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A. Assignments of Error

Assignments of Error

1. The trial court erred when it found the juvenile guilty of criminal trespass in the second degree in Findings 2.1 of the order of disposition, which states: "The Respondent is guilty of the offenses listed in Paragraph 1.1 above."
2. The trial court erred when it entered finding of fact No. IV:

"Dasan Berrios at no time expressed confusion or misunderstanding regarding the terms of the notice of trespass."
3. The trial court erred when it entered finding of fact No. V:

"Dasan Berrios was on the campus during school hours in violation of the notice of trespass."
4. The trial court erred when it entered Conclusion of Law II:

"Dasan Berrios knowingly entered and remained upon the premises of the Armin Jahr Elementary School during school hours in violation of the Notice of Trespass he had previously signed."
5. The trial court erred when it entered Conclusion of Law III:

"Dasan Berrios is guilty of Criminal Trespass in the Second Degree."
6. The defendant was denied due process of law guaranteed by the Fourteenth Amendment and by Wash. Const. Art. 1, sec. 3 when he was not given fair warning of what the term "school hours" meant or included

when he was issued a notice of trespass from Armin Jahr Elementary school and later charged with criminal trespass in violation of RCW 9A.52.080(1).

7. As applied to the facts of this case RCW 9A.52.080(1) violates due process of law guaranteed by the Fourteenth Amendment and by Const. Art. I, sec. 3 because it is void for vagueness.

Issues Pertaining to Assignments of Error

1. Whether the state proved beyond a reasonable doubt that the juvenile was on school grounds during school hours on January 9, 2008?

(Assignments of Error 1,3,4 and 5.)

2. Whether there was sufficient evidence to support finding of fact IV where the juvenile testified that no school official explained to him the terms of a Notice of Trespass when it was issued to him? (Assignment of Error 2.)

3. Whether the term “school hours” is unconstitutionally vague because it may mean when classes are in session or have a broader meaning including when children, teachers and staff are present on campus?

(Assignment of Error 6.)

4. Whether the juvenile was denied due process of law because he was not given fair warning pursuant to RCW 9A.52.080(1) and in conjunction with a written Notice of Trespass as to when he was excluded from the

school grounds at an elementary school and when he was allowed to enter or remain on the premises? (Assignment of Error 7.)

B. Statement of the Case

Statement of Procedure

Dasan Berrios is charged with Criminal trespass in the Second Degree contrary to RCW 9A.52.080(1). C.P 1. He is accused of knowingly entering or remaining unlawfully on the school grounds at Armin Jahr Elementary School in Bremerton, Kitsap County, Washington on January 9, 2008.¹ He had been issued a notice of trespass on December 17, 2007 that purported to exclude him from the school during “school hours.” After an adjudication hearing Dasan was found guilty. He appealed on May 20, 2008. CP 34.

Statement of Facts

Michael Sellars, principal of Armin Jahr, issued a Notice of Trespass to Dasan on December 17, 2007. CP ; ex. 1. This document purported to exclude Dasan from the school grounds at Armin Jahr during

¹RCW 9A.52.080(1) states “A person is guilty of criminal trespass in the second degree if he knowingly enters or remains unlawfully in or upon premises of another under circumstances not constituting criminal trespass in the first degree.”

RCW 9A.52.070(1) states in part: “A person is guilty of criminal trespass in the first degree if he knowingly enters or remains unlawfully in a building.”

school hours for the remainder of the 2007-2008 school year. 5/07/08 RP

14. The notice was signed by the juvenile. id.

According to Sellars, this notice was issued because Dasan had been on the Arim Jahr campus previously "...disrupting school operations during our school day and told him he need to not be hanging out near the classroom, you know, looking in the other classroom windows..." RP 15. Also, Dasan had been seen in the locked, bike rack area during the school day. Id. He was advised that if he was found on campus the police would be called. id.

Sellars had difficulty describing what the term "school hours" meant. He explained that students could be removed from campus without being signed out before classes began at 9:05 and ended at 3:35, except on Wednesday. He testified in part: "Well, Wednesday, 1:30 is the end of the school day. It runs 9 o'clock to 1:30." RP 18.

During cross-examination, Mr. Sellars admitted that according to Bremerton School District policies and procedures concerning "Removal or Release of Student During School Hours" that "school hours" as used in that policy meant the time that classes were in session.² RP 20. Also, the

² Policy 3124 states in part: "No student shall be removed from the school grounds, any school building or school functions during school hours except by a person duly authorized in accordance with district procedures."

district's policy concerning medication at school states that students are allowed to take medication before classes begin. However, if they are on the school grounds they may do so only with parental supervision.³ RP 21.

Sellars admitted that as in used in policy 3416 concerning "medication" the term "school hours" meant the time that classes are in session. RP 21. Sellars further disclosed that the play fields at Armin Jahr are open to the public when school is not in session. Presumably, members of the public do not need to report to the office under those circumstances. RP 22.

On re-cross examination, Sellars testified that on Wednesdays the school bell rang at 1:30. RP 27. This signified that classes were out. Id. There is no requirement that students remain on campus before or after the bell rings. id.

The trial court also examined Mr. Sellars who then testified that "school hours" meant when children were present. He expanded the school day time to be about 8:35 -8:40 until 3:50. "That gives our students a chance to be picked up by their parents and buses then leave." RP 28. He

³ Policy 3416 states in part: "Under normal circumstances prescribed oral medication and over the counter medication should be dispersed before and/or after school hours under supervision of the parent or guardian." RP 20.

believed school hours would be about 8:30 to 3:50 on Monday, Tuesday, Thursday and Friday. On Wednesday school hours would be 8:40 to 2:45. RP 29. He stated: "We can't get our buses out of there much before then." id.

William Palmer testified that he was a full time para-educator at the school. RP 31. At the end of the day he assisted in clearing off the school's back lot where the buses loaded. RP 31. On January 9th he saw "two youths walking around the dumpster area." RP 33. He was advised by a bus driver that the two boys had been throwing snowballs.

Palmer testified that he saw the boys "in the area of the dumpster and also standing by the school bus." RP 34. The buses were on school property. When asked about the area where the boys were first observed he answered indirectly and stated:

"Q. And the dumpster area is also on school property?

A. It's behind the school within the fenced area. RP 34.

After being identified at the office, the two youths were asked to leave. Palmer testified: "I said, Listen, I want you to leave the school property right now. I observed as they walked out the door, walked off the school property through the back fenced area...." RP 35. He was asked:

"Q. And just to clarify, you called them into your office in order to get their names, but the conversation that initially happened was outside when you first stopped them and that was also on school property?

A. That is correct.” RP 35.

Dasan Berrios testified that his understanding of the notice of trespass was “To stay off the property during school hours, and after school hours, don’t go near the buildings.” RP 39. Dasan testified that on Wednesday, January 9th his Mountain View Middle School was dismissed at 12:40. Any other school day dismissal would have been at 2:45. RP 41. He testified that he went to Armin Jahr “So I could cut through, so I could go to the Dollar Store from there.” RP 42.

C. Summary of the Case

Dasan, age 13 and a middle school student, was excluded from the Armin Jahr Elementary school because he purportedly disrupted classes and was tinkering with bicycles when students were in class. Consequently, he was trespassed from the elementary school during “school hours”. Later, he was prosecuted for being on the school grounds when he threw a snowball at a school bus while children were leaving school on an early dismissal day.

During adjudication it was asserted by the principal of Armin Jahr that Dasan was excluded not only when classes were in session and during “school hours” but also at anytime that he was on campus whether observable by security cameras or by others. RP 16.

The trial court did not make any finding of fact defining what the

term”school hours” meant or what it included. Instead, the court seemed to adopt the school principal’s testimony that “school hours” meant “operational hours”. RP 25. This meant that school hours covered not only when students were present but also whenever teachers or staff were present. The trial court did not recognize the juvenile’s purported public premise defense during non-school hours. RCW 9A.52.090(2).

The juvenile is raising for the first time on appeal- pursuant to RAP 2.5(a)(3)- his constitutional right to fair warning of what constitutes “school hours” so that he would know when he was excluded from the school. Also, he is challenging for the first time the constitutionality of RCW 9A.52.080(1) based on the void for vagueness doctrine.

D. Argument

I. THE TRIAL COURT ERRED WHEN IT RULED THAT THE JUVENILE WAS ON SCHOOL GROUNDS DURING SCHOOL HOURS.

The trial court entered one challenged finding of fact and one conclusion of law to the effect that Dasan was on the school grounds of Armin Jahr Elementary School during school hours. CP 32; ff. V; CL II. Finding of Fact V states: “Dasan Berrios was on the campus during school hours in violation of the notice of trespass.” CP 32. The juvenile disputes this ruling. He argued to the trial court that the term “school hours” means the time in which the children are in the classroom. CP 34-8.

There was not substantial evidence to support entry of the findings. Thus, the conclusion of law: “Dasan Berrios knowingly entered and remained upon the premises of Armin Jahr Elementary School during school hours in violation of the Notice of Trespass he had previously signed” is erroneous. CP 32.

See generally, *State v. Hashman*, 115 Wn.2d 217, 222, 797 P.2d 477 (1986): “Substantial evidence is evidence of sufficient quantum to persuade a fair minded person of the truth of the declared premise. Here, there was not evidence of sufficient quantum to show that Dasan was on the school grounds while classes were in session. See also, *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994) substantial evidence is enough evidence to persuade a fair-minded, rational person of the truth of the finding.

If there is substantial evidence, then appellate review determines whether the findings support the conclusions of law and judgment. *Tacoma v. State*, 117 Wn.2d 348, 361, 816 P.2d 7 (1991). Appellate courts review issues of law de novo. *State v. Johnson*, 128 Wn.2d 431, 443, 909 P.2d 293 (1996).

According to *State v. Bingham*, 195 Wn.2d 820, 823, 719 P.2d 109 (1986):

“The constitutional standard for reviewing the

sufficiency of the evidence in a criminal case is “Whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 61 L.Ed. 2d. 560, 99 S.Ct. 2781 (1979); *State v. Green*, 94 Wn.2d. 216, 221, 616 P.2d 628 (1980).”

The standard of “School Hours” is applied in an ad hoc manner.

Principal Sellars defined the term school hours to mean “Well, Wednesday, 1:30 is the end of the school day. It runs 9 o’clock to 1:30.”

RP 18. However, there was no testimony as to what time Dasan was actually on the school grounds on Wednesday, January 9, 2008. The trial court did not enter any finding of fact as to time of day.

During cross examination Sellars admitted that as used in Bremerton School District Policy 3124 with regard to “Removal or Release of Students During School Hours” that the term “school hours” meant the time that classes were in session. RP 19-20. He further admitted that as used in policy 3416 concerning medication taken at school, the term “school hours” also meant the time that classes were in session. RP 21.

On re-direct examination, Sellars then defined the term “school hours” to mean “operational hours.” RP 25. He explained that this phrase in turn meant, as least to his mind: “It includes the time when students are

arriving on campus and supervised and then time after school where students are supervised and staff are present to do such.” RP 26.

According to his definition of “operational hours” Dasan was present at Armin Jahr during this time. The children were on the playground being loaded onto buses. Or presumably they were walking home off campus or they were being picked up by their parents.

The trial court attempted to determine the meaning of the variable term “school hours” when it examined Mr. Sellars. In response to questions from the court, the principal further broaden the term the term “school hours” to mean the “time when students are, you know present.” RP 28. On a normal school day that could mean about 8:30 until 3:50. On Wednesday it would be 8:40 until 2:45. Id.

Still, another definition of “school hours” was proposed by the trial court’s leading question, which was stated as:

“Q. So the reasonable time of “school hours” are the time that you expect the children to be on the campus either preparing to start school or winding down from school?

A. Right.” RP 29.

Again, no finding of fact was entered to indicate what time Dasan was on the school grounds or under which definition of “school hours” he was found to have violated. Yet, the trial court concluded as follows:

“Dasan Berrios knowingly entered and remained

upon the premises of the Armin Jahr Elementary School during school hours in violation of the Notice of Trespass he had previously signed.” CP 32, CL II.

State v. R.H.

State v. R.H., 86 Wn.App. 807, 939 P.2d 217 (1997) was cited and argued to the trial court. According to the argument Dasan had a public premises defense to criminal trespass if “[t]he 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 on the premises.” *id.* at 811; RCW 9A.52.090(2).⁴ The state has the burden of presenting evidence from which a fact finder could conclude beyond a reasonable doubt that an individual did not comply with the lawful conditions of access to the premises. See RCW 9A.52.090(2) and *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

Mr. Sellars testified with regard to the area, outside of the buildings, that was restricted from public use after school hours:

“Q. Is there any limit on the public’s use outside of school hours other than the trash you just listed, the trash fenced in by a receptacle?”

⁴RCW 9A.52.090 entitled “Criminal trespass-Defenses states in part: In any prosecution under RCW 9A.52.070 and 9A.52.080, it is a defense that:...(2) 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;....”

A. No. RP 23.

According to the Notice of Trespass, including highlighted language, issued to Dasan:

“You are hereby ordered effective this date, by written notification that you are **not** to enter, re-enter or be found within or upon any premises of Armin Jahr Elementary School during school hours. This notice of Trespass will be in effect for:[2007-08 handwritten] The current school year.”

Ex. 1; see appendix (bold print and underlining appears in the notice.).

If Dasan was on the school grounds after classes were in session, then he had a legitimate defense to being on campus according to *State v. R.H.* and according to the wording of the notice of trespass issued by the school. However, according to principal Sellars, Dasan was trespassed from the school even beyond school hours. He was asked:

Q”...Did you discuss what it had – how it affected hours of the day?

A. Well, yes. Actually, I told him that, because we have security cameras too, I told him if you were on campus and that we didn’t see him, even if we happen to record something, that we could still, you know, hold him accountable. But that meant that he was no longer welcome on Armin Jahr’s campus for the remainder of the school year.” RP 15-16.

II. DASAN WAS DENIED DUE PROCESS OF LAW BECAUSE THE TERM “SCHOOL HOURS” WAS NOT DEFINED.

RAP 2.5(a) entitled “Errors Raised for First time on Review” states that a party may raise for the first time on review “(3) manifest error

affecting a constitutional right.” A two part test is set forth in *State v. WWJ Corp.*, 138 Wn.2d 595, 602, 980 P.2d 1257 (1999) (whether the alleged error is truly constitutional and whether the alleged error is manifest). See also, *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995) (an appellant must identify a constitutional error and then show how the alleged error affected the appellant’s rights).

Dasn Berrios, age 13, was denied due process of law guaranteed by the Fourteenth Amendment and by Const. Art. 1, sec. 3 because one of the most important terms “school hours” that was used in the Notice of Trespass to warn him of when he could not be on campus was not defined. The Bremerton School district uses the term “school hours” in many instances. But it does not define what is meant by the term. CP 4.

The term “school hours” was described during the adjudicative hearing to mean any of the following:

1. When classes were in session. This was for purposes of removal of students. RP 20 (9:05 to 3:35 on all school days except Wednesday when it is 9:00 to 1:30) RP 18.⁵

⁵ At one point Sellars testified that children are in class “when the first bell rings” at 8:45. RP 24. When examined by the trial court he testified to an expanded definition of school hours on a normal day being 8:40 until 3:50: “That gives our students a chance to be picked up by their parents and buses then leave.” RP 28.

2. When classes are in session. This is for purposes of oral medication taken by students.. RP 21.
3. When children are present. RP 28.
4. During “operational hours”: when students are present and supervised by staff i.e, the time when teachers and staff are required to be on campus. RP 26⁶, RP 27.
5. The time that school officials expect children to be on campus either preparing to start school or winding down from school. RP 29.
6. At Armin Jahr: 8:40 to 3:50 on all school days, except Wednesday when children are present from about 8:40 to 2:45. RP 24, 28-9.
7. When Dasan was present on campus. RP 15-16.

Even the trial court had its own interpretation of what school hours meant when it entered its first finding of fact and referred to the time to include “at the end of the school day.” CP 32 ff. I.

The constitutionality of a statute is reviewed de novo. *State v. Stevenson*, 128 Wn.App. 179, 187, 114 P.3d 699 (2005). An appellant who asserts a vagueness challenge bears the burden of proving the statute’s unconstitutionality beyond a reasonable doubt. *id.*

The constitutional test is that the criminal trespass statute should be

⁶“It includes the time when students are arriving on campus and supervised and then time after school where students are supervised and staff are present to do such.” RP 26.

evaluated for vagueness “as applied” in light of the particular facts of the case. *State v. Halstien*, 122 Wn.2d 109, 117, 857 P.2d 270 (1993) (“The due process vagueness doctrine under U.S. Const. amend 14, sec. 1 and Const. art. 1, sec. 3 serves two important purposes: first, to provide citizens with fair warning of what conduct they must avoid; and second, to protect them from arbitrary, ad hoc, or discriminatory law enforcement.”) *Id.* at 116-17. See also, *State v. Riles*, 135 Wn.2d 326, 348, 957 P.2d 655 (1998) (two purposes under United States Const. Amend 14, sec. 1 and Const. art. 1, sec 3.)

In *Halstien*, where a juvenile newspaper boy was adjudicated to be guilty of second degree burglary with sexual motivation when he ejaculated on a picture frame, the State Supreme Court elaborated and clarified the above test by stating:

“Under the due process clause of the Fourteenth Amendment, a statute is void for vagueness if either (1) the statute “does not define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited,” or (2) the statute “does not provide ascertainable standards of guilt to protect against arbitrary enforcement.”⁷ *Halstien*, 122 Wn.2d at 117 (citing *Spokane v. Douglass*,

⁷ In the case at bench there are no prosecutorial statutory standards with regard to criminal trespass at schools. Nor is the prosecutor required

115 Wn.2d 171, 178, 795 P.2d 693 (1990)). And see, *Kolender v. Lawson*, 461 U.S. 352, 357, 75 L.Ed.2d 903, 103 S.Ct. 1855 (1983).⁸ Appellate courts have held and have found that a statute is unconstitutionally vague if either requirement is not satisfied. *Spokane v. Douglass*, at 178; *State v. Stevenson*, 128 Wn. App. at 188.

One case may find a statute unconstitutional while another case may find a statute constitutional, as the following two examples illustrate. In *State v. Williams*, 98 Wn.App 765, 773, 991 P.2d 107 (2000) the Court of Appeals found RCW 9A.46.020(1)(a)(iv) was not unconstitutionally vague and re-stated the test:

“The measure for vagueness is common intelligence, and a statute is unconstitutionally vague if ““It forbids conduct in terms so vague that persons of common intelligence must guess at its meaning and differ as to its application.”” (citing *Spokane v. Douglass*, 115 Wn. 2d at 179 (quoting *Burien Bark Supply v. King County*, 106 Wn.2d 868, 871, 725 P.2d 994 (1986)).

to consider any possible defense, such as in *State v. R.H.* Also, no specific findings of fact are required. Compare *State v. Halstien*, supra.

⁸The Supreme Court found California’s Penal Code sec. 647(e) unconstitutional where it required persons who loitered or wandered the streets to provide “credible and reliable” identification to police officers. The High Court held that there were no standards set forth to advise what a suspect must do to comply with the requirement.

Applying that test to the case at bench, Dasan was advised in writing to stay away from the school during school hours. What that term means has numerous interpretations. In addition, principal Sellars advised Dasan to remain away from the school for the remainder of the school year including any time that a security camera was able to detect his presence.⁹ Yet, according to Sellars the school was open to the public: “When school is not in session, yes.”¹⁰ RP 22.

This Court should follow the decision in *Everett v. Moore*, 37 Wn.App. 862, 683 P.2d 617 (1984) where a city ordinance prohibiting harassment was declared unconstitutional because it was both vague and overly broad. There the court stated:

“A penal statute is constitutionally vague if it does not define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is

⁹“...Actually, I told him that, because we have security cameras too, I told him if you were on campus and that we didn’t see him, even if we happen to record something, that we could still, you know, hold him accountable. But that meant that he was no longer welcome on Armin Jahr’s campus for the remainder of the school year.” RP 16.

¹⁰See *Seattle v. Rice*, 93 Wn.2d 728, 612 P.2d 792 (1980) where the Supreme Court found Seattle ordinance No. 102843 (SMC 12A.08.240) that defined the offense of criminal trespass in terms of obedience to a “lawful order” to create the possibility of ad hoc and arbitrary enforcement. The Court affirmed the superior court’s finding of void for vagueness because the ordinance was not sufficiently specific to inform persons of reasonable understanding of what conduct was proscribed.

prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. *Kolender v. Lawson*, 461 U.S. 352, 357, 75 L.Ed2d 903, 103 S.Ct. 1855 (1983).”

“As applied” to the facts and circumstances of this case RCW 9A.52.080 is unconstitutional because ordinary people have to guess at its meaning as to when “school hours” are over and the public, including Dasan, are entitled to be on the school premises.

III. THE TRIAL COURT ERRED WHEN IT ENTERED DISPUTED FINDING OF FACT IV.

The trial court entered finding of fact IV, which states:

“Dasan Berrios at no time expressed confusion or misunderstanding regarding the terms of the notice of trespass.” CP 32.

There was not substantial evidence to support this finding.

According to *State v. Sommerville*, 111 Wn.2d 524, 760 P.2d 932 (1988) (“Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded person of the truth of the declared premise.”) See also, *State v. Thetford* and *State v. Hill*, supra.

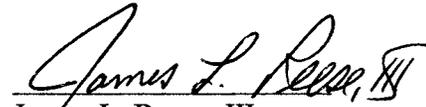
Contrary to this finding of fact Dasan testified that the terms of the Notice of Trespass were not explained to him. At the time he signed the notice, the two principals present did not explain trespass to him. RP 39. According to his testimony, after discussion with his mother, he thought that he was told not to be on school property during school hours. RP 40.

E. Conclusion

This court should find that RCW 9A.52.080(1) as applied in this case is unconstitutionally vague, does not provide fair notice and violates due process of law. The juvenile's conviction for criminal trespass in the second degree should be reversed.

Dated this 5th day of September 2008.

Respectfully submitted,



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Court appointed attorney
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RECEIVED AND FILED
IN OPEN COURT

MAY 13 2008

DAVID W. PETERSON
KITSAP COUNTY CLERK

IN THE KITSAP COUNTY SUPERIOR COURT

JUVENILE DIVISION

STATE OF WASHINGTON,

Plaintiff,

v.

DASAN V. BERRIOS,
Age: 13; DOB: 12/12/1994,

Respondent.

)
) No. 08-8-00052-8
)
) FINDINGS OF FACT AND CONCLUSIONS
) OF LAW FOR HEARING ON FACT FINDING
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THIS MATTER having come on regularly for hearing before the undersigned Judge of the above-entitled Court pursuant to a hearing on Fact Finding; the parties appearing by and through their attorneys of record below-named; and the Court having considered the motion, briefing, testimony of witnesses, if any, argument of counsel and the records and files herein, and being fully advised in the premises, now, therefore, makes the following-

FINDINGS OF FACT

I.

On January 9, 2008, Dasan Berrios was observed by William Palmer, a member of the



1 school staff, on the campus of Armin Jahr Elementary School in the City of Bremerton, Kitsap
2 County, Washington, while school buses were being loaded at the end of the school day.

3 **II.**

4 Dasan Berrios had been issued a Notice of Trespass on December 12, 2007, which stated
5 he was not to enter the premises of the elementary school during school hours for the 2007-2008
6 school year.

7 **III.**

8 The Notice of Trespass had been signed by Dasan on the date it was issued and was
9 entered as State's Exhibit during the fact-finding.

10 **IV.**

11 Dasan Berrios at no time expressed confusion or misunderstanding regarding the terms of
12 the notice of trespass.

13 **V.**

14 Dasan Berrios was on the campus during school hours in violation of the notice of
15 trespass.

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17
18 **CONCLUSIONS OF LAW**

19 **I.**

20 The above-entitled Court has jurisdiction over the parties and the subject matter of this
21 action.

22 **II.**

23 Dasan Berrios knowingly entered and remained upon the premises of the Armin Jahr
24 Elementary School during school hours in violation of the Notice of Trespass he had previously
25 signed.

26 **III.**

27 Dasan Berrios is guilty of Criminal Trespass in the Second Degree.
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CLERK

SO ORDERED this 13th day of May, 2008.

Theodore F. Spearman

JUDGE THEODORE F. SPEARMAN

PRESENTED BY-

APPROVED FOR ENTRY-

STATE OF WASHINGTON

Helene R. Smart

HELENE R. SMART, WSBA NO. 38398
Deputy Prosecuting Attorney

Mary Spun

MARY SPAUN, WSBA NO. 38003
Attorney for Defendant

Prosecutor's File Number-08-180590-3

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FINDINGS OF FACT AND CONCLUSIONS OF LAW;
Page 3 of 3



Russell D. Hauge, Prosecuting Attorney
Juvenile Criminal Division
614 Division Street, MS-35
Port Orchard, WA 98366-4681
(360) 337-5500; Fax (360) 337-5509
www.kitsapgov.com/pros

**ARMIN JAHR ELEMENTARY SCHOOL
 (BREMERTON SCHOOL DISTRICT)
 800 DIBB ST
 BREMERTON, WA 98320
 (360) 478-5085**

NOTICE OF TRESPASS

ATTENTION Berrios DASAN Y 12/12/1994
Last Name First Middle (Date of Birth)

Address 213 OAK STREET APT 13 Bremerton, WA 98310
(Street/Apartment #/City/State/Zip Code)

You are hereby ordered effective this date, by written notification that you are not to enter, re-enter, or be found within or upon any premises of Armin Jahr Elementary School during school hours. This Notice of Trespass will be in effect for:

2007-08
 The current school year The following dates _____

 Other _____

You are further ordered effective this date, by written notification that in the event you re-enter or be found within or upon any premises of the Armin Jahr Elementary School in violation of this order will result in apprehension and detention by school authorities until delivered to or turned over to civil authorities.

Any entrance within or upon the premises of the Armin Jahr Elementary School in violation of this written notification is in violation of the Bremerton Municipal Code 9A.36.140, adopting R.C.W.9A.52.070 Criminal Trespass in the first degree. Criminal trespass in the first degree is a gross misdemeanor.

Gross misdemeanors are punishable by a fine or not more than five thousand dollars, or by imprisonment in a county jail for up to one year, or by both, plus restitution, assessments and court costs.

I have read or have been read to me and understand the above written notification.

DASAN v. Berrios
 Signature [Signature] Date 12/17/07

Witness [Signature] Date 12-17-07
Sally Wilson, Principal
 Mountain View Middle School
 Bremerton School District B

AMENDMENT (XIV)

ss.1. Citizenship rights not be abridged by states

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATE CONSTITUTION OF WASHINGTON

ARTICLE 1, ss. 3. Personal Rights

No person shall be deprived of life, liberty, or property, without
due process of law.

RCW 9A.52.080

Criminal trespass in the second degree.

(1) A person is guilty of criminal trespass in the second degree if he knowingly enters or remains unlawfully in or upon premises of another under circumstances not constituting criminal trespass in the first degree.

(2) Criminal trespass in the second degree is a misdemeanor.

[1979 ex.s. c 244 § 13; 1975 1st ex.s. c 260 § 9A.52.080.]

Notes:

Effective date – 1979 ex.s. c 244: See RCW 9A.44.902.

RCW 9A.52.090
Criminal trespass — Defenses.

In any prosecution under RCW 9A.52.070 and 9A.52.080, it is a defense that:

- (1) A building involved in an offense under RCW 9A.52.070 was abandoned; or
- (2) 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; or
- (3) The actor reasonably believed that the owner of the premises, or other person empowered to license access thereto, would have licensed him to enter or remain; or
- (4) The actor was attempting to serve legal process which includes any document required or allowed to be served upon persons or property, by any statute, rule, ordinance, regulation, or court order, excluding delivery by the mails of the United States. This defense applies only if the actor did not enter into a private residence or other building not open to the public and the entry onto the premises was reasonable and necessary for service of the legal process.

[1986 c 219 § 2; 1975 1st ex.s. c 260 § 9A.52.090.]

far sanctioned such a departure by the court of limited jurisdiction, as to call for review by the appellate court.

(e) **Acceptance of Review.** Upon accepting discretionary review, the appellate court may specify the issue or issues as to which review is granted.

[Amended effective January 1, 1981; September 1, 1985; September 1, 1998; December 24, 2002.]

RULE 2.4 SCOPE OF REVIEW OF A TRIAL COURT DECISION

(a) **Generally.** The appellate court will, at the instance of the appellant, review the decision or parts of the decision designated in the notice of appeal or, subject to RAP 2.3(e), in the notice for discretionary review, and other decisions in the case as provided in sections (b), (c), (d), and (e). The appellate court will, at the instance of the respondent, review those acts in the proceeding below which if repeated on remand would constitute error prejudicial to respondent. The appellate court will grant a respondent affirmative relief by modifying the decision which is the subject matter of the review only (1) if the respondent also seeks review of the decision by the timely filing of a notice of appeal or a notice of discretionary review, or (2) if demanded by the necessities of the case.

(b) **Order or Ruling Not Designated in Notice.** The appellate court will review a trial court order or ruling not designated in the notice, including an appealable order, if (1) the order or ruling prejudicially affects the decision designated in the notice, and (2) the order is entered, or the ruling is made, before the appellate court accepts review. A timely notice of appeal of a trial court decision relating to attorney fees and costs does not bring up for review a decision previously entered in the action that is otherwise appealable under rule 2.2(a) unless a timely notice of appeal has been filed to seek review of the previous decision.

(c) **Final Judgment Not Designated in Notice.** Except as provided in rule 2.4(b), the appellate court will review a final judgment not designated in the notice only if the notice designates an order deciding a timely posttrial motion based on (1) CR 50(b) (judgment as a matter of law), (2) CR 52(b) (amendment of findings), (3) CR 59 (reconsideration, new trial, and amendment of judgments), (4) CrR 7.4 (arrest of judgment), or (5) CrR 7.6 (new trial).

(d) **Order Deciding Alternative Post-trial Motions in Civil Case.** An appeal from the judgment granted on a motion for judgment notwithstanding the verdict brings up for review the ruling of the trial court on a motion for new trial. If the appellate court reverses the judgment notwithstanding the verdict, the appellate court will review the ruling on the motion for a new trial.

(e) **Order Deciding Alternative Post-trial Motions in Criminal Case.** An appeal from an order granting a motion in arrest of judgment brings up for review the ruling of the trial court on a motion for new trial. If the appellate court reverses the order granting the motion

in arrest of judgment, the appellate court will review the ruling on a motion for new trial.

(f) **Decisions on Certain Motions Not Designated in Notice.** An appeal from a final judgment brings up for review the ruling of the trial court on an order deciding a timely motion based on (1) CR 50(b) (judgment as a matter of law), (2) CR 52(b) (amendment of findings), (3) CR 59 (reconsideration, new trial, and amendment of judgments), (4) CrR 7.4 (arrest of judgment), or (5) CrR 7.6 (new trial).

(g) **Award of Attorney Fees.** An appeal from a decision on the merits of a case brings up for review an award of attorney fees entered after the appellate court accepts review of the decision on the merits.

[Amended effective September 1, 1994; September 1, 1998; December 24, 2002.]

References

Rule 5.2, Time Allowed To File Notice, (f) Subsequent notice by other parties.

RULE 2.5 CIRCUMSTANCES WHICH MAY AFFECT SCOPE OF REVIEW

(a) **Errors Raised for First Time on Review.** The appellate court may refuse to review any claim of error which was not raised in the trial court. However, a party may raise the following claimed errors for the first time in the appellate court: (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right. A party or the court may raise at any time the question of appellate court jurisdiction. A party may present a ground for affirming a trial court decision which was not presented to the trial court if the record has been sufficiently developed to fairly consider the ground. A party may raise a claim of error which was not raised by the party in the trial court if another party on the same side of the case has raised the claim of error in the trial court.

(b) **Acceptance of Benefits.**

(1) **Generally.** A party may accept the benefits of a trial court decision without losing the right to obtain review of that decision only (i) if the decision is one which is subject to modification by the court making the decision or (ii) if the party gives security as provided in subsection (b)(2) or (iii) if, regardless of the result of the review based solely on the issues raised by the party accepting benefits, the party will be entitled to at least the benefits of the trial court decision or (iv) if the decision is one which divides property in connection with a dissolution of marriage, a legal separation, a declaration of invalidity of marriage, or the dissolution of a meretricious relationship.

(2) **Security.** If a party gives adequate security to make restitution if the decision is reversed or modified, a party may accept the benefits of the decision without losing the right to obtain review of that decision. A party that would otherwise lose the right to obtain review because of the acceptance of benefits shall be

FILED
COURT OF APPEALS
DIVISION II

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PROOF OF SERVICE

STATE OF WASHINGTON
BY Jim
DEPUTY

STATE OF WASHINGTON)
COUNTY OF KITSAP)

James L. Reese, III, being first duly sworn on oath, deposes and says:

That he is a citizen of the United States, a resident of the State of Washington over the age of eighteen years, not a party to the above-entitled action and competent to be a witness herein.

That on the 8th day of September, 2008, he hand delivered for filing the original and one (1) copy of Appellant's Brief in State of Washington v. Dasan V. Berrios, No. 37754-3-II, to the office of David C. Ponzoha, Clerk, Court of Appeals, Division II, 950 Broadway, Ste. 300, Tacoma, WA 98402; hand delivered one (1) copy of the same to the office of Kitsap County Prosecuting Attorney, 614 Division Street, Port Orchard, Washington 98366 and deposited in the mails of the United States of America, postage prepaid, one (1) copy of the same to Appellant, Dasan V. Berrios, at his last known address: Dasan V. Berrios, 213 Oak St. #B, Bremerton, WA 98312.

James L. Reese, III
James L. Reese, III

Signed and Attested to before me this 8th day of September, 2008 by
James L. Reese, III.

Julia S. Reese
Notary Public in and for the State of
Washington, residing at Port Orchard.
My Appointment Expires: 04/04/09