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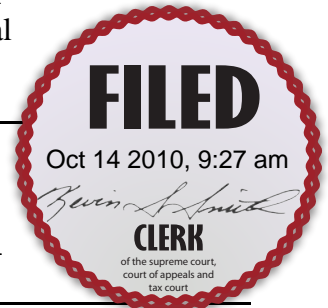
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**IN THE
COURT OF APPEALS OF INDIANA**



PHYLLIS MERRIWEATHER.

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-1003-CR-428

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Richard E. Sallee, Judge
Cause No. 49F08-1001-CM-1264

October 14, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Phyllis Merriweather appeals her conviction for Class A misdemeanor criminal trespass. She contends that the evidence is insufficient to support it. Finding the evidence sufficient, we affirm.

Facts and Procedural History

In September 2009 Madison Realty and Investments, LLC, purchased a house located near the Butler University campus at 504 West 43rd Street in Indianapolis. The house was purchased as part of a foreclosure sale. Mark Madinger is the sole member of the LLC. In October 2009 Madinger posted no trespassing signs on the house and asked the Butler University Police Department to keep an eye on the house because someone had been in the house and caused damage.

On January 7, 2010, the company planned to begin work inside the house. Madinger confronted Merriweather inside the house and told her it was not her house and that she needed to leave. Merriweather, however, maintained that it was her house. Madinger called the Butler University Police Department.

Butler University Police Officer Loran Wilber responded. He identified Merriweather as someone whom he had encountered there and arrested for trespassing on two previous occasions. Tr. p. 18. And on those previous occasions, Officer Wilber explained to Merriweather that she could not be there. *Id.*; *see also id.* at 19 (“Q Okay, so you have told her to leave before and she came back? A Yes.”). Officer Wilber had these previous interactions with Merriweather because Madinger had asked Officer Wilber to keep Merriweather off of his property.

Officer Wilber arrested Merriweather on January 7, 2010.

Thereafter, the State charged Merriweather with Class A misdemeanor criminal trespass. Ind. Code § 35-43-2-2(a)(1); Appellant's App. p. 13. At the bench trial, Merriweather testified that beginning in 1996, she lived in the house with a previous owner of the property. At some point, this previous owner died, and she claimed to have engaged in litigation regarding the ownership of the house. Merriweather "believed" that because of this litigation, she still owned the house. Merriweather admitted being ordered off the property and arrested by Officer Wilber before the incident on January 7, 2010. The trial court stated:

You've got a very good lawyer in this case but you can't come to court and just say, "Well, it's my property". I mean this other person bought this property he claims at a tax sale. Twice before you have been arrested and ordered off of it And I would think that you would go get your documentation from Probate Court but you don't have to prove anything in a criminal case. The State has the burden but they have established that burden and sometimes you know mistakes are made but he's got title to it according to his testimony and there's nothing to dispute that and I am going to have to find you guilty.

Tr. p. 25-26. Merriweather now appeals her conviction.

Discussion and Decision

Merriweather contends that the evidence is insufficient to support her conviction for Class A misdemeanor criminal trespass. When reviewing the sufficiency of the evidence, appellate courts must only consider the probative evidence and reasonable inferences supporting the judgment. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient. *Id.* To preserve this structure,

when appellate courts are confronted with conflicting evidence, they must consider it “most favorably to the trial court’s ruling.” *Id.* Appellate courts affirm the conviction unless “no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *Id.* at 146-47 (quotation omitted). It is therefore not necessary that the evidence “overcome every reasonable hypothesis of innocence.” *Id.* at 147 (quotation omitted). “[T]he evidence is sufficient if an inference may reasonably be drawn from it to support the [judgment].” *Id.* (quotation omitted).

In order to convict Merriweather as charged here, the State had to prove that Merriweather, not having a contractual interest in the property, knowingly or intentionally entered 504 West 43rd Street in Indianapolis after having been denied entry by Madinger or Madinger’s agent. I.C. § 35-43-2-2(a)(1); Appellant’s App. p. 13.¹ “A person has been denied entry under subdivision (a)(1) of this section when the person has been denied entry by means of: (1) personal communication, oral or written; [or] (2) posting or exhibiting a notice at the main entrance in a manner that is either prescribed by law or likely to come to the attention of the public” I.C. § 35-43-2-2(b). 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. *A.E.B. v. State*, 756 N.E.2d 536, 541 (Ind. Ct. App. 2001).

Merriweather argues that “there was insufficient evidence to show that [she] knew she would be subject to a criminal trespass prosecution for entering the house she

¹ While Merriweather makes a brief argument that the evidence is insufficient because there is no evidence that she was given a reasonable period of time to leave the property of her own volition, this argument is directed to subsection (a)(2) of the statute (“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”), under which Merriweather was not charged in this case.

believed she owned” because the prior trespassing charges had been dismissed. Appellant’s Br. p. 8. She also argues that she could not have knowingly or intentionally committed criminal trespass because she had a good faith belief that she owned the house.

We first note that there is no evidence in the record concerning why the prior trespassing charges were dismissed. The dismissal of these charges has absolutely no bearing on the sufficiency of the evidence for the criminal trespass conviction in this case, particularly in light of the fact that Merriweather was previously ordered off the property and removed at least twice by Officer Wilber, which she does not contest.

As for Merriweather’s belief that she owned the property, Madinger testified that his LLC purchased the property in September 2009 in a foreclosure sale and posted no trespassing signs in October 2009. He also testified that Merriweather had no interest in the property. Indeed, the record shows that Madinger’s company had owned the property for roughly four months and that Merriweather had been removed from the same property by the Butler University Police Department on multiple occasions. By January 2010 Merriweather was on notice that the house belonged to someone else and that she had no right to be there. The only evidence that she was not aware of someone else’s ownership of the house is her own self-serving testimony. Merriweather’s argument is essentially a request for us to reweigh the evidence to conclude that her belief that she owned the property had a fair and reasonable foundation. This we cannot do. We therefore affirm Merriweather’s conviction for criminal trespass.

Affirmed.

MAY, J., and ROBB, J., concur.