

Tammy Davis appeals her conviction of trespass, a Class A misdemeanor.¹ She argues the evidence was insufficient because she had a good faith belief that she had a right to enter the property to recover her personal belongings. We affirm.

FACTS AND PROCEDURAL HISTORY

Davis' boyfriend, Charles Dugger, rented an apartment from Brian Taylor. Only Dugger's name was on the lease, and the lease specified it was for only one person. Davis had been arrested previously on Taylor's property, and Taylor repeatedly told Dugger he did not want Davis on his property. Nevertheless, Davis visited Dugger at least four times a week.

On March 6, 2008, police were called to the property because Dugger was making threats. Dugger was arrested, and Davis was told to leave by Taylor and the police. She initially complied, but then came back to look for a bus pass. Taylor gave her the pass, and she left. Davis came back again, and Taylor said he would call the police if she returned. Davis left, but came back again. Taylor told her he was going to call the police, and she said she already had.

Taylor apparently had begun cleaning out the apartment. There were trash bags on the porch, and Taylor testified they contained Dugger's belongings. Davis testified she thought the bags might contain some of her belongings, and she thought Taylor might be planning to throw the bags away. When the police arrived, Davis was sitting on the porch, and Taylor was in the yard.

¹ Ind. Code § 35-43-2-2(a)(1).

Davis was arrested and charged with trespass and public intoxication. The trial court found her guilty of trespass, but dismissed the public intoxication charge because the State did not present evidence that Davis was intoxicated in a public place.

DISCUSSION AND DECISION

When reviewing the sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. *Woods v. State*, 703 N.E.2d 1115, 1116 (Ind. Ct. App. 1998). “We consider only the evidence favorable to the judgment, together with the reasonable inferences to be drawn therefrom.” *Id.* We will affirm if there is substantial evidence of probative value to support the conviction. *Id.*

The State was required to prove that Davis, not having a contractual interest in the property, knowingly or intentionally entered Taylor’s real property after having been denied entry by Taylor or his agent. Ind. Code § 35-43-2-2(a)(1).

The belief that one has a right to be on the property of another will defeat the mens rea requirement of the criminal trespass statute if it has a fair and reasonable foundation. It is for the trier of fact to determine whether the defendant believed that she had a right to be on the property of another and whether that belief had a fair and reasonable foundation.

A.E.B. v. State, 756 N.E.2d 536, 541 (Ind. Ct. App. 2001).

Davis was not a tenant and had no contractual interest in the property. At the time of the trespass, Dugger had been arrested, and Taylor was the only person exercising control over the property. Davis had been told several times by Taylor, and by officers acting at his behest, not to return to the property. She could not have reasonably believed she had permission to be on the property.

Notwithstanding the lack of permission, she argues she reasonably believed she had a right to be present to protect her personal property. The only thing Davis testified to having in the apartment was jewelry, something she presumably could have taken with her on one of the numerous occasions when she was asked to leave the property. She returned to retrieve a bus pass, and Taylor cooperated with her; there was no evidence she requested the return of any other property or that Taylor refused to return anything to her. Davis testified she believed the trash bags contained her personal property, but there was no evidence that the bags contained any of her property or that Taylor exhibited any intention to discard the bags. Her behavior was described as drunken and belligerent. From these facts, the trial court could conclude either that Davis did not have a reasonable belief that she needed to protect her property or that protecting her property was not her true reason for being there. *See id.* at 541 (rejecting student's argument that she believed she had a right to be present at school until her father picked her up because her stated intent was to remain until she spoke to another student). Therefore, we conclude there was sufficient evidence to support Davis' conviction of trespass.

Affirmed.

FRIEDLANDER, J., and BRADFORD, J., concur.