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IN THE
COURT OF APPEALS OF INDIANA

FRANCISCO J. RAMON, JR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 28A04-0902-CR-61
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE GREENE CIRCUIT COURT
The Honorable Erik C. Allen, Judge
Cause No. 28C01-0402-FC-26

July 23, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Francisco J. Ramon, Jr. appeals the revocation of his probation. We affirm.

FACTS AND PROCEDURAL HISTORY

On February 5, 2004, Ramon was charged with causing the death of another person while operating a vehicle with marijuana in his body. *See* Ind. Code § 9-30-5-5(a)(2) (offense is a Class C felony). On October 18, 2005, Ramon pled guilty to the charge in exchange for a six-year cap on his sentence. The trial court sentenced him to six years in the Greene County Jail with two years suspended to probation. The conditions of Ramon's probation included:

> 2. You shall not commit another criminal offense. You shall obey all rules as prescribed by this Court and the Greene County Probation Officer.
>
> * * * * *
>
> 7. You shall refrain from the use, possession, or transportation of any controlled substances, unless legally prescribed by a duly licensed physician. If so ordered by the Department of Probation, you shall refrain from the use, possession or transportation [of] any alcohol[ic] beverages. Also, if so ordered by the Department of Probation, you shall not enter any establishment where alcoholic beverages are sold, dispensed or consumed. You shall, when so ordered by a Law Enforcement Officer, Probation Officer, or Community Corrections Director, report within one hour of being so ordered to a place ordered by said Officer to submit yourself to any breathalyzer, intoxilyzer or any chemical test to determine whether you have ingested any alcoholic beverage or controlled substance. The Defendant shall assume the cost of $10.00 for any failed drug screens which shall be paid to the Greene County Probation Department.

(Appellant's App. at 65-66.)

On April 21, 2008, Ramon was required to submit a urine sample for a drug screening. The results of the drug screen indicated Ramon had consumed alcohol. At that time, Ramon's probation officer opted to allow Ramon to continue treatment and did not file a probation violation.

On the evening of June 17, 2008, Bethany Soriano was dropping her friend Tara off at Tara's house, when Ramon came around the corner and approached Tara. Ramon and Tara knew each other from work and began talking. Soriano heard Ramon say he had just come from a bar and he was drunk. Soriano had the impression that he was in fact drunk because he "was being loud and obnoxious and Tara wasn't too far away from him and he was basically screaming his answers." (Tr. at 28.)

After dropping off Tara, Soriano drove around for fifteen to twenty minutes before she passed a car that was teetering over an embankment. She called Officer Jordan Hasler, a friend of hers, and told him about the car. Officer Hasler asked her to go back and see if the car was still there.

Soriano got back to the scene of the accident about three minutes later. She saw Damon Ramon, Ramon's brother, yelling at someone in another car "to get out of here, I don't want the cops called." (*Id*. at 24.) She saw Francisco Ramon exit the driver's side of the wrecked vehicle, and Damon's girlfriend exited the passenger side.

When Officer Hasler arrived at the scene a few minutes later, no one was around. He found the car had apparently struck some trees, and it was "nose down in the ditch." (*Id*. at 45.) Damon and his girlfriend exited a nearby house and approached Officer Hasler. They told him it was Francisco Ramon's vehicle, and Damon's girlfriend claimed she had been the driver. Officer Hasler, however, thought she "was being indecisive." (*Id*. at 48.) Dispatch confirmed the car belonged to Francisco Ramon.

Officer Hasler asked to speak to Ramon, and Damon went back to the house and got him to come out. Ramon acknowledged the car was his. He claimed "he was driving

the vehicle, as he turned into the driveway he thought that the breaks [sic] had went [sic] out and he didn't have enough time to slow the vehicle down before it went in the ditch." (*Id*. at 51.) While he was speaking to Ramon, Officer Hasler "detected an odor of alcoholic beverage" on Ramon's breath. (*Id*. at 52.) Ramon was "staggering" and "swaying" and his eyes were "glassed over." (*Id*.) Officer Hasler asked Ramon if he had consumed any alcohol, and Ramon admitted he had some earlier in the day.

Officer Hasler believed Ramon was intoxicated and placed him in the patrol car. Officer Hasler then began taking pictures of the car, but Ramon kept getting out of the patrol car until Officer Hasler finally locked it in a way that Ramon could not open it from the inside. Ramon was "cussing and yelling and kicking, he kicked [the] car so hard that the car was shaking back and forth." (*Id*. at 56.)

Meanwhile, Officer Inman was interviewing Damon's girlfriend. She changed her story and claimed she was not the driver, but she would not say who the driver was. Damon also refused to say who the driver was.

After Ramon was taken to jail, Officer Inman tried to conduct field sobriety tests, but Ramon claimed he "did not understand field sobriety." (*Id*. at 57.) He was then asked to take a breathalyzer test, but he refused. Officer Chris McDonald saw Ramon when he was in the "intoxicator room," and he also believed Ramon was intoxicated. (*Id*. at 37.) Officer McDonald noticed Ramon had a strong odor of alcohol on his breath, his eyes were bloodshot and watery, and his balance was unsteady. Ramon "became agitated in the room[,] banging on the doors, yelling, disrupting the dispatcher." (*Id*. at 38.)

On June 19, 2008, the State filed a petition to revoke Ramon's probation, which was amended on December 2, 2008. The petition alleged: (1) on April 21, 2008, there were alcohol metabolites in Ramon's urine screen; (2) Ramon consumed an alcoholic beverage on June 17, 2008; (3) on June 17, 2008, Ramon operated a vehicle while intoxicated; and (4) on June 17, 2008, Ramon operated a vehicle while intoxicated in a manner that endangered a person.[1] After a hearing, the trial court found the State had proved each of these allegations by a preponderance of the evidence.

On January 7, 2009, a sentencing hearing was held. Ramon presented testimony of Nicole Dunning, the Director of the Greene County Alcohol and Drug Program. Dunning testified Ramon was referred to her office after the positive urine screen. She testified Ramon cooperated with her treatment recommendations and was going to AA meetings and sessions at Greene County Rehab. Dunning felt Ramon needed intensive inpatient treatment at Richmond State Hospital, and Ramon had already started the process of being admitted there when he was arrested. Dunning stated there were no treatment programs available at the Greene County Jail.

Ramon testified he has a three-year-old child and owes $42 per week in child support. He opined that he would be able to find employment if he were not incarcerated.

The trial court ordered Ramon to serve the entire amount of his previously suspended sentence at the Greene County Jail. The court found the situation "very serious" because he was "on probation for . . . OWI resulting in death and the new allegations in the Amended Petition to Revoke Suspended Sentence are another OWI

[1] Criminal charges stemming from the events of June 17, 2008 were also filed.

arrest." (*Id*. at 113.) The trial court found Ramon "had the opportunities and you have just blown that, you have not taken advantage of it." (*Id*. at 114.)

DISCUSSION AND DECISION

Ramon argues there was insufficient evidence he was the driver of the car and that he endangered another person. A probation revocation hearing is civil in nature; therefore, the State needs prove the alleged violations by only a preponderance of the evidence. *Podlusky v. State*, 839 N.E.2d 198, 200 (Ind. Ct. App. 2005). When reviewing the sufficiency of evidence, we consider only the evidence favorable to the judgment, and we do not reweigh the evidence or judge the credibility of witnesses. *Id*.

Ramon notes none of the witnesses saw the accident or saw him driving. However, there is sufficient circumstantial evidence that he was the driver. *See Sisk v. State*, 736 N.E.2d 250, 252 (Ind. 2000) (an offense may be wholly established by circumstantial evidence). Soriano heard Ramon say he was drunk and observed him behaving in a loud and obnoxious manner. About fifteen to twenty minutes later, she drove past the scene of the accident. When she returned a few minutes later, Ramon was exiting the vehicle from the driver's side, and Damon's girlfriend was exiting from the passenger's side. Damon's girlfriend initially claimed to be the driver, but she recanted. Ramon admitted to the police that he had been drinking earlier in the day and that he was the driver. Two officers testified that he showed signs of intoxication and was belligerent and uncooperative after his arrest.

Ramon notes Soriano did not specify whether he exited from the front or rear driver's side. However, Officer Hasler testified Ramon admitted he was the driver.

Ramon argues Officer Hasler's testimony is not credible on this point, but we do not judge the credibility of witnesses. *Podlusky*, 839 N.E.2d at 200.

Ramon also argues Officer Hasler contradicted himself as to whether Ramon was intoxicated. On cross-examination, Officer Hasler was asked:

> Q You indicated earlier that there were some things that suggested to you that my client was intoxicated?
> A Impaired sir yes.
> Q Impaired, so not intoxicated, impaired?
> A Yes sir.

(Tr. at 73.) Even if we discounted Officer Hasler's testimony, Officer McDonald independently testified he believed Ramon was intoxicated, based on the odor of alcohol on Ramon's breath, his bloodshot eyes, his unsteady balance, and his disruptive behavior.

Ramon suggests it is more likely that Damon was the driver because Damon "was outside the vehicle immediately after the accident, Damon was directing people not to call police, his girlfriend was a passenger in the vehicle, and Soriano did not make clear whether Francisco [Ramon] exited from the front or back of the vehicle." (Appellant's Br. at 10.) We decline Ramon's invitation to reweigh the evidence. *Podlusky*, 839 N.E.2d at 200. In addition, since Soriano testified she saw Damon's girlfriend exiting the passenger side of the vehicle, and Ramon seems to acknowledge Damon's girlfriend was a passenger, we cannot say the State failed to prove Ramon operated a vehicle in a manner that endangered another person.

Ramon argues the trial court abused its discretion by ordering him to serve the entirety of his previously suspended sentence in light of Dunning's testimony and the hardship to his child. When a trial court finds a person has violated a condition of

probation, it may continue the person on probation, extend the probationary period, or order execution of all or part of the sentence that was originally suspended. Ind. Code § 35-38-2-3(g). We review that decision for abuse of discretion. *Podlusky*, 839 N.E.2d at 200.

The State established Ramon violated two conditions of his probation by operating a vehicle while intoxicated in a manner that endangered a person and by having a positive urine screen. Ramon does not dispute that he had alcohol on these two occasions. The trial court was well within its discretion to revoke Ramon's probation and order him to serve his entire suspended sentence.

Affirmed.

BAKER, C.J., and BARNES, J., concur.