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**IN THE
COURT OF APPEALS OF INDIANA**

VINAYA CHOPPALA,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 29A04-0512-CR-743

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable J. Richard Campbell, Judge
Cause No. 29D04-0410-FD-7051

November 15, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Vinaya Choppala appeals his conviction for Class D felony operating a vehicle while intoxicated (“OWI”). We affirm.

Issues

Choppala raises two issues, which we restate as:

- I. whether he received ineffective assistance of counsel; and
- II. whether a police officer’s testimony regarding the odor of alcoholic beverages on Choppala’s breath was properly admitted into evidence.

Facts

At approximately 12:30 p.m., on October 28, 2004, the Noblesville Police Department received a report of a battery and was informed that the suspect had left the scene in a red Ford Ranger. Officer Darin Landers of the Noblesville Police Department observed a man, later identified as Choppala, driving a red Ford Ranger. He confirmed the license plate number and initiated a traffic stop. Choppala stopped his car and “jumped out.” Tr. p. 123. Officer Landers smelled a strong odor of alcohol on Choppala’s breath from four or five feet away and noticed that Choppala’s eyes were red, bloodshot, and watery. Officer Landers also observed that Choppala was unsteady and invited Choppala to sit on the tailgate of his truck. Choppala told Officer Landers that “he had been drinking earlier and he’d only had a couple drinks.” *Id.* at 133.

Officer Landers asked Choppala to undergo field sobriety tests at least five times, but Choppala refused. Choppala said “let’s go” indicating that he was going to jail. Tr.

p. 134. Officer Landers read Choppala the implied consent law and asked if he would submit to a chemical test, which he refused. Eventually, however, Choppala agreed to the field sobriety tests, including the horizontal gaze nystagmus, the nine-step walk-and-turn, and the one-legged stand, and he failed all three. Officer Landers reread the implied consent information and again asked Choppala to consent to a chemical test. Choppala refused.

On October 29, 2004, the State charged Choppala with Class C misdemeanor¹ OWI and Class B misdemeanor battery. In a separate information, the State charged Choppala with Class D felony OWI because of previous OWI conviction. A jury found Choppala guilty of the Class C misdemeanor OWI charge and not guilty of the battery charge. After a bench trial on the Class D felony OWI charge, Choppala was found guilty. Choppala now appeals.

Analysis

I. Ineffective Assistance of Counsel

Choppala argues that he received ineffective assistance of counsel. To prevail on a claim of ineffective assistance of counsel, an appellant must demonstrate both that counsel's performance was deficient and that the appellant was prejudiced by the deficient performance. Walker v. State, 843 N.E.2d 50, 57 (Ind. Ct. App. 2006), trans. denied. Counsel's performance is deficient if it falls below an objective standard of

¹ It appears that Choppala incorrectly refers to this charge as Class A misdemeanor operating a vehicle while intoxicated. Both the information and final jury instructions refer to the charge as Class C misdemeanor operating a vehicle while intoxicated.

reasonableness based on prevailing professional norms. Id. To meet the test for prejudice, the appellant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. "Failure to satisfy either prong will cause the claim to fail." Id.

Choppala argues that defense counsel was ineffective because he did not object to the admission of the videotape of his arrest in which the arresting officers discuss charging him with driving and operating while suspended and Choppala makes a general statement regarding a prior refusal.² Choppala also argues that defense counsel then improperly questioned Officer Landers regarding a possible driving while suspended charge. Choppala contends that this evidence was inadmissible under Indiana Evidence Rules 403 and 404(b).

We need not determine whether defense counsel's representation fell below an object standard of reasonableness because Choppala has not shown that he was prejudiced by the admission of this evidence. Although the jury was clearly aware that Choppala's license was suspended, as evidenced by a juror question asking whether his license was "suspended or valid," this does not, in and of itself, indicate that the outcome of the trial would have been different. Tr. p. 188. First, the jury was not informed of why Choppala's license was suspended or given the context surrounding his previous

² It is unclear exactly what portions of the videotape were shown to the jury. The prosecutor explained that she was "going to play most of this tape and at some point there's dead time in there and so I'm going to fast forward through that and then watch a little bit more and that will be it." Tr. p. 155. For purposes of our review, we will assume the jury saw the entire videotape.

refusal. Moreover, there is overwhelming evidence that Choppala was operating a vehicle while intoxicated.

After repeatedly refusing to undergo field sobriety tests, Choppala eventually complied and failed all three tests that were administered. Choppala also repeatedly refused to submit to a chemical test. See Ind. Code § 9-30-6-3(b) (“[A] person’s refusal to submit to a chemical test is admissible into evidence.”). Further, Officer Landers smelled a strong odor of alcohol on Choppala’s breath from at least four feet away. Officer Landers also observed that Choppala’s eyes were red, bloodshot, and watery, and that he was unsteady on his feet. Choppala was stopped at 12:30 in the afternoon, and he told Officer Landers that he had had a “couple drinks” earlier in the day. Tr. p. 133. Finally, Officer Landers testified that at one point Choppala said “let’s go” apparently referring to jail. Id. at 134.

In light of this evidence, we cannot conclude that the outcome of the trial would have been different even if the jury had not been informed of Choppala’s suspended license or of Choppala’s brief statement regarding a prior refusal. Choppala has not established that he received ineffective assistance of counsel.

II. Admission of Evidence

Choppala also argues that the trial court should not have admitted Officer Lander’s testimony regarding an intensely strong odor of alcohol being associated with people testing “over the limit.” Id. at 137. “Rulings on the admission of evidence are subject to appellate review for abuse of discretion.” McHenry v. State, 820 N.E.2d 124, 128 (Ind. 2005).

Even assuming this evidence was inadmissible, given the overwhelming evidence that Choppala was operating while intoxicated, any error is harmless. See Bassett v. State, 795 N.E.2d 1050, 1054 (Ind. 2003) (“A trial error may not require reversal where its probable impact on the jury, in light of all of the evidence in the case, is sufficiently minor so as not to affect a party’s substantial rights.”). First, although Officer Landers testified regarding the legal limit, Choppala was not charged with operating a vehicle with an alcohol concentration over a certain level. See, e.g., I.C. § 9-30-5-1. Instead, he was charged with operating a vehicle while intoxicated. See I.C. § 9-30-5-2(a). Moreover, as discussed above, there was substantial evidence of Choppala’s intoxication, including his failed field sobriety tests, his refusal to submit to a chemical test, his admission that he had a couple of drinks earlier in the day, and his apparent request to go to the jail. Even if, as Choppala contends, the jury heard the disputed evidence first, we are not persuaded that it affected his substantial rights. Any error in the admission of Officer Lander’s testimony associating the strong odor of alcohol with being “over the limit” is harmless.

Conclusion

Choppala has not established that he received ineffective assistance of counsel or that the admission of certain portions of Officer Lander’s testimony affected his substantial rights. We affirm.

Affirmed.

ROBB, J., concurs.

SULLIVAN, J., concurs in result.