Affirmed and Opinion filed February 15, 2001.

In The

Fourteenth Court of Appeals

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NO. 14-98-00954-CR

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ROBERT EDWARD FERRIS JR., Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 184th District Court
Harris County, Texas
Trial Court Cause No. 94-09406

O P I N I O N

Appellant Robert Edward Ferris Jr. was convicted of felony driving while intoxicated and sentenced to five years' probation. The state moved to revoke, alleging he had violated his probation by engaging in telephone harassment and by drinking alcoholic beverages. After a hearing, the trial court found the allegations to be true and sentenced appellant to three years' confinement in the Texas Department of Criminal Justice Institutional Division. In a single point of error appellant contends the trial court abused its discretion in revoking his probation. We affirm.

The terms of appellant's probation called on him to commit no offense against the laws of the state and to avoid "injurious or vicious habits including the use of controlled substances and alcoholic beverages." The State's first amended motion to revoke alleged that two persons observed Ferris under the influence of alcohol, and that on another occasion he harassed one of these persons by telephone.[1]

A probation revocation proceeding is neither a criminal nor a civil trial, but rather an administrative hearing. *Bradley v. State*, 564 S.W.2d 727, 729 (Tex. Crim. App.1978) (en banc). The State must prove by a preponderance of the evidence that a defendant violated the terms of his probation. *Cardona v. State*, 665 S.W.2d 492, 493-494 (Tex. Crim. App.1984). Whether the trial court abused its discretion in revoking the probation is the only issue presented in this appeal, and we view the evidence in the light most favorable to the verdict. *Garrett v. State*, 619 S.W.2d 172, 174 (Tex. Crim. App. 1981). It is the trial court's duty to judge the credibility of the witnesses and to determine whether the allegations in the motion to revoke are true or not. *See id.*

Appellant's sister, Ellen Harless, testified at the motion to revoke hearing. She said that on January 15, 1998, appellant came to her house intoxicated and belligerant, and that he tried to shove his way into the house. She also testified that on May 29, 1998, she came home to find appellant blocking her driveway. She said she had to ask him repeatedly to leave. After he finally left, Harless said he called her repeatedly. Because she had programmed her telephone to block his calls, appellant called collect. Harless said he called her six or eight times that night; each time the operator would come on the line and ask if she would take his call, and each time she said she would not. She said appellant used several names in an attempt to get her to take his calls. Harless said she felt alarmed and harassed by the calls.

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[1] It is a misdemeanor offense to cause the telephone of another person to ring repeatedly or in a manner reasonably likely to harass, alarm, annoy or offend another. TEX. PEN. CODE ANN. § 42.07 (Vernon Supp. 1999).

Shannon Vincento, a probation officer, testified that she was in district court on the morning of July 1, 1998 when appellant showed up for a court appearance. Vincento said appellant had a strong odor of alcohol about him that morning, and that he admitted drinking the night before.

Appellant took the stand and testified he had had some beers the night before. He also admitted to drinking in moderation during the time of his probation. He said he and his sister had been engaged in a dispute over their father's will, and that he did not intend to annoy or harass her when he called her "several times" on the night of May 29.

Appellant contends that "two isolated incidents" involving alcohol should not be sufficient grounds to revoke his probation. However, when avoiding alcohol is specifically mentioned in the conditions of probation, a single use of alcohol is sufficient to support a motion to revoke. *Gonzales v. State*, 527 S.W.2d 540, 541 (Tex. Crim. App. 1975). And while appellant denied he intended to annoy or harass his sister when he called her "several times" on the night of May 29, 1998, the trial court was authorized to disbelieve this testimony.

Viewing the evidence in the light most favorable to the verdict, we find that this record supports the trial court's decision to revoke. The judgment of the trial court is affirmed.

/s/ Joe L. Draughn
Justice

Judgment rendered and Opinion filed February 15, 2001.
Panel consists of Justices Cannon, Draughn, and Lee.[**]
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[**] Senior Justices Cannon, Draughn, and Lee sitting by assignment.