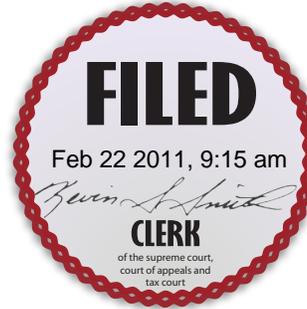


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

GREGORY PREYER,
Appellant- Defendant,

vs.

STATE OF INDIANA,
Appellee- Plaintiff,

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No. 49A05-1007-CR-397

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Barbara A, Collins, Judge
The Honorable John J. Boyce, Master Commissioner
Cause No. 49F08-1003-CM-016055

February 22, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issue

Following a bench trial, Gregory Preyer appeals his conviction of criminal trespass, a Class A misdemeanor. On appeal, Preyer raises one issue, which we restate as whether sufficient evidence was presented to support his conviction. Concluding sufficient evidence supports Preyer's conviction, we affirm.

Facts and Procedural History

Shortly after midnight on March 2, 2010, Officer Gregory Moore of the Indiana University Purdue University at Indianapolis ("IUPUI") Police Department encountered Preyer while patrolling the inside of the Business/School of Public and Environmental Affairs ("SPEA") building at 801 West Michigan Street on IUPUI's campus. The Business/SPEA building had been closed for over an hour at the time Officer Moore found Preyer. According to Officer Moore, Preyer had multiple bags and a suitcase with him that contained personal items such as a toothbrush, mouthwash, and clothing. Preyer had previously been a student at IUPUI but was not enrolled as a student on March 2, 2010.

Officer Moore had encountered Preyer in the past while on patrol. On October 25, 2009, Officer Moore found Preyer sleeping in the fifth floor stairwell of parking garage 72 on IUPUI's campus. After waking Preyer, Officer Moore called Preyer's information into headquarters and was informed Preyer had been given a previous trespass warning. Subsequently Officer Moore arrested Preyer for criminal trespass and issued an additional no trespass warning to Preyer telling him "he was not to be back on IUPUI campus." Transcript at 23. Prior to the October 25, 2009 incident, Preyer had been issued a trespassing warning by Officer Eric Lyons of the IUPUI Police Department.

Officer Lyons had encountered Preyer sleeping in the fifth floor stairwell of the Blackford Street garage on IUPUI's campus.

As a result of the March 2, 2010 incident, the State charged Preyer with criminal trespass, a Class A misdemeanor. The trial court presided over a bench trial, heard testimony from Officer Moore and Preyer, and ultimately found Preyer guilty. Preyer now appeals.

Discussion and Decision

I. Standard of Review

Preyer challenges the sufficiency of the evidence supporting his criminal trespass conviction. Our supreme court has articulated the following standard of review when faced with such challenges:

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (citations and quotations omitted) (emphasis in original).

II. Proof of Trespass

To convict Preyer of criminal trespass as a Class A misdemeanor, the State had to prove beyond a reasonable doubt that Preyer, while lacking a contractual interest in

IUPUI's property, knowingly or intentionally entered IUPUI's property after having been denied entry by IUPUI or IUPUI's agent. See Ind. Code § 35-43-2-2(a)(1). A person has been denied entry when notice has been given by means of personal oral or written communication. See Ind. Code § 35-43-2-2(b)(1). Although the belief that "one has a right to be on the property of another will defeat the mens rea requirement of the criminal trespass statute if it has a fair and reasonable foundation," it is incumbent on the trier of fact to determine whether this belief was reasonable. Taylor v State, 836 N.E.2d 1024, 1028 (Ind. Ct. App. 2005), trans. denied.

At the time he was arrested, Preyer was not an IUPUI student and he does not argue he had any other contractual interest in IUPUI's property. Therefore, Preyer relies on the argument he was not given oral or written notice by IUPUI or its agent that he was not allowed on IUPUI property. Preyer contends he was told not to enter only IUPUI's garages after the incidents on September 3, 2008 and October 25, 2009. Preyer entered into evidence the September 3, 2008 trespass warning given by Officer Lyons stating that Preyer was not to enter "all IUPUI parking garages." Exhibit Volume, Defendant's Exhibit 2. Preyer also testified he was in the Business/SPEA building doing research on classes because he was interested in re-enrolling at IUPUI, which he believes establishes a fair and reasonable foundation for his right to be on IUPUI's property.

Preyer's arguments notwithstanding, the March 2, 2010 incident at issue was the third time Preyer had been stopped for trespassing on IUPUI's campus. At trial, Officer Moore testified he issued written notice to Preyer indicating Preyer "was not to be back on IUPUI campus" after the October 25, 2009 incident in the IUPUI parking garage. Tr. at 23. A written warning satisfies the notice requirement of the criminal trespass statute.

See Ind. Code § 35-43-2-2(b)(1). Additionally, Officer Moore testified he arrested Preyer in the Business/SPEA building after midnight, well after the Business/SPEA building was closed and locked. Finally, at the time of his arrest Preyer had several bags with him containing personal belongings such as a toothbrush, mouthwash, and clothing. Both of these facts belie Preyer's assertion he was legitimately in the building to research class offerings.

Preyer's argument is essentially a request for us to reweigh the evidence to conclude that his belief he was only banned from entering IUPUI's garages had a fair and reasonable foundation. This we cannot do. We therefore affirm Preyer's conviction for criminal trespass.

Conclusion

There is sufficient evidence to support Preyer's conviction for criminal trespass as a Class A misdemeanor.

Affirmed.

RILEY, J., and BROWN, J., concur.