

NOTICE
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2012 IL App (4th) 100532-U

Filed 1/20/12

NO. 4-10-0532

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Woodford County
JOSHUA KINDIG,)	No. 09CF41
Defendant-Appellant.)	
)	Honorable
)	John B. Huschen,
)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Justices Steigmann and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the trial court's revocation of defendant's probation as the court's finding that defendant violated a term of his probation was not against the manifest weight of the evidence.

¶ 2 In October 2009, defendant, Joshua Kindig, began serving a 30-month term of probation on his conviction of obstructing justice. In March 2010, the State filed a petition to revoke defendant's probation. In May 2010, the trial court revoked defendant's probation, and in June 2010, the court resentenced defendant to 30 days in jail and an additional 30-month probationary term.

¶ 3 Defendant appeals, arguing the evidence was insufficient to support the trial court's finding that he violated a term of his probation. We disagree and affirm.

¶ 4

I. BACKGROUND

¶ 5 In September 2009, a jury convicted defendant of obstructing justice. In October 2009, the trial court sentenced him to 90 days in jail, 100 hours of public service work, \$500 in fines, and 30 months of probation. As a term of his probation, defendant was forbidden to consume alcohol or to be in a place that serves alcohol by the drink as its principal source of revenue.

¶ 6 In March 2010, the State filed a petition to revoke defendant's probation. The State alleged defendant had entered "an establishment in which alcohol is served as the primary source of income"—namely, Edens Club 116 in Roanoke.

¶ 7 In April 2010, the trial court held a hearing on the petition to revoke defendant's probation. The testimony relevant to this appeal was provided by Jimmy Micheletti. Micheletti testified he had known defendant and his family for about 20 years. Micheletti testified that he and his wife went to Edens Club 116 to have a drink on March 10, 2010. While they were there, Micheletti observed defendant and defendant's brother Cody. Micheletti testified Cody had been drinking and smelled of alcohol. Micheletti saw defendant and Cody order drinks, but he did not hear specifically what they ordered. In his testimony, Micheletti described Edens Club 116 as "a bar" that served food at lunchtime and pizza at all hours of business. At the close of the hearing, the court took the matter under advisement.

¶ 8 In May 2010, in a written order, the trial court found the State had proved by a preponderance of the evidence that defendant had violated a term of his probation by entering Edens Club 116. The court noted Micheletti's credibility as a witness. Following a June 2010 hearing, the court resentenced defendant to an additional 30 days in jail, 100 hours of public

service, and 30 months' probation.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant argues the evidence was insufficient to support the trial court's finding that he violated his probation. Specifically, he contends the State failed to establish that Edens Club 116 served alcohol by the drink as its principal source of revenue. We disagree.

¶ 12 "A probation revocation is in the nature of a civil proceeding arising in the wake of a previous conviction and sentence of probation, and the violation of previously imposed conditions of probation, not the commission of a culpable offense, must be proved." *People v. Williams*, 303 Ill. App. 3d 264, 267, 707 N.E.2d 729, 731 (1999). In such a proceeding, the State has the burden of proving a probation violation by a preponderance of the evidence. 730 ILCS 5/5-6-4(c) (West 2008); *Williams*, 303 Ill. App. 3d at 267, 707 N.E.2d at 731.

¶ 13 On appeal from a probation revocation, we will not disturb a trial court's findings "unless they are against the manifest weight of the evidence." *Williams*, 303 Ill. App. 3d at 267, 707 N.E.2d at 731. As the trier of fact in probation-revocation proceedings, the trial court "has the function of weighing the evidence, assessing the credibility of the witnesses, and drawing reasonable inferences from the testimony presented." *Id.*

¶ 14 Where a condition of probation may be said to consist of multiple elements, each element of a probation violation must be proved by a preponderance of the evidence. For example, in *People v. Halterman*, 45 Ill. App. 3d 605, 608, 359 N.E.2d 1223, 1224 (1977), cited by defendant, this court reversed the revocation of the defendant's probation because the State

failed to prove each element of the probation violation. There, the State alleged the defendant violated his probation by committing the offense of theft of a rental vehicle. *Id.* at 604, 359 N.E.2d at 1224. The elements of that offense were: "(1) a written agreement with specific terms concerning the time and place of return; (2) failure to comply with those terms; (3) an oral or written demand to return the car within 72 hours of the demand; and (4) failure to comply with the demand within 72 hours." *Id.* at 607-08, 359 N.E.2d at 1224. As the State failed to introduce the written rental agreement or to prove its terms by testimony and provided no evidence that the rental company made a demand or that the defendant failed to comply with such a demand, this court concluded the State had not satisfied its burden. *Id.* at 608, 359 N.E.2d at 1225.

¶ 15 Here, the trial court's finding that Edens Club 116 was an establishment that derived most of its income from sales of alcohol by the drink was not against the manifest weight of the evidence. Testimony that the court explicitly found credible established that Edens Club 116 was "a bar" and that Micheletti and his wife, defendant, and Cody went to Edens Club 116 for the purpose of consuming alcohol by the drink. There, they sat on bar stools and ordered drinks from a bartender late in the evening. That the four patrons described in testimony were attracted to Edens Club 116 to order drinks provides some insight into Edens Club 116's primary line of business. Given the testimony presented and our deferential standard of review, the court could have permissibly inferred that Edens Club 116 derived its principal revenue from selling alcohol even though evidence showed it also served food. The inference that "a bar" earns its keep primarily through its sale of alcohol by the drink required of the court no stretch in reasoning.

¶ 16 Unlike in *Halterman*, the State in this case presented evidence establishing each

element of the alleged probation violation. Under the manifest-weight-of-the-evidence standard and in light of the trial court's duty to make reasonable inferences from the evidence and the State's lesser burden of proof by a preponderance of the evidence, we conclude no error occurred in this case.

¶ 17

III. CONCLUSION

¶ 18 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 19 Affirmed.