

Adrian Butler appeals the revocation of his probation and the imposition of his previously suspended sentence. We affirm.

FACTS AND PROCEDURAL HISTORY

On September 19, 2007, Butler entered a plea agreement that addressed charges under three cause numbers. Butler agreed to plead guilty to one count of Class A felony dealing in cocaine, and the State agreed to dismiss three other counts of Class A felony dealing in cocaine, four counts of Class C felony possession of cocaine, and one count each of possession of marijuana, operating a vehicle having never received a license, and operating a vehicle with expired license plates. On November 1, 2007, Butler was sentenced to 10,950 days (*i.e.*, 30 years) with 138 days executed and 10,812 days suspended. He was ordered to serve two years on probation.

On June 26, 2008, a notice of probation violation was filed. The notice alleged Butler was not paying his fees. At a hearing on July 31, 2008, the probation department indicated the violation should not have been filed, and Butler was continued on probation.

On October 6, 2008, a second notice of probation violations was filed. The notice alleged Butler was not paying his fees and had been arrested for Class D felony resisting law enforcement, Class A misdemeanor resisting law enforcement, Class A misdemeanor criminal recklessness, and Class B misdemeanor reckless driving. Several continuances were granted as the parties attempted to negotiate a plea agreement.

On December 4, 2008, a contested hearing on the probation violations was held. The State presented the testimony of Officer John King. On September 27, 2008, Officer

King saw a silver or light-colored Bravada traveling at a high rate of speed on Warman Avenue in Indianapolis. Officer King followed the vehicle, caught up to it, and activated his emergency lights. The vehicle did not stop at 16th Street and turned eastbound on 16th Street, pulling into the path of an oncoming car. The vehicle turned north on Lafayette Road and continued north on Cold Springs Road, reaching speeds of up to eighty miles per hour. The vehicle then pulled into an apartment complex. Butler, who had been driving, jumped out of the vehicle while it was still moving and fled on foot.

As he ran off, Butler turned for a moment, and Officer King got a good look at him. Officer King described him as a thin-to-medium built person with shoulder-length dreadlocks and a shadow of facial hair and wearing a white tee shirt and dark-colored jeans or shorts. Officer King pursued Butler but lost sight of him.

In the meantime, other officers arrived at the scene. One officer discovered the license plate of the vehicle was registered to an apartment in that complex. Officer King arrived at that apartment approximately two minutes after he lost sight of Butler. Butler's mother, Joyce Gladney, opened the door. She eventually had Butler come down from upstairs. Butler was now wearing boxer shorts, but Officer King recognized him as the person he had been pursuing.

Butler, Gladney, and Butler's brother, Rodney Butler, testified for Butler. Gladney testified she owned a gray Bravada. She and Rodney were together when the car broke down. They left the vehicle at Gladney's sister's house. Gladney's sister drove her home, but Rodney stayed. Gladney testified she did not see Rodney until about a week later. She told him about Butler's arrest. Rodney told her, "I went back and I tried

to start the car. And it started and I was going to bring it to you, but I . . . went over to my friend [sic] house and the police got behind me and started chasing me and I ran.”
(Tr. at 72.)

Rodney also testified he was the driver. However, he admitted he did not have dreadlocks. He testified that after he jumped out of the vehicle, he ran to his mother’s apartment and ran through it to the back patio. However, Butler and Gladney both said they did not see Rodney in the apartment that night.

Butler and Gladney both claimed Butler had been at Gladney’s apartment all evening. He was upstairs with his children when the police arrived. Butler testified he came down just to see what was going on and did not expect that he would be accused of anything. Butler acknowledged he had dreadlocks and facial hair.

On rebuttal, the State recalled Officer King. Officer King testified he had seen Rodney in the courtroom, and he was certain Rodney was not the person who had fled from him.

The trial court explicitly credited the testimony of Officer King rather than Butler and his relatives:

Well, I can tell you that what I’ve got is, is I’ve got an officer saying that it was Mr. Butler. That he got a good look at Mr. Butler, albeit short. And that he believed it was Mr. Butler. And that Mr. Butler --- he described what he was wearing and the dreadlocks and all this stuff. And I’ve got the other Mr. Butler, Mr. Rodney Butler come in who said he never had dreadlocks. That he ran and he ran through the apartment and out the back door. I’ve got the mom saying that she didn’t see Rodney Butler until a week later. So, I don’t know what she was doing while he was supposedly running through the house The question is do I believe or disbelieve more likely than not. And quite honestly it’s more likely than not I believe that Mr. Butler was the one driving that car.

(*Id.* at 80-81.) Therefore, the court found Butler had violated the conditions of his probation and it imposed his previously suspended sentence of 10,812 days.

DISCUSSION AND DECISION

Butler argues there was insufficient evidence he violated the conditions of his probation. A probation revocation hearing is civil in nature; therefore, the State need prove the alleged violations only by 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.*

Butler argues, based on the court’s statement excerpted above, that the trial court considered only whether Butler was the driver and failed to consider whether the State had proved by a preponderance of the evidence that the alleged offenses had been committed. We disagree. That the trial court *sua sponte* made findings on the most vigorously contested issue of the case – the identity of the driver – does not mean the trial court ignored other issues. The record contains evidence from which the trial court could conclude Butler committed the alleged offenses.

Resisting law enforcement is committed when a person knowingly or intentionally “flees from a law enforcement officer after the officer has, by visible or audible means, including operation of the law enforcement officer’s siren or emergency lights, identified himself or herself and ordered the person to stop.” Ind. Code § 35-44-3-3(a)(3). This offense is a Class A misdemeanor, but may be elevated to a Class D felony if the person

uses a vehicle to commit the offense. Officer King testified he saw Butler driving a vehicle at a high rate of speed. Officer King was driving a marked police car and he activated his emergency lights, but Butler continued on for several more blocks before jumping out of the vehicle and fleeing on foot. These facts are sufficient to establish by a preponderance of the evidence that Butler committed the offenses of Class A misdemeanor and Class D felony resisting law enforcement.

Criminal recklessness is committed when a person recklessly, knowingly, or intentionally performs an act that creates a substantial risk of bodily injury to another person. Ind. Code § 35-42-2-2(b). The offense is a Class A misdemeanor if the conduct includes the use of a vehicle. Ind. Code § 35-42-2-2(c)(1). Officer King testified Butler was driving at speeds of up to eighty miles per hour on city streets. At one intersection, he failed to stop and pulled into the path of an oncoming vehicle. These actions created a substantial risk of bodily injury, involved the use of a vehicle, and are sufficient to establish by a preponderance of the evidence that Butler committed the offense of criminal recklessness as a Class A misdemeanor.

Reckless driving is committed when a person recklessly operates a vehicle at such an unreasonably high rate of speed under the circumstances as to endanger the safety or property of others.¹ Ind. Code § 9-21-8-52. The same facts that support criminal recklessness also support reckless driving.

¹ The notice of probation violation alleges Butler was arrested for Class A misdemeanor reckless driving; however, that appears to be a mistake. Reckless driving is generally a Class B misdemeanor. Ind. Code § 9-21-8-52. It is a Class A misdemeanor only if a person recklessly passes a school bus and causes bodily injury. Ind. Code § 9-21-8-52(b).

Butler also argues the trial court abused its discretion by ordering him to serve all of his previously suspended sentence. When a trial court finds a person has violated a condition of probation, the trial court 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 for abuse of discretion the trial court's sentencing decision in a probation revocation proceeding. *Podluskys*, 839 N.E.2d at 200.

Butler received substantial leniency when the trial court accepted a plea agreement in which numerous charges were dropped and imposed a suspended, advisory sentence on a single count.² Butler committed new offenses less than a year later. "Probation is a matter of grace and a conditional liberty that is a favor, not a right." *Taylor v. State*, 820 N.E.2d 756, 759 (Ind. Ct. App. 2005), *trans. denied*. Butler was given an opportunity to demonstrate that he could lead a law-abiding life; however, instead of cooperating with authorities, he led police on a dangerous chase through the streets of Indianapolis. We cannot say the trial court abused its discretion by ordering Butler to serve his previously suspended sentence.

Affirmed.

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

² The State argues Butler also received leniency when the court continued him on probation after his alleged failure to pay fees. However, it does not appear the State offered evidence at any of the five hearings held in this matter that Butler was not paying his fees as ordered.