



property not lawfully under his or her control. The elements of this offense are (1) being in a state of intoxication and (2) in a public place. *See Findlay v. City of Tulsa*, 1977 OK CR 113, ¶15, 561 P.2d 980. In *Findlay* we stated it is important to remember that the objective of a statute or ordinance prohibiting public intoxication is to protect the public and that it was apparent the lawmakers intended to ban all drunk or intoxicated persons from all places where the public has a right to be and where such person is apt to come in contact with or annoy the public. *Id.*

In the present case Appellant was in a large suite at a hotel in Oklahoma City he had rented when the police knocked on his door. The testimony reflects the police were responding to a noise complaint around midnight on November 18, 2006. The record shows Appellant had rented the suite to host a youth football team to watch film and eat pizza before their championship game the next day. Approximately 21 of the young kids participating in the Greater Oklahoma City Youth Football Championship had been in the suite earlier in the evening. Testimony reflects all of the kids had been picked up by their parents before 10:00 p.m. that evening and that six or seven adults remained in the suite after the kids left making banners and talking about the game plan.

Appellant testified he was not aware of any noise complaints and questioned why they were being told by the police to leave the premises. Two officers testified Appellant was belligerent and they could smell a strong odor of alcoholic beverage on Appellant's breath. When Appellant stepped across the

threshold of his suite onto the landing, he was immediately handcuffed and arrested for Public Intoxication.

Three witnesses who were in the suite that evening, plus Appellant, testified no one was drinking that evening, that Appellant was not drinking alcohol, and that Appellant was not intoxicated. The officers all testified Appellant's speech was slightly slurred, but at trial it was shown Appellant has a speech impediment. Appellant did not resist arrest, he did not stagger, he was not unsteady on his feet, he was not abusive, he was not confused and there was no visible evidence of alcohol.

The standard for this Court's review is set forth in *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202: "whether after reviewing the evidence in the light most favorable to the State, a rational trier of fact could have found the existence of the essential elements of the crime beyond a reasonable doubt". We do not find the evidence in this case supports a conviction for Public Drunkenness. The evidence does not show Appellant was drunk in a public place.

### **DECISION**

The Judgment and Sentence is **REVERSED and the matter is REMANDED with INSTRUCTIONS to DISMISS.** Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2007), the **MANDATE is ORDERED** issued upon the filing of this decision.

AN APPEAL FROM THE MUNICIPAL COURT OF OKLAHOMA CITY  
THE HONORABLE WILLIAM J. MANGER, MUNICIPAL JUDGE

**APPEARANCES AT TRIAL**

MICHAEL S. JOHNSON  
830 N.W. 10<sup>TH</sup>  
Oklahoma City, Oklahoma 73106  
COUNSEL FOR APPELLANT

MICHAEL FOUTS,  
Assistant Municipal Counselor  
700 Couch Drive  
Oklahoma City, Oklahoma 73102  
COUNSEL FOR THE CITY

**OPINION BY: LEWIS, J.**

LUMPKIN, P.J.: Concur in Results  
C. JOHNSON, V.P.J.: Concur  
CHAPEL, J.: Concur  
A. JOHNSON, J.: Concur

**APPEARANCES ON APPEAL**

MICHAEL S. JOHNSON  
830 N.W. 10<sup>th</sup>  
Oklahoma City, Oklahoma 73106  
COUNSEL FOR APPELLANT

KENNETH D. JORDAN  
Municipal Counselor  
MICHAEL FOUTS  
Assistant Municipal Counselor  
700 Couch Drive  
Oklahoma City, OK 73102  
COUNSEL FOR THE CITY