

FILED
MAY 15, 2015
Court of Appeals
Division III
State of Washington

NO. 32634-9-III

**COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III**

STATE OF WASHINGTON,

Respondent,

v.

DANIEL BRYON KINGMA,

Appellant.

BRIEF OF RESPONDENT

**GARTH DANO
PROSECUTING ATTORNEY**

**By: Kevin J. McCrae – WSBA #43087
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I. ASSIGNMENT OF ERROR

Did the trial court correctly rule that CPL Mansford had probable cause to arrest Daniel Kingma for criminal trespassing?

Issues pertaining to the assignment of error:

1. Did CPL Mansford have enough information to establish probable cause that Daniel Kingma trespassed on his father's property?
2. Was the officer required to credit Daniel Kingma's explanation of events that contradicted his father's version in determining probable cause, when that explanation, if believed, only established an affirmative defense?

II. STATEMENT OF THE CASE

On October 6th, 2013 Grant County Sheriff's Deputy David Delarosa was called to Dale Kingma's¹ residence regarding a motor vehicle theft. RP 24.² The issue was resolved with an agreement between Dale and Daniel Kingma that Daniel would not come back to the property. *Id.* Deputy Delarosa advised Daniel that he was trespassed, that his dad did not want him on the property and not to come back. *Id.* Daniel

¹ The defendant in this case is Daniel Kingma. His father, the complaining witness, is Dale Kingma. For clarity's sake the State will refer to the Kingmas by their first names. No disrespect is intended.

² All RP references are to the transcript prepared by Kenneth Beck on the motion hearing on 1/15/14.

Kingma told Delarosa he understood. RP 24-25, 28. Deputy Delarosa also notified dispatch of the trespass in order to place that information into the system. RP 26. Dale had agreed that Daniel could make arrangements to come back at another time to pick up property. RP 29.

On October 14th, 2013 Deputy Hudson and CPL Mansford were called back out to Dale's property for a trespassing complaint. RP 30-31. CPL Mansford was aware of several calls that had been answered at the residence by other Deputies regarding Daniel. RP 40. When CPL Mansford arrived Dale was waiting for him. RP 42. Dale explained to CPL Mansford that Daniel had been trespassed from the property, had arrived to get some golf clubs, came on the property and tried to fight his dad. *Id.* Dale took a picture of Daniel, which he showed CPL Mansford, and called dispatch. *Id.* A copy of the photograph was admitted as an exhibit in the CrR 3.6 hearing. RP 43, State Supplemental Clerk's papers (SCP). The picture shows Daniel with two raised middle fingers towards the camera. CPL Mansford obtained a written statement, signed under penalty of perjury, from Dale outlining these occurrences. RP 44, CP 29, SCP. The statement read:

Danny Kingma trespassed on 10-14-13 wanted a set of golf clubs.

Danny came onto my property yelling misc. profanity and wanted to fight. This is my son and I have a business to run and can't have him on my property.

CPL Mansford then contacted dispatch and was told that Daniel had been trespassed a week earlier by Deputy Delarosa. RP 45. Dale informed CPL Mansford that Daniel was last seen going across the street to a neighbor's house. RP 46. CPL Mansford recognized Daniel by sight. *Id.* CPL Mansford went over to the neighbor's house and saw Daniel in the driveway. RP 47. Daniel admitted that he went onto his father's property to get a set of golf clubs, but claimed that his father invited him onto the property. RP 48. Daniel did not have golf clubs with him when he was arrested. RP 37. CPL Mansford never asked Dale directly whether he had invited Daniel onto the property. *Id.* CPL Mansford then placed Daniel under arrest for criminal trespassing. RP 49. During a search incident to arrest the Deputies found methamphetamine on Daniel, leading to the charges in this case. RP 49.

III. ARGUMENT

1. Disputed findings of fact

The appellant assigns error to certain findings of fact.

On appeal, the court reviews solely whether the trial court's findings of fact are supported by substantial evidence and, if so, whether the findings support the trial court's conclusions of law. The party challenging a finding of fact

bears the burden of demonstrating the finding is not supported by substantial evidence. Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the finding.

State v. Vickers, 148 Wn.2d 91, 116, 59 P.3d 58 (2002). The State also asks that the court not review this issue, as the appellant does not state how the findings conflict with the evidence, or how the alleged errors in the findings are relevant to the issues presented, but instead invites the court and State to guess at these issues. “[T]he defendant has the burden of establishing that the constitutional mandate has been violated.” *State v. Trickel*, 16 Wn. App. 18, 26, 553 P.2d 139 (1976). “[The defendant] does not explain how this instruction had the potential effect of suggesting to the jury that his defense was not credible. Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration.” *State v. Soper*, 135 Wn. App. 89, 103, 143 P.3d 335 (2006). The appellant has failed in his burden to raise this issue and the court should reject this issue as insufficiently raised. Nevertheless the State points to the following places in the record to support the findings:

2.12 On October 6, 2013 Deputy Delarosa contacted Daniel Kingma 4156 Rd. F NE and verbally informed the defendant that he was trespassed from that property. On the same date the information of the defendant being trespassed was entered into the information system "Spillman". RP 24-26, 28.

2.13 Dale Kingma informed Corporal Mansford that Daniel Kingma was trespassing on Dale Kingma's property. That Daniel had arrived to retrieve Daniel' s golf clubs, and would not leave. When Dale asked him to leave Daniel was attempting to fight Dale. Dale took a picture with his cell phone of Daniel while Daniel was on the property and attempting to fight Dale. RP 42.

2.14 Dale showed the picture he took of Daniel when Daniel was on the property refusing to leave and attempting to fight to Corporal Mansford. RP 42.

2.15 Corporal Mansford testified he has been to that residence and property before on the same type of call. At that time Daniel Kingma was asked to leave the property and not return. RP 40.

2.16 Dispatch advised Corporal Mansford that Deputy David Delarosa had notified Dispatch that on October 6th, 2013, Daniel Kingma had been notified by Deputy Delarosa that he was trespassed from going to, or going on, the property located at 4156 Rd F NE, Moses Lake, Washington. RP 45.

2.17 Deputy David Delarosa testified that on October 6th, 2013 he had informed Daniel Kingma verbally at the scene that Daniel was trespassed from 4156 Rd F NE, Moses Lake Washington and was not to come back. Deputy Delarosa then put the information that Daniel Kingma was trespassed from 4156 Rd. F NE, Moses Lake Washington, in the Spillman system for all officers and dispatches information. RP 24-26.

2.18 Both Deput[ies] testified that Daniel Kingma informed them that he had been on the property but had been told by Dale Kingma he could go on the property to get his golf clubs. Daniel Kingma told the Deputies that he only went

on the property when he was told he could go on the property. RP 33, RP 62.

2. *There was probable cause to arrest Daniel Kingma for criminal trespass*

“Probable cause exists where the facts and circumstances within the arresting officer's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in a belief that an offense has been or is being committed.” *State v. Knighten*, 109 Wn.2d 896, 899, 748 P.2d 1118 (1988). The determination will rest on the totality of facts and circumstances within the officer's knowledge at the time of the arrest. The standard of reasonableness to be applied takes into consideration the special experience and expertise of the arresting officer.” *Id.* “Probable cause is not a technical inquiry.” *State v. Terrovona*, 105 Wn.2d 632, 643, 716 P.2d 295 (1986). “Probable cause is not proof beyond a reasonable doubt, or even proof by a preponderance of evidence.” *United States v. Jones*, 763 F.3d 777 (7th Cir 2014). There is no dispute that Daniel Kingma went onto his father's property.

CPL Mansford had plenty of information that led him to believe that Daniel had committed the crime of criminal trespass. He had information from the Law Enforcement Database (Spillman) that indicated he was previously trespassed. He had a signed statement from the

property owner, Dale Kingma, that Daniel had just trespassed and he had a picture taken during that trespass. The fact that Daniel asserted an affirmative defense to the officer is irrelevant in determining whether there was probable cause, and even if it was relevant, did not negate probable cause.

First Deputy Delarosa resolved an issue a week prior between Dale and Daniel Kingma that Daniel Kingma would leave and not come back. RP 24. Deputy Delarosa advised Daniel that he was not to come back. *Id.* Deputy Delarosa also told Daniel he needed to leave, and that he was trespassed. RP 26. He then entered this information into the Law Enforcement Database, Spillman. That information was transmitted to CPL Mansford when he went back to the Kingma residence on the 14th, just a week after the trespass notice. Officers can and often do rely on information in law enforcement databases. See, e.g., *State v. Balch*, 114 Wn. App. 55, 55 P.3d 1199 (2002).

Appellant argues that the information in Spillman was unreliable because the notice was not legally sufficient. However, telling someone they were trespassed is enough to put them on notice they are not welcome back, especially to a probable cause standard, which is not highly technical. Although there was an ability to come back and pick up property, specifically golf clubs, at a later date if arrangements were made,

RP 29, the fact that Dale Kingma stated Daniel was trespassing and the way Daniel was gesturing to his father in the picture indicated no such arrangements had been made.

Second Dale, who was a party to the earlier issue on the 6th, stated that Daniel had trespassed on the 14th and gave CPL Mansford a written statement to that effect. The term trespass in common parlance has at least close to the same meaning as it does in legal circles, that someone is not where they belong. In addition it is a reasonable inference that Deputy Delarosa asked Dale if he wanted Daniel trespassed, although the specific question was not asked. Thus there is more than enough for CPL Mansford to conclude, at least to a probable cause standard, that Dale knew what he was talking about when he said that Daniel trespassed.

Even if either of the facts of the Spillman notice or Dale's complaint of trespassing was not enough individually, the court and officer analyze probable cause using a totality of the circumstances test. Both of these facts together certainly indicate there was information to conclude that Daniel was trespassed from the property and was informed about that trespass such that a person of reasonable caution would conclude that Daniel Kingma committed the crime of criminal trespass.

3. An affirmative defense does not negate probable cause

The appellant correctly notes “It is an *affirmative defense* to criminal trespass that the actor reasonably believed that the owner of the premises, or other person empowered to license access thereto, would have licensed him or her to enter or remain.” Brief of Appellant at 12-13, citing RCW 9A.56.090(3)(emphasis added). Officers are not required to weigh affirmative defenses when determining probable cause to arrest. *McBride v. Walla Walla County*, 95 Wn. App. 33, 40, 975 P.2d 1029 (1999); cited with approval by *State v. Fry*, 168 Wn.2d 1, 228 P.3d 1 (2010). Thus Daniel Kingma claiming he believed he had permission is irrelevant to the issue of probable cause.

In addition CPL Mansford had Dale Kingma’s signed statement that Daniel had just *trespassed* on his property, as well as the picture. If Dale had invited Daniel onto his property, he would not have signed a statement saying Daniel trespassed. The Officer is not required to believe a person who was trespassed and had come onto the property showing hostility over the homeowner. In *McBride* the officer had no information contradicting the affirmative defense. However, the court held “The self-defense claim did not vitiate probable cause.” Even if the officer had a duty to weigh the affirmative defense offered by Daniel, it still would not have outweighed Dale’s statement, the picture, the lack of golf clubs and the Spillman notice. Credibility determinations are seldom crucial in

deciding whether the evidence supports probable cause. *Gerstein v. Pugh*, 420 U.S. 103, 121, 95 S. Ct. 854, 43 L. Ed. 2d 54 (1975).

4. *State v. Blair is not on point to this case*

Appellant relies heavily on *State v. Blair*, 65 Wn. App. 64, 827 P.2d 356 (1992). *Blair* is both factually and legally not on point. As an issue of fact in that case the *Blair* court noted “both Officer Williams and Bock acknowledged that if Blair were entering Roxbury Village for a legitimate purpose, i.e., to visit a resident or guest of a resident, the agreement authorizing Seattle police officers to arrest trespassers would not permit Officer Williams to arrest Blair for criminal trespass.” *Id.* at 69 n.4. In contrast the only way Daniel would be legitimately on Dale’s property was if Dale had made a special explicit arrangement for him to be there to collect his things. Given the fact that Dale stated that Daniel was trespassing, this clearly did not happen. Thus there was no legitimate purpose in this case. *Blair* also notes “Officer Williams arrested Blair as he was entering Roxbury Village. He had not seen Blair loitering on the property or exhibiting other behavior which might lead a reasonable person to believe that Blair was not on the property to visit a resident or guest on the day of the arrest.” *Id.* at 69. Here CPL Mansford had information from Dale that Daniel was misbehaving on the property.

As a legal matter the *Blair* court did not consider whether an affirmative defense negates probable cause. "In cases where a legal theory is not discussed in the opinion, that case is not controlling on a future case where the legal theory is properly raised." *Berschauer/Phillips Constr. Co. v. Seattle Sch. Dist. No. 1*, 124 Wn.2d 816, 824, 881 P.2d 986 (1994); accord *Kucera v. Dep't of Transp.*, 140 Wn.2d 200, 220, 995 P.2d 63 (2000) (quoting *In re Electric Lightwave, Inc.*, 123 Wn.2d 530, 541, 869 P.2d 1045 (1994) (if a case fails to specifically raise or decide an issue, it cannot be controlling precedent for the issue)). *Blair* predates both *McBride* and *Fry*, and it appears the issue of whether an affirmative defense negates probable cause was never raised or discussed, and thus legally is not on point to the current case.

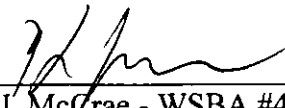
IV. CONCLUSION

CPL Mansford had probable cause to believe Daniel trespassed. He knew Daniel had been warned a week earlier. He had a statement by Dale done under penalty of perjury that Daniel had just trespassed and tried to fight his dad. He had a picture of Daniel showing Daniel in an aggressive posture. There were no golf clubs to match up with Daniel's claim. Daniel's statement that he believed he had permission did not

diminish probable cause in any way. CPL Mansford's arrest of Daniel was supported by probable cause and the lower court should be affirmed.

Dated this 14th day of May, 2015.

GARTH DANO
Prosecuting Attorney

By: 
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Deputy Prosecuting Attorney

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 32634-9-III
)	
vs.)	
)	
DANIEL BRYON KINGMA,)	DECLARATION OF SERVICE
)	
Appellant.)	
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Under penalty of perjury of the laws of the State of Washington, the undersigned declares:

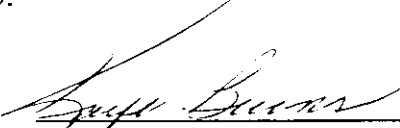
That on this day I served a copy of the Brief of Respondent in this matter by e-mail on Susan Marie Gasch, Attorney for Appellant, receipt confirmed, pursuant to the parties' agreement:

Susan Marie Gasch
gaschlaw@msn.com

That on this day I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to Appellant containing a copy of the Brief of Respondent in the above-entitled matter.

Daniel Bryon Kingma
PO Box 1754
Mosses Lake WA 98837

Dated: May 15, 2015.



Kaye Burns