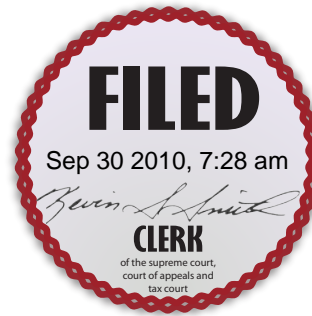


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

CHAD DELPHIA,)

Appellant-Defendant,)

vs.)

No. 48A02-1002-CR-149

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable David A. Happe, Judge
Cause No. 48D04-0910-FD-433
Cause No. 48D04-0910-FD-434

September 30, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Chad Delphia appeals the revocation of probation and the trial court's decision to terminate his in-house detention. Specifically, Delphia argues that the State failed to establish by a preponderance of the evidence that he had committed a criminal offense while on probation. Finding the evidence sufficient, we affirm the revocation.

FACTS

On March 2, 2009, Delphia pleaded guilty to maintaining a common nuisance, a class D felony, possession of a controlled substance, a class D felony, and possession of marijuana, a class A misdemeanor. The trial court imposed an eighteen-month suspended sentence and ordered Delphia to three years of formal probation.

On August 10, 2009, the State filed a notice of violation of probation, and Delphia received a sanction of three months of in-home detention. Thereafter, on October 14, 2009, a second notice of violation of probation was filed against Delphia, alleging that:

- A. On . . . October 5, 2009, . . . Delphia . . . in a rude, insolent or angry manner, did knowingly or intentionally apply pressure to the throat or neck of [A.M.] in a manner that impeded normal breathing or blood circulation of [A.M.].
- B. On or about October 5, 2009, . . . Delphia . . . did knowingly or intentionally touch [A.M.], who is the spouse of . . . Delphia, in a rude, insolent, or angry manner, to wit: by placing his hands around her neck and squeezing, resulting in bodily injury, to wit: pain. Further, said offense was committed in the physical presence of a child or children less than . . . sixteen years of age, knowing that the child/children were present and might be able to see or hear commission of the offense.

Appellant's App. p. 21-22.

On January 27, 2010, the trial court conducted an evidentiary hearing on the violation. Anderson Police Officer Mark Naselroad testified that he was working at the front desk of the police station on October 6, 2009. At some point, A.M. arrived at the station to speak with him. Officer Naselroad noticed that A.M. was upset and crying. A.M. told Officer Naselroad that she was afraid to go home because Delphia might injure her. She explained that when she was late coming home the previous evening, Delphia shook her and grabbed her around the neck.

Officer Deena Dunn videotaped A.M.'s statement and heard A.M. tell Officer Naselroad that she was afraid to go home because Delphia became irate and was screaming at her at the local grocery store. Officer Dunn also heard A.M. state that Delphia had choked or strangled her the previous day.

Christy Tiner, who was in charge of the home detention center, testified that Delphia's arrest amounted to a violation of the rules. While Delphia admitted that he yelled and argued with A.M. at the grocery store, he testified that he had never strangled, pushed, or shoved A.M. in anger. Delphi also admitted that the two argued when A.M. returned home late on October 5, 2009.

A.M. testified at the revocation hearing that she did not recall telling Officer Naselroad that Delphia had choked or strangled her. However, she recalled the video camera and Officer Dunn. A.M. also remembered that she did not look at the camera when she gave her statement.

Following the presentation of the evidence, the trial court found that it was more likely than not that Delphia had choked or strangled A.M. on October 5, 2009. In support

of its ruling, the trial court noted that when A.M. gave her statement to police, she was speaking to two police officers and that she understood the gravity of her statement. The trial court also observed that there was no credible motive for A.M. to have fabricated the statement that she provided to the police, and that the ongoing dispute in the couple's relationship corroborated A.M.'s statement. As a result, the trial court determined that A.M.'s testimony at the hearing was "just simply not credible." Tr. p. 71.

The trial court ordered Delphia to serve 236 days in the Department of Correction (DOC). Additionally, Delphia's probation was revoked to eighteen months on work release, which was to be served consecutive to the time served at the DOC. Delphia now appeals.

DISCUSSION AND DECISION

In addressing Delphia's claim that the evidence was insufficient to support the revocation, we note that "probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled." Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007). Probation revocation is a two-step process. First, the court must make a factual determination that a violation of a condition of probation actually occurred. Woods v. State, 892 N.E.2d 637, 640 (Ind. 2008). If a violation is proven, then the trial court must determine if the violation warrants revocation of the probation. Id.

We will neither reweigh the evidence nor judge the credibility of the witnesses in a probation revocation matter. Washington v. State, 758 N.E.2d 1014, 1017 (Ind. Ct. App. 2001). Rather, we look to the evidence most favorable to the judgment. T.W. v. State,

864 N.E.2d 361, 364 (Ind. Ct. App. 2007). If there is substantial evidence of probative value to support the trial court's decision that the probationer committed any violation, revocation is appropriate. Id.

The rules of evidence do not apply in revocation proceedings, and the State is required to prove the violation only by a preponderance of the evidence. Cooper v. State, 900 N.E.2d 64, 66 (Ind. Ct. App. 2009). Finally, when a criminal offense is alleged as the basis for revocation, the trial court is only required to find that there was probable cause to believe that the defendant violated a criminal law. Richeson v. State, 648 N.E.2d 384, 389 (Ind. Ct. App. 1995).

In this case, A.M. claimed at one point during the revocation hearing that she did not remember the events that she detailed in her statement to the police. Tr. p. 50. She also testified that Delphia did not grab or squeeze her around the neck. Id. at 51. However, as noted above, the trial court found that A.M.'s testimony was not credible and she did not appear to be truthful at the hearing. Id. at 71. The trial court also pointed out that neither A.M. nor Delphia's counsel offered any motive for her to go to the police department and provide a false statement. Id.

Delphia claims that the revocation must be set aside because the videotape of A.M.'s statement was not admitted into evidence, Officer Naselroad's testimony was the "sole evidence" in support of the revocation, and there were no other witnesses to the alleged "battery/strangulation." Appellant's Br. p. 10. However, it is apparent that Delphia is asking us to reweigh the evidence and place greater weight on his testimony, which we will not do.

In sum, the trial court considered all the evidence that was presented at the hearing and determined by a preponderance of the evidence that Delphia violated the conditions of his probation. That determination was reasonably drawn from the evidence and, as a result, Delphia has failed to show that the trial court abused its discretion in revoking his probation.

The judgment of the trial court is affirmed.

NAJAM, J., and MATHIAS, J., concur.