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**IN THE
COURT OF APPEALS OF INDIANA**

ANDREW MARTIN,)
)
Appellant-Defendant,)
)
vs.) No. 49A02-0903-CR-197
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Barbara A. Collins, Judge
Cause No. 49F08-0809-CM-204029

September 9, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Andrew Martin appeals his conviction for Public Intoxication, as a Class B misdemeanor, following a bench trial. Martin presents a single issue for review, namely, whether the evidence is sufficient to support his conviction.

We affirm.

FACTS AND PROCEDURAL HISTORY

On September 1, 2008, Officer Daniel D. Disney, II responded to a report of “trouble with a person at 1726 Hoyt [Avenue]” in Indianapolis. Appellant’s App. at 12. When Officer Disney arrived at the 1700 block of Hoyt Avenue, citizens in the area advised him that a man was “causing trouble in the street[.]” Id. Officer Disney drove down Hoyt Avenue toward Randolph Street, where he first observed Martin. The officer testified that Martin was “[w]alking down Randolph [Street] on the sidewalk and then [Martin] crossed the street to the east sidewalk and he was walking until he saw my patrol car and then he took off at a higher rate of speed.” Transcript at 5. Martin headed south toward the intersection of Randolph Street and Lexington Avenue. Officer Disney lost sight of him briefly. But when the officer entered the intersection, “people on the porch at the intersection where [sic] pointing between the houses.” Id.

Officer Disney found Martin “trying to hide beside 1902 Lexington.” Appellant’s App. at 12. Upon approaching the officer, a disheveled Martin was “stumbling sideways[.]” “obviously smelled of alcohol[.]” and had bloodshot eyes and slurred speech. Transcript at 13. Officer Disney arrested Martin. The State charged Martin with

public intoxication, as a Class B misdemeanor. The court entered judgment of conviction following a bench trial. Martin now appeals.

DISCUSSION AND DECISION

Martin contends that the evidence is insufficient to support his conviction for public intoxication, as a Class B misdemeanor. When reviewing a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the judgment and the reasonable inferences that may be drawn from that evidence to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

To prove the offense of public intoxication, as a Class B misdemeanor, the State was required to prove beyond a reasonable doubt that Martin was 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 (as defined in IC 35-48-1-9).” Ind. Code § 7.1-5-1-3. Martin does not contest the court’s determination that he was intoxicated. Instead, he argues that the State failed to present any evidence that he was in a “public place” within the meaning of the statute.¹ We cannot agree.

Officer Disney observed Martin walking on the sidewalk along Randolph Street and crossing that street at the intersection with Lexington Avenue. Martin does not contest that Randolph Street and the sidewalk along it are public places. Instead, he

¹ Martin stated in his brief on appeal that he “is not contesting the adequacy of the charging information and there was no objection to its sufficiency below[.]” Appellant’s Brief at 8 n.5.

argues that the State charged he was in a public place “at 1902 E. Lexington[]” and that there is no evidence that that address is a public place.

In support, Martin relies on Moore v. State, 634 N.E.2d 825 (Ind. Ct. App. 1994). There, we reversed a public intoxication conviction where the arresting officer had found the defendant intoxicated on a private residential driveway:

The charging information states that Moore was in a state of intoxication at 10421 Hills Dale Drive (Rice’s residence), not on the public roads going to the residence. Further, it is uncontroverted that Moore was only observed in Rice’s driveway or backyard. We reject the State’s suggestion that we broaden the charging information and infer evidence which was not actually presented at trial. Moore’s public intoxication conviction is reversed.

Id. at 827. Although we noted that the charging information in Moore listed only the address for a private residence, our holding was also based on the fact that the arresting officer had not seen the defendant in a public place. Here, Officer Disney observed Martin in a public place, walking on the sidewalk along Randolph Street and crossing the street, before he found him on private property. Thus, Moore is distinguishable.

In any event, Moore should not be read to hold that an intoxicated person first seen on public property, eventually found on private property, and charged with intoxication at that address is exempt from prosecution for public intoxication. Although not directly on point, our decision in Vickers v. State, 653 N.E.2d 110 (Ind. Ct. App. 1995), is instructive. There, an off-duty officer stopped Vickers after observing his vehicle weaving across lanes. Vickers fled from the traffic stop, and a high-speed chase ensued. Eventually the chase led to a “densely populated residential area.” Id. at 112. Vickers pulled into “Rockford Court,” and the officer parked his car to block the exit from that

road. Upon attempting to leave Rockford Court, Vickers struck the officer's vehicle and was arrested.

On appeal Vickers challenged his convictions and sentences for three alcohol related charges: driving while intoxicated, operating a vehicle with a BAC of .10% or more, and public intoxication. Specifically, he argued that the evidence did not support a conviction for all three offenses. We disagreed, holding in relevant part that “Vickers was charged with public intoxication based on his intoxicated condition after he ran into [the off-duty officer’s] vehicle.¹¹ Vickers has failed to convince us that the conduct underlying his convictions for driving while intoxicated and public intoxication was so continuous and uninterrupted as to constitute a single transaction.” Id. at 115. In a footnote, we noted that Vickers had been charged with public intoxication as follows: “Ray W. Vickers, on or about October 23, 1993, was found at 10335 Rockford Ct., a public place in Marion County, Indiana, in a state of intoxication” Id. Thus, we held that the evidence was sufficient, even though the charging information had listed only a street address, because the officer testified that he had observed Vickers in the public roadway. Id.

Similarly, here, Officer Disney testified that he had observed Martin on the sidewalk and crossing the street before he found him intoxicated at 1902 E. Lexington. Such is sufficient to show that Martin was intoxicated in a public place. As noted above, to hold otherwise would allow intoxicated suspects observed in a public place to avoid prosecution by quickly moving onto private property, an absurd result. Martin’s argument must fail.

Affirmed.

KIRSCH, J., and BARNES, J., concur.