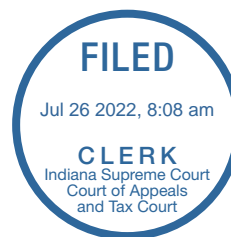


## MEMORANDUM DECISION

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

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Samuel Houston,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

July 26, 2022

Court of Appeals Case No.  
22A-CR-290

Appeal from the Warren Circuit  
Court

The Honorable Hunter Reece,  
Judge

Trial Court Cause No.  
86C01-1711-F6-100

**Robb, Judge.**

## Case Summary and Issue

- [1] Samuel Houston pleaded guilty to possession of a controlled substance, maintaining a common nuisance, and possession of paraphernalia. Houston was sentenced to an aggregate sentence of 849 days, all suspended to probation.
- [2] Subsequently, the State alleged that Houston violated the terms and conditions of his probation. After a fact-finding hearing, the trial court found Houston had violated his probation and ordered that he serve the remaining balance of his previously suspended sentence in the Indiana Department of Correction. Houston appeals, arguing the trial court abused its discretion when it permitted the State to ask his wife leading questions during the fact-finding hearing. Concluding the trial court did not abuse its discretion, we affirm.

## Facts and Procedural History

- [3] In October 2018, Houston pleaded guilty to possession of a controlled substance and maintaining a common nuisance, each a Level 6 felony, and possession of paraphernalia, a Class A misdemeanor. He was sentenced to 849 days with the entire sentence suspended to probation. Houston's probation was to be served consecutively to probation he was already serving in another unrelated case. The terms and conditions of his probation required that he "behave well and not engage in any unlawful conduct." Exhibits, Volume 3 at 3.

- [4] On the night of October 13, 2021, Houston entered the room in which his wife, Tracy, and their ten-month-old child were sleeping and poured a liquid that smelled like “[b]urning” and “gasoline or kerosene” on the bedroom floor and the bed. Transcript, Volume 2 at 13. The fluid got on both Tracy and the child. As a result, Tracy suffered skin irritation and the child was diagnosed with chemical burns. The fluid was later determined to be kerosene.
- [5] After pouring out the kerosene, Houston left the house and Tracy called 9-1-1. When Officer Zachary Belfi of the Vigo County Sheriff’s Office arrived on the scene, Tracy was outside the home, visibly distraught and wet. Tracy told Officer Belfi that she was wet because Houston had poured what she believed to be gasoline on her. Tracy also indicated that she and Houston had been arguing and Houston splashed the liquid around the house and threatened to set it on fire. Officer Belfi walked through the home and noted that the house smelled like kerosene and kerosene appeared to be poured throughout the house.
- [6] The next day, Officer Ronald Steiner visited with Tracy at the house. Tracy discussed the events of the prior evening with Officer Steiner, showed him a large patch of irritated skin where the kerosene had come into contact with her lower abdomen and hip, and indicated where the kerosene had come into contact with the child. Officer Steiner also walked through the home and noticed that it “wreaked [sic] of kerosene.” *Id.* at 34.

[7] Houston was charged with domestic battery, three counts of neglect of a dependent, and intimidation. In November 2021, the State filed a petition to revoke Houston's probation alleging that he had violated the terms of his probation by committing these new criminal offenses.

[8] In January 2022, a fact-finding hearing on the State's petition was held. At the hearing, Officer Belfi and Officer Steiner testified to their visits to the home and interactions with Tracy. *See supra* ¶¶ 5-6. Officer Steiner confirmed that Tracy had suffered skin irritation from the kerosene and that the hospital had diagnosed the child with chemical burns. Tracy was also called to testify. As the trial court was attempting to swear her in, she had the following exchange with the trial court:

THE COURT: Alright please come forward to be sworn mam [sic]. . . . Do you solemnly swear or affirm under the pains and penalties for perjury to testify truthfully in these proceedings to the best of your knowledge and belief?

[Tracy]: No, I won't testify against him, we are legally married.

THE COURT: That is not my question. . . . My question is will you testify truthfully to the extent you answer a question.

[Tracy]: Yes.

Tr., Vol. 2 at 7. Tracy was then successfully sworn in.

[9] During the State's direct examination of Tracy, she testified that Houston had been mad prior to pouring the kerosene and that she did not want to discuss

what had caused a problem between her and Houston on the night in question. The State observed that Tracy seemed to be attempting to assert a spousal privilege but believed that such privilege did not apply to the specific question. The trial court agreed, admonished Tracy, and allowed questioning to continue. Later, the State asked Tracy the following:

[State]: And did there come a time when you went to bed that evening?

[Tracy]: Yes mam [sic].

[State]: Where did you go to bed at?

[Tracy]: In my house, in my bed.

[State]: Which bedroom did you go to?

[Tracy]: My master bedroom mam [sic].

[State]: So you didn't go to um bed with your daughter?

[Tracy]: I did after.

*Id.* at 10. Houston's attorney objected to the final question as leading, and the State requested to treat Tracy as a hostile witness. The trial court overruled Houston's objection and granted the State's request to treat Tracy as a hostile witness. The trial court explained its ruling: "It's the fact that . . . when I tried to put her under oath [she stated that she is] not going to testify against [her]"

husband so I think . . . her tone and her demeanor as the Court is observing her[,] she's not only visibly hostile but I think under the rules [the State] can use some leading questions.” *Id.* at 11. Tracy then testified regarding Houston entering the child’s bedroom and pouring kerosene on her and the child.

[10] At the conclusion of the fact-finding hearing, the trial court determined that Houston had violated the terms of his probation requiring that he behave well and not engage in any unlawful conduct. The trial court revoked Houston’s probation and ordered that he execute the remaining balance of his previously suspended sentence. Houston now appeals.

## Discussion and Decision

### I. Standard of Review

[11] Generally, the Indiana Rules of Evidence do not apply to probation revocation proceedings. *Terpstra v. State*, 138 N.E.3d 278, 287 (Ind. Ct. App. 2019), *trans. denied*; *see* Ind. Evidence Rule 101(d)(2). This flexibility is needed for the trial court to exercise its inherent power to enforce obedience to its lawful orders. *Terpstra*, 138 N.E.3d at 287. Accordingly, the trial court has broad discretion in ruling on the admissibility of evidence at a probation revocation hearing, and on appeal, we will not disturb its decision absent an abuse of discretion. *Id.*

### II. Leading Questions

[12] Under the Indiana Rules of Evidence, the trial court should not allow leading questions to be used on direct examination unless “a party calls a hostile

witness, an adverse party, or a witness identified with an adverse party.” Evid. R. 611(c). Houston argues that a witness may only be declared hostile after “the party has demonstrated to the court’s satisfaction that the witness is hostile.” Appellant’s Brief at 11. According to Houston, the State did not make the appropriate demonstration that Tracy was hostile and therefore, the trial court abused its discretion when it allowed the State to ask her leading questions. However, as stated above, strict rules of evidence do not apply in probation revocation proceedings and therefore, probation revocation hearings are more flexible than an adversarial criminal proceeding. *Cox v. State*, 706 N.E.2d 547, 550 (Ind. 1999).

[13] Here, prior to being sworn in as a witness, Tracy said, “I won’t testify against [Houston], we are legally married.” Tr., Vol. 2 at 7. She later testified that she did not want to answer questions regarding the cause of the problem between Houston and herself on the night in question. The State questioned whether she was trying to assert spousal privilege, and because the trial court did not believe the spousal privilege applied to the question, the court admonished Tracy. Following an objection to a leading question, the State made a request to treat Tracy as a hostile witness, which the trial court granted. The trial court reasoned that Tracy’s relationship to Houston, her statement that she did not want to “testify against” Houston, and her demeanor on the witness stand warranted treatment as a hostile witness and the use of leading questions. *Id.* at 11. Based on this record and the flexibility allowed in probation revocation proceedings, we cannot say the trial court abused its discretion in allowing the

State to treat Tracy as a hostile witness and use leading questions on direct examination.

[14] However, even if it was improper to treat Tracy as a hostile witness and allow the State to ask her leading questions, any error was harmless. Where erroneously admitted evidence is merely cumulative of other evidence, the result is harmless error. *Hunter v. State*, 72 N.E.3d 928, 932 (Ind. Ct. App. 2017), *trans. denied*. Tracy's testimony was in addition to the testimony of both Officer Belfi and Officer Steiner who testified that kerosene had been poured throughout the house, including on Tracy and the child. Moreover, Officer Steiner confirmed that Tracy suffered skin irritation from the kerosene and the child was diagnosed with chemical burns. Tracy's testimony aligned with the testimony of Officer Belfi and Officer Steiner and accordingly, her testimony is cumulative to other evidence in the record that Houston did not behave well and engaged in unlawful conduct.

## Conclusion

[15] The trial court did not abuse its discretion in allowing the State to ask Houston's wife leading questions during the fact-finding hearing on the State's petition to revoke Houston's probation. Therefore, we affirm.

[16] Affirmed.

Pyle, J., and Weissmann, J., concur.