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IN THE
COURT OF APPEALS OF INDIANA

BRIAN DEVLIN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0812-CR-735
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Barbara Collins, Judge
Cause No. 49F08-0807-CM-178317

June 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Brian Devlin challenges the sufficiency of the evidence supporting his conviction for public intoxication, a class B misdemeanor. We affirm.

The facts most favorable to the trial court's judgment indicate that around 2:00 p.m. on July 28, 2008, Officer Loren Eltzroth was dispatched to the corner of Illinois and Vermont Streets in Indianapolis in response to a report of a white male in a red T-shirt and shorts exposing himself next to a burgundy Chrysler. Upon arrival at the scene, Officer Eltzroth encountered Devlin. Devlin matched the dispatcher's description.

There was a wet spot on the ground in front of the driver's side door of Devlin's vehicle. There had been no precipitation on that day. Officer Eltzroth observed Devlin exit his vehicle and try to lock the door. Devlin's balance was unsteady, and he did not notice when the cigarette in his mouth fell to the ground. Devlin admitted to Officer Eltzroth that he had consumed beer, and as the questioning continued he became belligerent toward the officer. Officer Eltzroth, a fifteen-year veteran of the Indianapolis Metropolitan Police Department, noticed that Devlin had a strong odor of alcohol on his breath and person, that his speech was slurred, and that his eyes were glassy and bloodshot. The State charged Devlin with public intoxication, a class B misdemeanor, and on November 18, 2008, the trial court found him guilty as charged.

When reviewing a claim of insufficient evidence, we do not reweigh the evidence, nor do we reevaluate the credibility of witnesses. *Rohr v. State*, 866 N.E.2d 242, 248 (Ind. 2007). This Court will consider only the evidence most favorable to the judgment and will draw all reasonable inferences therefrom. *Id*. We will affirm the conviction if there is

substantial evidence of probative value from which a reasonable fact-finder could find the defendant guilty beyond a reasonable doubt. *Id*.

To convict Devlin of public intoxication, the State was required to prove that he was in a public place or place of public resort in a state of intoxication caused by his consumption of alcohol or a controlled substance. Ind. Code § 7.1-5-1-3. A conviction for public intoxication may be sustained upon the sole testimony of the arresting officer. *Wright v. State*, 772 N.E.2d 449, 460 (Ind. App. 2002).

Devlin claims the State failed to prove that he was intoxicated. We disagree. Indiana Code Section 9-13-2-86 defines intoxication in pertinent part as "under the influence of: (1) alcohol, … so that there is an impaired condition of thought and action and the loss of normal control of a person's faculties." Impairment can be established by evidence of the following: (1) the consumption of a significant amount of alcohol; (2) impaired attention and reflexes; (3) watery or bloodshot eyes; (4) the odor of alcohol on the breath; (5) unsteady balance; and (6) slurred speech. *Fought v. State*, 898 N.E.2d 447, 451 (Ind. Ct. App. 2008).

Upon Officer Eltzroth's arrival, Devlin admitted that he had consumed beer, had red eyes, smelled strongly of alcohol, and was unsteady on his feet. Also, Devlin did not respond when a cigarette fell from his mouth. Devlin became belligerent toward Officer Eltzroth, and there was a wet spot on the ground suggesting that Devlin may have urinated in the street.

Taken together, the evidence most favorable to the judgment is sufficient to establish beyond a reasonable doubt that Devlin was intoxicated. Devlin's argument to the contrary is

simply an invitation to reweigh the evidence in his favor, which we must decline. Accordingly, we affirm Devlin's conviction.

Affirmed.

BRADFORD, J., and BROWN, J., concur.