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**IN THE
COURT OF APPEALS OF INDIANA**

ROBERT E. MYERS,)
)
Appellant-Defendant,)
)
vs.) No. 48A02-0806-CR-568
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause Nos. 48D03-0509-FC-414, 48D03-0512-FD-581

October 31, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Robert E. Myers appeals the trial court's order revoking his probation and imposing the balance of his sentence to be served in the Department of Correction. Myers contends that the trial court impermissibly admitted certain out-of-court statements into evidence at the probation revocation hearing and that there is insufficient evidence supporting the revocation. Finding no error, we affirm.

FACTS

On May 1, 2006, Myers pleaded guilty to class C felony nonsupport of a dependent child, class D felony attempted theft, two counts of class A misdemeanor resisting law enforcement, and three counts of class D felony theft. On October 23, 2006, the trial court sentenced Myers to an aggregate sentence of eleven years, all suspended to probation.

On December 11, 2007, Carmen Singer discovered that the mobile phone store she managed had been burglarized. Numerous items were missing, including an old, filthy Bissell vacuum cleaner. In mid-December 2007, Myers contacted Sherry Bevel and offered to sell her a number of items, including a vacuum cleaner, for which he asked \$20. Bevel offered \$8 for the vacuum cleaner, and Myers accepted. When Bevel claimed the vacuum cleaner, she noticed that it was "very, very dirty." Tr. p. 55-56. At some point, Bevel became suspicious that the vacuum cleaner was a stolen item, and she eventually reported her suspicion to the police. Bevel gave the vacuum cleaner to the police, who showed it to Singer, who identified it as the one that had been stolen from her store.

On February 22, 2008, the State filed a notice of probation violation, alleging, in part, that Myers had committed the December 11, 2007, burglary of Singer's store. At the February 26, 2008, hearing on the State's notice, the investigating officer testified about conversations that he had had with Myers's landlord. Myers objected to the testimony as hearsay but the trial court overruled the objection. At the close of the hearing, the trial court found that Myers had committed a new crime while on probation, revoked that probation, and imposed the entirety of the previously-suspended sentence. Myers now appeals.

DISCUSSION AND DECISION

I. Testimony

Myers first argues that the trial court erred by admitting the testimony of the investigating police officer about a conversation he had had with Myers's landlord. As we consider this argument, we observe that probation revocation hearings are narrow inquiries with flexible procedures and are not intended to be equated with adversarial criminal proceedings. Cox v. State, 706 N.E.2d 547, 550 (Ind. 1999). Although a probationer retains his due process right to confront and cross-examine witnesses against him, id. at 549, the Indiana Rules of Evidence, including the rules regarding hearsay, do not apply to probation revocation proceedings, id. at 550, Ind. Evid. Rule 101(c)(2). Therefore, the trial court may consider any relevant evidence bearing some substantial indicia of reliability, including reliable hearsay. Whatley v. State, 847 N.E.2d 1007, 1010 (Ind. Ct. App. 2006).

Here, the police officer testified that when he confronted Myers about the vacuum cleaner, Myers initially reported that the vacuum came from a home that he had rented. Tr. p. 73. Myers claimed that his landlord—a State Police officer—would verify the story. Id. The officer then testified that when he spoke to Myers’s landlord, the landlord denied any knowledge of the vacuum cleaner. Id. at 73-74. Myers objected to the officer’s testimony about the conversation with his landlord, arguing that it was impermissible hearsay, and the trial court overruled the objection. Next, the officer testified that Myers eventually changed his story, claiming that he had found the vacuum in the trash, though Myers could provide no additional details. Id. at 75.

Hearsay is an out-of-court statement that is offered into evidence to prove the truth of the matter asserted. Ind. Evid. Rule 801(c). Here, the State did not offer the police officer’s testimony about the conversation with Myer’s landlord into evidence to prove the truth of the matter asserted. In other words, the State was not attempting to establish that, in fact, the landlord knew nothing about the vacuum cleaner. Instead, the State offered this evidence to establish that, when confronted with his landlord’s response, Myers changed his story about how and where he acquired the vacuum cleaner. Therefore, the officer’s testimony recounting the conversation he had had with the landlord did not constitute hearsay and the trial court properly admitted it into evidence.¹

¹ In any event, even if the testimony had constituted hearsay, the fact that the witness and the landlord were both police officers provides sufficient indicia of reliability to admit the testimony about the out-of-court statements into evidence.

II. Sufficiency of the Evidence

Myers next argues that the evidence is insufficient to support the trial court's decision to revoke his probation. A probation revocation proceeding is civil in nature; therefore, the State need only prove an alleged violation of probation by a preponderance of the evidence. Pitman v. State, 749 N.E.2d 557, 559 (Ind. Ct. App. 2001). When reviewing the trial court's decision to revoke probation, we neither reweigh the evidence nor assess witness credibility, instead looking only to the evidence supporting the judgment and the reasonable inferences that may be drawn therefrom. Id. We will affirm if there is substantial evidence of probative value supporting the trial court's conclusion that the probationer committed a violation. Id.

Merely being arrested for a crime is insufficient to revoke probation. Gleason v. State, 634 N.E.2d 67, 68 (Ind. Ct. App. 1994). Instead, the State must offer proof that “the defendant engaged in the alleged criminal conduct or proof of the conviction thereof.” Id. Such proof includes evidence that the arrest was reasonable and that there was probable cause to believe that the defendant violated a criminal law. Pitman, 749 N.E.2d at 560.

Here, the record reveals that in mid-December 2007, Myers sold a vacuum cleaner to an acquaintance for a very insignificant amount of money—\$8. The manager of a store that had been burglarized on December 11, 2007, later identified that vacuum cleaner as one that had been stolen from her store in the burglary. The vacuum sold by Myers was the same make and model as the one that had been stolen and, like the burglarized vacuum, it was “very, very dirty.” Tr. p. 55-56. When questioned about the

vacuum cleaner, Myers initially said that he had taken it from a home that he rented, but when his landlord denied all knowledge of the vacuum, Myers changed his story, telling the investigating officer that, in fact, he had found the vacuum in the trash. We find that this evidence amply support's the trial court's conclusion that Myers violated the terms of his probation by committing burglary. Myers's arguments to the contrary amount to a request that we reweigh the evidence and assess witness credibility—practices in which we do not engage when evaluating the sufficiency of the evidence supporting the revocation of a defendant's probation.

The judgment of the trial court is affirmed.

MATHIAS, J., and BROWN, J., concur.