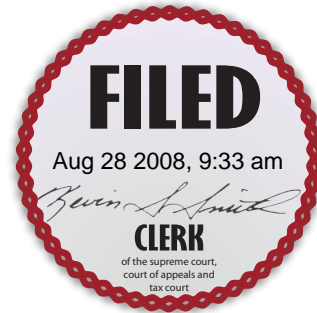


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

FRANK CASTILLO,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A02-0801-CR-62
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven Rubick, Commissioner
Cause No. 49F10-0710-CM-230116

AUGUST 28, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Appellant-Defendant Frank Castillo appeals his conviction of public intoxication, a Class B misdemeanor. We affirm.

ISSUE

Castillo raises one issue for our review, which we restate as: Whether the State presented sufficient evidence to support Castillo's conviction.

FACTS

On October 29, 2007, Indianapolis Police Officer Justin Reese was dispatched to an Indianapolis home in response to a domestic disturbance. Officer Reese saw Castillo standing on a public sidewalk in front of the home Castillo shared with Amy Chilcutt. Officer Reese approached Castillo and smelled alcoholic beverages "on his breath and his person" and observed that Castillo's eyes were "watery." Tr. at 7-8. Castillo became "very combative" and angry when Officer Reese began to question him. *Id.* Castillo, who anticipated an arrest, was agitated and speaking very rapidly. *Id.*

Officer Reese arrested Castillo and charged him with public intoxication. He was convicted after a bench trial and was sentenced to time served. This appeal followed.

DISCUSSION AND DECISION

Ind. Code § 7.1-5-1-3 requires the State to prove that the defendant is in a public place and in a state of intoxication caused by the defendant's use of alcohol. Castillo does not contest the State's evidence that he was in a public place; however, he contends that there is insufficient evidence to show beyond a reasonable doubt that he was intoxicated. He notes that (1) he was agitated because of the domestic disturbance; (2)

Officer Reese testified on cross-examination that Castillo did not have any problems with his balance; and (3) Officer Reese testified that Castillo's eyes were neither red nor bloodshot. Castillo further notes that Officer Reese testified on cross-examination that he did not have an opportunity to observe lack of dexterity and that Officer Reese made no mention of slurred speech or impaired diction. Castillo cites *Wright v. State*, 772 N.E.2d 449, 458 (Ind. Ct. App. 2002), for the proposition that the smell of alcohol is insufficient, standing alone, to support a conviction for public intoxication.¹

When reviewing a claim of insufficient evidence, we do not reweigh the evidence, nor do we reevaluate the credibility of witnesses. *Jones v. State*, 881 N.E.2d 1095, 1097 (Ind. Ct. App. 2008). We view the evidence most favorable to the judgment and the reasonable inferences therefrom and will affirm the conviction if there is substantial evidence of probative value from which a reasonable fact-finder could find the defendant guilty beyond a reasonable doubt. *Id.*

However, we also observe that evidence of guilt of substantial and probative value, as required to affirm a conviction on appeal, requires more than a mere scintilla of evidence. *Id.* Evidence that only tends to support a conclusion of guilt is insufficient to sustain a conviction, as evidence must support the conclusion of guilt beyond a reasonable doubt. *Id.*

¹ Actually, in *Wright* we were responding to Wright's argument that the public intoxication statute was defective. We first noted, "We are not persuaded by Wright's attempts to produce an absurd result by arguing that a patron who has one sip of alcohol in a dining establishment would be guilty under the statute." 772 N.E.2d at 457-58. We then observed, "It is axiomatic that one sip, or even a few sips, of alcohol would not render an ordinary person 'intoxicated' for purposes of the public intoxication statute." *Id.*

Here, Officer Reese testified that the following are classic indicators of intoxication: (1) the smell of alcohol upon the breath; (2) red and blood shot eyes; (3) watery eyes; (4) problems with balance; and (5) problems with fine motor skills. Tr. at 8. Officer Reese further testified that he arrested Castillo because (1) Castillo exhibited a smell of alcohol on his breath and person; (2) Castillo's eyes were watery; and (3) Castillo exhibited combativeness and anger without any observable provocation. Although we might not have found guilt based upon this evidence, we will not usurp the authority of the trial court to do so. The confluence of the three indicators is sufficient to support the trial court's determination. Thus, we cannot say that the State failed to present sufficient evidence to support the conviction.²

CONCLUSION

The State presented sufficient evidence to sustain the trial court's determination that Castillo was guilty of public intoxication.

Affirmed.

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

² We note that Castillo attempts to frame his case to coincide with the facts of *Irwin v. State*, 178 Ind. 676, 383 N.E.2d 1086, 1090 (1978), wherein our supreme court held that an officer's perception of an odor of alcohol and the defendant's admission that he had consumed alcohol were insufficient to prove intoxication. Castillo's watery eyes and combative nature distinguish this case from *Irwin*.