

68242-3

68242-3

NO. 68242-3-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

BRYAN T.  
(D.O.B. 7/13/1994),

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

APPELLANT'S OPENING BRIEF

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COURT OF APPEALS  
STATE OF WASHINGTON  
DIVISION ONE

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A. ASSIGNMENTS OF ERROR.

1. The prosecution did not prove the essential elements of criminal trespass in the second degree.

2. The prosecution did not prove that Bryan was unlawfully at the location alleged in the charging document.

3. The prosecution did not disprove the evidence that Bryan was lawfully invited onto the property by a tenant.

4. The court did not apply the correct burden of proof to disprove that Bryan was lawfully invited onto the property by a tenant.

5. The court untenably admitted evidence that violated ER 404(b) and ER 403.

6. The court admitted evidence that violated Bryan's right to confront witnesses against him.

7. Finding of fact 1 is not supported by substantial evidence in the record because it misrepresents the substance of the trespass notice. CP 21 (attached as Appendix A).

8. Finding of fact 8 is not supported by substantial evidence because it does not accurately reflect testimony by the witness Mazick, who had no firsthand knowledge of the incident.

9. Findings of fact 11, 15, 17 are not supported by substantial evidence because they repeat the disputed assertion that Bryan was seated at a picnic table.

10. Finding of fact 16 is not supported by substantial evidence because it misrepresents witness Kerkhoff's testimony.

11. To the extent the conclusions of law are deemed to be findings of fact, Conclusion of Law 3 is not supported by substantial evidence.

**B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.**

1. A person commits criminal trespass by remaining on property of another when he knows that he is not entitled to be there. Bryan was told that he could be arrested if he "entered or remained unlawfully at 1150 Union Ave NE," yet he was charged with trespass for being at "1455 Northeast 12<sup>th</sup> Street." When the purported "no trespass" notice applies only to a specific address, did the prosecution fail to prove that an accused person knowingly trespassed when he was charged with being at a different address?

2. A "no trespass" admonishment is issued by an individual without judicial oversight and is not entitled to deference as a presumptively valid order. The prosecution offered no evidence

about why an apartment complex had advised Bryan that he could not be on their property. Did the prosecution fail to prove that Bryan was in violation of a lawfully entered “no trespass” order?

3. Even when a landlord informs a person that he is not permitted to be on the property, a tenant may give that person permission to visit the property, and the State bears the burden of disproving the validity of that invitation. Bryan testified that he was at the property at the invitation of his friend who lived there. The prosecution refused to acknowledge that it bore the burden of disproving Bryan’s invitation beyond a reasonable doubt. Did the court apply the wrong standard of proof and rely on inadmissible evidence when it found the prosecution had proved the elements of criminal trespass in the second degree?

#### C STATEMENT OF THE CASE.

On December 4, 2010, police officer Jim Gould issued a “trespass admonishment” to Bryan T., advising him that he could be arrested if he was found “entering or remaining unlawfully” at “1150 Union Ave NE.” Ex. 1 (copy attached as Appendix B). Although Gould issued this admonishment, he had not seen Bryan

do anything wrong. 1RP 39, 41.<sup>1</sup> Gould provided the notice to Bryan at the request of a property manager. 1RP 40. He did not claim to have told Bryan anything to explain this admonishment when he gave it to him. 1RP 41.

On June 10, 2011, Bryan was arrested at the Arbors at Sunset housing complex, based on the accusation that his presence at the property violated this admonishment. CP 1; RP 13, 52; Ex. 1. Arresting officer Thaddeus Kerkhoff saw Bryan sitting on a bench near a park area on the housing property's grounds. 1RP 52. The charging document alleged that Bryan unlawfully entered or remained at the "Arbors Apartments, located at 4455 Northeast 12<sup>th</sup> Street." CP 1.

Bryan testified that he was visiting his friend Roberto Liberto who lived in unit 17-2. 1RP 74-75. After he left Liberto's apartment, he walked through the play area to the place where he would exit and go to his home. 1RP 75. He took the most direct route possible. 1RP 75. As he was walking, a police officer told him to stop. 1RP 76. After he stopped, he was arrested. 1RP 53.

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<sup>1</sup> The verbatim report of proceedings consists of two volumes of transcripts, referred to herein as:

1RP January 3, 2012 (adjudication and sentencing)  
2RP February 17, 2012 (entry of written findings).

The prosecution did not offer any evidence contradicting Bryan's testimony that he had been visiting his friend based on a valid invitation. Instead, the prosecution argued that because Kerkhoff claimed Bryan was sitting on a bench, and not walking, Bryan was in violation of the "no trespass" order at the time of his arrest. 1RP 97. The court found Bryan guilty of criminal trespass in the second degree following a bench trial. 1RP 99; CP 23.

D. ARGUMENT.

**The State failed to prove Bryan violated a lawful trespass order when it did not offer any evidence of why Bryan was prohibited from being on the property and insisted that it did not bear the burden of disproving Bryan's valid invitation**

1. Criminal trespass requires the prosecution prove the trespass order was lawfully entered

The prosecution bears the burden of proving all elements of an offense beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); U.S. Const. amend. 14; Const. art. I, § 3. Challenges to the sufficiency of the evidence are reviewed taking the evidence in the light most favorable to the government. Jackson v. Virginia, 443 U.S. 307, 319, 61 L.Ed.2d 560, 99 S.Ct. 2781 (1979); State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). While reasonable

inferences from the evidence are construed in favor of the prosecution, a case may not rest on speculation or conjecture. United States v. Nevils, 598 F.3d 1158, 1167 (9th Cir. 2010) (“[E]vidence is insufficient to support a verdict where mere speculation, rather than reasonable inference, supports the government's case.”).

Bryan was charged with criminal trespass in the second degree. CP 1. This offense requires the prosecution to prove a person “knowingly enters or remains unlawfully in or upon premises of another.” RCW 9A.52.080. If the accused person presents some evidence that he was invited to be on the premises, the prosecution also bears the burden to disprove that he was invited to be there. City of Bremerton v. Widell, 146 Wn.2d 561, 570, 51 P.3d 733 (2002).

2. The prosecution was required to prove the trespass order was lawfully entered and failed to do so.

The “no trespass order” Bryan was accused of violating was not issued by a judge. Ex. 1. This order is not a judicial order and is not presumed to have been lawfully entered. State v. Green, 157 Wn.App. 833, 845, 239 P.3d 1130 (2010) **Error! Bookmark not defined.**; see Widell, 147 Wn.2d at 569 (“We see no reason to

extend” deference given to judicial orders to “exclusion orders issued by individual police officers.”). Bryan’s trespass conviction rests on the allegation he was at the Arbor Apartments in violation of a “no trespass” order issued by an individual police officer. CP 1; Ex. 1. Thus, the prosecution must prove that the order excluding him from the property was lawfully issued and Bryan violated it. Green, 157 Wn.App. at 851.

a. The prosecution did not prove Bryan violated the trespass order issued in 2010.

The prosecution charged Bryan with committing criminal trespass in the second degree by “knowingly entering or remaining unlawfully in or upon premises of Arbors Apartments, located at 4455 Northeast 12<sup>th</sup> Street, in said county and state.” CP 1. However, the “no trespass” order he was accused of violating told him only that he may not enter or remain unlawfully at the location of “1150 Union Ave NE.” Ex. 1.

The “trespass admonishment” did not direct Bryan to stay away from property owned by Arbors Apartments; it only advised him to stay away from “1150 Union Ave NE.” Ex. 1. This admonishment notified Bryan that he would be subject to arrest if

he entered or remained unlawfully “at the above location(s).” Ex. 1.

The “location” listed above was “1150 Union Ave NE.” Ex. 1.

When Bryan was arrested, he was on the grounds of Arbors Apartments, either walking through a play area or sitting on a bench in the play area. 1RP 52, 75. The charging document alleged Bryan committed trespass by being at “4455 Northeast 12<sup>th</sup> Street,” which is several blocks away from Union Avenue. CP 1; 1RP 65. The apartment complex owned by Arbors consists of many small buildings and spans several blocks; the area where Bryan was arrested is not at Union Avenue. 1RP 26-29.

To prove that Bryan entered or remained unlawfully, it relied entirely on a “no trespass” notice Bryan received on December 4, 2010. There was no other evidence proving that Bryan did not have a right to be present in the common areas of the property. No one testified that they had seen Bryan engage in wrongdoing on the property, and no one said “no trespassing” signs barred any non-residents from the property. The trespass notice did not bar Bryan from being on the playground, which was not at 1150 Union Ave NE. Ex. 1. Because there was no evidence that Bryan was forbidden to be at the location of his arrest, the prosecution did not

prove he knowingly entered or remained unlawfully at the Arbor Apartments at 4455 Northeast 12<sup>th</sup> Street. CP 1.

The court's written findings of fact gloss over this error by claiming Bryan received a trespass notice that prohibited him from "entering the Arbor Apartments, '1150 Union Ave NE.'" CP 21 (Finding of Fact 1). This finding is not supported by the evidence. The trespass notice did not mention the Arbor Apartments. It only directed Bryan to avoid the explicit location of 1150 Union Ave NE. Ex. 1. Yet Bryan was not at 1150 Union Ave NE when arrested. He was on property owned by the same corporation, at a playground area. 1RP 13, 52. The findings of fact do not say that Bryan was at 4455 Northeast 12<sup>th</sup> Street, as charged in the information. CP 1.

Finding of fact 16 states that police officer Kerkhoff learned from "his headquarters" that Bryan "had been trespassed from the Arbors Apartments." CP 22. This finding is similarly unsupported by the evidence. Kerkhoff did not testify that anyone told him Bryan had been trespassed from the apartments. 1RP 51-52. He said he knew Bryan and recognized him when he saw him, but he never discussed whether Bryan had permission to be on the apartment's property. 1RP 52-53. Kerkhoff did not testify that he radioed his headquarters to obtain information about Bryan, as the finding of

fact contends. CP 22. This finding is unsupported by the trial testimony.

Because the court's factual findings are not supported by the evidence and are not consistent with the charging document, the prosecution did not prove Bryan was at a location where he knew he did not have permission to be.

b. The prosecution did not prove the trespass order was lawfully entered.

Notice that a person may not enter or remain on certain property unlawfully does not prove the validity of that notice. Green, 157 Wn.App. at 845, 850. In Green, a woman was charged with criminal trespass for entering her son's school after having been previously issued a "no trespass" order. 157 Wn.App. at 838-39. This Court ruled that mere service of a "no trespass" order does not prove that the defendant could not lawfully enter the school. Id. at 850-51. Instead, "the notice of trespass is merely an evidentiary tool in the prosecution for trespass." Id. at 850. Serving a person with notice of trespass "does not relieve the State of its burden to prove the elements of criminal trespass, including facts necessary to prove that the school district's exclusion of Green from school property was lawful." Id. at 851.

In Green, the prosecution did not present testimony from witnesses with firsthand knowledge of the basis for issuing the “no trespass” order. A lawyer for the school explained its issuance, but “he had no personal knowledge of the events.” Id. at 852. There was “no competent testimony to establish that the school district had a basis” to issue the order denying Green access to the school. Id.

Similarly, the prosecution did not present testimony from witnesses who had personal knowledge of the reasons for issuing the order barring Bryan from the property. Apartment manager Kimberly Mazick testified, but she was “not on site” when Bryan received the “no trespass” order in December 2010. 1RP 16. She did not see him do anything wrong. 1RP 16-17. She knew about the order because she had been told about it by an assistant manager. 1RP 17.

Renton police officer Jim Gould said he gave Bryan the “no trespass” order at the request of one of the property’s managers. 1RP 40. The manager, Mazick, explained that it was the assistant manager, not herself, who spoke to the police. 1RP 17. Gould did not see Bryan do anything wrong on the property. 1RP 41. When

asked about the underlying accusations that prompted the “no trespass” order, Gould said he “didn’t observe that.” 1RP 42.

Like Green, the prosecution did not present any competent testimony explaining the basis for issuing the order prohibiting Bryan’s presence. 157 Wn.App. at 851. Housing manager Mazick and police officer Gould heard reports from others. 1RP 17, 41. No one testified who had firsthand knowledge of the underlying reason for the “no trespass” order.

Bryan was not engaging in any wrongdoing when he was arrested on June 6, 2011. 1RP 52. According to arresting officer Kerkhoff, Bryan was sitting on a bench. 1RP 52. The sole authority to arrest him was his purported violation of a “no trespass” order issued on December 4, 2010. Bryan admitted he received the order but said he thought he was allowed to be on the property if invited, as he was on the night of his arrest. 1RP 75-76.

As a large private apartment complex, the management of the facility would have authority to exclude people who are uninvited by residents or who are a threat to the tenants’s security. See Widell, 147 Wn.2d at 572; see State v. Blair, 65 Wn.App. 64, 68 n.2, 827 P.2d 356 (1992) (noting that publicly owned housing facilities have same right to restrict uninvited visitors as privately

owned complex). The landlord does not have automatic authority to exclude people who are invited by tenants. Widell, 147 Wn.2d at 571; RCW 9A.52.090(3). Furthermore, a landlord may not exclude people for discriminatory reasons, such as racial or ethnic bias. RCW 49.60.215 (barring property owners from excluding people from areas where public otherwise permitted based on impermissibly discriminatory reasons). Thus, the mere issuance of a “no trespass” notice does not prove that the notice was validly entered and may be lawfully enforced.

Here, the prosecution did not meet its burden of proving Bryan was prohibited from being on the property based on a lawfully issued order. Green, 157 Wn.App. at 850-51. The “no trespass” notice was not shown to have been issued for a permissible purpose. Furthermore, Bryan testified he was invited to the property by a tenant and the State did not disprove that evidence, as discussed below.

3. The prosecution denied Bryan his right to confront witnesses against him and relied on evidence barred from admission under ER 404(b).

The “competent evidence” the Green Court spoke of, which is necessary to prove that the “no trespass” order was lawfully entered, includes evidence that complies with the rules of

evidence, of the confrontation requirements of Article I, section 22, and the Sixth Amendment. 157 Wn.App. at 851.

Statements made to police officers in the course of a police investigation constitute the “core class” of statements considered testimonial. Crawford v. Washington, 541 U.S. 36, 68-69, 124 S.Ct. 1354, 1359, 158 L.Ed.2d 177 (2004); see Davis v. Washington, 547 U.S. 813, 822, 126 S.Ct. 2266, 165 L.Ed. 244 (2006); U.S. Const. amend. 6;<sup>2</sup> Const. art. I, § 22.<sup>3</sup>

Gould testified that when he wrote the trespass admonishment for Bryan, he did so because a maintenance man had contacted the police, and one of the apartment managers asked him to issue a ten-year “no trespass” order. 1RP 40. The prosecution did not call as a witness either the maintenance man or apartment manager who spoke to the police. Their statements to the police were intended to further a criminal investigation and therefore were testimonial in nature. Thus, their statements to the police were inadmissible absent the opportunity for confrontation.

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<sup>2</sup> The Sixth Amendment’s Confrontation Clause provides that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.”

<sup>3</sup> The Washington Constitution more explicitly mandates that an accused person is guaranteed the right “to meet the witnesses against him face to face.”

Similarly, Mazick repeated statements from a “maintenance tech” and assistant manager. 1RP 16, 17, 21, 23. The court sustained Bryan’s objections to Mazick’s testimony about the reason the police were called at the time the “no trespass” order was issued. 1RP 16. But the court admitted Mazick’s testimony relating information she learned from a maintenance tech on another occasion. 1RP 25.

The allegations that Bryan was on the property in violation of the “no trespass” order -- on another occasion unrelated to the day the “no trespass” order was issued and separate from the day of his arrest on the charge in the case at bar -- fall under the auspices of ER 404(b). 1RP 22 (Bryan’s ER 404(b) objection).

ER 404(b) is a rule of exclusion, barring the court from admitting evidence of uncharged misconduct absent the court’s finding that the evidence will be used for a narrow, permissible purpose. State v. Gresham, 173 Wn.2d 405, 420-21, 269 P.3d 207 (2012). To admit evidence of a person’s prior misconduct, “the trial court must (1) find by a preponderance of the evidence that the misconduct occurred, (2) identify the purpose for which the evidence is sought to be introduced, (3) determine whether the evidence is relevant to prove an element of the crime charged, and

(4) weigh the probative value against the prejudicial effect.” Id. at 421; ER 403.

Before trial, the prosecution insisted it was not planning on offering any evidence under ER 404(b). 1RP 8. Yet during trial, it inexplicably offered testimony about an unrelated incident in which Bryan had been taken into police custody at the Arbors Apartments. 1RP 21-25. When Bryan objected to testimony about this unrelated incident from January 2011, the prosecution asserted that it showed Bryan’s knowledge of the “no trespass” order. 1RP 22. Bryan correctly pointed out that the testimony did not have any bearing on his knowledge of the order, because the witness Mazick did not say she told Bryan he was excluded from the property. 1RP 24-25.

Mazick said she did not call the police in January 2011 and she did not speak directly to Bryan. 1RP 23, 35. She saw him in a police car, apparently having been arrested. 1RP 23. Mazick did not know what Bryan may have known about his permission to be on the property because she did not speak to him directly. Thus, the only purpose of her testimony was to show that Bryan had been arrested on another occasion.

This evidence had no probative value yet it served the highly improper purpose of making Bryan appear untrustworthy. It was unduly prejudicial to a fact of consequence in the case. Bryan's credibility was central the court's assessment of his testimony that he was invited to be on the property on June 6, 2011, and was walking away when the police stopped him. 1RP 75-76, 97, 99. Kerkhoff testified that Bryan was sitting down when he approached and arrested him. 1RP 52, 97. The court found Bryan's testimony about what he was doing on the property was not credible, but did not explain why. 1RP 99. The only basis in the record for the court to treat Bryan's testimony as untruthful was Bryan's January arrest at the apartment complex, a fact that had nothing to do with the charges but made Bryan appear to be a troublemaker with a propensity for trespassing at the same location. The court relied on evidence that was inadmissible under ER 404(b), as well as evidence that violated Bryan's right to confront witnesses against him.

4. The prosecution encouraged the court to apply the wrong standard of proof to reject Bryan's valid invitation to enter the property.

The burden of proof must be allocated correctly in order to maintain the integrity of criminal trials and to guard against wrongful

convictions. Winship, 397 U.S. at 363-64. Proof beyond a reasonable doubt of all essential elements is an “indispensable” threshold of evidence that the prosecution must establish to garner a conviction. Id. at 364. It reduces the risk that factual error results in a conviction and gives “concrete substance to the presumption of innocence.” Id. at 363.

This burden of proof also applies to defense that would negate a fact essential to conviction. Mullaney v. Wilbur, 421 U.S. 684, 704, 95 S.Ct. 1881, 44 L.Ed.2d 508 (1975); Widell, 146 Wn.2d at 570. If it is reasonably likely that the fact-finder interpreted the burden of proof to require less than proof beyond a reasonable doubt, a new trial is required. Sandstrom v. Montana, 442 U.S. 510, 514, 99 S.Ct. 2450, 61 L.Ed.2d 39 (1979). So important to the integrity of a criminal trial is the reasonable doubt standard that “failure to instruct a jury on the necessity of proof of guilt beyond a reasonable doubt can never be harmless error.” Jackson, 443 U.S. at 320 n.14; see also Sullivan v. Louisiana, 508 U.S. 275, 281, 113 S.Ct 2078, 124 L.Ed.2d 182 (1993) (explaining that when there is “a misdescription of the burden of proof,” then “a criminal trial cannot reliably serve its function.”).

The statutory defenses to criminal trespass “negate the unlawful presence element of criminal trespass.” Widell, 146 Wn.2d at 570 (citing RCW 9A.52.090). “[O]nce a defendant has offered some evidence that his or her entry was permissible under RCW 9A.52.090, the State bears the burden to prove beyond a reasonable doubt that the defendant lacked license to enter.” Id.

In Bryan’s case, the prosecution disputed that it bore the burden of disproving Bryan’s testimony that he was lawfully on the property beyond a reasonable doubt. 1RP 98. When defense counsel told the court that the prosecution bore this burden under Widell, the prosecution requested to know the citation to this case. 1RP 98. When discussing the written findings of fact, the prosecution again characterized the statutory defense as an “affirmative defense.” 2RP 4. Bryan objected and explained it was not an affirmative defense. 2RP 5. Neither the court nor the prosecution ever acknowledged the State’s burden of proof under RCW 9A.52.090.

Rather than resolving the State’s burden of proof, the court convicted Bryan without explaining what burden of proof it was applying. Instead, immediately after defense counsel argued that the State bore the burden of disproving Bryan’s invitation to be on

the property beyond a reasonable doubt under Widell, and after the prosecution expressed doubt that it bore such a burden, the court summarily found Bryan guilty. 1RP 98-99. Cryptically, the court said it found the prosecution met “its burden of proof.” 1RP 99. But it never explained what burden of proof it was applying.

Weeks later, the court entered written findings drafted by the prosecution. CP 21-23. These written findings do not expressly state the burden of proof applied to Bryan’s explanation that he was on the property in response to a lawful invitation. CP 23. Bryan again objected to the court’s failure to apply the proper burden of proof but the court remained silent and never acknowledged what burden of proof it applied. 2RP 5, 6-7.

The court’s credibility determination rested on weighing the police officer’s testimony that Bryan was sitting on a bench against Bryan’s testimony that he was walking on his way to leave the property after visiting his friend. 1RP 99. The court entered findings that Kerkhoff said Bryan was sitting down, but Bryan disputed that claim and testified that he was walking when he stopped at the request of the police. CP 22 (Findings of Fact 11, 15, 17); 1RP 75-76. The correct standard of proof is a critical threshold question that must be resolved before the court assesses whether the

prosecution has proved its case. Thus, it was necessary to resolve the burden of proof before finding which facts had been proved.

The abstract weighing of the evidence performed by the court belies the significant distinctions between the standard of proof beyond a reasonable doubt and preponderance of the evidence. Winship, 397 U.S. at 367-68. The type of proof used in a negligence case, that simply involves the weighing of evidence, does not constitute proof beyond a reasonable doubt. Id. Here, the court simply indicated it was weighing Bryan's credibility against Kerkhoff's credibility, without indicating that it did so through the proper prism of holding the State to its burden to prove the elements of the crime and disprove the defense negating Bryan's lawful presence on the property beyond a reasonable doubt.

5. The prosecution's failure to prove all essential elements requires reversal.

The prosecution failed to establish Bryan unlawfully remained on the Arbor Apartment property in violation of a validly issued "no trespass" notice and failed to disprove that he was permissibly leaving the property after visiting a friend who lived there, both of which the State was required to show beyond a reasonable doubt. Where evidence is insufficient to support a

conviction, double jeopardy bars retrial for that offense, and the matter must be dismissed. Burks v. United States, 437 U.S. 1, 11, 98 S.Ct. 2141, 57 L.Ed.2d 1 (1978). The insufficient evidence supporting the charge against Bryan requires reversal.

Furthermore, the court's reliance on evidence showing Bryan had a propensity to trespass at this housing property, based on uncontroverted claims accusing him of having been involved in prior misconduct, undermined the fairness of the trial. If the case is not reversed for insufficient evidence, it must be reversed for the violations of due process and confrontation stemming from the admission of incompetent evidence and the court's lack of understanding of the correct burden of proof.

E. CONCLUSION.

For the reasons stated above, Bryan respectfully asks this Court to reverse his adjudication for criminal trespass in the second degree.

DATED this 31<sup>st</sup> day of May 2012.

Respectfully submitted,

  
\_\_\_\_\_  
NANCY P. COLLINS (WSBA 28806)  
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Attorneys for Appellant

## **APPENDIX A**



- 1 4. Arbors Apartments is private property owned by Pinnacle, a private business.
- 2
- 3 5. The Arbors Apartments has a play area in the center of the complex. The play area is  
surrounded by apartment buildings on all sides.
- 4 6. Each apartment building has a prominent plaque with a building number and a uniform  
5 design or logo next to the building number.
- 6 7. Witness Kimberly Mazick is the manager of Arbors Apartments and has the authority to  
trespass individuals from Arbors Apartments.
- 7 8. On December 4, 2010, Mazick received a call from the police about Trujillo and several  
8 others on the property. Through an employee, Mazick authorized the police to issue a  
trespass notice against Trujillo and asked that Trujillo be trespassed for as long as possible.
- 9 9. ~~The Court finds Witness Kimberly Mazick's testimony to be credible.~~ *CMW*
- 10 10. On June 10, 2011, around 10 p.m., after dark, Officer Thaddeus Kerkhoff responded to  
11 Arbors Apartments to investigate a report of several teenagers looking in the windows of  
parked cars.
- 12 11. Officer Kerkhoff saw several individuals from his squad car seated at a picnic table in the  
13 play area of Arbors Apartments. ~~These individuals were not walking and did not appear to  
be on their way to another location, but were seated at the picnic table.~~ *CMW*
- 14 12. Officer Kerkhoff parked his squad car about 50 feet from the play area and began to  
15 approach the play area on foot.
- 16 13. Officer Kerkhoff then proceeded on foot and approached the individuals seated at the picnic  
17 table.
- 18 14. At this time, the play area was illuminated with artificial lighting.
- 19 15. Upon approaching the seated individuals, Officer Kerkhoff recognized the respondent as  
20 Bryan Trujillo. Officer Kerkhoff recognized him from prior contacts.
- 21 16. Officer Kerkhoff radioed his headquarters to learn that Bryan Trujillo had been trespassed  
22 from the Arbors Apartments, Trujillo's location at this time.
- 23 17. *CMW* The Court finds the testimony of Officer Kerkhoff to be credible. *as to the Respondent  
being seated.*
- 24 18. The respondent, Bryan Trujillo, testified at trial.
19. Trujillo testified that he signed the trespass notice issued by Officer Gould. The Court  
finds that this testimony is credible.

FINDINGS OF FACT AND CONCLUSIONS OF LAW  
PURSUANT TO CrR 6.1(d) - 2

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(206) 296-9025, FAX (206) 296-8869

1 20. Trujillo also testified that on June 10, 2011 he had visited the home of a friend at Arbors  
2 Apartments and was walking through the play area when he was stopped by at least one  
3 individual who shone a flashlight in his face. Trujillo believed this person to be a  
policeman.

4 21. Trujillo testified that he was not seated at the picnic table when he encountered the police  
5 on June 10, 2011, but was walking at the time with the intention of crossing through the  
6 play area.

7 22. The Court does not find the testimony described in paragraphs 20 and 21, above, to be  
8 credible.

9 II.

10 *And having made those Findings of Fact, the Court also now enters the following:*

11 CONCLUSIONS OF LAW

12 I.

13 The above-entitled court has jurisdiction of the subject matter and of the respondent,  
14 Bryan F. Trujillo, who was born on July 13, 1994, in the above-entitled cause.

15 II.

16 The following elements of Criminal Trespass in the Second Degree have been proven by  
17 the State beyond a reasonable doubt:

- 18 1. That on or about June 10, 2011, the respondent knowingly entered or remained in or upon  
19 the premises of another;
- 20 2. That the trespass notice previously issued by Renton Police Department was valid;
- 21 3. That the respondent knew that entry or remaining was unlawful;
- 22 4. That this act occurred in King County, Washington.

23 III.

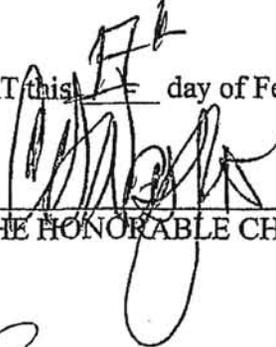
24 The respondent is guilty of the crime of Criminal Trespass in the Second Degree as  
charged in the Information.

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IV.

Judgment should be entered in accordance with Conclusion of Law III. In addition to these written findings and conclusions, the Court hereby incorporates its oral findings and conclusions as reflected in the record.

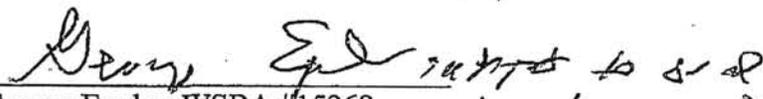
DONE IN OPEN COURT this 17<sup>th</sup> day of February, 2012.

  
\_\_\_\_\_  
THE HONORABLE CHRIS WASHINGTON

Presented by:

  
\_\_\_\_\_  
Matthew J. McCarthy, WSBA #42081  
William L. Doyle, WSBA #30687  
Deputy Prosecuting Attorney

Approved as to form only:

  
\_\_\_\_\_  
George Eppler, WSBA #15268 *signature must not be read*  
Attorney for Respondent

## **APPENDIX B**

**FILED**

KING COUNTY, WASHINGTON

JAN 3 - 2012

CLERK  
BY JOVELITA V. AVILA  
DEPUTY

11-5858

**STATE EXHIBIT** —  
#1 Offered and Admitted

State vs. Bryan F. Tanjillo  
# 11-8-020993

10-13417

Do not Write in this space		Renton Police Department		<input checked="" type="checkbox"/> Trespass Admonishment / <input type="checkbox"/> FIR Card		
Subject - (last, first, middle) TANJILLO, BRYAN F						
Address 2711 SYNIET W NE			Apt C	Phone 425-495-7855		
City RENTON			State WA	Zip 98056		
Race W	Sex M	DOB 7-13-94	Height 5'8"	Weight 160	Eyes BRN	Hair BLK
Build MED		Complexion DARK	Clothing			
Date 02-4-10	Time 1657	Location 1150 UNION AVENUE			District	
Vehicle License	State	Year	Make	Model	Style	Color
I know that I am subject to arrest for criminal trespass if found entering or remaining unlawfully at the above location(s). I understand that my refusal to sign this warning does not relieve me from criminal prosecution should I ignore this warning.					Refused _____	
Subject's Signature: <i>Bryan Tanjillo</i>					Exp. Date 12-4-2020	
Officer(s) GOULD			ID Number 8032	Code 0228		

RPD037 12/01/05

RECEIVED

JUN 27 2011

King County Prosecutor  
Juvenile Division