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**IN THE  
COURT OF APPEALS OF INDIANA**

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AARON SPENCER, )  
 )  
Appellant-Defendant, )  
 )  
vs. )  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

No. 49A04-1102-CR-68

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Rebekah Pierson-Treacy, Judge  
Cause No. 49F19-1009-CM-71048

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**October 26, 2011**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Defendant, Aaron Spencer (Spencer), appeals his conviction for public intoxication, a Class B misdemeanor, Ind. Code § 7.1-5-1-3.

We affirm.

## ISSUE

Spencer raises one issue for our review, which we restate as the following: Whether there was sufficient evidence to show that Spencer was in a public place or public resort under I.C. § 7.1-5-1-3 at the time of his arrest.

## FACTS AND PROCEDURAL HISTORY

On September 12, 2010 at 12:40 a.m., Officer Daniel Smith (Officer Smith) of the Indianapolis Metropolitan Police Department was dispatched to the 2800 block of Station Street in Indianapolis, Indiana. Officer Smith parked his car on Station Street and walked through an empty lot to the alley behind the street. Upon entering the alley, Officer Smith saw Spencer “. . . standing in the alleyway looking in some bushes. . .” (Transcript p. 11). Officer Smith approached Spencer, who appeared to be intoxicated, and ordered him to be seated. Officer Smith then observed that Spencer’s eyes were red and bloodshot, his speech was slurred, and he had the odor of alcohol on his breath. Officer Smith believed Spencer to be intoxicated and arrested him for public intoxication.

On September 12, 2010, the State filed an Information charging Spencer with public intoxication, a Class B misdemeanor, I.C. § 7.1-5-1-3. On January 31, 2011, after a bench

trial, Spencer was found guilty. Immediately following the trial, the trial court sentenced Spencer to 180 days, with six days executed, 174 days suspended, and 32 hours of community service to be completed with a non-profit organization.

Spencer now appeals. Additional facts will be provided as necessary.

### DISCUSSION AND DECISION

Spencer argues that there was not sufficient evidence to prove that he was in a public place or public resort under the public intoxication statute I.C. § 7.1-5-1-3. In reviewing the sufficiency of the evidence, this court examines the evidence favorable to the judgment and all reasonable inferences drawn therefrom. *Perez v. State*, 872 N.E.2d 208, 213 (Ind. Ct. App. 2007), *trans. denied*. If substantial evidence of probative value exists to establish every material element of the offense beyond a reasonable doubt, we will affirm. *Id.* However, we will reverse a conviction if the record does not contain substantial evidence of probative value that would place reasonable doubt in the minds of reasonably prudent persons. *Id.*

Spencer contends that he was simply walking on the edge of his brother's yard in order to investigate who was shining a flashlight in the alley next to his brother's house and that he never completely entered the alley until Officer Smith ordered him to do so. Therefore, Spencer argues that because the boundary between the alley and the backyard is not clear, there was not sufficient evidence to establish that he left the yard until ordered by Officer Smith. We disagree.

Sufficient evidence was presented to show that the alley was a public place under I.C. § 7.1-5-1-3. I.C. § 9-13-2-2.5 states:

‘Alley’ means a public way in an urban district that meets the following qualifications:

- (1) Is open to the public for vehicular traffic.
- (2) Is publicly maintained.
- (3) Is one lane wide.
- (4) Is designated as an alley by the local authorities on an official map of the urban district.

The record shows that this alley was a “public alley with a paved blacktop” that was used for “public conveyance” and was considered “a small city street.” (Tr. 9). Further, residents of the area used the alley to place their trash containers in the alley to be collected by the public trash service. Therefore, the State provided sufficient evidence for the trier of fact to conclude that this alley was a public place.

Spencer’s challenge to the evidence on whether he was actually inside the public alley when Officer Smith approached him focuses on what he claims to be insufficient evidence by the State tending to support that he was in the alley at the time of the initial interaction. In support of his argument, Spencer argues that the unclear boundary between the yard and the alley is inadequate to prove he was in a public area. (Appellant’s Brief p. 6). However, the trier of fact is free to disbelieve and disregard testimony of a defendant. *Goodman v. State*, 863 N.E.2d 898, 902 (Ind. Ct. App. 2007). Officer Smith and Spencer each gave different accounts of where Spencer was standing when Officer Smith approached him. Even though there was conflicting testimony, “it is for the trier of fact to reject defendant’s version of what happened, to determine all inferences arising from the evidence, and to decide which witness to believe.” *Holeton v. State*, 853 N.E.2d 539, 541 (Ind. Ct. App. 2006). Given that Spencer’s challenge to the evidence is based upon conflicting testimony at trial, we conclude

that he is merely inviting us to reweigh the evidence and assess the credibility of Officer Smith, which we decline to do. Therefore, we conclude that there was sufficient evidence to show that Spencer was in a public place when he was arrested for public intoxication.

#### CONCLUSION

Based on the foregoing, we conclude that there was sufficient evidence to show that Spencer was in a public place or public resort at the time of his arrest under I.C. § 7.1-5-1-3.

Affirmed.

NAJAM, J. and MAY, J. concur