

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Rachel Strothman,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 21, 2023

Court of Appeals Case No.
22A-CR-2131

Appeal from the
Hendricks Superior Court

The Honorable
Stephenie D. LeMay-Lukin, Judge

Trial Court Cause No.
32D05-2204-CM-423

Memorandum Decision by Judge Foley
Judges Vaidik and Tavitas concur.

Foley, Judge.

- [1] Rachel Strothman (“Strothman”) appeals her conviction for Class B misdemeanor public intoxication.¹ Strothman argues that the State presented insufficient evidence to support her conviction. We affirm.

Facts and Procedural History

- [2] On April 23, 2022, at approximately 11:46 p.m., Corporal Christopher Johnson (“Corporal Johnson”) was dispatched to a public roadway in a residential area because of “trouble with a person.” Tr. Vol. 2 p. 18. When he arrived at the scene, he observed Strothman stumbling next to a parked vehicle. When Strothman attempted to re-enter the vehicle, Corporal Johnson instructed her not to do so, but she did not listen. Instead, Strothman reached into the front passenger compartment of the vehicle and handed Corporal Johnson “a partially consumed bottle of alcohol.” *Id.* When Corporal Johnson spoke to Strothman, he could smell the odor of alcohol emanating from her. Additionally, he noticed Strothman’s bloodshot eyes, disheveled clothing, and the fact that she was missing a shoe. When Corporal Johnson was about to handcuff her, Strothman aggressively screamed and yelled at a bystander, stating that “it was their fault and [she was] getting arrested because of them.” *Id.* at 19.
- [3] Additional officers arrived at the scene, and Strothman became more aggressive. When Corporal Johnson attempted to escort Strothman to

¹ Ind. Code § 7.1-5-1-3(a)(3).

Hendricks Regional Health, Strothman threatened to urinate in his vehicle. Because of Strothman's threat, Corporal Johnson requested a transport van. While in the back of the transport van, Strothman removed her cuffs and the bottom half of her clothing and proceeded to urinate as well as take blood from her body and smear it all over the back of the van, on her face, and onto the camera in the van. Strothman's blood alcohol content was later determined to be 0.054. State's Ex. Vol. 3 p. 3.

- [4] On April 25, 2022, Strothman was charged with public intoxication as a Class B misdemeanor. On May 24, 2022, a bench trial was held, and Strothman was found guilty. Strothman was sentenced to four days in the Hendricks County Jail, with credit for time served (two days served plus two days credit). Strothman now appeals.

Discussion and Decision

- [5] 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)).

- [6] Strothman was convicted of public intoxication. Indiana Code Section 7.1-5-1-3(a)(3) provides 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 . . . breaches the peace or is in imminent danger of breaching the peace.

- [7] “‘Intoxicated’ means under the influence of [] alcohol . . . so that there is an impaired condition of thought and action and the loss of normal control of a person’s faculties.” Ind. Code § 9-13-2-86. “Impairment can be established by evidence of: (1) the consumption of a significant amount of alcohol; (2) impaired attention and reflexes; (3) watery or bloodshot eyes; (4) the odor of alcohol on the breath; (5) unsteady balance; (6) failure of field sobriety tests; and (7) slurred speech.” *Williams v. State*, 989 N.E.2d 366, 369 (Ind. 2013) (quoting *Vanderlinden v. State*, 918 N.E.2d 642, 644 (Ind. Ct. App. 2009), *trans. denied*). “Because ‘there is no statutory requirement of proof of a particular blood-alcohol content above which a person is intoxicated’ under Indiana Code

§ 9-30-5-2^[2], the State may prove intoxication ‘by a showing of impairment.’” *Combs v. State*, 895 N.E.2d 1252, 1259 (Ind. Ct. App. 2008) (quoting *Monjar v. State*, 876 N.E.2d 792, 798 (Ind. Ct. App. 2007)). *See Williams*, 989 N.E.2d at 369 (noting that bloodshot eyes, the odor of alcohol on the breath, and unsteady balance can establish impairment). *See also Fought v. State*, 898 N.E.2d 447, 451 (Ind. Ct. App. 2008) (the strong odor of alcohol from defendant’s car and breath, the defendant’s disheveled clothing, slurred speech, unsteadiness, and uncooperative manner were sufficient to establish that defendant was intoxicated).

[8] Strothman argues that she was not intoxicated because “the blood draw showed that [she] had a blood alcohol content of .05 which is less than what is required to drive[.]” Appellant’s Br. p. 7. The State presented sufficient evidence to demonstrate that Strothman had consumed alcohol and was impaired, thus intoxicated.³ Corporal Johnson testified that he observed Strothman “stumbling around, under [sic] intoxicated state.” Tr. Vol. 2 p. 18. When he spoke with Strothman, “[he] could smell the odor commonly associated with alcohol” and see Strothman’s “bloodshot eyes.” *Id.* at 18–19. Additionally, he

² Although this quote references the operating while intoxicated (“OWI”) statute, the definition of intoxication is identical under both statutes.

³ Strothman also asserts that “the court failed to consider that [her concerning behaviors] could have been indicative of her mental health or something else and not necessarily due to the consumption of alcohol or controlled substances.” Appellant’s Br. p. 7. However, Strothman did not make this assertion at trial, thus waiving her issue on appeal. *See Wilson v. State*, 931 N.E.2d 914, 919 (Ind. Ct. App. 2010) (failure to raise issue at trial court waives the issue for appellate review), *trans. denied*.

noticed that Strothman’s “clothing was messed up” and that “she was missing a shoe.” *Id.* at 19. Moreover, Strothman handed Corporal Johnson “a partially consumed bottle of alcohol” that she pulled out of the front passenger compartment of the vehicle after Corporal Johnson told her not to re-enter the vehicle. *Id.* at 18. Finally, the blood draw revealed that Strothman’s blood alcohol content was 0.054.

[9] Our analysis does not end here. Strothman further claims that the State’s evidence was insufficient to show “that she breached the peace or was in imminent danger of breaching the peace.” Appellant’s Br. p. 9. Strothman specifically argues that although her “behaviors were concerning, they were not intrusive” nor “was there any riotous, forceful, or unlawful proceedings.” Appellant’s Br. p. 9.

[10] The public intoxication statute does not define breach of peace or imminent danger “nor has our Indiana Supreme Court defined these terms in conjunction with the amended public intoxication statute.” *Ruiz v. State*, 88 N.E.3d 219, 224 (Ind. Ct. App. 2017).

[This] court has more frequently relied upon prior caselaw dealing with citizens’ arrests to define breach of peace. Specifically, we have explained that a “breach of the peace includes all violations of public peace, order or decorum.” *Lemon [v. State]*, 868 N.E.2d [1190,] 1194 [(Ind. Ct. App. 2007)] (quoting *State v. Hart*, 669 N.E.2d 762, 764 (Ind. Ct. App. 1996) (citing *Census Fed. Credit Union v. Wann*, 403 N.E.2d 348, 350 (Ind. Ct. App. 1980))). A breach of peace is a violation or disturbance of the public tranquility or order and includes breaking or disturbing the public peace by any riotous, forceful,

or unlawful proceedings.” *Lemon*, 868 N.E.2d at 1194. Thus, a breach of the peace may involve other offenses.” *Id.*; *see, e.g., Hart*, 669 N.E.2d at 764 (holding that a person who operates a motor vehicle while intoxicated commits a breach of the peace).

Ruiz, 88 N.E.3d at 225. “[T]he spirit of the public intoxication statute is to prevent people from becoming inebriated and then bothering and/or threatening the safety of other people in public places.” *Ruiz*, 88 N.E.3d at 224.

[11] Corporal Johnson was dispatched to “the area of Keller and Walton Drive^[4]” at “about 11:45 in the evening” because of “trouble with a person.” Tr. Vol. 2 p. 18. When Corporal Johnson arrived at the scene, he observed Strothman “stumbling around, under [sic] intoxicated state.” *Id.* Strothman then attempted to enter the parked vehicle next to her, and he “tried giving verbal commands not to re-enter the vehicle[,]” but she did not listen. *Id.* As Corporal Johnson walked Strothman back to his vehicle in order to “place her into handcuffs,” she began aggressively “screaming and yelling at [the bystander]” stating that “it was their fault and she’s getting arrested because of them.” *Id.* at 19. When other officers arrived on the scene to try to figure “out what was going on[, Strothman] became more and more aggressive towards the officers

⁴ “Q: Tell me about Walton Drive. What kind of road is that?

A: It’s a residential road that could be considered like a neighborhood road but it’s a public roadway in the Town of Plainfield.

Q: It’s not a gated community or anything like that?

A: No, Sir.”

Tr. Vol. 2 p. 20.

on scene.” *Id.* When Corporal Johnson tried to “transport her to Hendricks Regional Health,” Strothman threatened to urinate in his vehicle. *Id.* After being placed in the back of the transport van, Strothman

“was able to get her cuffs off, . . . remove[the] bottom half of her clothing[,] . . . urinate as well as t[ake] blood from her body and smear[] it all over the back of the van on her face and onto the camera that was located in the transport van.”

[12] *Id.* Strothman’s behavior was sufficient to demonstrate that she had breached the peace or was in imminent danger of breaching the peace.

[13] Based on the foregoing, we conclude that Strothman’s conviction for public intoxication was supported by sufficient evidence.

[14] Affirmed.

Vaidik, J., and Tavitas, J., concur.