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February 27, 2015
Court of Appeals
Division III
State of Washington

NO. 32558-0-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent

v.

ANGEL E. TAPIA, Appellant

APPEAL FROM THE SUPERIOR COURT
FOR BENTON COUNTY

NO. 14-8-00062-5

BRIEF OF RESPONDENT

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I. ISSUES PRESENTED

1. **Was the evidence sufficient to sustain a conviction for Criminal Trespass in the Second Degree?**

2. **Was there probable cause to arrest Mr. Tapia for Obstruction?**

II. STATEMENT OF FACTS

On May 20, 2014, Angel Tapia was found guilty of Criminal Trespass in the Second Degree and Resisting Arrest for events that occurred on February 9, 2014. (CP 16-23).

On February 9, 2014, Officer Joe Brazeau was dispatched to Chief Joseph Middle School for a report of two individuals on school grounds potentially causing damage to the school. (RP[1] at 13, 34). February 9, 2014, was a Sunday and it was approximately 10:00 p.m. when Officer Brazeau arrived at the school. (RP at 15). Officer Brazeau observed two individuals on the north side of the school between the building and the track. (RP at 15). He had to shine his spotlight on the individuals because it was dark and difficult to see them. (RP at 15-16, 23). The individuals walked away from Officer Brazeau when he shined the light on them. (RP at 16). Officer Brazeau exited his vehicle, identified himself as a police officer, and told the individuals to stop. (RP at 16, 24-25). They initially

[1] Unless otherwise indicated, "RP" refers to the Report of Proceedings of the Bench Trial held on May 20, 2014, before the Honorable Judge Cameron Mitchell.

ignored Officer Brazeau's request and continued to walk away, until they stopped and walked back. (RP at 17).

Officer Brazeau recognized Angel Tapia when he made contact with him; he did not know the other person, later identified as Daniel Perez. (RP at 17). Officer Brazeau observed the smell of alcohol on Mr. Perez. (RP at 17-18). Officer Brazeau informed Mr. Perez that he was under arrest after he observed the smell of alcohol coming from his person. (RP at 18). Mr. Perez told Officer Brazeau, "Fuck that," threw his backpack on the ground and "bladed his stance." *Id.* Officer Brazeau described Mr. Perez's stance as a "fighting-type stance. . . . a stance that is a pre-attack indicator, where somebody is bracing themselves, and getting a . . . wide stance so they . . . can either fight or run." *Id.*

Officer Brazeau drew his taser and commanded Mr. Perez to get on the ground. (RP at 19, 31). Mr. Perez complied; however, he struggled against Officer Brazeau when Officer Brazeau attempted to place him in handcuffs. *Id.* Officer Brazeau searched Mr. Perez incident to arrest and located a large fixed blade knife on Mr. Perez's hip. *Id.* Officer Brazeau was still the only officer on the scene at this time. (RP at 20). He threw the knife away from Mr. Perez as Mr. Perez continued to struggle with him. (RP at 20, 31-32). At this same time, Officer Brazeau observed Angel Tapia remove a cell phone and attempt to place a phone call. (RP at

20-21). Mr. Tapia was behind Officer Brazeau's shoulder when this occurred. (RP at 20). Officer Brazeau told Mr. Tapia to back up and put the phone down. *Id.*. Mr. Tapia neither backed up nor placed his phone down. *Id.* Officer Brazeau testified that Mr. Tapia's actions affected his ability to place Mr. Perez under arrest. (RP at 21).

Officer Brazeau turned and knocked the phone out of Mr. Tapia's hand when he refused to put the phone down. (RP at 21). Officer Brazeau told Mr. Tapia he was under arrest at that time. (RP at 21). Officer Brazeau went to grab Mr. Tapia's jacket and he attempted to spin out of his jacket. *Id.* Mr. Tapia's own testimony at trial was that he "slipped away" from Officer Brazeau when he attempted to grab him. (RP at 48). Mr. Perez started to kick Officer Brazeau when Officer Brazeau turned his attention from Mr. Perez to Mr. Tapia. (RP at 22; 48).

Mr. Tapia was charged by Information with Criminal Trespass in the Second Degree and Resisting Arrest. (CP 6-7). A bench trial was held on May 20, 2014, before the Honorable Judge Cameron Mitchell. Judge Mitchell found Mr. Tapia guilty of Criminal Trespass in the Second Degree and Resisting Arrest. (CP 16-23).

Mr. Tapia now appeals his convictions.

III. ARGUMENT

1. THE EVIDENCE WAS INSUFFICIENT TO FIND MR. TAPIA GUILTY OF CRIMINAL TRESPASS IN THE SECOND DEGREE.

The State's evidence was insufficient to sustain a finding of guilty for Criminal Trespass in the Second Degree. Under RCW 9A.52.010(5):

> A license or privilege to enter or remain on improved and apparently used land that is open to the public at particular times, which is neither fenced nor otherwise enclosed in a manner to exclude intruders, is not a license or privilege to enter or remain on the land at other times if notice of prohibited times of entry is posted in a conspicuous manner.

The State concedes that no evidence was presented at trial to show that the school was fenced or that there was signage prohibiting entry. The State did not prove the absence of the statutory defense beyond a reasonable doubt. The State requests that the conviction under Count I, Criminal Trespass in the Second Degree, be reversed and dismissed.

2. THE EVIDENCE WAS SUFFICIENT TO FIND MR. TAPIA GUILTY OF RESISTING ARREST.

"A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *State v. Thompson,* 69 Wn. App. 436, 444, 848 P.2d 1317 (1993). "Evidence is sufficient to support an adjudication of guilt in a juvenile proceeding if any rational trier of fact, viewing the evidence in a light most favorable to the State, could have found the essential elements of the crime beyond a

reasonable doubt." *State v. Avila,* 102 Wn. App. 882, 895–96, 10 P.3d 486 (2000) (quoting *State v. Echeverria*, 85 Wn. App. 777, 782, 934 P.2d 1214 (1997)).

A. There was probable cause to arrest Mr. Tapia for the crime of Obstruction.

Mr. Tapia obstructed Officer Brazeau when he did not put his phone down and back away from Officer Brazeau.

> "A person is guilty of obstructing a law enforcement officer if the person willfully hinders, delays, or obstructs any law enforcement officer in the discharge of his or her official powers or duties." RCWA 9A.76.020(1). "Hinder" means "to make slow or difficult the course or progress of." Webster's Third New Int'l Dictionary 1070 (2002). "Delay" means "to stop, detain, or hinder for a time ... to cause to be slower or to occur more slowly than normal." Webster's at 595. "Obstruct" means "to be or come in the way of: hinder from passing, action, or operation." Webster's at 1559. A person acts willfully when he acts knowingly with respect to the material elements of the offense. RCW 9A.08.010(4).

State v. Steen, 164 Wn. App. 789, 798, 265 P.3d 901 (2011), *as amended* (Dec. 20, 2011). "Under RCWA 9A.76.020(1)'s plain language, a person may commit obstruction by willfully disobeying a lawful police order in a manner that hinders, delays, or obstructs the officer in the performance of his or her duties." *Id.* at 800.

In the instant case, Officer Brazeau was arresting Mr. Perez for being a minor in possession/consumption of alcohol. (RP at 18). Mr.

Perez resisted arrest. (RP at 19-22). Mr. Tapia was aware that Officer Brazeau was struggling with Mr. Perez and having a difficult time placing him under arrest. (RP at 46). Mr. Tapia heard Officer Brazeau tell him not to be on his phone. (RP at 54). Mr. Tapia's act of using his cell phone did hinder or delay the arrest that was occurring. Officer Brazeau had to turn his attention from Mr. Perez, who was struggling and resisting arrest, to Mr. Tapia. (RP at 20-21). Mr. Perez proceeded to kick Officer Brazeau when he turned his attention to Mr. Tapia. (RP at 20-21). The trial court's legal conclusion that there was probable cause to arrest for Obstruction is supported by the facts, especially when the facts are looked at in the light most favorable to the State. Mr. Tapia's arrest for Obstruction was lawful.

B. The trial court did not err when it concluded that the defendant was guilty of Resisting Arrest.

Mr. Tapia resisted the lawful arrest of Officer Brazeau. A person is guilty of Resisting Arrest if he intentionally prevents or attempts to prevent a peace officer from lawfully arresting him. RCW 9A.76.040(a). Here, Mr. Tapia was told by Officer Brazeau that he was under arrest. (RP at 21). By Mr. Tapia's own account, he tried to "slip away" from Officer Brazeau after he was told he was under arrest. (RP at 48). The facts support the trial court's conclusion that Mr. Tapia intentionally

attempted to prevent Officer Brazeau from placing him under arrest for Obstruction. This conclusion and conviction should be upheld.

IV. CONCLUSION

The State concedes that there was insufficient evidence to prove Criminal Trespass in the Second Degree and that this conviction should be reversed and the charge dismissed. However, the State presented sufficient evidence for the trier of fact to find the defendant guilty of the crime of Resisting Arrest. Therefore, the State respectfully requests this Honorable Court to affirm the conviction of Resisting Arrest.

RESPECTFULLY SUBMITTED this 27th day of February, 2015.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

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