

STATEMENT OF THE CASE

Jordan Bellamy appeals his conviction for Public Intoxication, a Class B misdemeanor, following a bench trial. He presents a single issue for our review, namely, whether the State presented sufficient evidence to support his conviction.

We reverse.

FACTS AND PROCEDURAL HISTORY

On July 10, 2008, Bellamy was sitting in the driver's seat of a car parked in a gravel parking area on private property off of an alley behind Prospect Street in Indianapolis. Two officers with the Indianapolis Metropolitan Police Department, who had been conducting a traffic stop on Prospect Street, approached the car to investigate whether someone in the car had just thrown a "bouncy ball" at them. Transcript at 11. Bellamy and the other people in the car with him were uncooperative when the officers questioned them about the ball. And Bellamy repeatedly reached between his legs to the floor of the car. The officers asked Bellamy to exit the car, but he refused.

The officers forcefully removed Bellamy from the car. Bellamy demanded that the officers administer a portable breath test, which they did. That test showed that Bellamy's blood alcohol content was .05%. Bellamy smelled of alcohol and had "red and glassy" eyes. *Id.* at 14. The officers arrested him for public intoxication. Following a bench trial, the trial court entered judgment of conviction against Bellamy for public intoxication. This appeal ensued.

DISCUSSION AND DECISION

Bellamy contends that the evidence is insufficient to support his public intoxication conviction. When reviewing the claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the judgment and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

To prove public intoxication, the State was required to prove that Bellamy was in a public place or a place of public resort in a state of intoxication caused by his use of alcohol. See Ind. Code § 7.1-5-1-3. On appeal, Bellamy maintains that the evidence is insufficient to show that he was in a public place or place of public resort at the time of his alleged intoxication.¹ We must agree.

In Moore v. State, 634 N.E.2d 825, 827 (Ind. Ct. App. 1994), this court reiterated that a private residence, including the grounds surrounding it, is not a public place. And in Jones v. State, 881 N.E.2d 1095, 1098 (Ind. Ct. App. 2008), we held that the evidence was insufficient to support a public intoxication conviction where the defendant was sitting in a vehicle parked on private property.

Here, Officer Paul Ziliak testified that he found Bellamy sitting in a car parked on “a gravel strip on the alleyway behind [a] residence.” Transcript at 13. Officer Ziliak

¹ Bellamy also contends that the evidence is insufficient to show that he was intoxicated. But we need not address that issue since we hold that the evidence is insufficient to show that he was in a public place.

testified further that “[t]he back end of the car was in the alleyway.” Id. Officer Ziliak stated that the car was in “a public place.” Id.

But on cross-examination, Officer Ziliak clarified that “[t]he back end [of the car] was close to the alley. I don’t know, you could probably get a car past it.” Id. at 18.

And this colloquy occurred:

Q: It was parked mainly on like the grass next to the alley?

A: It was parked on some gravel.

Q: Okay. So, most of the car was parked outside of the alleyway. Just the end . . .

A: It was parked on the gravel. I can’t tell you exactly where the end of the alleyway is.

Id.

Sheena Chatman, a witness for the defense, testified as follows:

Q: Where was Mr. Bellamy parked at the time that the police encountered him?

A: In the back of my mother’s house.

Q: Okay. And can you be more specific? Is it parked . . . it’s parked close to an alley?

A: In the parking space that was made for people to park for her house, that lives in her house [sic]. It was not an alley.

Q: Okay. It was adjacent to an alley?

A: It was. . . the alley went this way, but then there’s a parking spot right here in the back of her house. But the alley was there.

Q: Okay. So, the back of the car might have been sticking out or close to the alley?

A: Yeah.

Q: The back of the car would have been close to the alley?

A: Yeah.

Q: Okay. But the rest of the car was in a parking space on her property?

A: Yes.

Id. at 23.

In sum, the undisputed evidence shows that the car was parked in a parking space on private property, with only the back end of the car sticking out into or near the alley. In Jones, where the defendant was likewise sitting in a vehicle parked on private property, we determined that reversing the defendant's conviction was "consistent with the purpose and spirit of the public intoxication statute" which is "to prevent people from becoming inebriated and then bothering and/or threatening the safety of other people in public places." 881 N.E.2d at 1098 (quoting Wright v. State, 772 N.E.2d 449, 456 (Ind. Ct. App. 2002)). And we concluded that "[p]rosecuting and convicting Jones for being intoxicated in a vehicle parked in a private driveway, not disturbing or offending anyone, does nothing to serve this purpose." Id. Here, we follow Jones and hold that the evidence is insufficient to show that Bellamy was in a public place. We reverse his conviction for public intoxication.

Reversed.

FRIEDLANDER, J., and VAIDIK, J., concur.