MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Brandon E. Murphy
Cannon Bruns & Murphy
Muncie, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Steven J. Hosler
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Shane K. Garrett,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 15, 2022

Court of Appeals Case No. 22A-CR-1263

Appeal from the Jay Superior Court

The Honorable Gail M. Dues, Judge

Trial Court Cause Nos. 38D01-2107-F6-135
38D01-2204-CM-51

Tavitas, Judge.

Case Summary

[1] In this consolidated appeal, Shane K. Garrett appeals his conviction for public intoxication, a Class B misdemeanor, and the trial court's revocation of his probation in a separate case. Garrett argues that the State presented insufficient evidence to support his conviction and that the trial court abused its discretion by finding that he violated the terms of his probation. We find that the State presented sufficient evidence to support Garrett's conviction and that the trial court did not abuse its discretion by finding that Garrett violated the terms of his probation. Accordingly, we affirm.

Issues

[2] Garrett raises two issues on appeal, which we restate as:

I. Whether the State presented sufficient evidence to support Garrett's conviction for public intoxication.

II. Whether the trial court abused its discretion by finding that Garrett violated the terms of his probation.

Facts

[3] On July 15, 2021, the State charged Garrett with Count I, operating a vehicle while intoxicated, a Level 6 felony, in Cause No. 38D01-2107-F6-135 ("Cause No. F6-135"). On December 8, 2021, the State amended its information and added Count II, operating a vehicle with a schedule I or II controlled substance or its metabolite in the blood, a Level 6 felony. On January 4, 2022, Garrett

and the State executed a plea agreement wherein Garrett agreed to plead guilty to Count II. The trial court held a sentencing hearing on February 22, 2022, where it entered a judgment of conviction on Count II and sentenced Garrett to 360 days in the Jay County Security Center with 270 days suspended to probation. [1]

[4] On April 9, 2022, at approximately 12:24 a.m., Portland Police Department Officer Donnie Miller and his partner were patrolling the area of Water Street and Wayne Street in Jay County when they discovered Garrett "standing in the middle of the road with his legs spread and his hands on his head." Tr. Vol. II p. 9. Garrett was wearing "blue jeans and a dark colored hoodie." *Id.*

[5] The officers approached Garrett, who "said that we'd [the officers] won . . . because we'd been chasing him for the last two hours, and he was tired of running." *Id.* at 7. The officers, in fact, had just discovered Garrett and had not been chasing him. Officer Miller observed that Garrett's "pupils were pinpoint, and he was breathing heavy" and determined that Garrett was intoxicated. *Id.* at 8. Officer Miller escorted Garrett to the hospital and then to jail.

[6] On April 12, 2022, the State charged Garrett with one count of public intoxication, a Class B misdemeanor, in Cause No. 38D01-2204-CM-51

[1] The trial court subsequently dismissed Count I.

("Cause No. CM-51"). On April 13, 2022, the State filed a petition to revoke probation and alleged that Garrett violated the terms of his probation in Cause No. F6-135 by committing this new offense.

[7] On May 25, 2022, the trial court held a bench trial on the public intoxication charge in Cause No. CM-51 and a fact finding hearing on the State's petition to revoke probation in Cause No. F6-135. The trial court found Garrett guilty of public intoxication, a Class B misdemeanor, in Cause No. CM-51 and entered a judgment of conviction accordingly. The trial court sentenced Garrett to ninety-four days in the Jay County Security Center.

[8] In addition, the trial court found that Garrett violated the terms of his probation in Cause No. F6-135. As a sanction for his probation violation, the trial court imposed 136 days of Garrett's previously suspended sentence in Cause No. CM-51 and terminated his probation. Garrett now appeals.

Discussion and Decision

[9] Garrett argues that the State presented insufficient evidence to support his conviction for public intoxication and that the trial court abused its discretion by finding that he violated the terms of his probation. We disagree.

I. Sufficiency of the Evidence—Public Intoxication

[10] Sufficiency of evidence claims "warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility." *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020) (citing *Perry v. State*, 638 N.E.2d 1236, 1242 (Ind.

1994)). We consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Id.* (citing *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018), *cert. denied*). "We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt." *Id.* at 263. We affirm the conviction "unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict." *Sutton v. State*, 167 N.E.3d 800, 801 (Ind. Ct. App. 2021) (quoting *Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007)).

[11] The trial court convicted Garrett of public intoxication, a Class B misdemeanor. Indiana Code Section 7.1-5-1-3(a) provides, in relevant part, "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* . . . *endangers the person's life*." (Emphasis added). We have observed the following regarding the endangerment prong of the public intoxication statute:

> The common thread . . . is past or present conduct by the defendant [that] 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. This is true even where an officer testifies that the defendant was a danger to himself or others . . . Were it otherwise, citizens could be convicted for

> possible, future conduct. The policy behind the current public intoxication statute is to encourage intoxicated persons to avoid danger by walking or catching a ride rather than driving . . . Although we acknowledge that intoxicated persons may also create danger by walking in public places, that danger must have manifested itself in order for the State to obtain a conviction.

Pulido v. State, 132 N.E.3d 475, 479-80 (Ind. Ct. App. 2019) (quoting *Davis v. State*, 13 N.E.3d 500, 503 (Ind. Ct. App. 2014) (internal citations omitted)).

[12] Garrett does not challenge the trial court's finding that he was intoxicated in a public place; rather he only challenges the sufficiency of the evidence to prove that he was endangered. He relies on *Davis*, 13 N.E.3d 500; *Sesay v. State*, 5 N.E.3d 478 (Ind. Ct. App. 2014), *trans. denied*; and *Pulido*, 132 N.E.3d 475.

[13] In *Davis*, we reversed a conviction for public intoxication when the intoxicated defendant "made it no farther than the grassy common area of the apartment complex" and "[t]here was no evidence that [he] went anywhere near the busy, dangerous roads outside the apartment complex." 13 N.E.3d at 504. In *Sesay*, we reversed a conviction for public intoxication when the intoxicated defendant "was standing peaceably several feet off the road beside a car that had been driven into a ditch." 5 N.E.3d at 486. Finally, in *Pulido*, we reversed a conviction for public intoxication when the intoxicated defendant was "staggering . . . on [ ] the sidewalk . . . adjacent to the city street," but the State presented no evidence that the defendant "had walked into the street or . . . had fallen or hurt himself." 132 N.E.3d at 478-479 (brackets in original).

[14] We find *Davis*, *Sesay*, and *Pulido* distinguishable. In each of those cases, the defendant was discovered adjacent to, but not on, the public road. In contrast, here, the police discovered Garrett standing in the middle of the road, late at night, and wearing dark clothing. Garrett was at risk of being hit by a driver driving on the road that night. Accordingly, we conclude that the State presented sufficient evidence to support Garrett's conviction.

II. Probation Revocation

[15] Garrett next argues that the trial court abused its discretion by finding that he violated the terms of his probation. We disagree.

[16] "'A probation hearing is civil in nature, and the State must prove an alleged probation violation by a preponderance of the evidence.'" *Brown v. State*, 162 N.E.3d 1179, 1182 (Ind. Ct. App. 2021) (quoting *Murdock v. State*, 10 N.E.3d 1265, 1267 (Ind. 2014)); *see also* Ind. Code § 35-38-2-3(f). "The requirement that a probationer obey federal, state, and local laws is automatically a condition of probation by operation of law." *Luke v. State*, 51 N.E.3d 401, 421 (Ind. Ct. App. 2016) (citing *Williams v. State,* 695 N.E.2d 1017, 1019 (Ind. Ct. App. 1998); Ind. Code § 35-38-2-1(b)), *trans. denied*. "'[W]hen the State alleges that the defendant violated probation by committing a new criminal offense, the State is required to prove—by a preponderance of the evidence—that the defendant committed the offense.'" *Brown*, 162 N.E.3d at 1183 (quoting *Martin v. State*, 813 N.E.2d 388, 391 (Ind. Ct. App. 2004)).

[17] "'When the sufficiency of evidence is at issue, we consider only the evidence most favorable to the judgment—without regard to weight or credibility—and will affirm if 'there is substantial evidence of probative value to support the trial court's conclusion that a probationer has violated any condition of probation.'" *Brown*, 162 N.E.3d at 1182 (quoting *Murdock*, 10 N.E.3d at 1267). "In appeals from trial court probation violation determinations and sanctions, we review for abuse of discretion." *Heaton v. State*, 984 N.E.3d 614, 616 (Ind. 2013) (citing *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007)). "An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances," *id*. (citing *Prewitt*, 878 N.E.2d at 188), "or when the trial court misinterprets the law," *id*. (citing *State v. Cozart*, 897 N.E.2d 478, 483 (Ind. 2008)).

[18] Garrett's sole argument is that the State presented insufficient evidence for the trial court to find that he violated the terms of his probation in Cause No. F6-135 by committing the offense of public intoxication. Because we have found that the State presented sufficient evidence for the trial court to find Garrett guilty of public intoxication beyond a reasonable doubt, we find that the State presented sufficient evidence for the trial court to find the same by a preponderance of the evidence. Accordingly, the trial court did not abuse its discretion by finding that Garrett violated the terms of his probation.

Conclusion

[19] The State presented sufficient evidence to support Garrett's conviction for public intoxication, and the trial court did not abuse its discretion by finding that Garrett violated the terms of his probation. Accordingly, we affirm.

[20] Affirmed.

Brown, J., and Altice, J., concur.