Accordingly, the Court held that the affidavit, "which was full of hearsay within hearsay within hearsay," was not substantially reliable and that the court had erred when it admitted the affidavit. *Id.*

[16] Here, Rocha first asserts *Mateyko* and *Robinson* should be interpreted as creating a "bright-line rule" that any piece of evidence that contains multiple levels of hearsay is per se unreliable. Appellant's Br. at 7. But we do not read those cases as creating such a strict rule. Rather, both of those cases simply

evaluated the trustworthiness of a given piece of hearsay evidence under the circumstances. And this Court held that, where the witness or affiant received information from someone who had received it from someone else, the evidence was not substantially reliable. In other words, we interpret *Mateyko* and *Robinson* to require trial courts to evaluate each piece of hearsay evidence on a case-by-case basis to determine if it is substantially trustworthy under a particular set facts.

[17] Still, Rocha contends that Sergeant Cron’s affidavit was unreliable because the allegations contained in it were “centered on the observations of someone other than the affiant.” Appellant’s Br. at 8. We acknowledge that some of the information in Sergeant Cron’s affidavit came from the other investigating officers. However, the majority of the information in his affidavit was the result of his personal involvement in the investigation of the home invasion.

[18] Indeed, Sergeant Cron responded to the scene of the home invasion and spoke with the two victims, who provided details about the incident. Specifically, Sergeant Cron learned directly from Jackson and Spencer that a woman named Maria and her friend had broken into their home, threatened them with a knife with a light-colored handle, and demanded money or a car. Ex. at 7. Then, after other officers conducted a traffic stop on Rocha’s vehicle and sent photographs of Rocha and Nunez to Sergeant Cron, Jackson and Spencer identified Rocha and Nunez as the two offenders directly to Sergeant Cron. *Id.* at 8.

[19] Further, Sergeant Cron went to the scene of the traffic stop and spoke to both Rocha and Nunez. Nunez admitted to Sergeant Cron that she had heard an “argument about money” between Rocha and Jackson. *Id.* And during a search of Rocha’s car, Sergeant Cron found a large knife with a light-colored handle “directly next to where the driver’s right leg would be.” *Id.* at 9. Sergeant Cron also located a syringe and a bottle in Rocha’s purse that both tested positive for methamphetamine. In other words, Sergeant Cron was not “removed by several steps” from the investigation. *Mateyko*, 901 N.E.2d at 558. Instead, he was directly involved in the investigation, and most of his affidavit was based on information he gathered personally from the victims or from his own search of Rocha’s vehicle. We therefore hold that that affidavit is substantially trustworthy.

[20] Rocha also contends that the trial court erred when it failed to “make a specific finding” on the record regarding the reliability of the affidavit. Appellant’s Br. at 8. We cannot agree. Rather, the trial court made a detailed written entry in which it noted that “much of the evidence” contained in Sergeant Cron’s affidavit “was observed, documented and affirmed” by him. Appellant’s App. Vol. 2 at 31. In addition, the court noted that it has found Sergeant Cron to be “credible and reliable” in the past. *Id.* We conclude that the trial court provided an adequate explanation on the record regarding the reliability of Sergeant Cron’s affidavit.

[21] In sum, Sergeant Cron’s affidavit was substantially trustworthy, and the court entered a written finding explaining why the affidavit was reliable. As such, the

trial court did not abuse its discretion when it admitted the affidavit as evidence at Rocha's probation revocation hearing. We affirm the trial court.

[22] Affirmed.

Vaidik, J., and Weissmann, J., concur.