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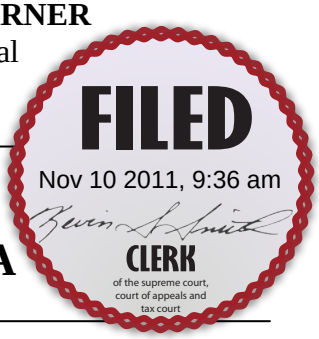

IN THE
COURT OF APPEALS OF INDIANA

MICHAEL HENDERSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1102-CR-108
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Linda E. Brown, Judge
Cause No. 49F10-1008-CM-61958

November 10, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Michael Henderson appeals his convictions for disorderly conduct as a class B misdemeanor[1] and public intoxication as a class B misdemeanor.[2] Henderson raises one issue which we revise and restate as whether the evidence is sufficient to sustain his convictions. We affirm in part and reverse in part.

The facts most favorable to the convictions follow. In the early afternoon of August 9, 2010, Indianapolis Metropolitan Police Officer Marvin Bankhead was dispatched to the 1800 block of North Irvington Avenue in Marion County based upon a call that "said that they could hear someone yelling, threatening to kick down the door of a house on the corner of 18th and Irvington." Transcript at 7. When Officer Bankhead arrived, he noticed Henderson on the porch of the corner house. Officer Bankhead approached Henderson, and Henderson stated that he needed to retrieve some personal items from the house. Officer Bankhead told Henderson to "wait right there" while he talked to the resident. Id. Officer Bankhead knocked on the door, and a female answered the door and invited Officer Bankhead into the home. Officer Bankhead learned that the female and Henderson had had an intimate relationship at some point and that she no longer wanted Henderson at her residence.

Indianapolis Metropolitan Police Officer Tracy Dobbs arrived on the scene and observed Henderson standing on the sidewalk. Henderson "started yelling and screaming" and using "[p]rofanities, a lot." Id. at 18. Henderson yelled something about a business card and that he "wanted his 'F'ing' business card." Id. at 18. Officer

[1] Ind. Code § 35-45-1-3 (Supp. 2006).

[2] Ind. Code § 7.1-5-1-3 (2004).

Bankhead went back outside and noticed Henderson was no longer on the porch, but was on the sidewalk on the south side of the house. Officer Bankhead took Henderson some belongings he had collected from inside the house, and "before even looking, [Henderson] just started yelling about a business card in his wallet." Id. at 9. Officer Bankhead told Henderson "this is all the stuff that you have here . . . you guys can work this out at another time," but Henderson continued yelling and screaming. Id. at 10. The residents in two houses to the east and one house to the west came out on to their porches and directed their attention toward Henderson. Officer Bankhead told Henderson to lower his voice and stop using profane language so he would not alarm the residents in the area, but Henderson continued yelling "using profane language towards the officers, just in general to the resident of the home." Id.

On August 10, 2010, the State charged Henderson with disorderly conduct as a class B misdemeanor and public intoxication as a class B misdemeanor. During the bench trial, Officer Bankhead and Officer Dobbs testified to the foregoing facts.

Officer Bankhead described the house as follows:

> The house sits on a corner lot in a residential area; and there's a sidewalk and parkway in front of the residence which would be on the west side of the house. On the south side of the house there's also a sidewalk and a parkway for 18th Avenue. The front of the house is on Irvington Avenue.

Id. at 9. The following exchange occurred between the court and Officer Bankhead regarding where Henderson was standing:

THE COURT:	And so when you're saying the sidewalk, are you talking about a public sidewalk?
OFFICER BANKHEAD:	Yes, ma'am.

THE COURT: Not the sidewalk by a side door or anything like that?

OFFICER BANKHEAD: No, no.

THE COURT: Okay.

Id. The following exchange occurred during cross-examination of Officer Bankhead:

Q Do you have specific knowledge that in this particular property that concrete walkway is in fact public? Do you have specific knowledge that it is, or are you just assuming that?

A Can you clarify what – Have I went to the Assessor's Office and to see if the City of Indianapolis owns that stretch of sidewalk?

Q Or did the owner of the property that [sic] is actually public, that does not belong to me?

A No.

Q Okay, so you're assuming that based on your experience, potentially, in what other neighborhoods, your own neighborhood?

A That neighborhood that I've worked in for the last year and a half, and other urban areas that I work in.

Q So you still again have no specific knowledge that in this particular property that concrete sidewalk is in fact public or private?

A No.

Id. at 13-14. Later, Officer Bankhead used the phrase "public sidewalk," and Henderson's counsel objected to the statement "public" because "[t]he witness has already testified that he has no specific knowledge that it's public property." Id. at 35. The court sustained the objection. Id.

Officer Dobbs testified that he had seen the Department of Public Works working on sidewalks, but that he had not seen the Department of Public Works working on this

particular sidewalk. Officer Dobbs indicated that the sidewalk and the street were separated by "a little bit of grass" and that the sidewalk was one "where people walk up and down on it." Id. at 23. Henderson introduced a picture of the house and a portion of the sidewalk, which the court admitted. The officers pointed out where Henderson was standing on the sidewalk, but the location on the sidewalk to which the officers pointed does not appear to be included in the picture.[3]

Henderson testified that he lived at the address at that time and that when Officer Bankhead exited the house after retrieving some items for him, Henderson was on the porch, that he never left the porch, and that Officer Bankhead handcuffed him on the porch. Henderson also testified that he told the officer that he was missing "some items, some of my ID and credit cards and stuff." Id. at 28. The court found Henderson guilty as charged and sentenced him to 180 days with 176 days suspended for each count to be served concurrently.

The issue is whether the evidence is sufficient to sustain Henderson's convictions for disorderly conduct and public intoxication. 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

[3] Officer Bankhead testified: "[I]f the picture were complete, it would be right about here . . . ." Transcript at 35. Officer Dobbs testified: "It's not in the picture. But see how the sidewalk comes . . . It's straight off, over there." Id. at 37.

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.

A. Disorderly Conduct

The offense of disorderly conduct is governed by Ind. Code § 35-45-1-3, which provides "[a] person who recklessly, knowingly, or intentionally . . . makes unreasonable noise and continues to do so after being asked to stop . . . commits disorderly conduct, a Class B misdemeanor."[4] Thus, to convict Henderson of disorderly conduct as a class B misdemeanor, the State needed to prove that Henderson recklessly, knowingly, or intentionally made unreasonable noise and continued to do so after being asked to stop. "[T]he criminalization of 'unreasonable noise' was 'aimed at preventing the harm which flows from the volume' of noise." Whittington v. State, 669 N.E.2d 1363, 1367 (Ind. 1996) (quoting Price v. State, 622 N.E.2d 954, 966 (Ind. 1993), reh'g denied). "The State must prove that a defendant produced decibels of sound that were too *loud* for the circumstances." Id. "Whether the state thinks the sound conveys a good message, a bad message, or no message at all, the statute imposes the same standard: it prohibits context-inappropriate *volume*." Id. "Section 35-45-1-3(2) is aimed at the intrusiveness and loudness of expression, not whether it is obscene or provocative." Price, 622 N.E.2d at 960 n.6.

[4] The State alleged that Henderson "did recklessly, knowingly, or intentionally . . . make unreasonable noise and continued to do so after being asked to stop." Appellant's Appendix at 16.

Henderson argues that "there is no evidence that [his] outburst produced harm beyond a fleeting annoyance." Appellant's Brief at 6. Henderson argues that "[i]t was only the officer's conclusion that his voice was causing the perhaps two or three neighbors down the street to come onto their porches." Id. Henderson also argues that "[t]here is no evidence or testimony that [his] voice interfered with the police activities" and "[t]he State failed to show that the volume of [his] noise caused any harm." Id.

The record reveals that Officer Dobbs testified that Henderson was "yelling and screaming," that Henderson was asked to calm down and be quiet, and that Henderson continued to yell. Transcript at 18. Officer Bankhead testified that Henderson was "yelling and screaming," and that residents from three houses came out on to their porches and directed their attention toward Henderson. Id. at 10. Lastly, Officer Bankhead told Henderson to lower his voice and stop using profane language so he would not alarm the residents in the area, but Henderson continued yelling at the officers and "just in general to the resident of the home." Id.

Based upon the record, we conclude that evidence of probative value exists from which the trial court could have found Henderson guilty of disorderly conduct as a class B misdemeanor. See Blackman v. State, 868 N.E.2d 579, 584 (Ind. Ct. App. 2007) (holding that the defendant's argument was simply a request that we reweigh the evidence and holding that there was sufficient evidence to support the defendant's conviction for disorderly conduct), trans. denied; Humphries v. State, 568 N.E.2d 1033, 1037 (Ind. Ct. App. 1991) (holding that officer's testimony indicating that he asked the defendant to quiet down twice and ultimately decided to arrest the defendant for

disorderly conduct raised a reasonable inference that the defendant was speaking in an unreasonably loud voice and that the evidence was substantial enough to support the defendant's conviction).

B. Public Intoxication

The offense of public intoxication is governed by Ind. Code § 7.1-5-1-3, which provides that "[i]t is a Class B misdemeanor for a person to be in a public place or a place of public resort in a state of intoxication caused by the person's use of alcohol or a controlled substance (as defined in IC 35-48-1-9)." Thus, to convict Henderson of public intoxication as a class B misdemeanor, the State needed to prove that Henderson was in a public place or a place of public resort in a state of intoxication caused by the use of alcohol.

Henderson argues that the evidence was insufficient because he was not in a public place and that the officer could not arrest him for public intoxication at his own home. Henderson argues that "[t]he officer said he was arresting Mr. Henderson for being out on the sidewalk on the side of the house, despite the fact that he originally found him on the porch waiting to get his belongings." Appellant's Brief at 7. Henderson asserts that "[h]is stepping onto the sidewalk on the side of his home should be of no moment, as Mr. Henderson was primarily on the property of the residence." Id. at 8. Henderson also argues that Officer Dobbs testified that he did not remember Henderson's speech being slurred and he did not see any problems with his manual dexterity. Henderson also contends that "[w]hen there is smell, there is not necessarily

intoxication" and that his "bloodshot eyes could easily be attributed to the emotional situation he was experiencing with his girlfriend." Id.

The State argues that the sidewalk was a public place for purposes of the statute as it was always accessible to the public and maintained by the Indianapolis Department of Public Works. The State also argues that there was sufficient evidence that Henderson was intoxicated.

The Indiana Supreme Court "stated many years ago, 'The purpose of the law is to protect the public from the annoyances and deleterious effects which may and do occur because of the presence of persons who are in an intoxicated condition.'" State v. Jenkins, 898 N.E.2d 484, 487 (Ind. Ct. App. 2008) (quoting State v. Sevier, 117 Ind. 338, 20 N.E. 245, 246-247 (1889)), trans. denied. "A 'public place' does not mean only a place devoted to the use of the public." Jones v. State, 881 N.E.2d 1095, 1097 (Ind. Ct. App. 2008) (citing Wright v. State, 772 N.E.2d 449, 456 (Ind. Ct. App. 2002)). "It also means a place that 'is in point of fact public, as distinguished from private, – a place that is visited by many persons, and usually accessible to the neighboring public.'" Id. "A private residence, including the grounds surrounding it, is not a public place." Moore v. State, 634 N.E.2d 825, 827 (Ind. Ct. App. 1994).

Officer Bankhead indicated that he had no specific knowledge that the sidewalk was in fact private or public. Officer Dobbs indicated that he did not have any specific knowledge that the sidewalk was not private property. What is evident is that when Officer Bankhead arrived at the scene, Henderson was clearly on private property. We conclude that the State failed to prove beyond a reasonable doubt that Henderson was

located in a public place. Accordingly, we reverse his conviction for public intoxication. See Christian v. State, 897 N.E.2d 503, 505 (Ind. Ct. App. 2008) (reversing a conviction for public intoxication where the State "presented no evidence that the parking area was used by the public in general rather than only the residences next to the area"), trans. denied.

For the foregoing reasons, we affirm Henderson's conviction for disorderly conduct as a class B misdemeanor and reverse his conviction for public intoxication as a class B misdemeanor.

Affirmed in part and reversed in part.

BAKER, J., and KIRSCH, J., concur.