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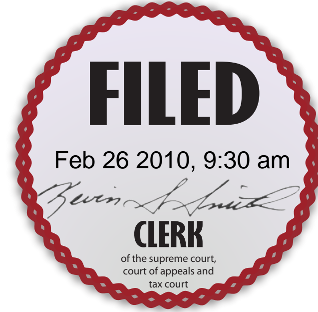

ATTORNEY FOR APPELLANT:

SUZY ST. JOHN
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

NICOLE DONGIEUX WIGGINS
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

STEVE ALSUM,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

No. 49A02-0907-CR-706

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Rebekah Pierson-Treacy, Judge
Cause No. 49F19-0904-CB-43786

February 26, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Stevie Alsum appeals his conviction for Public Intoxication,[1] a class B misdemeanor. He presents the following restated issues for review:

1) Did the trial court abuse its discretion by admitting testimony regarding the police dispatcher's statements to the responding officer?

2) Did the State present sufficient evidence?

We affirm.

On April 28, 2009, Officer Horace Cox of the Indianapolis Metropolitan Police Department responded to a dispatch regarding an intoxicated individual at 38th and Sherman. Upon his arrival, Officer Cox found Alsum "[a]t the Walgreen's" sitting outside of the store. *Transcript* at 7. Officer Cox observed that Alsum had very unsteady balance, red, bloodshot eyes, and slurred speech. Moreover, Officer Cox noted the odor of alcoholic beverage "emanating from [Alsum's] breath and from his body." *Id*. at 8. Alsum "couldn't sit up straight" and "kept falling over." *Id*. Based upon his training and experience, Officer Cox believed Alsum to be intoxicated.

Following a bench trial, Alsum was convicted as charged of class B misdemeanor public intoxication and sentenced to 180 days, with 150 days to be served on home detention and the remaining time suspended. Alsum now appeals.

1.

Alsum argues that the trial court abused its discretion when it allowed Officer Cox to testify about what the police dispatcher said to Cox when dispatching him to the scene.

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[1] Ind. Code Ann. § 7.1-5-1-3 (West, Westlaw through end of 2009 1st Special Sess.).

Specifically, Cox was permitted to testify as follows: "Got dispatched to a run, gentleman just off the bus, city bus, was severely intoxicated, fell off the bus, which caused him to have a little minor bruising to his head". *Id*. at 8. Alsum claims this is classic hearsay, as the out-of-court statement of the dispatcher was being offered to prove the truth of the matter asserted. *See* Ind. Evidence Rule 801(c).

When Alsum objected to this evidence at trial, the State indicated that it was only offering the testimony to explain Officer Cox's actions subsequent to receiving the dispatch. The trial court then overruled Alsum's objection, stating that the evidence "will be used to show what the officer did next and why he was there, not to prove the truth of any of the elements of the public intoxication, which we're here for." *Transcript* at 8.

On this record, we find it clear that the challenged testimony was not admitted for the purpose of proving the truth of the matter asserted. *See Mulligan v. State*, 487 N.E.2d 1309, 1313 (Ind. 1986) ("[t]estimony about a radio transmission is not hearsay when it is offered to explain an officer's actions subsequent to receiving the dispatch rather than to prove the truth of the matter asserted"). Moreover, we remind Alsum that this was a bench trial and that the trial court is presumed to have used the evidence appropriately. *See Purvis v. State*, 829 N.E.2d 572, 587 (Ind. Ct. App. 2005) ("'[i]n criminal bench trials, we presume that the court disregarded inadmissible testimony and rendered its decision solely on the basis of relevant and probative evidence'") (quoting *Helton v. State*, 624 N.E.2d 499, 513 (Ind. Ct. App. 1993), *trans. denied*), *trans. denied*. *See also Morfin v. Estate of Martinez*, 831 N.E.2d 791, 800 n.5 (Ind. Ct. App. 2005) ("we presume that a trial court in a bench trial rendered its

judgment solely on the basis of admissible evidence"). There was no error.

2.

Though framed differently, Alsum's next argument is essentially that the State failed to establish he was in a public place when Officer Cox found him intoxicated. More specifically, Alsum asserts that there was insufficient evidence that he was on Walgreen's property.

When considering a challenge to the sufficiency of evidence to support a conviction, we respect the fact-finder's exclusive province to weigh the evidence and therefore neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). We consider only the probative evidence and reasonable inferences supporting the conviction, and "must affirm 'if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.'" *Id.* at 126 (*quoting Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)).

At trial, Officer Cox clearly testified that he encountered Alsum *at* the Walgreen's located at 3734 East 38th Street and that Alsum was outside of the store. In light of this evidence, a reasonable trier of fact could find that Alsum was on Walgreen's property when approached by Officer Cox.

In response to a Trial Rule 41(B) motion, the trial court stated, "I can infer and will that Walgreen's drugstores, which are ubiquitous in this county, invite the public. It's a business that particularly invites the public to come and buy things, so even though I cannot

take judicial notice of it, I can infer the public is invited." *Transcript* at 18. On appeal, Alsum concedes that the public nature of a Walgreen's drugstore is "a fact not reasonably disputable and generally known within the territorial jurisdiction of the court." *Appellant's Brief* at 10. He simply argues that the trial court could not infer or take judicial notice of Walgreen's public nature "absent any indication from Officer Cox [that] Mr. Alsum was on Walgreen's property." *Id.* As set forth above, the State presented sufficient evidence that Officer Cox encountered Alsum on Walgreen's property. Therefore, Alsum's argument fails.

Judgment affirmed.

NAJAM, J., and BRADFORD, J., concur.