

## MEMORANDUM DECISION

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IN THE  
**Court of Appeals of Indiana**

Miana M. Peterson,  
*Appellant-Defendant*

v.

State of Indiana,  
*Appellee-Plaintiff*



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March 1, 2024

Court of Appeals Case No.  
23A-CR-2041

Appeal from the Madison Circuit Court

The Honorable Mark Dudley, Judge

Trial Court Cause No.  
48C06-1508-F3-1223

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**Memorandum Decision by Chief Judge Altice**  
Judges Bradford and Felix concur.

**Altice, Chief Judge.**

## **Case Summary**

[1] Miana Peterson appeals from the revocation of her probation and presents the following restated issues for review:

1. Did the trial court abuse its discretion by admitting hearsay evidence?

2. Did the trial court abuse its discretion by allowing an investigator to testify about statements Peterson made during a videotaped interview that the State failed to produce in discovery?

3. Did the State present sufficient evidence of the probation violation?

[2] We affirm.

## **Facts & Procedural History**

[3] In January 2016, Peterson was convicted in Madison County of two counts of dealing in a narcotic drug, one as a Level 3 felony and one as Level 5 felony, and sentenced to twelve years in prison, with three of those years suspended to probation. Peterson began serving formal probation in July 2020 and was granted informal probation two years later.

[4] In January 2023, the Ripley County Prosecutor's Office received a report involving Peterson from Adult Protective Services, and Tracy Rohlring began

investigating.<sup>1</sup> On February 14, 2023, as part of the investigation, Rohlfig met with George Rudolph (George) and George’s sister, Melena Waninger (Melena). They came in to report the theft of around \$7,000 from George’s checking account. From this meeting, Rohlfig learned that in 2022, Peterson provided in-home assistance to George through her employer, Bethany Cares.<sup>2</sup> Peterson assisted George with maintaining his home and running errands. George and Melena reported that they believed Peterson had stolen the money from George’s account.

[5] Later that afternoon, Peterson voluntarily came to the Prosecutor’s Office for a noncustodial interview with Rohlfig. During the twenty-minute, video-recorded interview, Peterson acknowledged, according to Rohlfig, that she had taken about \$7,000 from George. Peterson indicated that she first used George’s debit card information with his permission to pay her utility bills but then “got carried away” and made unauthorized charges involving various accounts that Peterson had set up for herself, such as Xoom, PayPal, MoneyGram, and Klarna (collectively, money accounts). *Transcript* at 63. Peterson last used George’s account information around November 19, 2022.

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<sup>1</sup> Rohlfig had been a detective with the Indiana State Police (ISP) for twenty-five years before retiring and becoming an investigator for the Prosecutor’s Office.

<sup>2</sup> Rohlfig later contacted the owner of Bethany Cares and verified that Peterson had worked for the company but had since been terminated.

- [6] As a result of his investigation, Rohlfig prepared a probable cause affidavit, in which he summarized his communications with George, Melena, and Peterson and recommended the filing of Level 6 felony theft and Class A misdemeanor exploitation charges against Peterson. Such criminal charges were filed on March 7, 2023, in Ripley Superior Court under Cause No. 69D01-2303-F6-22. Two days later, the State filed a notice of probation violation in this case, alleging that Peterson had committed a new criminal offense.
- [7] At the probation revocation hearing on August 4, 2023, both Rohlfig and Peterson testified. The trial court permitted Rohlfig to testify, over Peterson's hearsay objection, regarding the details of his meeting with George and Melena. He was also permitted to testify about statements made by Peterson during his noncustodial interview with her, despite Peterson's objection that such testimony should be excluded as a sanction because the video recording of the interview had not been provided in discovery.
- [8] After Rohlfig's testimony setting out the facts as detailed above, Peterson testified and disputed that she had admitted any sort of criminal activity during her noncustodial interview. She, however, acknowledged using George's debit card many times including to make payments on her money accounts but claimed that each use was authorized by George.
- [9] At the end of the hearing, the trial court found, by a preponderance of the evidence, that Peterson had violated her probation by committing a new felony. The court expressly indicated that it did not find credible Peterson's testimony

that she had permission for every purchase that she made with George's debit card. In this regard, the court found it notable that George had gone to the authorities and reported the theft. The court also credited Rohlfin's testimony that, during the interview, Peterson admitted responsibility for certain unauthorized purchases. The court proceeded with the sanctions hearing and ordered Peterson to serve all three years of her suspended sentence on home detention.

[10] Peterson now appeals. Additional information will be provided below as needed.

## **Discussion & Decision**

### **1. The trial court did not abuse its discretion by admitting hearsay evidence**

[11] Peterson contends that the trial court should not have permitted Rohlfin to testify about what George and Melena reported to him. Specifically, she argues that the testimony contained unreliable hearsay and that the State presented no reason why George could not testify at the hearing. Peterson also appears to suggest that her inability to cross-examine George regarding his statements violated her right of confrontation protected by the Sixth Amendment of the United States Constitution.

[12] 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). We will reverse only where the trial court’s decision is clearly against the logic and effect of the facts and circumstances. *Id.*

[13] The Indiana Rules of Evidence in general and the rules against hearsay in particular do not apply in probation hearings, which have more flexible procedures than criminal trials. *See* Ind. Evidence Rule 101(d)(2); *Monroe v. State*, 899 N.E.2d 688, 691 (Ind. Ct. App. 2009). Thus, in probation revocation hearings, the trial court may consider “any relevant evidence bearing some substantial indicia of reliability.” *Monroe*, 899 N.E.2d at 691 (citing *Cox v. State*, 706 N.E.2d 547, 551 (Ind. 1999)). “This includes reliable hearsay.” *Id.* “The absence of strict evidentiary rules places particular importance on the fact-finding role of judges in assessing the weight, sufficiency and reliability of proffered evidence.” *Id.*

[14] Further, while a probationer’s due process rights include the right to confront and cross-examine witnesses, his confrontation rights are not as extensive as in a criminal trial. *See Reyes v. State*, 868 N.E.2d 438, 440-41 (Ind. 2007). “This does not mean that hearsay evidence may be admitted willy-nilly in a probation revocation hearing.” *Id.* at 440. But all that is required for admissibility is that the hearsay evidence bears substantial guarantees of trustworthiness. *Id.* at 441. That is, the trial court need only evaluate the reliability of the hearsay evidence and “need not ‘assess the relative weight of every reason the State might not care to produce a witness.’” *Mateyko v. State*, 901 N.E.2d 554, 558 (Ind. Ct. App. 2009) (quoting *Reyes*, 868 N.E.2d at 442), *trans. denied*.

[15] Here, the trial court expressly determined, without further elaboration, that the hearsay statements were reliable. While we prefer that a trial court explains on the record why the hearsay is reliable, a failure to do so is not fatal where the record supports such a determination. *See Reyes*, 868 N.E.2d at 442 (affirming admission of affidavits in probation hearing despite court’s failure to provide detailed explanation on record). The reliability of the hearsay evidence in this case is evident. The victim, George, and his sister reported the theft allegations directly to Rohlring, an investigator with the Prosecutor’s Office and a retired ISP detective. Rohlring then followed up on the reported theft by contacting the owner of Bethany Cares to confirm Peterson’s employment and by interviewing Peterson, who made incriminating statements to Rohlring. Under the circumstances, the trial court did not abuse its discretion by allowing Rohlring to testify about information he obtained directly from George and Melena during his investigation.<sup>3</sup>

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<sup>3</sup> In fact, we have held that under certain circumstances, a probable cause affidavit may be considered as evidence at a probation hearing where it was signed by the officer who was listed as the affiant. *See Whatley v. State*, 847 N.E.2d 1007, 1010 (Ind. Ct. App. 2006) (concluding that probable cause affidavit bore substantial indicia of reliability where it was “prepared and signed by Detective Ball while under oath, and contained relevant evidence concerning Whatley’s violation of his probation by dealing in and possession of cocaine”), overruled on other grounds by *Heaton v. State*, 984 N.E.2d 614, 617 n.4 (Ind. 2013).

## **2. Peterson waived her challenge, based on a discovery violation, to the admission of Rohlfig's testimony about her confession**

[16] Peterson objected at trial to Rohlfig's testimony about his interview with her because the video recording of the interview had not been provided by the State during discovery. Defense counsel argued:

[T]his is all based off what [Rohlfig] said in his report happened. There is a recording of exactly what happened that I have not been provided by the State it [sic], so I have no way to cross examine him on what he alleged has happened and there is a document by his own admission that shows what did or didn't, or not a document but a video. So, I have no ability to cross examine this witness on this material. I would object to the questions.... These are recorded, it is completely improper for him to characterize [Peterson's statements] without this discovery being given to me.

*Transcript* at 55-56. After confirming that Peterson was not in custody during the recorded interview, the trial court overruled Peterson's objection. Peterson claims that this was an abuse of discretion.

[17] It is undisputed that the State violated a standing discovery order requiring it to produce any recorded statements made by Peterson. A discovery violation, however, does not always require the exclusion of evidence; the preferred remedy for a discovery violation is a continuance. *See Warren v. State*, 725 N.E.2d 828, 832 (Ind. 2000); *Tavake v. State*, 131 N.E.3d 696, 706 (Ind. Ct. App. 2019), *trans. denied*. "Failure to alternatively request a continuance upon moving to exclude evidence, where a continuance may be an appropriate



remedy, constitutes a waiver of any alleged error pertaining to noncompliance with the court's discovery order." *Warren*, 725 N.E.2d at 832.

[18] Here, a continuance would have remedied any prejudice from the State's failure to disclose the video, but Peterson did not ask for a continuance to view the video. The issue is thus waived. *See id.*

[19] Waiver notwithstanding, we note that Peterson has not argued, let alone shown, that "the discovery violation was intentional, flagrant, in bad faith, or otherwise reprehensible" or that exclusion was "the sole remedy available to avoid substantial unfair prejudice." *State v. Lyons*, 211 N.E.3d 500, 505-06 (Ind. 2023). The nondisclosure of the video appears to have been an oversight by the State, and the record makes clear that the substance of Rohlfig's testimony was contained in the probable cause affidavit, which the defense had in preparation for the hearing.

### **3. The evidence sufficiently established that Peterson violated probation**

[20] Peterson challenges the sufficiency of the evidence, arguing: "There is no substantial evidence which supports the finding of probation violation when the improperly admitted hearsay is excluded from consideration." *Appellant's Brief* at 6. We have, however, found against Peterson on the admission-of-evidence issues, thus derailing her argument on the sufficiency of the evidence. Further, Rohlfig's testimony provided ample evidence in support of the trial court's determination that the evidence established by a preponderance of the evidence

that Peterson had committed a new criminal offense while on probation. We will not, indeed cannot, reweigh the evidence or judge witness credibility on appeal. *See Woods v. State*, 892 N.E.2d 637, 639-40 (Ind. 2008).

[21] Judgment affirmed.

Bradford, J. and Felix, J., concur.

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