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IN THE
COURT OF APPEALS OF INDIANA

HARRION DIXON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1101-CR-35
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM MARION SUPERIOR COURT
The Honorable Mark A. King, Judge Pro-Tempore
Cause No. 49F08-1009-CM-74620

August 16, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Harrion Dixon appeals his conviction for Public Intoxication,[1] a class B misdemeanor, arguing that the evidence was insufficient. Finding sufficient evidence, we affirm.

FACTS

At around 3:30 a.m., on September 26, 2010, Indianapolis Metropolitan Police Department (IMPD) Officer James Nichols responded to a report of a disturbance by a person at a Speedway gas station on Lafayette Road. When Officer Nichols arrived, he observed Dixon standing in the parking lot speaking with another officer.

As Officer Nichols approached Dixon, he noticed "an odor of an alcoholic beverage" coming from Dixon. Tr. p. 7. Officer Nichols also noticed that Dixon had bloodshot eyes and an unsteady balance. Dixon responded slowly and with difficulty to Officer Nichols's questions but eventually stated that he had been at Claude and Annie's, a local bar, socializing with friends. Dixon explained that he had walked from the bar to the gas station, a distance of approximately one mile.

As Officer Nichols and Dixon walked towards the gas station from the parking lot, Dixon stumbled over a small curb and nearly fell down. Based on Officer Nichols's three years of training and experience, including his nightly encounters with intoxicated persons, he determined that Dixon was intoxicated and placed him in handcuffs.

While handcuffed, Dixon stood near the wall of the gas station and began to sway "like he might fall down." Id. at 8. Officer Nichols requested help from another officer

[1] Ind. Code § 7.1-5-1-3.

so that Dixon would not fall down; however, Dixon collapsed to the ground "in one complete motion completely on his own," hitting the back of his head and injuring his finger. Id. Despite Dixon's injuries, he refused medical assistance.

On September 26, 2010, the State charged Dixon with class B misdemeanor public intoxication. On January 3, 2011, at the conclusion of a bench trial, the trial court found Dixon guilty as charged. The trial court conducted a sentencing hearing immediately after the trial and sentenced Dixon to a 180-day term with 176 days suspended. Dixon now appeals.

DISCUSSION AND DECISION

Dixon argues that the evidence was insufficient to convict him of class B misdemeanor public intoxication. When reviewing a challenge to the sufficiency of the evidence, this Court neither reweighs the evidence nor judges the credibility of witnesses. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). Rather, a reviewing court considers "'only the probative evidence and reasonable inferences supporting the verdict.'" Id. (quoting McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005)). The conviction will be affirmed "unless 'no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.'" Id. at 146-47 (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)).

To convict Dixon of class B misdemeanor public intoxication, the State was required to prove that Dixon 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. Ind. Code § 7.1-5-1-3. Dixon concedes that he was in a public place, but argues that he was not intoxicated.

Indiana Code section 9-13-2-86 defines "intoxicated," in relevant part, as "under the influence of: (1) alcohol; (2) a controlled substance (as defined in IC 35-48-1) . . . so that there is an impaired condition of thought and action and the loss of normal control of a person's faculties." Impairment may be established by evidence of the following: "(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; (7) slurred speech." Ballinger v. State, 717 N.E.2d 939, 943 (Ind. Ct. App. 1999).

In this case, Officer Nichols testified that he observed an odor of alcoholic beverage coming from Dixon and that he had bloodshot eyes and unsteady balance. Tr. p. 5, 7. Dixon exhibited great difficulty responding to Officer Nichols's questions and stumbled over a small curb as he walked closer to the building, nearly falling down in the process. Id. at 7. Dixon told Officer Nichols that he had walked from a local bar located approximately one mile from the gas station. Id. at 8. Based on Officer Nichols's three years of experience and training, he concluded that Dixon was intoxicated and placed him in handcuffs.

As Dixon stood next to the wall of the gas station, he began to sway like he might fall down, and before an officer could assist him, he collapsed "in one complete motion completely on his own." Id. Under these facts and circumstances, a reasonable

factfinder could conclude that Dixon was guilty of class B misdemeanor public intoxication. Dixon's arguments to the contrary are merely invitations to reweigh the evidence, which we decline, and we affirm the decision of the trial court.

The judgment of the trial court is affirmed.

KIRSCH, J., and BROWN, J., concur.