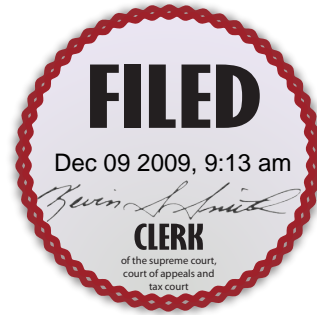


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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ISAIAH KENDRICK,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 49A02-0904-CR-329

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Linda Brown, Judge  
Cause No. 49F10-0807-CM-177029

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**DECEMBER 9, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**GARRARD, Senior Judge**

Isaiah Kendrick was convicted after a bench trial of trespass, a Class A misdemeanor, and public intoxication, a Class B misdemeanor. His appeal challenges the sufficiency of the evidence to sustain each conviction.

We affirm in part, reverse in part, and remand with instructions.

On appeal Kendrick acknowledges the well known standard of review that prohibits us from reweighing the evidence or redetermining the credibility of the witnesses. We will affirm if the evidence and the reasonable inferences to be drawn therefrom in favor of the decision would permit a reasonable jury to find the defendant guilty beyond a reasonable doubt. *Hyppolite v. State*, 774 N.E.2d 584, 598 (Ind. Ct. App. 2002). Each material element of the charge must be supported by evidence in the record. *Travis v. State*, 812 N.E.2d 826, 828 (Ind. Ct. App. 2004).

The state's case was presented through the testimony of Michael Schollmeier, an off duty Indianapolis police officer who, on the night in question, was working as a security person for Rock Lobster, a bar in Indianapolis. Schollmeier testified that he was stationed outside, near the bar's front entrance. About 2:00 a.m. he saw Kendrick being "escorted out of the bar" by one of the managers. Kendrick was brought to Schollmeier. He testified that Kendrick's eyes were glassy and blood shot, he was unsteady on his feet and smelled strongly of alcohol. In Schollmeier's opinion, based on his training and experience, he believed Kendrick was extremely intoxicated. Schollmeier said that Kendrick yelled numerous expletives. He told Kendrick numerous times that Kendrick had to leave, but Kendrick refused. Kendrick was then arrested.

The public intoxication charged was based upon Ind. Code § 7.1-5-1-3, which provides in relevant part that a person in a public place in a state of intoxication caused by the person's use of alcohol commits public intoxication as a class B misdemeanor. Ind. Code § 9-13-2-86 defines intoxication as being under the influence of alcohol so that there is an impaired condition of thought and action and the loss of normal control of a person's faculties. Impairment can be established by evidence of (1) the consumption of a significant amount of alcohol; (2) impaired attention and reflexes; (3) watery or bloodshot eyes; (4) the odor of alcohol on the breath; (5) unsteady balance; (6) failure of field sobriety tests; and (7) slurred speech. *Fought v. State*, 898 N.E.2d 447, 451 (Ind. Ct. App. 2008). Schollmeier's testimony about Kendrick's appearance and behavior on the sidewalk outside the Rock Lobster clearly sustain his conviction for public intoxication.

The trespass charge was based upon Ind. Code § 35-43-2-2(a)(2) which provides in relevant part as follows:

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 trespass, a Class A misdemeanor....

There was no witness to what had occurred within the bar. Schollmeier testified to telling Kendrick to leave numerous times as they stood outside on the public sidewalk. However, the sidewalk does not qualify as the real property of another person within the meaning of the statute. *See Travis* 812 N.E.2d at 828 (holding that police officer had no authority to ban defendant from a public park). Accordingly, there was a failure of proof

that Kendrick failed to leave the real property *of another person*, after having been asked to leave by that person or the agent of that person. It follows that the conviction for trespass is reversed and the defendant is discharged on that count.

The court entered judgment on each count and ordered the balance of the sentences suspended after Kendrick's credit for pre-trial incarceration. It then ordered Kendrick to perform 80 hours of community service. We cannot tell from the record upon what basis the court fixed the community service requirement. We must therefore remand to the trial court for its determination concerning community service based upon the public intoxication conviction alone.

Affirmed in part, reversed in part, and remanded.

MAY, J., and BARNES, J., concur.