

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jason U. Ford,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 28, 2021

Court of Appeals Case No.
21A-CR-540

Appeal from the Elkhart Superior
Court

The Honorable Gretchen S. Lund,
Judge

Trial Court Cause No.
20D04-2003-F6-403

Bailey, Judge.

Case Summary

- [1] Jason U. Ford (“Ford”) appeals his conviction for Public Intoxication, as a Class B misdemeanor,¹ raising for our review the sole issue of whether there is sufficient evidence of endangerment to support the conviction.
- [2] We affirm.

Facts and Procedural History

- [3] On March 18, 2020, at around 6:45 a.m., Bristol Police Department Chief Deputy Adam Dernay (“Chief Deputy Dernay”) responded to a 9-1-1 call reporting a suspicious person. After looking in the reported area for around ten minutes, Chief Deputy Dernay was unable to locate the individual. Soon after, at around 7:30 a.m., Chief Deputy Dernay was called back to the same location on another report of a suspicious person. Upon returning to the location, Chief Deputy Dernay parked his car about fifty yards away from a residence and spent approximately fifteen to twenty minutes observing an individual, later identified as Ford, on the front porch and in the front yard of the residence. During this period, Detective Stephen Priem (“Detective Priem”) arrived as backup and joined Chief Deputy Dernay in observing Ford.

¹ Ind. Code § 7.1-5-1-3(a)(1).

[4] Ford entered the residence and shortly thereafter walked out with a backpack and a suitcase. Walking away from the residence, Ford passed Chief Deputy Dernay and Detective Priem's patrol vehicles and continued toward an entrance to the neighborhood. Ford turned westbound onto County Road 8 heading away from the entrance. County Road 8 is a two-lane road with one lane going in each direction. This road has no sidewalks, and the speed limit becomes forty-five miles per hour beyond the neighborhood entrance. While walking on County Road 8, Ford was not in the center of the lane, but he also was not "close to the side of the road or off the side of the road," and Detective Priem considered Ford to be in an unsafe portion of the roadway. (Tr. Vol. 3 at 16). While Ford was walking in County Road 8, there was moderate traffic, and several vehicles had to leave their normal lane of travel to avoid hitting Ford. Chief Deputy Dernay observed Ford walking unsteadily, leaning from left to right. Concerned for Ford's safety, Chief Deputy Dernay and Detective Priem waited for Ford to reach a safer portion of the roadway then stopped Ford to conduct a "welfare check."

[5] During the "welfare check," Ford had slurred speech, a strong odor of alcohol coming from his breath, and glassy and bloodshot eyes. At times, Ford acted belligerently and uncooperatively. Chief Deputy Dernay and Detective Priem concluded that Ford was exhibiting signs of intoxication or other impairment and decided to take Ford to the hospital to obtain "medical clearance."

[6] While being transported to the hospital by Detective Priem, Ford was loudly cursing. At one point during the drive, Detective Priem believed that Ford spat

on him, although he was not entirely sure. Additionally, Detective Priem saw Ford slide down in the seat and kick him in his right side, which caused a violent jerk of Detective Priem's uniform camera. Blood tests at the hospital revealed that Ford's blood alcohol content was 322 milligrams per deciliter.

[7] On March 20, 2020, the State charged Ford with three counts: Level 6 felony Battery against a Public Safety Official;² Level 6 felony Battery by Bodily Waste;³ and Class B misdemeanor Public Intoxication. Following a jury trial, Ford was found guilty as charged of Battery against a Public Safety Official and Public Intoxication. The jury found Ford not guilty of Battery by Bodily Waste. Ford was sentenced to two years for Battery against a Public Safety Official and to 180 days for Public Intoxication.

[8] This appeal ensued.

Discussion and Decision

[9] Ford challenges the sufficiency of the evidence supporting his conviction for Class B misdemeanor Public Intoxication, focusing only on whether there is sufficient evidence that his conduct endangered his life. When reviewing the sufficiency of evidence, we consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind.

² I.C. § 35-42-2-1(c)(1) & (e)(2).

³ I.C. § 35-42-2-1(c)(2) & (e)(2).

2007). It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. *Id.* We will affirm the conviction if there is substantial evidence such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt. *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009).

[10] Indiana Code Section 7.1-5-1-3(a) provides as follows:

[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...if the person:

- (1) endangers the person's life;
- (2) endangers the life of another person;
- (3) breaches the peace or is in imminent danger of breaching the peace; or
- (4) harasses, annoys, or alarms another person.

In its charging information, the State alleged that Ford did "appear in a public place or a place of public resort in a state of intoxication caused by [Ford] using alcohol or a controlled substance," and that Ford endangered his life. (App. Vol. 2 at 27).

[11] The Indiana General Assembly chose to amend the Public Intoxication statute to add "endangerment" as an element. *Compare* I.C. § 7.1-5-1-3 (2011)

(requiring only that an individual be intoxicated in a public place or a place of public resort), *with* I.C. § 7.1-5-1-3(a)(1) (2021) (including the element of endangerment). As this Court has explained, the purpose of the amendment was to require “something more than mere intoxication...to prove a person has committed the crime of public intoxication.” *Sesay v. State*, 5 N.E.3d 478, 485 (Ind. Ct. App. 2014), *trans. denied*. Additionally, the legislature implemented this change to further the public policy of “encouraging inebriated persons to avoid creating dangerous situations by walking, catching a cab, or riding home with a designated driver rather than driving while intoxicated.” *Tin Thang v. State*, 10 N.E.3d 1256, 1259 (Ind. 2014) (emphasis removed) (quoting *Stephens v. State*, 992 N.E.2d 935, 938 (Ind. Ct. App. 2013)). As to the element of endangerment, speculation regarding things that could happen in the future is not sufficient to prove the crime of public intoxication. *Sesay*, 5 N.E.3d at 485. Rather, there must be actual endangerment. *See id.* at 485-86. Furthermore, the conduct of the intoxicated person must cause the endangerment, not the conduct of another person. *Id.* at 485 n.8.

[12] Applying the amended statute, this Court has reversed several convictions involving speculative endangerment rather than actual endangerment: where a person was staggering on a sidewalk adjacent to a city street, *Pulido v. State*, 132 N.E.3d 475, 476 (Ind. Ct. App. 2019); where a person was standing approximately three to five feet away from the roadway, *Sesay*, 5 N.E.3d at 479; and where a person was stumbling and tripping over his feet prior to reaching the road, *Davis v. State*, 13 N.E.3d 500, 502 (Ind. Ct. App. 2014). On the other

hand, this Court has affirmed convictions where a person was walking along the fog line in the road and a vehicle had to swerve to avoid hitting the person, *Estes v. State*, 166 N.E.3d 950, 951 (Ind. Ct. App. 2021); and where among other things a person was unable to stand on his own in a public street and was unaware of his surroundings, *Labarr v. State*, 36 N.E.3d 501, 503 (Ind. Ct. App. 2015).

[13] In this case, the evidence most favorable to the judgment indicates that Ford endangered his life while walking between the center and the edge of the lane of travel on County Road 8. Chief Deputy Dernay testified that there was moderate traffic while Ford was walking on the road, and that several cars crossed into the other lane of traffic to avoid hitting Ford. There was no sidewalk upon which Ford could walk and he had an unsteady gait. Based upon the foregoing evidence, a reasonable fact-finder could find beyond a reasonable doubt that Ford endangered his life when he walked on County Road 8. Therefore, we conclude that there was sufficient evidence to support Ford's conviction.

[14] Affirmed.

Crone, J., and Pyle, J., concur.