

70426-5

70426-5

No. 70426-5-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

J.H.,

Appellant.

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FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2014 FEB 5 PM 1:48

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

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APPELLANT'S OPENING BRIEF

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## **A. INTRODUCTION**

In order to prove criminal trespass, the State must provide sufficient evidence that the trespass notice was issued on a lawful basis. Notice of the exclusion does not establish that the exclusion itself was lawful. Here, while there was evidence that J.H. was given notice excluding him from the property of a mall in 2009 and 2011, the State failed to establish that either of these exclusions were lawful. No witness with personal knowledge of why J.H. was excluded in 2011 testified. As for the 2009 exclusion, a police officer testified that he served a notice of trespass to J.H. and that he recalled J.H. had been arrested for theft. However, he had no detailed recollection. Thus, the State failed to prove that a lawful basis supported the mall's decision to exclude J.H. in 2009. Because the State did not prove that J.H. was lawfully excluded from the mall's premises in either 2009 or 2011, the disposition of guilt for criminal trespass should be reversed. Alternatively, the disposition should be reversed because the testimony from the police officer that J.H. been accused of theft in 2009 was admitted in violation of J.H.'s confrontation rights.

## **B. ASSIGNMENTS OF ERROR**

1. Lacking sufficient evidence, the court erred in finding the defendant guilty of Criminal Trespass in the First Degree. Conclusion of

Law (CL) II, III, IV; CP 18 (court's oral incorporation of its oral findings and conclusions as reflected in the record).

2. For lack of substantial evidence, the court erred in finding that J.H. admitted to knowing that he had been permanently trespassed.

Finding of Fact (FF) 15.

3. The court erred in admitting evidence that violated J.H.'s right to confront the witnesses against him.

### **C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Proof of criminal trespass requires proof that the exclusion was lawful. The notice of trespass itself does not establish the lawfulness of the exclusion. A police officer testified that he issued a notice of trespass to J.H. in 2009. Other than recalling that J.H. had been arrested and accused theft, the officer had no personal memory of the underlying circumstances. Was this evidence sufficient to prove beyond a reasonable doubt that J.H.'s exclusion from the mall was lawful?

2. Absent unavailability and prior opportunity for cross-examination, testimonial statements from a non-testifying witness violate the constitutional right of confrontation. Statements made to police officers conducting an investigation that have the primary purpose of proving past events potentially relevant to later a criminal prosecution are testimonial. A police officer testified that he issued a trespass notice to

J.H. in 2009, recalling that J.H. had been accused of theft. Did admission of this statement for the purpose of proving that the 2009 exclusion was lawful violate J.H.'s right of confrontation?

#### **D. STATEMENT OF THE CASE**

J.H., a juvenile, was arrested by police officers outside the Commons Mall in Federal Way on September 22, 2012. CP 15-16 (FF 1, 2, 11).<sup>1</sup> He was ultimately charged with criminal trespass in the first degree and tried before the bench in juvenile court on April 1, 2013. CP 1, 15.

The only witnesses at trial were William Stowers, a security officer at the Commons Mall, and police officer Richard Adams. RP 5-61.<sup>2</sup> On September 22, 2012, Stowers was dispatched to the American Eagle store in the mall after a report that several teenagers might be involved in a theft. RP 10; CP 15 (FF 2-3). Stowers followed J.H. and several other teenagers from inside the mall to the parking lot outside. CP 16 (FF 4). Shortly thereafter, police arrived and detained J.H. CP 16 (FF 6-11).

Officer Richard Adams was the arresting officer. CP 16 (FF 5, 8, 11). Because Adams believed that J.H. had run away from him, he

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<sup>1</sup> The Findings of Fact and Conclusions of Law are attached as "Appendix A."

<sup>2</sup> All citations to the Report of Proceedings are to the volume containing the proceedings from April 1, 2013.

arrested J.H. for “obstructing.” CP 16 (FF 11). While J.H. was detained, Officer Adams contacted “records” and learned that J.H. was “trespassed” from mall property two times before. CP 16 (FF 16); RP 38, 47. While Officer Adams did not recall doing so initially, he had served J.H. a “permanent trespass notice” in 2009. RP 38, 56. Other than recalling that J.H. had been identified as stealing from stores at the mall and arrested, Adams had no recollection of the circumstances underlying the 2009 trespass notice. RP 44. Based on his review of a second trespass notice issued by someone else, Officer Adams also concluded that J.H. had been trespassed in 2011. RP 49-50. The State did not move to admit either trespass notice at trial. RP 67.

J.H. waived his Miranda<sup>3</sup> rights and agreed to speak to Adams. CP 21-22. Adams did not take a written statement. RP 56. J.H. denied being involved in any theft. CP 21; RP 37. Upon being confronted with information that he was trespassed from the mall, J.H. admitted that he had been previously trespassed from the mall. RP 37, 50. He did not admit to knowing that he had been permanently trespassed. RP 37, 50.

Stowers testified that mall security has authority to trespass a person from the mall. RP 8. A supervisor makes the decision and forms

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<sup>3</sup> Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

are signed by security and a police officer, who is there to witness it. RP 8. A supervisor makes the decision whether the exclusion is permanent or temporary. RP 10. As to the actual trespass notice served on the person being excluded, these are different forms that the police department fills out, not mall security. RP 18-19. These are issued by the police and do not contain a signature from mall security. RP 18-19. Stowers did not testify about any record or document specific to J.H. See RP 6-26.

The court admitted J.H.'s statements to Officer Adams that he knew he had been trespassed before. CP 19-22. The court found J.H. guilty of criminal trespass in the first degree.<sup>4</sup> RP 67-73; CP 17. J.H. appeals.

## **E. ARGUMENT**

### **1. The State failed to prove with sufficient evidence all the elements of criminal trespass.**

#### **a. The State has the burden to prove all the elements of the offense beyond a reasonable doubt.**

The State bears the burden of proving all the 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 viewing

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<sup>4</sup> J.H. was ordered to serve a period of confinement in two other unrelated dispositions. These two dispositions and one other are linked on appeal (# 70427-3-I; # 70429-0-I; and # 70428-1-I).

the evidence in the light most favorable to the State. Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979).

The State charged J.H. with criminal trespass in the first degree. This offense requires that the State prove that the defendant “knowingly enters or remains unlawfully in a building.” RCW 9A.52.070 (emphasis added). A statutory defense to criminal trespass is that the “premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises.” RCW 9A.52.090(2). The State must disprove this defense beyond a reasonable doubt. State v. R.H., 86 Wn. App. 807, 811, 939 P.2d 217 (1997). This defense may be raised for the first time on appeal because it challenges the sufficiency of the State’s evidence. Id. Here, because the Commons Mall is open to the public, the defense applied. In sum, the State not only had the burden to prove beyond a reasonable doubt that J.H. knowingly entered or remained unlawfully in the mall, but also to disprove J.H.’s license (as a member of the public) to enter the mall.

**b. Evidence that a notice of trespass was provided to the defendant is insufficient to establish that the exclusion was lawful.**

In order to prove that the defendant entered or remained unlawfully, the basis of the exclusion must be proved to be lawful. State v. Green, 157 Wn. App. 833, 844, 851, 239 P.3d 1130 (2010). Businesses

open to the public, like the Commons Mall, may only exclude people from their property lawfully. For example, businesses may not exclude people on the basis of race or ethnicity. RCW 49.60.215.

As this Court's decision in State v. Green illustrates, providing notice of exclusion does not prove that the exclusion itself was lawful. There, a mother was charged with criminal trespass for entering her son's school after she had been issued a notice of trespass. Green, 157 Wn. App. at 838-39. The mother contended that the State had the burden to prove the lawfulness of the restrictions on her access to campus. Id. at 844. The State argued that because the parent had failed to challenge the notice of trespass, the notice itself proved that the exclusion was lawful. Id. at 845-46. This Court disagreed: "Service of the notice of trespass proves only that the recipient had notice that the issuing authority considered her license to enter the property to have been revoked." Id. at 851. This Court remanded for dismissal the case because the State failed to carry its burden on the lawfulness of the exclusion order. Id. at 852-53. There was no testimony from a witness with personal knowledge of facts showing that the mother's access had been lawfully revoked. Id. at 851-52. While an attorney for the school testified about events that precipitated the issuance of the trespass notice, he had no personal

knowledge of these events. Id. at 852. Thus, there was no competent testimony proving that the mother's access had been lawfully revoked. Id.

Green establishes that the State must prove that an exclusion order rests on a lawful basis. Absent evidence proving the underlying basis of the exclusion was lawful, the State fails to meet its burden to prove that the defendant entered or remained "unlawfully."

**c. Because the evidence was insufficient to prove that J.H. was lawfully excluded from the mall, the State failed to prove he committed criminal trespass.**

Similarly, there was not sufficient evidence establishing that J.H.'s license to access to the mall was lawfully revoked. Officer Adams testified that when he arrested J.H. in September 2012, he learned that J.H. had been "trespassed" twice, once in 2009 and again in 2011. RP 38, 47. Adams was not involved in the 2011 incident and a different officer purportedly served a notice of trespass then. See RP 48-50. Concerning the 2009 trespass, while he did not specifically recall doing so, Officer Adams testified he served this notice to J.H. RP 38, 56. Adams, however, only recalled that J.H. had been accused of and arrested for theft. RP 44. Otherwise, he did not have any "personal recollection":

Q. Now, do you remember the circumstances surrounding this 2009 trespass?

A. Other than that he was arrested for theft and that he had been identified as stealing from several stores, I don't have any personal recollection.

RP 44 (emphasis added).

Officer Adams' bare recollection that he served J.H. a trespass notice in 2009 based on allegations of theft is not competent testimony establishing that J.H.'s exclusion was lawful. Adams did not testify that he himself arrested J.H. in 2009 for theft or that he had conducted an investigation leading to J.H.'s arrest. Adams also did not claim to have authority to make exclusion decisions by himself. Compare State v. Finley, 97 Wn. App. 129, 130-31, 139, 982 P.2d 681 (1999) (testimony from bartender sufficient to prove that bartender had authority to exclude belligerent defendant from bar). Security officer Stowers testified that his office makes decisions on whether to trespass a person. RP 8. Stowers did not testify about the mall trespassing J.H. in 2009. RP 6-26. Officer Adams' statement concerning an arrest for theft at the mall in 2009 only explained why he might have served the trespass notice in 2009 on the mall's behalf. It did not prove that J.H. committed theft in 2009. Under Green, the State had to produce evidence of theft to prove that the exclusions was lawful. See Green, 157 Wn. App. at 845, 851 (rejecting the State's argument that the school district did not have to prove facts justifying the notice of trespass).

That J.H. admitted to Officer Adams that he had previously been trespassed from the mall does not establish that J.H. was lawfully excluded before. What J.H. understood or believed is not relevant to whether his presence was unlawful. R.H., 86 Wn. App. at 812-13. Otherwise, “one would be guilty of trespass by returning to property after being unjustly ordered to vacate it.” Id. at 813.

J.H.’s admission also did not prove that a trespass notice was still in effect. Finding of Fact 15 erroneously states that J.H. admitted to knowing that he was “permanently” trespassed from the mall. J.H. only admitted to knowing that he had been trespassed, not to knowing that he had been permanently trespassed. RP 37, 50; CP 21. This part of the finding should be disregarded for lack of substantial evidence. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994) (“Substantial evidence exists where there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding.”).

In sum, because there was no proof beyond a reasonable doubt that J.H. stole from stores in the mall in 2009 (the alleged basis for excluding J.H. from the mall), the State failed to prove that he was lawfully excluded in 2009. As for the 2011 trespass notice, there was no evidence that it rested on a lawful basis. Officer Adams only testified that he had learned about it after contacting J.H. in 2012; he had no personal knowledge about

it. See RP 49 (sustaining hearsay objection concerning 2011 trespass notice because officer lacked personal knowledge). Thus, the State failed to prove that J.H. was excluded lawfully from the mall property. This Court should accordingly reverse and order the charge dismissed with prejudice. Burks v. United States, 437 U.S. 1, 11, 98 S. Ct. 2141, 57 L. Ed. 2d 1 (1978).

**2. The court admitted testimonial hearsay in violation of J.H.’s right of confrontation.**

Alternatively, this Court should reverse and remand for a new trial because testimonial hearsay was admitted in violation of J.H.’s right of confrontation under the Sixth Amendment to the United States Constitution<sup>5</sup> and article 1, section 22 of the Washington Constitution.<sup>6</sup>

**a. In general, testimonial hearsay is inadmissible under the Sixth Amendment and article 1, section 22.**

Absent unavailability and a prior opportunity for cross-examination, testimonial statements from an absent witness may not be admitted. Crawford v. Washington, 541 U.S. 36, 59, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004). Included among the “core class” of testimonial statements are (1) statements that a declarant would reasonably expect to

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<sup>5</sup> Under the Sixth Amendment, the accused has the “right . . . to be confronted with the witnesses against him.” CONST Amend. VI.

<sup>6</sup> Article I, section 22 provides that in “criminal prosecutions the accused shall have the right . . . to meet the witnesses against him face to face . . . .” WA Const. art. I, § 22.

be used prosecutorially and (2) statements made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial. Id. at 51-52.

Statements made to police officers are testimonial when the circumstances objectively indicate there is no ongoing emergency and the primary purpose of police questioning is to prove past events potentially relevant to later criminal prosecution. Davis v. Washington, 547 U.S. 813, 822, 126 S. Ct. 2266, 165 L. Ed. 2d 224 (2006).

Whether the admission of hearsay statements violate a defendant's confrontation rights is a constitutional question reviewed de novo review. State v. Price, 158 Wn.2d 630, 638-39, 146 P.3d 1183 (2006).

As recounted earlier, Officer Adams briefly testified that he had served a trespass notice to J.H. in 2009 because J.H. had been arrested for stealing from stores in the mall. RP 44 (“[J.H.] was arrested for theft and . . . he had been identified as stealing from several stores . . .”). If this statement was admitted to prove that J.H. stole from several stores in the mall, then it violated J.H.’s right to confront the witnesses who accused him of stealing.<sup>7</sup> Statements made by witnesses to Officer Adams or other police officers reporting a theft in 2009 qualify as testimonial. Absent

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<sup>7</sup> J.H. maintains his earlier argument that this was not substantive evidence of theft and thus was insufficient to prove that the exclusion in 2009 was lawful. If this Court disagrees, J.H. argues, alternatively, that the admission of this evidence violated his confrontation rights.

some showing of an ongoing emergency, statements made to a police officer accusing someone of theft is testimonial. See Davis, 547 U.S. at 829-30. Thus, if used as substantive evidence to prove that J.H. was guilty of theft in 2009, the admission of the statement that J.H. “had been identified as stealing from several stores” violated his right to confront the witnesses against him.

**b. Confrontation errors may properly be raised for the first time on appeal as manifest constitutional error under RAP 2.5(a)(3).**

J.H. did not object to this testimony and did not argue that it violated his right of confrontation. Nevertheless, this Court should review the issue because the violation of J.H.’s confrontation right qualifies as “a manifest error affecting a constitutional right.” RAP 2.5(a)(3); State v. Kronich, 160 Wn.2d 893, 900-01, 161 P.3d 982 (2007) overruled on other grounds by State v. Jasper, 174 Wn.2d 96, 271 P.3d 876 (2012). Here, Officer Adams’ statement that J.H. had been accused of theft in 2009 was the only evidence that arguably tended to show a lawful basis for the 2009 trespass notice. Had J.H. successfully raised his confrontation rights, this evidence would have been excluded. There was no other evidence that J.H. had been excluded from the mall lawfully in 2009. Accordingly, J.H.’s claim is manifest error affecting a constitutional right that this Court should review despite lack of an objection below. See Kronich, 160

Wn.2d at 901 (reviewing Confrontation Clause challenge for first time on appeal as manifest constitutional error).

In two published cases, this Court has held that under controlling United States Supreme Court precedent, a failure to assert the confrontation right at or before trial results in the right being forfeited. State v. O’Cain, 169 Wn. App. 228, 248, 279 P.3d 926 (2012); State v. Fraser, 170 Wn. App. 13, 25, 282 P.3d 152 (2012). O’Cain premised this holding on the United States Supreme Court decision in Melendez-Diaz, which recognizes States may adopt procedural rules governing confrontation clause objections:

The right to confrontation may, of course, be waived, including by failure to object to the offending evidence; and States may adopt procedural rules governing the exercise of such objections.

Melendez-Diaz v. Massachusetts, 557 U.S. 305, 314 n.3, 129 S. Ct. 2527, 174 L. Ed. 2d 314 (2009). O’Cain goes on to reason that an appellate court violates United States Supreme Court precedent by allowing a Confrontation Clause challenge for the first time on appeal and that Kronich was overruled in this respect. O’Cain, 169 Wn. App. at 248.

This Court in Fraser adhered to O’Cain, but acknowledged that RAP 2.5(a) is arguably a procedural rule by which Washington State allows defendants to raise Confrontation Clause objections for the first

time on appeal if they can show a manifest error. Fraser, 170 Wn. App. at 26-27. O’Cain notwithstanding, Fraser went on to analyze the issue under RAP 2.5(a) and determined that the claim of error there was not “manifest.” Id. at 27-29.

As this Court hinted at in Fraser, RAP 2.5(a)(3) is procedural rule that governs whether a Washington appellate court may hear Confrontation Clause challenges. O’Cain’s sweeping assertion that appellate courts may not hear Confrontation Clause challenges for the time on appeal is incorrect. Melendez-Diaz simply acknowledges that Confrontation Clause issues can be waived and that States may create procedural rules to govern the issue of waiver. The Court did not hold that appellate courts were forbidden from hearing Confrontation Clause challenges for the first time on appeal. If the Court did, federal appellate courts missed the message because they continue to hear unpreserved Confrontation challenges for the first time on appeal under “plain error” review. See e.g., United States v. Charles, 722 F.3d 1319, 1322 (11th Cir. 2013).

Any doubt on this issue is resolved by the United States Supreme Court’s opinion in Michigan v. Bryant, 131 S. Ct. 1143, 179 L. Ed. 2d 93 (2011). There, the Court reviewed a Confrontation Clause error that had not been preserved in a Michigan trial court. The Michigan Supreme

Court addressed the issue for the first time on appeal under a “plain error” standard and held the defendant’s right of Confrontation was violated. Bryant, 131 S. Ct. at 1143. The United States Supreme Court reversed, not because the State court had addressed an unpreserved Confrontation Clause issue, but because the statements at issue were not testimonial. Id. at 1150.

Our Washington Supreme Court has also implicitly refuted the analysis in O’Cain. For example, in State v. Beadle, the court analyzed a confrontation issue under RAP 2.5(a)(3) where the defendant did not object. State v. Beadle, 173 Wn.2d 97, 105 n.8, 107, 265 P.3d 863 (2011). In another case, the Supreme Court cited to Kronich to explain that a Confrontation Clause error can be raised for the first time on appeal under RAP 2.5(a) in criminal cases. In re Disciplinary Proceeding Against Sanai, 177 Wn.2d 743, 762, 302 P.3d 864 (2013) (“A confrontation clause error can be raised for the first time on appeal in a criminal case under the manifest error rule because the confrontation clause is a constitutional protection that clearly applies at the trial of a criminal defendant.”)

This Court should decline to follow O’Cain. This Court may properly review the issue as one of manifest error affecting a constitutional right under RAP 2.5(a). For the reasons argued earlier, J.H. shows manifest constitutional error.

**c. The error was not harmless.**

If a court determines a claim raises a manifest constitutional error, it may still be subject to a harmless error analysis. State v. O'Hara, 167 Wn.2d 91, 98, 217 P.3d 756 (2009). Confrontation right violations are subject to harmless error analysis. State v. Jasper, 174 Wn.2d 96, 117, 271 P.3d 876 (2012). Constitutional error is presumed to be prejudicial, and the State bears the burden of proving that the error was harmless. State v. Guloy, 104 Wn.2d 412, 425, 705 P.2d 1182 (1985). The State must show beyond a reasonable doubt that the error complained of did not contribute to the finding of guilt. Jasper, 174 Wn.2d at 117.

For the same reasons outlined earlier on why the error was “manifest,” the error was not harmless. The testimony was the only evidence that arguably showed that the mall had a lawful basis for issuing a trespass notice to J.H. Therefore, the error was not harmless. This Court should reverse and remand for a new trial.

**F. CONCLUSION**

There was insufficient evidence to prove that J.H. was lawfully excluded from the Commons Mall in either 2009 or 2011. Accordingly, the disposition of guilt for criminal trespass should be reversed with instruction that the charge be dismissed. Alternatively, if not reversed for lack of sufficient evidence, the disposition should be reversed and

remanded for a new trial because J.H.'s confrontation rights were violated through the admission of testimonial hearsay. This was manifest constitutional error that was not harmless beyond a reasonable doubt.

DATED this 4th day of February, 2014.

Respectfully submitted,



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# Appendix A

The Honorable Judge Barbara Mack  
Hearing Date April 24, 2013 at 1 30 pm  
Hearing Location Courtroom 2

**FILED**  
KING COUNTY WA  
JUN 24 2013  
CLERK OF COURT  
BY JONELITA V AVILA  
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY  
JUVENILE DIVISION

STATE OF WASHINGTON,

Plaintiff,

vs

JAHAD V D HILL,  
B D 04/18/95

Respondent

No 12-8-02838-1

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
PURSUANT TO CrR 6 1(d)

THE ABOVE-ENTITLED CAUSE having come on for fact finding on April 1, 2013, before the Honorable Judge Barbara Mack in the above-entitled court, the State of Washington having been represented by Eric Shelton, the respondent appearing in person and having been represented by Dennis McGuire, the court having heard sworn testimony and arguments of counsel, and having received exhibits, now makes and enters the following findings of fact and conclusions of law

**FINDINGS OF FACT**

- 1 William Stowers works as a security officer for The Commons Mall (or "the mall") in Federal Way, Washington The mall is located within King County
- 2 On September 22, 2012, Stowers was on duty and saw the respondent inside the mall
- 3 Stowers began following the respondent who was with several other teenagers because it was reported that they might be involved in a theft at an American Eagle store within the mall

FINDINGS OF FACT AND CONCLUSIONS OF LAW  
PURSUANT TO CrR 6 1(d) - 1

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**ORIGINAL**

- 1
- 2 4 Stowers followed them as they exited American Eagle, walked through the mall, exited  
the mall, and walked through the mall's north parking lot
- 3 5 Although Stowers stopped following them when they walked off of mall property, he  
4 informed Federal Way Police Officer Adams (who is assigned to the mall) via his radio  
where the group was headed
- 5 6 Stowers did not see officers detain the respondent, but he watched the respondent walk  
6 across 320th Street and saw a police car pull up next to the respondent and another young  
male
- 7 7 Officer Adams started walking toward where the respondent was located in order to help  
8 Stowers detain the respondent and the other teenagers
- 9 8 Officer Adams saw the respondent and another male near 320th Street and told them to  
stop
- 10 9 The respondent and another male immediately ran, and only stopped when another  
11 officer arrived
- 12 10 Once the respondent and the other male stopped running, Adams headed toward Deseret  
Industries to assist another officer who was chasing a third male who had been with the  
13 respondent
- 14 11 After the third male was detained at Deseret Industries, Adams walked back to where the  
15 respondent and the other male were detained and advised them that they were under  
arrest for obstructing
- 16 12 Adams read the respondent his Miranda rights After having been advised of his Miranda  
17 rights, the respondent admitted to being inside The Commons Mall and to going into  
several stores The respondent claimed, however, that he did not go inside American  
18 Eagle He also told Adams that he could not be charged with theft because he did not  
have any stolen property on him
- 19 13 The respondent denied running from police even though Adams told him that he saw him  
run
- 20 14 During his conversation with the respondent, Adams discovered that the respondent had  
21 been permanently trespassed from the mall in 2009 and in 2011
- 22 15 The respondent admitted to Adams that he knew that he had already been permanently  
23 trespassed from the mall
- 24

1 16 Adams was the officer that permanently trespassed Hill from the mall in 2009 And  
2 Adams photographed the respondent when he was trespassed in 2009, that picture is  
clearly a photograph of the respondent

3 17 The respondent admitted that he had used the name "Jarod Dwight Hill" when he was  
4 permanently trespassed from the mall in 2011

5 18 Stowers was able to positively identify the respondent that day based on notable  
characteristics his chain necklace and the cast on one of his arms

6 19 Adams also remembered that the respondent was wearing a cast on his arm when he was  
7 detained, and was also sure that the respondent was both the person that he permanently  
trespassed in 2009 and the person he detained on September 22, 2012

8 20 Stowers' and Adams' testimony was credible

### 9 CONCLUSIONS OF LAW

#### 10 I

11 The above-entitled Court has jurisdiction of the subject matter and of the respondent in  
12 the above-entitled cause

#### 13 II

14 The state has proved the following elements of Criminal Trespass in the First Degree,  
RCW 9A 52 070, beyond a reasonable doubt

15 (1) On or about September 22, 2012, the respondent knowingly entered or remained in a  
16 building,

17 (2) The respondent knew that the entry or remaining was unlawful, and

18 (3) This act occurred in the State of Washington King County

#### 19 III

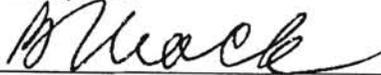
20 The respondent is guilty of the crime of Criminal Trespass in the First Degree as charged  
21 in the Information

1 IV

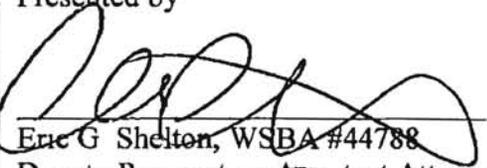
2 Judgment should be entered in accordance with Conclusion of Law III

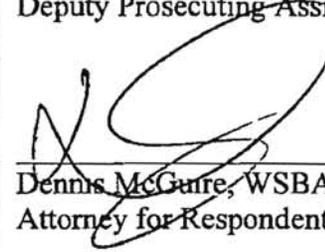
3 In addition to these written findings and conclusions, the Court hereby incorporates its  
4 oral findings and conclusions as reflected in the record

5 DONE IN OPEN COURT this 24 day of June, 2013

6   
THE HONORABLE JUDGE BARBARA MACK

7 Presented by

8   
9 Eric G. Shelton, WSBA #44788  
Deputy Prosecuting Assistant Attorney

10  
11   
12 Dennis McGuire, WSBA #18114  
13 Attorney for Respondent

The Honorable Judge Barbara Mack  
Hearing Date January 24, 2013 at 1 30 pm  
Hearing Location Courtroom 2

F P 2 4  
JUN 24 2013

JUN 24 2013  
SUPERIOR COURT OF WASHINGTON  
DE JONELVA V. AVILA  
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY  
JUVENILE DIVISION

STATE OF WASHINGTON,

Plaintiff,

vs

JAHAD V D HILL,  
B D 04/18/95

Respondent

No 12-8-02838-1

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW ON CrR 3 5  
MOTION TO ADMIT THE  
RESPONDENT'S STATEMENTS

A hearing on the admissibility of the respondent's statements was held on April 1, 2013,  
before the Honorable Judge Barbara Mack

The court informed the respondent that

(1) he may, but need not, testify at the hearing on the circumstances surrounding the  
statement, (2) if he does testify at the hearing, he will be subject to cross examination with  
respect to the circumstances surrounding the statement and with respect to his credibility, (3) if  
he does testify at the hearing, he does not by so testifying waive his right to remain silent during  
the trial, and (4) if he does testify at the hearing, neither this fact nor his testimony at the hearing

WRITTEN FINDINGS OF FACT AND  
CONCLUSIONS OF LAW ON CrR 3 5 MOTION TO  
SUPPRESS THE RESPONDENT'S STATEMENT(S) - 1

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Seattle Washington 9812  
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ORIGINAL

1 shall be mentioned to the jury unless he testifies concerning the statement at trial After being so  
2 advised, the respondent did not testify at the hearing

3 After considering the testimony of Federal Way Police Officer Adams, documentary  
4 evidence, and the parties' legal arguments, the court enters the following findings of fact and  
5 conclusions of law as required by CrR 3 5

6 1 THE UNDISPUTED FACTS

- 7 a The respondent was detained by Officer Adams on September 22, 2012
- 8 b Officer Adams read the respondent his Miranda rights while he was sitting on the  
9 curb next to another male who had also been detained The respondent was not  
10 handcuffed when Officer Adams read him his Miranda rights, but was "in  
11 custody" for purposes of Miranda
- 12 c The Miranda rights he read were from his department issued card and included  
13 the standard warnings given to juveniles
- 14 d There was no apparent language barrier between the respondent and Officer  
15 Adams The respondent did not appear to be cognitively impaired or under the  
16 influence of drugs or alcohol
- 17 e The respondent did not appear to be confused by Officer Adams's questions
- 18 f Officer Adams did not threaten the respondent or make any promises in order to  
19 convince him to talk
- 20 g While Officer Adams could not recall whether he advised the respondent and the  
21 other male individually or together of their Miranda rights, he was sure that the  
22 respondent told him that he understood his rights, agreed to waive them, and said  
23 that he was willing to speak with him

24 WRITTEN FINDINGS OF FACT AND  
CONCLUSIONS OF LAW ON CrR 3 5 MOTION TO  
SUPPRESS THE RESPONDENT'S STATEMENT(S) - 2

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1 h Officer Adams appropriately and correctly advised the respondent of his Miranda  
2 rights

3 i The respondent waived his Miranda rights and agreed to speak with Officer  
4 Adams

5 j After the respondent waived his rights, he

- 6 • Denied being involved in a theft
- 7 • Admitted that he was in The Commons Mall and that he went into several  
8 stores
- 9 • Denied entering American Eagle
- 10 • Told police officers that he could not be charged with theft because he had  
11 no stolen property on him
- 12 • Admitted jaywalking across South 320 Street
- 13 • Denied running from police even though Officer Adams told the  
14 respondent that he saw him run
- 15 • After telling officers his name was Jahad D Hill, he admitted that his full  
16 name was Jahad Vernon Dwight Hill
- 17 • Admitted that he knew that he had already been trespassed from The  
18 Commons Mall
- 19 • Admitted to using the name "Jarod Dwight Hill" when he was previously  
20 trespassed

21  
22  
23  
24 WRITTEN FINDINGS OF FACT AND  
CONCLUSIONS OF LAW ON CrR 3 5 MOTION TO  
SUPPRESS THE RESPONDENT'S STATEMENT(S) - 3

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1 2 CONCLUSIONS OF LAW AS TO THE ADMISSIBILITY OF THE RESPONDENT'S  
3 STATEMENTS

4 a ADMISSIBLE IN STATE'S CASE-IN-CHIEF

5 The respondent's statements are admissible in the State's case-in-chief These statements  
6 were made after the respondent made a knowing, intelligent, and voluntary waiver of his Fifth  
7 and Sixth Amendment rights by speaking spontaneously and answering questions The  
8 respondent's statements were voluntary both for Fifth Amendment and Sixth Amendment  
9 purposes

10 In addition to the above written findings and conclusions, the court incorporates by  
11 reference its oral findings and conclusions

12 DONE IN OPEN COURT this 29 day of June, 2013

13   
14 THE HONORABLE JUDGE BARBARA MACK

15 Presented by

16   
17 Eric G. Shelton, WSBA #44788  
18 Deputy Prosecuting Assistant Attorney

19   
20 Dennis McGuire, WSBA #18114  
21 Attorney for Respondent

22  
23  
24 WRITTEN FINDINGS OF FACT AND  
CONCLUSIONS OF LAW ON CrR 3 5 MOTION TO  
SUPPRESS THE RESPONDENT'S STATEMENT(S) - 4

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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 70426-5-I
v.	)	
	)	
J. H.,	)	
	)	
Juvenile Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 4<sup>TH</sup> DAY OF FEBRUARY, 2014, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

<input checked="" type="checkbox"/> KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
<input checked="" type="checkbox"/> J. H. 24513 27 <sup>TH</sup> AVE S APT 2 DES MOINES, WA 98198	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

**SIGNED** IN SEATTLE, WASHINGTON THIS 4<sup>TH</sup> DAY OF FEBRUARY, 2014.

X  \_\_\_\_\_

**Washington Appellate Project**  
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1511 Third Avenue  
Seattle, WA 98101  
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