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ATTORNEY FOR APPELLANT:

ANN M. SUTTON
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ELLEN H. MEILAENDER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

DEREK CARPENTER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0812-CR-706
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Rebekah Pierson-Treacy, Judge
Cause No. 49F19-0810-CM-227827

July 8, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Derek Carpenter appeals his conviction for Public Intoxication, a Class B misdemeanor.[1] We affirm.

Issues

Carpenter raises two issues on appeal:

I. Whether the trial court erred in admitting evidence regarding his encounter with a police officer that he alleges is in violation of his constitutional rights to be free of unreasonable searches and seizures; and

II. Whether there is sufficient evidence to support his conviction.

Facts and Procedural History

On October 3, 2008, Indianapolis Metropolitan Police Officer Michael Wilson was driving towards the area just east of the streets of Michigan and Alabama. Officer Wilson observed a man, standing with his back towards the street and appearing to be urinating in some bushes, and another man, Carpenter, standing on the sidewalk approximately four feet away. Officer Wilson stopped and exited his squad car to talk with the man standing by the bushes. Upon approaching the two men, Officer Wilson noticed that Carpenter had red, bloodshot, watery eyes. When he asked both men for their identification, Officer Wilson also observed that Carpenter slurred his speech and had a very strong odor of an alcoholic beverage on his breath and person, generally. In response to the request, Carpenter said that he did not have any identification but admitted that he had an open pint bottle of hard liquor,

[1] Ind. Code § 7.1-5-1-3.

which was approximately three-quarters empty, in his back pocket. Officer Wilson then arrested Carpenter for public intoxication.

The State charged Carpenter with public intoxication. During the bench trial, Carpenter, by counsel, moved the court to suppress Officer Wilson's testimony, claiming that Carpenter was detained by Officer Wilson without probable cause.[2] The trial court denied the motion. Carpenter was found guilty as charged and sentenced to 180 days of which 174 days were suspended.

Carpenter now appeals.

Discussion and Decision

I. Admission of Evidence

First, Carpenter argues that the trial court erred in admitting Officer Wilson's testimony regarding his encounter with Carpenter because Officer Wilson detained him without reasonable suspicion in violation of his federal and state constitutional rights protecting him from unreasonable searches and seizures. Admission of evidence is within the sound discretion of the trial court. Amos v. State, 896 N.E.2d 1163, 1167 (Ind. Ct. App. 2008), trans. denied. We will only reverse a decision of the trial court to admit evidence if there is an abuse of such discretion. Id. An abuse of discretion occurs if the trial court's decision is against the logic and effect of the facts and circumstances before the court. Id. at

[2] Although we conclude that the facts constitute a consensual encounter, reasonable suspicion, not probable cause, of criminal activity is the requisite level of proof required for a police officer to conduct a Terry stop. See State v. Ritter, 801 N.E.2d 689, 691 (Ind. Ct. App. 2004), trans. denied (An investigatory stop of a citizen by a police officer does not violate the Fourth Amendment rights of that individual where the officer has a reasonable articulable suspicion of criminal activity.).

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Carpenter alleges that Officer Wilson did not have reasonable suspicion to make an investigatory stop, in violation of both the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution. The Fourth Amendment to the United States Constitution provides all citizens with "[t]he right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures ...." U.S. CONST. amend. IV. The Fourth Amendment's protection against unreasonable searches and seizures has been extended to the states through the Fourteenth Amendment. See Taylor v. State, 842 N.E.2d 327, 330 (Ind. 2006). However, not all encounters between a police officer and a citizen implicate the Fourth Amendment:

> [T]here are three levels of police investigation, two which implicate the Fourth Amendment and one which does not. First, the Fourth Amendment requires that an arrest or detention for more than a short period be justified by probable cause. Probable cause to arrest exists where the facts and circumstances within the knowledge of the officers are sufficient to warrant a belief by a person of reasonable caution that an offense has been committed and that the person to be arrested has committed it. Second, it is well-settled Fourth Amendment jurisprudence that police may, without a warrant or probable cause, briefly detain an individual for investigatory purposes if, based on specific and articulable facts, the officer has a reasonable suspicion that criminal activity "may be afoot." Accordingly, limited investigatory stops and seizures on the street involving a brief question or two and a possible frisk for weapons can be justified by mere reasonable suspicion. Finally, the third level of investigation occurs when a law enforcement officer makes a casual and brief inquiry of a citizen which involves neither an arrest nor a stop. In this type of "consensual encounter" no Fourth Amendment interest is implicated.

Overstreet v. State, 724 N.E.2d 661, 663 (Ind. Ct. App. 2000) (citations omitted), trans. denied.

Carpenter's encounter with Officer Wilson falls into the last category.[3] Officer Wilson exited his patrol car to talk with the man that appeared to be urinating in public. The record does not reflect any indication that Officer Wilson displayed his weapon, physically touched either of the men, or indicated by language or the tone of his voice that compliance with his requests would be compelled. See Id. at 664 ("As long as the person to whom questions are put remains free to disregard the questions and walk away, there has been no intrusion upon that person's liberty or privacy to require some particularized and objective justification. Examples of circumstances under which a reasonable person would have believed he was not free to leave include the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled.") At trial, Carpenter even described Officer Wilson's attitude during the encounter as "fine" and that "[h]e wasn't violent or aggressive." Trial Transcript at 32. These circumstances present a case of a consensual encounter. Once Officer Wilson observed Carpenter's red, watery, bloodshot eyes, odor of alcohol, slurred speech and partially filled pint of hard liquor, the officer had probable cause to place Carpenter under arrest for public intoxication.

The result is the same under the similar provision of the Indiana Constitution. Article

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[3] Carpenter couches his argument in terms of whether Officer Wilson had reasonable suspicion to stop Carpenter based on Officer Wilson's testimony that the fact that Carpenter appeared to be a lookout for the man urinating in the bushes could be characterized as facilitating and assisting in a crime. However, a police officer's subjective motives for initiating contact with a citizen are irrelevant in Fourth Amendment analysis. See Lashley v. State, 745 N.E.2d 254, 258 (Ind. Ct. App. 2001), trans. denied.

1, Section 11 of the Indiana Constitution provides for the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure." In conducting analysis under this provision, we focus on whether the officer's conduct "was reasonable in light of the totality of the circumstances." Taylor v. State, 891 N.E.2d 155, 160 (Ind. Ct. App. 2008) (quoting Holder v. State, 847 N.E.2d 930, 940 (Ind. 2006)), trans. denied, cert. denied, 129 S. Ct. 1008 (2009), reh'g denied, 129 S. Ct. 1665 (2009). In making this determination, we balance (1) the degree of concern, suspicion, or knowledge that a violation has occurred; (2) the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities; and (3) the extent of law enforcement needs. Id.

Here, Carpenter was never seized or detained by Officer Wilson. The officer simply walked up to the men to instruct the man by the bushes not to urinate in public. This is not an intrusion on Carpenter's person. In fact, Officer Wilson testified that while he was speaking with the man near the bushes that Carpenter "became involved in the conversation." Tr. at 12. There is nothing in these facts that would make the circumstances anything other than a consensual encounter, which does not implicate Indiana Constitution Article 1, Section 11. See Taylor, 891 N.E.2d at 160. Therefore, the trial court did not abuse its discretion by admitting Officer Wilson's testimony.

II. Sufficiency of the Evidence

Second, Carpenter alleges that there is insufficient evidence to support his conviction because the State did not prove that he was interfering with the peace of the public or that he caused harm or interference with anyone in his vicinity. Our standard of review for

insufficiency claims is as follows:

> 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).

Indiana Code Section 7.1-5-1-3 provides, "[i]t is a Class B misdemeanor for a person to be in a public place or a place of public resort in a state of intoxication caused by the person's use of alcohol or a controlled substance." Carpenter does not dispute that he was in a public place or that Officer Wilson observed that Carpenter had red, bloodshot, watery eyes, slurred speech and smelled of alcohol. Citing Jones v. State, Carpenter contends that the State must demonstrate that his conviction would be within the spirit of the public intoxication statute, which is "to prevent people from becoming inebriated and then bothering and/or threatening the safety of other people in public places." See Jones v. State, 881 N.E.2d 1095, 1098 (Ind. Ct. App. 2008) (quoting Wright v. State, 772 N.E.2d 449, 456 (Ind. Ct. App. 2002)). We disagree.

In Jones v. State, this Court reversed Jones's conviction for public intoxication based on the facts that she was sitting in a vehicle parked on private property. Id. The conclusion

was bolstered by the idea that prosecution and conviction of a person for "being intoxicated in a vehicle parked in a private driveway, not disturbing or offending anyone," does not serve the statute's intended purpose, as stated above. Id. However, this conclusion does not mean that the State is required to prove that the person was bothering and/or threatening anyone at the time he or she was found in an intoxicated state in public. Furthermore, the facts before us are distinguishable from Jones in that Carpenter was in a public area in downtown Indianapolis, carrying a bottle of hard liquor, walking to attend a concert.

Officer Wilson's observations that Carpenter had red, watery, bloodshot eyes, slurred speech, smelled of alcohol and had a partially filled pint of hard liquor constitute sufficient evidence to prove that Carpenter was intoxicated.

Affirmed.

DARDEN, J., and ROBB, J., concur.