

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

STATE OF OHIO,	:	OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2009-L-088
ALEXANDER L. STEFL,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Mentor Municipal Court, Case No. 09 CRB 554.

Judgment: Reversed.

Joseph M. Gurley, Mentor-on-the-Lake Prosecutor, 240 East Main Street, Painesville, OH 44077 (For Plaintiff-Appellee).

Scott R. Stefl, Harbor House Professional Building, 7844 Lakeshore Boulevard, Mentor, OH 44060 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Alexander L. Stefl, appeals his conviction for Disorderly Conduct While Intoxicated, pursuant to Section 648.04(b)(1) of the Codified Ordinances of the City of Mentor-on-the-Lake, following a bench trial. Stefl was sentenced to serve sixteen hours of community service, stayed pending appeal. For the following reasons, we reverse the decision of the court below.

{¶2} On April 27, 2009, Stefl was issued a citation by Officer Scott R. Daubenmire of the Mentor-on-the-Lake Police Department for Disorderly Conduct While Intoxicated, a minor misdemeanor in violation of Section 648.04(b)(1) of the Codified Ordinances of the City of Mentor-on-the-Lake.

{¶3} On June 17, 2009, trial was held in Mentor Municipal Court.

{¶4} Officer Daubenmire testified that, at approximately 5:27 a.m., on April 27, 2009, he was making a routine business check at the Mentor Harbor Yachting Club when he “observed what I believe at that time were two males that were standing against the stern of one of the boats.” Officer Daubenmire backed his police cruiser up to approach them. The two males dispersed, one toward the beach and the other into the parking lot. Officer Daubenmire parked his vehicle and located Stefl “kneeling behind one of the jet skis.”

{¶5} Officer Daubenmire testified to the encounter as follows: “I asked what he was doing at that time. He just said he was sitting there. I asked him why he ran. He said he didn’t run. I asked him why he was hiding. He said he wasn’t hiding. I asked him if he was a member of the Yacht Club. And he said he was not; he was a member of the Beach Club, which is located just west of the Yacht Club property. I asked him what he was doing there. He stated that he was using the Yacht Club property to exit the beach. There’s a gate in the rear of the Yacht Club property.”

{¶6} Officer Daubenmire testified that he smelled alcohol on Stefl’s breath and Stefl admitted that he had been drinking that morning.

{¶7} Officer Daubenmire then cited Stefl for Disorderly Conduct While Intoxicated, based upon the following: “The fact that he was on the Yacht Club property

at the time. The fact that he took off running once he saw the presence of the cruiser. Hiding from me. Then lying to me, denying there was another person there at the time.”

{¶8} On cross-examination, Officer Daubenmire was asked, “what annoyance, inconvenience, alarm or offensive manner did [Stefl] exhibit?” Officer Daubenmire responded: “The fact that he ran and hid, was hiding behind jet skis at the time when I found him. He was eluding me. *** That would be -- well, not an inconvenience, because that’s my job. But it is alarming when I see somebody not -- where they are not supposed to be, and then [they] take off running from me and hiding, yes.”

{¶9} Officer Daubenmire testified that the Mentor Harbor Yachting Club is a private facility and that the parking lot in which Stefl was found is locked and gated. He further testified that he considered the parking lot a public place because it is possible to access the parking lot from the beach. Officer Daubenmire testified that the beach to the west of the Yachting Club is private property owned by the Beach Club.¹

{¶10} The State rested its case following Officer Daubenmire’s testimony and Stefl moved for a directed verdict, which the municipal court denied.

{¶11} Stefl testified on his own behalf that he was entitled to be on the Beach Club’s property as the guest of his parents, who are members. Stefl testified that it was his understanding that Beach Club members were allowed to access and exit the beach through Yachting Club property. Stefl testified that he hid from Officer Daubenmire because he “just didn’t feel like getting hassled by the cops for doing nothing wrong.”

1. Defense counsel asked Officer Daubenmire: “So if I understand your testimony correctly, you are saying because some people go illegally, if you will, improperly across a private Beach Club into the private Yacht Club, that makes it public.” Officer Daubenmire responded: “That is what I was basing my arrest on, yes.”

{¶12} Following this testimony, the municipal court found Stefl guilty of Disorderly Conduct While Intoxicated and sentenced him to sixteen hours of community service, stayed pending appeal.

{¶13} On July 8, 2009, Stefl filed his Notice of Appeal. On appeal, he raises the following assignments of error:

{¶14} “[1.] The Trial Court erred in denying the Defendant’s Rule 29 Motion as the State’s evidence did not prove that the alleged disorderly conduct occurred in a public place or in the presence of two or more persons.”

{¶15} “[2.] The Trial Court erred in denying the Defendant’s Rule 29 Motion as the State’s evidence did not prove that the alleged disorderly conduct caused inconvenience, annoyance or alarm to persons of ordinary sensibilities.”

{¶16} “[3.] The Trial Court erred in finding Defendant guilty at the conclusion of the trial.”

{¶17} The arguments raised by Stefl all concern the sufficiency of the evidence and may be considered together.

{¶18} The Ohio Rules of Criminal Procedure provide that a defendant may move the trial court for a judgment of acquittal “if the evidence is insufficient to sustain a conviction.” Crim.R. 29(A). “[S]ufficiency’ is a term of art meaning that legal standard which is applied to determine whether the case may go to the jury,” i.e. “whether the evidence is legally sufficient to support the jury verdict as a matter of law.” *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, quoting Black’s Law Dictionary (6 Ed. 1990), 1433. Essentially, “sufficiency is a test of adequacy,” that challenges

whether the state's evidence has created an issue for the jury to decide regarding each element of the offense. *Id.*

{¶19} “An appellate court’s function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant’s guilt beyond a reasonable doubt.” *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus, following *Jackson v. Virginia* (1979), 443 U.S. 307, 319. In reviewing the sufficiency of the evidence to support a criminal conviction, “[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *Jenks*, 61 Ohio St.3d 259, paragraph two of the syllabus.

{¶20} In order to convict Stefl of Disorderly Conduct While Intoxicated, the State was required to prove, beyond a reasonable doubt, that Stefl was “voluntarily intoxicated” while, “[i]n a public place or in the presence of two or more persons, engage[d] in conduct likely to be offensive or to cause inconvenience, annoyance, or alarm to persons of ordinary sensibilities, which conduct the offender, if he or she were not intoxicated, should know is likely to have such effect on others.” Section 648.04(b)(1) of the Codified Ordinances of the City of Mentor-on-the-Lake.

{¶21} Stefl’s first contention is that the State presented insufficient evidence that he was in a “public place” as required by the statute. We agree.

{¶22} With respect to whether the Yachting Club parking lot was a public place, Officer Daubenmire testified that it was private property restricted to Club members.

The municipal court deemed the parking lot a public place because it “is accessible to the public,” i.e. that one could enter the Yacht Club’s property from public property. This conception of a public place would render virtually all private property public. Rather, “in order for privately owned property to be deemed a public place, the public at large must be invited to either enter, remain on and/or cross the property.” *State v. Lawman*, 9th Dist. No. 05CA0006-M, 2005-Ohio-4545, at ¶6 (citation omitted). Although accessible from public property via the beach, there was absolutely no evidence that the Yacht Club or its gated parking lot were open for the public at large to enter, remain on, or traverse.

{¶23} The State’s failure to present sufficient evidence that Stefl was in a public place requires the reversal of his conviction. Stefl’s first and third assignments of error are with merit. We decline to address Stefl’s second assignment of error, pursuant to App.R. 12(A)(1)(c).

{¶24} For the foregoing reasons, Stefl’s conviction of Disorderly Conduct While Intoxicated is reversed. Costs to be taxed against appellee.

CYNTHIA WESTCOTT RICE, J.,

COLLEEN MARY O’TOOLE, J.,

concur.