

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Chebly Chanta Logging,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

June 20, 2023

Court of Appeals Case No.
22A-CR-2806

Appeal from the Marion Superior
Court

The Honorable Clayton A.
Graham, Judge

Trial Court Cause No.
49D33-2103-F6-6405

Memorandum Decision by Judge Crone
Judge Brown and Senior Judge Robb concur.

Crone, Judge.

Case Summary

- [1] A jury found Chebly Chanta Logging guilty of class B misdemeanor public intoxication. Logging argues that the State failed to prove beyond a reasonable doubt that he committed that offense. We agree and therefore reverse his conviction.

Facts and Procedural History

- [2] In March 2021, the State charged Logging with level 6 felony battery by bodily waste by spitting and class B misdemeanor public intoxication “caused by his use of alcohol or a controlled substance[.]” Appellant’s App. Vol. 2 at 26. A jury trial was held in November 2022. The State presented testimony from Indianapolis Metropolitan Police Department Officer Cassandra Crawley and EMT Rebecca Garvey, who responded to a dispatch for a person requiring medical attention. When they arrived at the scene, they found Logging lying on 38th Street being attended to by several firefighters, who “helped him up on to a gurney[.]” Tr. Vol. 2 at 209. Garvey testified that Logging then spit on her. *Id.* at 210. Logging was placed in an ambulance and was examined by Garvey, who concluded that “he was under the influence of something[.]” *Id.* at 222.
- [3] Before the alleged spitting incident, another officer conducted a patdown search of Logging and found a “clear baggy containing a green, leafy substance” that Officer Crawley believed, “based on [her] training and experience,” to be “[e]ither marijuana or a synthetic lookalike substance.” *Id.* at 194. The substance was never tested, and on cross examination Officer Crawley admitted

that “[w]e have no way of confirming what that substance was[.]” *Id.* at 199. Logging was not tested for drugs, and no evidence was presented that he was tested for alcohol consumption. Officer Crawley observed that Logging “was off balance[.]” but she did not note any odors, “such as the odor of alcohol[.]” *Id.* at 200. The jury was shown bodycam videos of the alleged spitting incident and Logging’s behavior inside the ambulance.

- [4] The jury acquitted Logging of battery by bodily waste and found him guilty of public intoxication. The trial court sentenced him to 180 days in jail, with 120 days suspended, and awarded him sixty days of credit time.

Discussion and Decision

- [5] Logging challenges the sufficiency of the evidence supporting his conviction. In a criminal case, “the State [bears] the burden of proving each element of the charged offense beyond a reasonable doubt.” *Stephens v. State*, 992 N.E.2d 935, 937 (Ind. Ct. App. 2013). When reviewing a sufficiency challenge, we consider only the probative evidence and reasonable inferences supporting the factfinder’s determination, and we neither reweigh evidence nor reassess witness credibility. *Veach v. State*, 204 N.E.3d 331, 336 (Ind. Ct. App. 2023). We will affirm unless no reasonable factfinder could find that each element of the offense was proven beyond a reasonable doubt. *Id.* But if the inference drawn by the factfinder “must rest upon speculation and conjecture, it cannot be drawn beyond a reasonable doubt, and we are required to set [the verdict]

aside.” *T.H. v. State*, 92 N.E.3d 624, 626 (Ind. 2018) (per curiam) (quoting *Shutt v. State*, 267 Ind. 110, 114, 367 N.E.2d 1376, 1378 (1977)).

[6] The State charged Logging with public intoxication under Indiana Code Section 7.1-5-1-3, which provides in pertinent part that “it is a Class B misdemeanor for a person to be in a public place ... 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), if the person ... endangers the person’s life[.]” Logging does not argue that the State failed to prove beyond a reasonable doubt that he was in a state of intoxication. Also, he concedes that “[p]ossession of a particular substance by an individual who is intoxicated could support a reasonable inference the person was intoxicated from use of that substance.” Appellant’s Br. at 16.

[7] Logging does argue, however, that the State failed to prove beyond a reasonable doubt either that he endangered his life or that his intoxication was caused by his use of alcohol or a controlled substance. We agree on both counts. Logging points out that “[n]either of the State’s witnesses arrived on scene until [he] was already being treated by firefighters. The evidence does not otherwise establish where [he] was, or what he was doing, prior to being treated by first responders.” Appellant’s Br. at 10. In other words, the jury could only speculate as to how and why Logging ended up lying on 38th Street, and thus it could not conclude beyond a reasonable doubt that Logging endangered himself in any fashion.

[8] Likewise, the jury could only speculate that Logging’s intoxication was caused by alcohol or a controlled substance. The State presented no evidence whatsoever that Logging had consumed alcohol, and it did not test the “green, leafy substance” that was found on his person. Tr. Vol. 2 at 194.¹ Officer Crawley testified that, “based on [her] training and experience,” she believed that the substance was either marijuana, which is specifically listed as a controlled substance,² or an unspecified “synthetic lookalike substance[,]” which is not. *Id.*³ On its face, this equivocal testimony is insufficient to prove beyond a reasonable doubt that the substance was actually a controlled substance.⁴ Moreover, the State presented no competent evidence to establish that the substance was in fact marijuana, rather than hemp, which is not a controlled substance. *See Fedij v. State*, 186 N.E.3d 696, 709 (Ind. Ct. App. 2022) (reversing

¹ For this reason alone, we reject the State’s argument that the substance contained synthetic THC, which is listed as a schedule I controlled substance under Indiana Code Section 35-48-2-4(d)(31). We also reject the State’s argument that Logging’s behavior demonstrated that he “was under the influence of a controlled substance.” Appellee’s Br. at 15. We agree with Logging that “[t]his argument is based on the false premise that only controlled substances cause intoxication.” Reply Br. at 10. *See, e.g., Upp v. State*, 808 N.E.2d 706, 707-08 (Ind. Ct. App. 2004) (reversing defendant’s conviction for public intoxication caused by use of alcohol or a controlled substance, where intoxication was caused by sniffing glue, which is not a controlled substance).

² Ind. Code § 35-48-2-4(d)(22).

³ Logging points out that statutes criminalizing the possession of a “synthetic drug lookalike substance” were repealed in 2019, and thus that term “has no current legal meaning in Indiana.” Reply Br. at 9 n.4.

⁴ During closing argument, the State asserted, over Logging’s overruled objection, that it “[did] not have to prove any type of substance [Logging] is under. That is not an element. What is an element is we have to prove that he’s intoxicated [...] and the evidence showed he is.” Tr. Vol. 2 at 248-49. Pursuant to Indiana Code Section 7.1-5-1-3, the State was required to prove that the intoxicating substance was either alcohol or a controlled substance. We remind the trial court that “counsel does not have the right to misstate the law or argue a theory unsupported by the evidence during closing arguments.” *Dixey v. State*, 956 N.E.2d 776, 783 (Ind. Ct. App. 2011), *trans. denied* (2012).

conviction for marijuana possession where “State had no evidentiary basis from which a reasonable fact-finder could conclude that the seized substances were in fact marijuana and not hemp”). Based on the foregoing, we reverse Logging’s conviction for insufficient evidence.

[9] Reversed.

Brown, J., and Robb, Sr.J., concur.