

66141-8

66141-8



NO. 66141-8-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

FABION MANION,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE ANTHONY WARTNIK

BRIEF OF RESPONDENT

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**A. ISSUE PRESENTED**

Viewing the evidence in the light most favorable to the State, is testimony from the officer who issued Manion notice that he was prohibited from all Garfield High School property for one year and from the teacher who later saw Manion on the stairs leading to the Garfield High School weight room sufficient to support Manion's conviction?

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS.**

The State charged Appellant Fabian Manion with second degree criminal trespass. CP 1. The State amended the information on the day of trial adding a second count of second degree criminal trespass.<sup>1</sup> After a bench trial, the Honorable Anthony P. Wartnick found Manion guilty of count 1 as charged and sentenced him to three months of community supervision and fifteen hours of community service. RP 150-52; CP 19-24.

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<sup>1</sup> The trial court granted the State's motion to amend, RP 12, however, the amended was not filed with the court.

## **2. SUBSTANTIVE FACTS.**

On February 4, 2010, Sylvia Hahn, a Garfield High School swimming and fitness teacher, was supervising the weight room after school. RP 23-4. Through the window, she saw Manion at the top of the stairs directly outside the weight room at approximately 3:00 or 3:30 PM. RP 24. She approached and was only a few feet away from Manion at the top of the stairs. RP 24-5. RP 46. Hahn did not recognize Manion, but saw he had what appeared to be marijuana in his hand and another individual had money out. RP 24; RP 45. She thought she was witnessing a drug deal and called 911. RP 24-5. Manion and the other individuals walked away. RP 25. Police did not respond. RP 42. Manion's presence on Garfield school property violated his previous trespass admonishment. RP 75-6.

A few weeks later, Hahn again saw Manion on the stairs outside of the weight room. RP 42. At that time, she went to the Garfield Teen Life Center to find out who he was. RP 42-3. She learned Manion's nickname and later reported to the Garfield school resource officer, Officer Bennie Radford, what she had observed on February 4, 2010. RP 31.

Earlier in the school year on September 16, 2009, Officer Radford had issued Manion a trespass admonishment prohibiting Manion from Garfield High School property for one year because Manion had harassed students and engaged in gang activity. RP 72-3. Manion had never been a student at Garfield. RP 49-50. The trespass admonishment stated the address of Garfield High School, 400 23<sup>rd</sup> AVE. RP 79. Officer Radford explained to Manion the trespass admonishment prohibited him from all areas of Garfield High School property. RP 73. He told him that the entire property was covered and Manion could not attend any school activities. RP 73.

The Garfield High School property or campus includes the main building, the gym, the areas behind the gym, and football field. RP 74. The building which houses the gym has a gym upstairs and a weight room downstairs. RP 39. The entire gym building and surrounding areas, including the stairs leading to the weight room, are part of Garfield's campus. RP 51. The campus also includes the fields and P.E. and Performing Arts Center<sup>2</sup>. RP 29. The

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<sup>2</sup> The P.E. and Performing Arts Center will be referred to as P.P.A.C.

Garfield Teen Life Center is adjacent to the gym building. RP 39. The front of the P.P.A.C. has signs posted warning that unauthorized persons are prohibited from school grounds from 7:00 AM until 4:00 PM on school days. RP 60. During these hours, these areas are part of the Garfield campus. RP 62-63.

After speaking to Hahn, Officer Radford referred the case to detectives. RP 76. Detective Whalen prepared a photo montage containing Manion's photo and showed it to Hahn. RP 18-21. Hahn positively identified Manion as the individual she had seen with what appeared to be marijuana on the stairs outside the weight room on February 4, 2010. RP 33-4; RP 18-21.

After hearing all of the evidence, Judge Wartnik issued oral and written Findings of Fact and Conclusions of Law convicting Manion of second degree criminal trespass. Supp CP \_\_\_\_ (sub no. 31).

Judge Wartnik orally found that Manion entered and remained unlawfully on Garfield High School property when Ms. Sylvia Hahn observed him on the stairs outside the weight room on February 4, 2010. RP 141-42. Supp CP \_\_\_\_ (finding of fact B,

appendix)<sup>3</sup>. Manion's presence on the stairs violated his previous trespass admonishment prohibiting Manion from Garfield school property. Judge Wartnik noted, "I don't think anybody can seriously question that Fabian [Manion] was on notice that that [stairs to the weight room] was part of school grounds since the doors are an entry into the school property." RP 141. Judge Wartnik specifically found that Manion had been on the stairs outside the weight room, not only the path. RP 141. RP 151.

**C. ARGUMENT**

Manion argues that there is insufficient evidence in the record to sustain his second degree criminal trespass conviction because the State did not prove beyond a reasonable doubt that he knowingly entered or unlawfully remained on the premises of Garfield High School on February 4, 2010. According to Manion, the State specifically failed to prove that Manion had notice that the stairs leading to the weight room were part of Garfield's campus and that the State did not disprove that this area was open to the

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<sup>3</sup> In the trial court's oral findings, the court states the date of the crime was on February 10, 2010. However, the written findings of fact state February 4, 2010, Supp CP \_\_ (finding of fact B, appendix), and Hahn testified she saw Manion on February 4, 2010, RP 24.

public and that he complied with lawful conditions of access.

Manion's argument fails on both counts. First, there is substantial evidence in the record that Manion knowingly and unlawfully entered Garfield's campus on February 4, 2010, when Hahn saw him dealing what appeared to be marijuana on the weight room stairs. Manion had been trespassed for one year from Garfield's campus on September 24, 2009 for harassing students and gang activity. At the time he was trespassed, Officer Radford notified Manion that he could not enter Garfield High School's campus, including all buildings on campus, playfields, and surrounding areas. Even if the stairs outside the weight room were a public area, Garfield had a right to exclude him because he had not complied with the lawful conditions of access.

#### **1. STANDARD OF REVIEW.**

A person is guilty of second degree criminal trespass if s/he knowingly enters or remains unlawfully in or upon premises of another under circumstances not constituting criminal trespass in the first degree. RCW 9A.52.080. Premises is defined as any building, dwelling, or any real property. RCW 9A.52.010(1). Enters or remains unlawfully is defined as when a person is not then

licensed, invited, or otherwise privileged to so enter or remain. RCW 9A.52.010(3). It is a defense to second degree criminal trespass if 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). When raised, the State must then prove that the area was not open to the public or that the actor did not comply with the lawful conditions of access. *State v. R.H.*, 86 Wn. App. 807, 812, 939 P.2d 217 (1997); *Bremerton v. Widell*, 146 Wn.2d 561, 570, 51 P.3d 733 (2002).

At trial, the State must prove each element of the charged crime beyond a reasonable doubt. *State v. Alvarez*, 128 Wn.2d 1, 13, 904 P.2d 754 (1995). Evidence is sufficient to support a conviction if, viewed in a light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences that reasonably can be drawn therefrom." *Id.* at 201. Circumstantial and direct evidence are equally reliable. *State v. Fiser*, 99 Wn. App. 714, 718, 995 P.2d 107 (2000). A reviewing court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the

persuasiveness of the evidence. *Id.* at 719. Furthermore, the reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that there is substantial evidence in the record to support the conviction. *Id.* at 718. A trial court's unchallenged findings are verities on appeal. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

**2. SUBSTANTIAL EVIDENCE IN THE RECORD SUPPORTS MANION'S SECOND DEGREE CRIMINAL TRESPASS CONVICTION.**

The State presented substantial evidence Manion trespassed on Garfield's campus when Ms. Hahn observed him dealing marijuana on the weight room stairs on February 4, 2010. Even if the stairs outside the weight room were an area open to the public, Manion was prohibited from this area because he had been trespassed from Garfield's campus for harassment of students and gang activity.

**a. Manion Had Notice That The Stairs Outside The Garfield Weight Room Were Part Of Garfield High School Property.**

The State must show whether a reasonable person in Manion's position would have understood s/he knowingly entered or remained unlawfully. *State v. Finley*, 97 Wn. App. 129, 138, 982 P.2d 681 (1999). His subjective view is not relevant. *Id.*

Manion asserts that he was not on notice that the stairs to the Garfield weight room were part of the Garfield campus<sup>4</sup>. However, Manion ignores the testimony of Officer Radford, Principal Howard, Hahn, and his own testimony. A review of the testimony shows that any rational trier of fact could conclude that Manion had notice that the trespass admonishment included the stairs outside the Garfield weight room.

Officer Radford issued Manion a trespass admonishment on September 16, 2009 because Manion had harassed Garfield students and engaged in gang activity. RP 72-73.<sup>5</sup> The notice prohibited Manion from entering or remaining on the premises of Garfield High School at 400 23 AVE. *Id.*; RP 79. When he issued him the notice, Officer Radford explained to Manion that it

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<sup>4</sup> Judge Wartnik found that Manion had specifically been on the stairs outside the weight room, not only the path. RP 141; RP 151. The findings of fact entered also state that Manion was on the stairs. Supp CP \_\_\_ (finding of fact B, appendix). The State will address the stairs as that was the trial court's specific finding of where Manion entered or remained unlawfully.

<sup>5</sup> Officer Radford issued the notice on September 16, 2009, but it was not entered until September 24, 2009. See State's Exhibit 11.

prohibited Manion from being on any of Garfield's property for one year. RP 73-74. Further, he explained that Manion could not go to any of the school activities and that the entire property was covered. RP 73. That included the gym, the areas behind the gym, and football field. RP 74.

Officer Radford identified the Garfield gym, the Quincy Jones Center, the football fields, and softball fields as part of the campus as shown in Respondent's Exhibit 12, an aerial photograph. RP 80-82. The weight room is in the same building as the gym and is a school building. RP 27. The Teen Life Center is in the adjacent building. RP 39. Manion also confirmed these facts in his testimony. RP 120.

Principal Howard described the area of campus as the entire school, including the baseball fields and swimming pool during daytime hours. RP 51. The daytime hours are from 7:00 AM until 4:00 PM. RP 60.

Hahn saw Manion on the three stairs that led directly into the Garfield weight room between 3:00 to 3:30 PM. RP 27; RP 43-44. She saw Manion dealing what appeared to be marijuana to several others. RP 24, 45. She identified and described the location where she saw Manion on Respondent's Exhibit 3, a photograph of the

Garfield gym building- which includes the weight room-a path, and fields. RP 43-44.

A rational trier of fact in Manion's position would have concluded that since he was prohibited from being on any area of the Garfield campus that this prohibition included the stairs leading to the weight room during the hours of 7:00 AM to 4:00 PM. See *State v. Finley*, 97 Wn. App. 129, 138, 982 P.2d 681 (1999). The trial court was persuaded that Manion was at an entrance to the gym, a school building, and no reasonable person could argue that he was not on notice that the trespass notice included that area. RP 141.

A trespass notice could not reasonably include every portion of a building and state that it specifically included the entrance to the building and stairs. Such a requirement would require lengthy trespass notices with needlessly repetitive information. Given the testimony of Officer Radford, Principal Howard, Ms. Hahn, and Manion and viewing the evidence in the light most favorable to the State, substantial evidence supports the court's finding of fact B, that Manion "was on notice that the area where he was standing was part of Garfield High School Property." Supp CP \_\_\_\_ (finding of fact B, appendix).

**b. Because Manion Had Been Previously Trespassed From Garfield Property, He Could Not Enter Or Remain On The Weight Room Stairs Even If This Was An Area Open To The Public.**

No Washington law or cases directly address whether a school is property that is generally open to the public during school hours. See *State v. Allen*, 90 Wn. App. 957, 960, 955 P.2d 403 (1998). A school, however, has a responsibility to protect students. As explained in *State v. Green*, "the school district has a clear interest in preserving order in the schools and protecting persons and property." 157 Wn. App. 833, 847, 239 P.3d 1130 (2010), citing RCW 28A.635.020(3); *Travis v. Bohannon*, 128 Wn. App. 231, 237, 115 P.3d 342 (2005); *State v. Allen*, 90 Wn. App. 957, 962, 955 P.2d 403 (1998). The responsibility to protect students on school grounds necessarily includes the right to exclude others.

Manion cites to *State v. Allen* and *State v. Brooks*, 741 S.W.2d 920, 923 (Tenn.Crim.App. 1987), to support his proposition that the general areas of a school are open to the public. Brief of Petitioner, 7-8. A review of the facts of *Allen* and *Brooks* show that neither is comparable to Manion's case. In *State v. Allen* the court considered the argument that a school was generally open to the

public. *Allen*, 90 Wn. App. at 962. Allen argued insufficient evidence supported his second degree burglary conviction because there was no unlawful entry when Allen had been discovered in an elementary school classroom during school hours. *Id.* at 959. Division 3 of the Washington Court of Appeals disagreed and held that sufficient evidence supported Allen's unlawful entry because he had gone beyond the "general administrative areas and means of ingress and egress," to an area that exceeded any implied public areas. *Id.* at 961. The *Allen* court did not address whether the general areas of the school were open to the public. *Id.* Unlike Manion, the defendant in *Allen* had not previously been notified he was prohibited from the school grounds.

In *Allen* the court did consider *State v. Brooks*, 741 S.W.2d 920, 923. *Allen*, 90 Wn. App. at 960-61. In *Brooks*, the defendants had been convicted of trespassing on school grounds for entering a school campus to confront the school bus drivers. 741 S.W.2d at 922-23. None of the defendants had previously been notified by the school that they were prohibited from entering the school campus. *Id.* Again, the defendants in *Brooks* are distinguished from Manion, because Manion had been previously notified he was prohibited from entering or remaining on Garfield's campus.

In this case, it is not necessary to determine whether the Garfield campus may have been generally open to the public because Garfield had the right to exclude others from areas otherwise open to the public. A government or private property owner may exclude others from a place generally open to the public as long as it does not do so in a discriminatory manner. See *e.g.* *Bremerton v. Widdell*, 146 Wn.2d 561, 573-74, 51 P.3d 733 (2002); *State v. Blair*, 65 Wn. App. 64, 67, 827 P.2d 356 (1992), (citing *Adderley v. Florida*, 385 U.S. 39, 47, 87 S. Ct. 242, 247, 17 L.Ed.2d 149 (1966)); *State v. Kutch*, 90 Wn. App. 244, 247, 951 P.2d 1139 (1998). If a person does not comply with the lawful conditions of access, then that person may be excluded. See *e.g.* *State v. Finley*, 97 Wn. App. 129, 138 (1999).

A trespass prohibition may include driveways or other areas that would otherwise be open to the public. In *State v. Bellerouche*, 129 Wn. App. 912, 915, 120 P.3d 971 (2005), Division One of the Court of Appeals rejected the defendant's argument that a trespass notice could not include a driveway because the driveway was "impliedly open to the public." *Bellerouche* cited to search and seizure cases in support of his argument, which the court found unpersuasive. *Id.* at 916. In *Bellerouche* the court explained, "a

person's presence may be rendered unlawful by revocation of the privilege to be there...even if the property is otherwise open to the public." *Id.* at 915-16. Further, "whether or not its driveway may be impliedly open to the public for some other purpose, it was not open to Bellerouche." *Id.*

Here, Manion cited to a search and seizure case, *State v. Jesson*, 142 Wn. App. 852, 858, 177 P.3d 139 (2008), to support his argument that the stairs and path outside the Garfield weight room were areas open to the public. Brief of Petitioner, 8. He also cited to cases involving vagrancy statutes, *State v. Pullman*, 82 Wn.2d 794, 800-01, 514 P.2d 1059 (1973), and exercise of First Amendment rights, *Flower v. United States*, 407 U.S. 197, 92 S. Ct. 1842, 32 L.Ed.2d 653 (1972). Brief of Petitioner, 6. Manion's reliance on these cases is misplaced. His situation is distinguished from those cases because he had previously been notified he could not enter or remain on Garfield's campus due to his past harassment of students and gang activity. Instead, similar to the defendant in *Bellerouche*, if the stairs outside of the Garfield weight room and path were areas open to the public, these areas were not open to him.

This Court should defer to the trial court's finding on the persuasiveness of the evidence and affirm Manion's conviction based on the substantial evidence in the record that he had notice the trespass prohibition included the stairs outside of the weight room. *Fiser*, 99 Wn. App. at 719.

**D. CONCLUSION**

The trial court properly found Manion guilty of second degree criminal trespass. Viewing the evidence in the light most favorable to the State, the Court should affirm Manion's conviction based on the substantial evidence in the record that Manion had notice that the area of the stairs was part of Garfield property and he could not enter it even if it was open to others.

DATED this 23 day of May, 2011.

Respectfully submitted,

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