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IN THE COURT OF APPEALS OF INDIANA

Kyle Jordan Estes,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 29, 2021

Court of Appeals Case No. 20A-CR-1921

Appeal from the Hendricks Circuit Court

The Honorable Daniel F. Zielinski, Judge

Trial Court Cause No. 32C01-2002-CM-149

Altice, Judge.

Case Summary

[1] Kyle Jordan Estes appeals his conviction for public intoxication, a class B misdemeanor, challenging the sufficiency of the evidence. Estes claims that his

conviction must be set aside because the State failed to prove that "he was a past or present danger to himself" as required under Ind. Code § 7.1-5-1-3(a)(1). *Appellant's Brief* at 4.

[2] We affirm.

Facts and Procedural History

[3] On February 7, 2020, at approximately 2:00 a.m., Hendricks County Sheriff's Department Deputy Cody Rusher was on routine patrol. While driving on Raceway Road, he observed a vehicle in the distance swerve across the center line. As Deputy Rusher approached that area, he saw an individual—subsequently identified as Estes—walking "along the fog line" in the road. *Transcript* at 14. Deputy Rusher also had to swerve to avoid hitting Estes.

[4] Deputy Rusher performed a U-turn and as he re-approached the vicinity, he saw Estes "in the middle of the road . . . on the double yellow line." *Id.* Estes then fell to his hands and knees. Although Estes was able to stand up again, he "immediately" fell to his knees and put his hands behind his back when Deputy Rusher stopped his police vehicle and began walking toward Estes. *Id.* at 15.

[5] When Deputy Rusher confronted Estes, he observed that Estes smelled of alcohol, had bloodshot eyes, "looked very disorderly," and was "sweating profusely." *Id.* at 15. Another officer arrived and assisted Deputy Rusher escort Estes to the front of the police vehicle. Estes staggered and fell again and

was arrested for public intoxication. Intake officers at the jail found a bottle of liquor in Estes's pocket.

[6] Estes was charged with public intoxication and following a bench trial on September 21, 2020, Estes was found guilty as charged. He now appeals.

Discussion and Decision

[7] When addressing sufficiency of the evidence claims, our standard of review is well settled: we do not reweigh the evidence or judge the credibility of the witnesses. *McCallister, v. State,* 91 N.E.3d 554, 558 (Ind. 2018). Rather, we consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom. *Purvis v. State*, 87 N.E.3d 1119, 1124 (Ind. Ct. App. 2017). We will affirm a defendant's conviction if there is substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Bailey v. State,* 907 N.E.2d 1003, 1005 (Ind. 2009).

[8] The State charged Estes with violating I.C. § 7.1-5-1-3(a)(1), which provides in relevant part that "it 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 . . . if the person: (1) endangers the person's life. . . ." The word "endanger" is not defined by the public intoxication statute. Generally, words not defined by statute are given their plain, ordinary, and usual meaning. *Weideman v. State,* 890 N.E.2d 28, 32 (Ind.

Ct. App. 2008). The dictionary definition of "endanger" is "to bring into danger or peril" or "to create a dangerous situation." *http://www.merriam-webster.com/dictionary/endanger.* The State is not required to prove that "actual harm or injury occur[red]" to satisfy the element of endangerment. *Hinton v. State,* 52 N.E.3d 1, 4 (Ind. Ct. App. 2016).

[9] Estes directs us to *Davis v. State*, 13 N.E.3d 500 (Ind. Ct. App. 2014) and *Pulido v. State*, 132 N.E.3d 475 (Ind. Ct. App. 2019) in support of his claim that the State failed to establish that he was a danger to himself in these circumstances. *Davis* and *Pulido* involved intoxicated defendants who were either walking on a sidewalk or standing in a yard. In reversing the defendant's public intoxication conviction in *Davis*, this court commented that

> the common thread in [public intoxication] cases is past or present conduct by the defendant did or did not place life in danger. While the statute does not require that actual harm or injury occur, some action by the defendant constituting endangerment of the life of the defendant . . . must be shown.

Davis, 13 N.E.3d at 503.

[10] The evidence in *Davis* showed that the defendant "made it no farther than the grassy common area of [an] apartment complex. There was no evidence that Davis went anywhere near the busy, dangerous roads outside the apartment complex." *Id.* at 504. This court determined that the State's argument that the defendant was in danger "of being struck by a car *if* he left the apartment complex . . . is merely speculative, not proof beyond a reasonable doubt." *Id.* at

504 (emphasis added). In other words, the State could "not convict Davis for what would or could have happened." *Id.*

[11] In *Pulido,* the arresting police officer testified that the defendant "was staggering on the sidewalk next to a city street when she encountered him." *Pulido,* 132 N.E.3d at 480. There was no evidence regarding the presence of traffic along that street at the time of the encounter. This court rejected the State's argument that Pulido's act of being intoxicated while on the sidewalk "created a dangerous situation." *Id.* We concluded that the officer's testimony that she was attempting to protect Pulido from any future, potential harm of walking in the street and getting struck by a car was "merely speculative [and] not proof beyond a reasonable doubt" that Pulido was a danger to himself. *Id.*

[12] Unlike the circumstances in *Davis* and *Pulido,* the evidence here demonstrated that when Estes was intoxicated and walking on a public road at 2:00 a.m., Deputy Rusher and the driver of another vehicle had to swerve to avoid striking Estes. Deputy Rusher subsequently observed Estes standing on the center line and falling in the middle of the road. Estes again fell to his knees when Deputy Rusher pulled over and stopped his police vehicle. Moments later, Deputy Rusher and another officer had to escort Estes from the road to prevent Estes from falling.

[13] In sum, the evidence demonstrated that Estes manifested an actual danger to himself within the meaning of I.C. § 7.1-5-1-3(a)(1). *See Williams v. State,* 989 N.E.2d 366, 370-71 (Ind. Ct. App. 2013) (holding that the intoxicated

defendant created a danger that he would be hit by a moving vehicle when he refused to remove himself from a busy street). In other words, Estes's conduct was not the sort of mere "speculative danger" contemplated in *Davis* and *Pulido.* Thus, Estes's claim that the evidence was insufficient to support his conviction fails.

[14] Judgment affirmed.

Kirsch, J. and Weissmann, J., concur.