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**IN THE  
COURT OF APPEALS OF INDIANA**

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JOSEPH POST, )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 49A05-0612-CR-710  
 )  
STATE OF INDIANA, )  
 )  
Appellee. )

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APPEAL FROM THE MARION SUPERIOR COURT  
CRIMINAL DIVISION, ROOM 10  
The Honorable Linda E. Brown, Judge  
Cause No. 49F10-0608-CM-141562

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**July 31, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**SULLIVAN, Judge**

Following a bench trial, Appellant, Joseph Post, was convicted of Public Intoxication as a Class B misdemeanor.<sup>1</sup> Upon appeal, Post argues that the evidence is insufficient to support his conviction.

We affirm.

The facts most favorable to the conviction reveal that on July 31, 2006, Officer David Ellis of the Indianapolis Police Department was dispatched to the corner of Morris and Lee Streets in Indianapolis upon a report of a disturbance. When Officer Ellis arrived, Post was talking to another officer who had already arrived on the scene. As Officer Ellis approached to see if he could be of assistance, Post immediately demanded to know Officer Ellis's name and badge number. Officer Ellis immediately detected a strong odor of alcoholic beverage emanating from Post. Officer Ellis further noticed that Post had glassy, bloodshot eyes and that his speech was slurred. Officer Ellis tried to explain to Post why he told Post's step-daughter to leave the scene of an earlier report of criminal mischief which Officer Ellis had investigated shortly before receiving the instant report. Post, however, was not listening to Officer Ellis, but rather was cursing and speaking loudly over Officer Ellis. Post also became very belligerent. Based upon his observations, Officer Ellis formed the opinion that Post was intoxicated. When Officer Ellis ordered Post to put his hands behind his back, Post refused to do so. Instead, Post attempted to use his cell phone. When Officer Ellis ordered Post to stop using his phone, Post refused. Officer Ellis was eventually able to handcuff Post and place him under arrest for public intoxication.

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<sup>1</sup> Ind. Code § 7.1-5-1-3 (Burns Code Ed. Repl. 2007).

On August 1, 2006, the State charged Post with public intoxication. Following a bench trial on November 8, 2006, the trial court found Post guilty as charged and thereafter sentenced him to 180 days with 178 days suspended and credit for two days. The trial court also ordered Post to complete eighty hours of community service work.

Upon appeal Post argues that the evidence is insufficient to sustain his conviction. Specifically, Post argues that the State failed to prove beyond a reasonable doubt that he was intoxicated. When reviewing a challenge to the sufficiency of the evidence, this court will neither reweigh evidence nor judge witness credibility, but instead, considering only the evidence which supports the conviction along with the reasonable inferences to be drawn therefrom, we determine whether there is substantial evidence of probative value from which a reasonable trier of fact could have concluded that the defendant was guilty of the charged crime beyond a reasonable doubt. Kien v. State, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), trans. denied.

To sustain Post's conviction for public intoxication, the State was required to prove beyond a reasonable doubt that Post was in a public place or a place of public resort in a state of intoxication caused by his use of alcohol or a controlled substance. See I.C. § 7.1-5-1-3. A defendant is intoxicated if he is under the influence of alcohol such that there is an impaired condition of his thought and action and the loss of the defendant's normal control of his faculties. Ind. Code § 9-13-2-86 (Burns Code Ed. Supp. 2006). Evidence of the following may establish impairment: (1) the consumption of significant amounts of alcohol; (2) impaired attention and reflexes; (3) watery or bloodshot eyes; (4) the odor of alcohol on the breath; (5) unsteady balance; (6) failure of

field sobriety tests; and (7) slurred speech. Pickens v. State, 751 N.E.2d 331, 335 (Ind. Ct. App. 2001). With regard to a sufficiency challenge to the element of intoxication, a non-expert witness may offer an opinion on intoxication. Wright v. State, 772 N.E.2d 449, 460 (Ind. Ct. App. 2002). Indeed, a conviction may be sustained upon the sole testimony of the arresting officer. Id.

In arguing that the evidence is insufficient to support his conviction, Post offers alternative explanations for the indicia of intoxication. Post also refers to his testimony wherein he admitted to having consumed three beers over a period of five hours and that he was “[b]y no means” intoxicated. Transcript at 21. Post’s arguments are simply requests that we reweigh the evidence and judge the credibility of witnesses, tasks which we do not undertake upon appeal.

Here, the arresting officer testified that Post had a strong odor of alcohol emanating from his person, that his eyes were glassy and bloodshot, that his speech was slurred,<sup>2</sup> and that he was belligerent and loud. Post exhibited a lack of understanding as to what Officer Ellis was trying to explain to him and refused to comply with orders to put his hands behind his back. Officer Ellis testified that given his experience, he formed the opinion that Post was intoxicated. In evaluating the evidence, the trial court specifically indicated that it did not credit Post’s version of events. This was within the trial court’s discretion. Having reviewed the record, we conclude that the evidence is sufficient to sustain Post’s conviction for public intoxication as a Class B misdemeanor.

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<sup>2</sup> Officer Ellis further testified that Post’s speech during the incident at issue was slurred more than it was on the day of trial.

See Wright, 772 N.E.2d at 460 (noting that evidence that defendant was verbally abusive to police, had red eyes, smelled strongly of alcohol and was unsteady on his feet was sufficient to establish impairment for public intoxication conviction); Luckhart v. State, 780 N.E.2d 1165 (Ind. Ct. App. 2003) (holding that evidence that defendant smelled of alcohol, had bloodshot eyes and slurred speech, and had difficulty balancing himself was sufficient to establish intoxication), disapproved of on other grounds by Ham v. State, 826 N.E.2d 640 (Ind. 2005).

The judgment of the trial court is affirmed.

ROBB, J., and VAIDIK, J., concur.