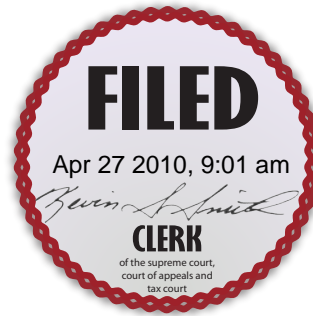


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

BARBARA J. SIMMONS
Oldenburg, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

KARL M. SCHARNBERG
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

TAMARA WARD,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A04-0909-CR-498
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable John J. Boyce, Commissioner
Cause No. 49F08-0904-CM-41184

April 27, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Tamara Ward appeals her convictions for criminal trespass as a class A misdemeanor¹ and resisting law enforcement as a class A misdemeanor.² Ward raises two issues, which we revise and restate as whether the evidence is sufficient to sustain her convictions. We reverse in part and affirm in part.

The relevant facts follow. On April 18, 2009, Robby, Ward's fiancé, was taken to Wishard Hospital by ambulance because he was having seizures. Ward called the hospital, "spoke to a doctor or nurse that was in the triage area," and was given permission to visit the hospital. Transcript at 31. Ward arrived at the hospital and obtained a visitor's pass, which she wore. Ward visited Robby in his hospital room until he was ready to be released. After Robby was released, Ward and Robby waited for his medication outside on a bench. Id. at 32. While waiting outside, Robby had five more seizures and was taken back into the hospital.

At some point, the names of several persons were called, and Ward approached the "check-in desk where patients and visitors get called to the back" and said that her name had been called. Id. at 5. Deputy Creston Lamar Burks, Jr., a special deputy employed by Wishard Hospital and who was at the check-in desk "let [Ward] back through." Id. Deputy Burks heard a little commotion and "went back to see what it was." Id. at 6. Deputy Burks determined that Ward was not the person that had been called and "so [he] asked her to leave." Id. Ward "was pretty belligerent and fussing and

¹ Ind. Code § 35-43-2-2 (2004) (subsequently amended by Pub. L. No. 88-2009, § 4 (eff. July 1, 2009)).

² Ind. Code § 35-44-3-3 (Supp. 2006).

complaining,” and Deputy Burks “escorted [Ward] halfway to the door and told her she must leave the hospital.” Id. at 6-7. Ward never told Deputy Burks that she had a visitor’s pass. Ward left the hospital and sat on a concrete bench outside the hospital.

At some point, Robby came out of the hospital and sat down with Ward on the bench. Deputy Burks observed Ward and Robby on the bench, which was located on Wishard property, and “told [Ward] to leave again, this time [telling] her she must leave the property” Id. at 8-9. Ward began to walk away, and Deputy Burks went back inside the hospital.

Ward walked “over the road” and “towards Riley [and] away from Wishard” to a location near a parking garage and “pushed [a] call box” located next to a parking garage. Id. at 37-39. Deputy Burks responded to the call. As Deputy Burks walked towards Ward at the emergency call box, he noticed that she was “hollering and shouting to the operator inside the call box.” Id. at 9. Deputy Burks told Ward “to stop” and “wait right there,” and Ward “swiftly walked off in the direction towards the back of the garage.” Id. Ward “hit the next call box button” and then “took off running.” Id. at 9-10. Deputy Burks told her “to stop a few times” and “chase[d] her around the back of the building.” Id. at 10. Ward stopped when she “got around the back of the building,” and Deputy Burks arrested her. Id.

On April 19, 2009, the State charged Ward with criminal trespass as a class A misdemeanor, resisting law enforcement as a class A misdemeanor, and disorderly conduct as a class B misdemeanor. After a bench trial, the trial court found Ward guilty

of trespass and resisting law enforcement as class A misdemeanors and not guilty of disorderly conduct. For each misdemeanor, the court sentenced Ward to a total term of 365 days, with two days executed for time served and 363 days suspended, and ordered White to complete eighty hours of community service. The court ordered the sentences to be served concurrently.

The sole issue is whether the evidence is sufficient to sustain Ward's convictions. When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess witness credibility or reweigh the evidence. Id. We consider conflicting evidence most favorably to the trial court's ruling. Id. We affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." Id. (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)). It is not necessary that the evidence overcome every reasonable hypothesis of innocence. Id. at 147. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. Id. We address Ward's convictions separately.

A. Trespass

Ward first argues that the evidence is insufficient to sustain her conviction for criminal trespass as a class A misdemeanor. The offense of criminal trespass is governed by Ind. Code § 35-43-2-2, which provides in pertinent part: "A person who . . . not having a contractual interest in the property, knowingly or intentionally refuses to leave

the real property of another person after having been asked to leave by the other person or that person's agent . . . commits criminal trespass, a Class A misdemeanor." Thus, to convict Ward of criminal trespass as a class A misdemeanor, the State needed to prove that Ward: (1) did not have a contractual interest in the property; (2) knowingly or intentionally refused to leave the real property of another person; (3) after having been asked to leave by the other person's agent. See Ind. Code § 35-43-2-2 (2004); Appellant's Appendix at 15. The belief that one has a right to be on the property of another will defeat the *mens rea* requirement of the criminal trespass statute if it has a fair and reasonable foundation. Olsen v. State, 663 N.E.2d 1194, 1196 (Ind. Ct. App. 1996).

Ward argues that "[u]nder I.C. § 35-43-2-2 criminal intent is an essential element of criminal trespass." Appellant's Brief at 8. Ward argues that "it is clear that Ms. Ward believed that she had been [sic] lawfully complied with the deputy's instructions for [sic] to leave the inside of the hospital. . . . [S]he had not received proper notice that she could not set [sic] on a concrete bench outside of the hospital building." Id. at 8-9. Ward further argues that "Deputy Burks testified that he told Ms. Ward she had to leave the building and later told her that she had to leave the outside of the building," and that "Ms. Ward complied with each of Deputy Burks['] orders to leave the building and the outside premises." Id. at 9. Ward also argues that she "acted in good faith and without any intent to violate the law." Id.

The State argues that "[t]he trial court must resolve, as a matter of fact and not a matter of law, whether the defendant believed that she had a right to be on the property of

another and whether that belief had a fair and reasonable foundation.” Appellee’s Brief at 5. The State further argues that “[a] reasonable person would have understood after multiple warnings that it was not prudent to wait around the hospital, even if it was outside,” and that “[a]n individual acting in good faith would have gone home and avoided this confrontation.” Id. at 6. The State also argues that Ward’s “actions indicate that she knew that she was not permitted on the property,” and that “[e]ven if, as she claims, she did not know, that belief lacked any reasonable foundation.” Id.

Here, the record reveals that Deputy Burks escorted Ward “halfway to the door” and “told her she must leave the *hospital*.” Transcript at 7 (emphasis added). Ward left the hospital and sat on a concrete bench outside the hospital. Later, when Ward and Robby were sitting together on the concrete bench outside the hospital, Deputy Burks approached Ward and told her “to leave again,” and “this time [telling] her she must leave *the property*”³ Id. at 8-9 (emphasis added). Ward walked over a road to a nearby parking garage which was also on Wishard’s property.

Ward testified that she believed she had left Wishard’s property. Ward testified that she “was walking through Riley parking lot” and “push[ed] the call box” because she “was in fear” of Deputy Burks and wanted to ask “for more security because [she] was walking through their area because [she] was in fear for him” Id. at 38. When asked if she “called security to have more deputies come,” Ward testified: “Yep [sic] on

³ On cross examination, when asked why he approached Ward outside on the bench when Ward had already left the hospital, Deputy Burks testified: “But that’s why I said I went over there and made sure she understood that she needed to leave the property at this time.” Transcript at 19.

Riley's property I sure did." Id. at 43. Ward further testified that she "was on what [she] considered to be Riley's side" Id. at 44. Ward also testified that Deputy Burks "told [her that she] could go to the other property but [that] he didn't give [her] a chance to get off [of the] property" Id. Ward testified that Deputy Burks "was over on Wishard property while [she] was on Riley property." Id. at 45. Ward also testified that she was "under the belief that if [she] walked over towards Riley Hospital that [she was] no longer on Wishard Hospital's property." Id. 45-46.

Based upon our review of the evidence, we conclude that the State failed to prove beyond a reasonable doubt that Ward knowingly or intentionally refused to leave the property of Wishard Hospital. We can affirm a conviction only when each material element is supported by evidence from which the trier of fact could have found guilt beyond a reasonable doubt. See Culbertson v. State, 792 N.E.2d 573, 576 (Ind. Ct. App. 2003), reh'g denied, trans. denied. Accordingly, we must reverse Ward's conviction for criminal trespass as a class A misdemeanor. See Myers v. State, 130 N.E. 116, 117 (Ind. 1921) (noting that criminal intent is an essential element of criminal trespass and holding that the evidence in the record showed that the defendant believed in good faith that he had a right to be on the premises); Travis v. State, 812 N.E.2d 826, 830 (Ind. Ct. App. 2004) (holding that the evidence was insufficient to sustain the defendant's conviction for criminal trespass where a material element of the crime was not supported by the evidence); Woods v. State, 703 N.E.2d 1115, 1118 (Ind. Ct. App. 1998) (concluding that the evidence was insufficient to sustain the defendant's conviction for criminal trespass

because the State failed to prove a material element of the offense within the meaning of Ind. Code § 35-43-2-2 and observing that the defendant's "belief and bona fide claim of right defeat the mens rea requirement of the criminal trespass statute and render her conviction erroneous").

B. Resisting Law Enforcement

Ward next challenges her conviction for resisting law enforcement as a class A misdemeanor. The offense of resisting law enforcement is governed by Ind. Code § 35-44-3-3, which provides in relevant part that "[a] person who knowingly or intentionally . . . flees from a law enforcement officer after the officer has, by visible or audible means, . . . identified himself or herself and ordered the person to stop . . . commits resisting law enforcement, a Class A misdemeanor" Thus, to convict Ward of resisting law enforcement as a class A misdemeanor, the State needed to prove that Ward: (1) knowingly or intentionally; (2) fled from Deputy Burks; (3) after Deputy Burks had, by visible or audible means, identified himself and ordered Ward to stop. See Ind. Code § 35-44-3-3(a)(1); Appellant's Appendix at 16.

Ward argues that she "did not intentionally or knowingly flee from Deputy Burks" and is thus "entitled to a reversal of her conviction." Appellant's Brief at 12. Ward's argument is merely a request that we reweigh the evidence, which we cannot do. See Drane, 867 N.E.2d at 146.

Here, the evidence reveals that Deputy Burks observed Ward and Robby sitting on a concrete bench and told Ward to leave the property. Ward walked over a road to a

position located near a parking garage and placed a call using an emergency call box, and Deputy Burks responded to the call. Deputy Burks walked towards Ward and noticed that she was “hollering and shouting to the operator inside the call box.” Transcript at 9. The record shows that Deputy Burks told Ward “to stop” and “wait right there,” but that Ward “swiftly walked off in the direction towards the back of the garage.” Id. Ward “hit the next call box button” and then “took off running.” Id. at 9-10. Deputy Burks told her “to stop a few times” and “chase[d] her around the back of the building.” Id. at 10. Ward stopped when she “got around the back of the building,” and Deputy Burks arrested her. Id.

Based upon our review of the record, we conclude that evidence of probative value exists from which the trial court could reasonably have found beyond a reasonable doubt that Ward committed resisting law enforcement as a class A misdemeanor. See Parahams v. State, 908 N.E.2d 689, 693 (Ind. Ct. App. 2009) (holding that the evidence was sufficient to sustain the defendant’s conviction for resisting law enforcement as a class A misdemeanor where an officer ordered the defendant to stop when the defendant began to flee); Yowler v. State, 894 N.E.2d 1000, 1003 (Ind. Ct. App. 2008) (holding that the evidence was sufficient to sustain the defendant’s conviction for resisting law enforcement as a class A misdemeanor where a police officer instructed the defendant to stop multiple times but the defendant instead began to walk away and eventually began to run away).

For the foregoing reasons, we reverse Ward's conviction for trespass as a class A misdemeanor and affirm her conviction for resisting law enforcement as a class A misdemeanor.⁴

Reversed in part and affirmed in part.

NAJAM, J., and VAIDIK, J., concur.

⁴ We note that the reversal of Ward's conviction for criminal trespass as a class A misdemeanor does not affect her total sentence because the trial court imposed equal sentences for Ward's sentences for criminal trespass and resisting law enforcement and ordered that the sentences be served concurrently.