



**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**SHARPNACK, Senior Judge**

STATEMENT OF THE CASE

Defendant-Appellant Aaron D. Ellis appeals his conviction of Class A misdemeanor criminal trespass. We affirm.

ISSUE

Ellis raises one issue for our review, which we restate as: Whether the State presented sufficient evidence to support the conviction.

FACTS AND PROCEDURAL HISTORY

Dana Stout lives in a home in Aurora, Indiana, and since December of 2008, his neighbor, Ellis, has backed onto Stout's driveway to turn around his truck. At times, Ellis has left gouge marks and rubber burns on the driveway. On June 1, 2009, Stout's friend was visiting and had parked his car at the end of Stout's driveway. Ellis became upset because he could not use the driveway as a turn around. Stout's friend called the police.

Officers Michael Prudenti and Vernon McBride responded and Stout complained about Ellis's use of the driveway. Ellis indicated that backing into the Stout's driveway caused damage to his vehicle, but he didn't care because the truck was going to be repossessed and Ellis enjoyed annoying the Stouts. Both officers made it "explicitly clear" to Ellis that he was not to use Stout's driveway, and if he did, he would be arrested

and charged with criminal trespass. Michael Scott, Ellis's roommate, testified that he and Ellis heard and understood the police officers' warnings.

On three occasions between June 1 and June 16, 2009, as Ellis told Sergeant Joshua Daugherty, "he had caught himself backing up the driveway." (Tr. at 65). Ellis had other ways to turn around, but he found the use of Stout's driveway to be more convenient. Stout contacted the police on June 16, 2009, and filed a complaint against Ellis because "there had been enough new instances" of Ellis using the Stout's driveway, and Stout wanted Ellis to stop. (Tr. at 31). On June 24, 2009, the State charged Ellis with criminal trespass.

At trial, the State presented photographs taken by Stout of Ellis backing into the part of the driveway below the sidewalk that bisects the property.<sup>1</sup> Ellis admitted that on three occasions after the warning from the police, he backed his vehicle into Stout's driveway. The jury entered a guilty verdict, and Ellis now appeals.

### DISCUSSION AND DECISION

Ellis contends that the State failed to present sufficient evidence to support the conviction. Our standard of review for sufficiency claims is well settled. In reviewing sufficiency of the evidence claims, this court does not reweigh the evidence or assess the credibility of witnesses. *Davis v. State*, 791 N.E.2d 266, 269 (Ind. Ct. App. 2003), *trans. denied*. We consider only the evidence most favorable to the judgment, together with all

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<sup>1</sup> Stout testified that he had observed Ellis backing his truck to a point beyond the sidewalk. However, Stout did not specify when he made the observation.

reasonable and logical inferences drawn therefrom. *Id.* at 269-70. The conviction will be affirmed if there is substantial evidence of probative value to support the conclusion of the trier of fact. *Id.* at 270. To prove trespass, the State must show that a person (1) not having a contractual interest in the property; (2) knowingly or intentionally refused to leave the property; (3) after having been asked to leave by the property's owner or the owner's agent. Ind. Code § 35-43-2-2.

Ellis argues that “[t]he critical failure in the State’s case was its failure to prove that [Ellis] was in a place he was not legally entitled to be.” (Appellant’s Brief at 4). The crux of Ellis’s contention is that the portion of the driveway he used was actually public property because it was on the street side of the sidewalk.

A person’s belief that he has the right to be on the property of another “must have a fair and reasonable foundation” and is a question for the jury. *Myers v. State*, 130 N.E. 116, 117 (Ind. 1921). Here, an Aurora police sergeant testified that Stout, as the property owner, was responsible for the portion of the driveway that extended past the sidewalk. He testified Stout was responsible to replace that portion of the driveway should it break up. The jury reasonably concluded that the driveway on the street side of the sidewalk was Stout’s property.<sup>2</sup> Furthermore, the jury reasonably concluded that the other elements of the offense were established by the evidence.

Affirmed.

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<sup>2</sup> Ellis emphasizes that the public is permitted to walk on the sidewalk and that he should also be allowed to use the sidewalk. Setting aside the questionable idea of permitting the public to drive on sidewalks, we note that the issue before us refers to use of another’s driveway.

BAKER, C.J., and DARDEN, J., concur.