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Court of Appeals
Division III
State of Washington

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

STATE OF WASHINGTON,

Respondent,

v.

PETER ARENDAS,

Appellant.

APPEAL FROM THE SUPERIOR COURT
OF KLICKITAT COUNTY, STATE OF WASHINGTON
Superior Court No. 17-1-00098-3

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

In the face of overwhelming evidence a jury convicted the Appellant of Assault in the Third Degree for spitting in the face of an active duty law enforcement officer and for Trespassing in the First Degree for sprawling on the floor of small waiting area creating access and safety issues and refusing to leave. Was the trial court's decision to follow the wishes of the Appellant and not give an instruction reversible error? Furthermore, was the denial of unfounded discovery requests and quashing harassing subpoenas an abuse of discretion demanding the reversal of convictions?

B. STATEMENT OF THE CASE

The Wishram train station waiting room is owned by Burlington Norther Santa Fe Railroad (BNSF). Ex. 11-14; RP 272. A train operated by Amtrak stops in Wishram twice each day. RP 272. The waiting room is used by Amtrak patrons waiting for their train - it is open 24 hours a day and is unmanned. RP 272, 314, 369. While open 24 hours a day, a sign on the door visible from the inside area reads "No Loitering on This Property." Ex. 15, 16; RP 278, 367. Loitering within the waiting room has been is an ongoing issue at this location causing safety and security concerns. RP 278.

The Appellant, Peter J. Arendas, walked and hitchhiked to Wishram on August 26, 2017. RP 432. The Appellant's stated intent was

to get a ticket to Salt Lake City, Utah, via the Amtrak train, although he did not have sufficient funds to purchase a ticket. RP 432. That evening the Appellant was approached by Sergeant Fredrick Kilian who checked his identification and ran history for warrants. RP 411, 423, 434. The Appellant spent the night in Wishram without shelter, whereby he acknowledged at trial that he caused concern to members of the community. RP 434, 435.

On August 28, 2017, the Appellant obtained the necessary funds and purchased a ticket to Salt Lake City, scheduled for 7:30 a.m. on August 29, 2017. Ex. 29. RP 435, 437. That evening the Appellant returned to the train station in Wishram and slept on the floor of the waiting room, blocking access to others who may try to utilize the train station. RP 277, 438, 439.

On the same day the Appellant laid himself out on the floor of the Wishram station waiting room, Eric Young, a BNSF locomotive engineer, received a report of suspicious activity in the area. RP 275, 276. In an effort to ensure the area was safe, Mr. Young did a courtesy walk around the area and discovered the Appellant lying on the floor of the train station blocking access to the vending machines and main door. RP 277. With the next train not scheduled until the following morning, Mr. Young asked the Appellant to leave the station twice, requests which were ignored. RP 278,

279. Mr. Young testified that he was in the Marine Corps for 20 years and drew upon that experience to use his voice in a command manner, which he demonstrated in court, telling the Appellant he needed to leave. RP 277, 278. The Appellant was asked to leave because of the ongoing safety and security concerns. RP 278. The Appellant was trespassed because he was either passed out or sleeping in a facility designed for people to wait to embark on Amtrak trains. RP 288. The Appellant was blocking the only access to go in and out of that area. RP 291. After his request were ignored Mr. Young coordinated with Resource Protection Office and the Klickitat County Sheriff's Office regarding his concern. RP 278, 279. Mr. Young again asked the Appellant to leave after he called for assistance. RP 279.

In response to Mr. Young's call, Sergeant Kilian and Deputy Eric Beasley responded to the scene and found the Appellant laying on the floor in the waiting room. RP 346, 361. Sergeant Kilian told the Appellant repeatedly he had to leave. RP 346, 372. The Appellant immediately became combative towards the officers, demanding to know who had told him to leave. RP 346. When Sergeant Kilian pointed to BNSF employee Mr. Young, the Appellant began yelling at him and using profanity. RP 346. As it was repeated that the Appellant needed to leave the Appellant continued to yell. RP 346. As the behavior became more aggressive and

after the Appellant made no attempt to leave as requested, Sergeant Kilian informed the Appellant that he was under arrest for trespass. RP 347. The Appellant continued to be argumentative and as the officers attempted to place him in handcuffs, he attempted to pull his arms away. RP 379. Once placed in handcuffs and escorted to the patrol car the Appellant continued to use profanity and be combative. RP 379. Recordings from the Appellant in the vehicle show the Appellant calling the officers names and using a wide array of profane words. RP 382.

As Sergeant Kilian was getting in the front seat, the Appellant spewed swear words and then spit on him from the back of the patrol vehicle. RP 320, 322, 382, 383. Sergeant Kilian immediately confronted the Appellant about spitting on him, which the Appellant denied as he continued using profanity, expressing he was just waiting for the train, and accused Sergeant Kilian of lying. RP 383.

As a result of these actions, the Appellant was charged with assault in the third degree and criminal trespass in the first degree. CP 63-64. After having an attorney appointed, the Appellant moved, and was granted, the opportunity to represent himself. CP 59.

Acting pro se, the Appellant moved for copies of his police reports from a prior contact with the Klickitat County Sheriff's Office. RP 74-77. The court denied this request on the basis that the other contact was

“unrelated to this incident, absent a showing that there is some relevance to that information.” RP 77. No showing was made. The Appellant also made a motion to view Sergeant Kilian’s patrol car, allegedly on the basis that because the windows were darkened, one of the witnesses alleged to have seen the spitting was a physical impossibility. 170. The court denied the request on the basis that this issue was “proper for cross examination of the witness on that matter.” RP 170.

During the trial Benjamin Tibbets, a BNSF train conductor present at the time of the Appellant’s arrest, testified he witnessed the Appellant make a spitting motion, and that Sergeant Kilian immediately backed away from the vehicle with spittle on his face. RP 320-325. Mr. Tibbets further testified he assisted Sergeant Killian with removing the spittle from his face. RP 322. The Appellant extensively cross-examined Mr. Tibbets about his ability to see the spitting action. RP 327-329.

As part of the trial, the Appellant subpoenaed Sergeant Kilian, Mr. Tibbets, and Mr. Young. RP 201-02, 313, 315. These three witnesses were also subpoenaed by the State, who subsequently moved to quash all three of the Appellant’s subpoenas. RP 331-32. When the court made lengthy and repeated inquiries as to the purpose of eliciting direct testimony of two witnesses, Young and Tibbets, which the Appellant had just cross examined, the Appellant only referred to wanting answers to questions he

had already asked on cross. RP 333-341. Upon being questioned by the court if there was additional information the Appellant intended to solicit that was not covered in his cross examination, the Appellant told the court “[n]ot at this time, but I’m – not at this time. I don’t want to excuse the witnesses, that just what I want to do. I don’t want to excuse them.” RP 339-340. The Appellant had previously told the court to “[f]orget those two witnesses. Get rid of them,” referring to Young and Tibbets. RP 337. The court ruled it would be cumulative and quashed the subpoenas for Mr. Young and Mr. Tibbets, but not for Sergeant Kilian, who had yet to testify. RP 340-41.

During the trial audio and video recordings were played from Sergeant Kilian’s patrol car which confirm the previously stated behavior of the Appellant during the arrest, including the spit sound. Ex. 31; RP 373, 377-88. The Appellant then testified on his own behalf, focusing on the fact that he has a ticket for the following morning and denying that he was asked to leave prior to the officers arriving or that he spat on Sergeant Kilian’s face Ex. 29; RP 435, 437-40. The Appellant was asked by the court whether he wished to offer WPIC 19.06 – the Appellant did not directly answer but rather stated he did not care and that he was satisfied with the jury not being so instructed. RP 454.

The jury convicted the Appellant of the crimes charged. CP 70, 71.

The court imposed a sentence at the upper range of the standard range. RP 528. The Appellant was prohibited from contacting BNSF or its properties in Washington as a condition of community custody. CP 90.

C. ARGUMENT

1. Overwhelming evidence as to the elements of Criminal Trespass in the First Degree were presented to the jury and they convicted accordingly.

The Appellant Arendas now challenges his underlying conviction for Trespass in the First Degree based on the failure of the court to instruct on statutory defenses when the Appellant made no request to the court for such and previously never raised a statutory defense. *City of Bremerton v. Widell*, 146 Wn.2d 561, 570, 51 P.3d 733 (2002), stands for the proposition that once a defendant has offered some evidence that his or her entry was permissible under RCW 9A.52.090, the prosecution bears the burden to prove beyond a reasonable doubt that the defendant lacked license to enter. However, it was never the theory of the State that the Appellant's entry into the waiting area was unlawful, but instead that his remaining in a position that obstructed the use of the area by others was not allowed, and that he ignored repeated requests to leave.

An appellate court is to view the supporting evidence in the light most favorable to the party that requested the instruction. *State v. Fernandez-Medina*, 141 Wn.2d 448, 455-6, 6 P.3d 1150 (2000)(emphasis

added). Here no request was made. In fact, the Appellant stated he did not want the instruction. While Washington cases hold that where sufficient evidence supports a theory of defense, it can be reversible error to refuse to instruct on the theory. *State v. Griffin*, 100 Wn.2d 417, 419-20, 670 P.2d 265 (1983). A specific instruction need not be given when a more general instruction adequately explains the law and enables the parties to argue their theories of the case. *State v. Brown*, 132 Wn.2d 529, 605, 940 P.2d 546 (1997), cert. denied, 523 U.S. 1007, 118 S.Ct. 1192, 140 L.Ed.2d 322(1998). Again, it was never the theory of the case that the initial entry was unlawful, but rather that the continued presence contrary to BNSF's requests was the unlawful act. Appellant never argued that his sprawling on the floor blocking access was an allowed use but rather accused everyone around him of lying.

In reviewing the sufficiency of the evidence, the test is whether, "viewing the evidence most favorable to the State, a rational trier of fact could find the essential elements of the charged crime have been proven beyond a reasonable doubt." *State v. Espinoza*, 112 Wn.2d 819, 827, 774 P.2d 1177 (1989). In such circumstances the court will admit the truth of the State's evidence and all inferences that can be reasonably drawn therefrom. *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254 (1980).

The Appellant referenced having an Amtrak ticket but, as was

argued in closing to the jury, that did not allow use of the facilities in any way he wished. He blocked access, created a safety issue, and refused to leave. The evidence is overwhelming he remained unlawfully in the waiting area and/or exceeded the scope of allowed uses of the waiting room. The jury agreed and they convicted as charged. Any jury that saw the evidence and heard the Appellant's defense would have convicted him of first degree trespass.

2. The Court properly exercised control over this case and did not allow the Appellant to turn it into a spectacle by indulging claims of harassment, there was no violation of the Appellant's right to present a defense.

The Appellant is focused on the notion that he is a victim of harassment and bias seemingly because he was arrested for refusing to leave a business and spitting on an officer. To further his position the Appellant claims he was erroneously denied discovery requests. The scope of discovery is within the sound discretion of the trial court and will not be disturbed absent a manifest abuse of that discretion. *State v. Mak*, 105 Wn.2d 692, 704, 718 P.2d 407 (1986). To show such a manifest abuse of discretion the Appellant must show that the requested information is material to the preparation of the accused's defense. *Id.* Discretion is abused only when no reasonable person would have decided the issue as the trial court did. *State v. Rice*, 110 Wn.2d 577, 600, 757 P.2d 889 (1988).

The Appellant made no showing whatsoever that records he may

have sought were material in any way to the case at bar and the Court properly denied his requests. RP 77. The mere possibility that an item of undisclosed evidence might have helped the defense or might have affected the outcome of the trial . . . does not establish 'materiality' in the constitutional sense. *In re Pers. Restraint of Lui*, 188 Wn.2d 525, 566, 397 P.3d 90 (2017).

In addition, the Appellant conceded at trial he had no further use for Young and Tibbets but refused, seemingly out of pure petulance, to release the witnesses. RP 331-341. The Appellant was asked multiple times by the court as to what relevant information he sought to elicit from the witnesses and the Appellant could not answer in any fashion. RP 333-341. Therefore, the two subpoenas were properly quashed and the witnesses were allowed to be excused.

In exercising its discretion to grant or deny a request for compulsory process, the trial court may consider a number of factors, including surprise, diligence, materiality and maintenance of orderly procedure. *State v. Edwards*, 68 Wn.2d 246, 255, 412 P.2d 747 (1966). The Appellant made no showing of materiality and the court properly exercised its discretion to try to maintain orderly proceeding, as it did throughout trial as the Appellant's repeatedly refused to obey court rulings, used inappropriate language, and overall acted contemptuous.

3. Community custody condition 4.2(B)(7) is straightforward on its face and directly related to the underlying criminal conviction.

The Appellant now relies on evidence not properly before the court to argue that a condition imposed as a result of the trespassing conviction on BNSF property, that he not have any contact with BNSF or its properties, is improper. The prohibition is clearly crime related as the Appellant was convicted of trespassing on BNSF property. Simply because BNSF is a large landowner does not invalidate the court's concern that it or its employees not be subject to the criminal and contemptuous actions of the Appellant.

The condition provides ordinary people fair warning of proscribed conduct and is definite enough to protect against arbitrary enforcement. *See State v. Bahl*, 164 Wn.2d 739, 752-53, 193 P.3d 678 (2008). A community custody condition is unconstitutionally vague if it fails to do either. *Bahl*, 164 Wn.2d at 753. However, a community custody condition is not unconstitutionally vague merely because a person cannot predict with complete certainty the exact point at which his actions would be classified as prohibited conduct. *State v. Sanchez Valencia*, 169 Wn.2d 782, 793, 239 P.3d 1059 (2010). The prohibition of contact with BNSF property is clear, concrete and not subject to multiple interpretations. It defies logic and common sense to view it as vague or unenforceable and is therefore

constitutional.

D. CONCLUSION

As demonstrated in the record, the Appellant was engaged in appalling conduct that resulted in the underlying criminal charges and led to a short deliberation by the jury before conviction on all charges. The evidence of trespass and spitting in the face of a law enforcement officer was clear and overwhelming. The Appellant's rights were scrupulously protected by the court and the convictions and sentence should not be disturbed.



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