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NO. 66141-8-I

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

REC'D
FEB 24 2011
King County Prosecutor
Appellate Unit

STATE OF WASHINGTON,

Respondent,

v.

F.M.,

Appellant.

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

The Honorable Anthony Wartnik, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court erred in finding appellant guilty of second degree criminal trespass where the evidence is insufficient to support the conviction. Supp. CP __ (sub no. 31, Findings of Fact and Conclusions of Law), attached as an appendix.

2. The trial court erred in entering findings of fact B and K. Appendix.

3. The trial court erred in entering conclusions of law II and IV. Appendix.

Issue Related to Assignments of Error

Was the evidence insufficient to prove that appellant knowingly entered or remained unlawfully on school property?

B. STATEMENT OF THE CASE

1. Procedural Facts

On June 29, 2010, the King County prosecutor charged juvenile appellant F.M. with second degree criminal trespass. The initial information charged that on or about February 4, 2010, F.M. "did knowingly enter or remain unlawfully on or upon premises of Garfield High School, located at 400 23rd Avenue, Seattle." CP 1.¹

¹ On the day of trial the State moved to amend the information by adding a second count of second degree trespass. RP 12. The motion to amend the information was granted, however, it does not appear the amended information was filed with the court.

The trial court found F.M. guilty and a disposition order was entered. RP 78-80; CP 19-24. The court did not enter written findings and conclusions until February 3, 2011. Supp. CP __ (sub no. 31).

2. Substantive Facts

Bennie Radford is the security officer at Garfield High School. Radford has the authority to issue trespass admonishments prohibiting individuals from entering the school. RP 68-69. In September 2009, Radford issued a trespass admonishment to F.M. RP 70. F.M. was trespassed from the school during the 2009-2010 school year for harassing other students and gang activity. RP 72-73. Radford testified he personally explained to F.M. the trespass admonishment meant F.M. was not to be on school property. RP 73-74.

The admonishment specifically stated F.M. was prohibited from entering or remaining on the premises located at 400 23rd Ave. in Seattle, which is the address for Garfield High School. RP 62, 77, 136. The Garfield Teen Life Center (Center) is located adjacent to and is connected to the Garfield High School Gymnasium. RP 77-78. Its address is 423 23rd Ave. RP 62. According to the Garfield High School principal, the Center is considered an extension of the school until 4:00 p.m., when the public uses it. RP 63. The Center is operated by the Seattle Parks

Department and F.M. was not prohibited from being at the Center. RP 83, 88.

A concrete path (path) runs past the School's buildings, including the gymnasium, and the Center and provides access to both the Center and gymnasium. RP 35, 39, 82-83. The path is a public access route between 23rd Ave. and 25th Ave., and is used to get to the Center. RP 83. The school's weight room is located in the gymnasium. RP 23-24, 35. The public path is about three feet from the weight room's wall and there are stairs from the path to the door of the weight room. RP 25, 27.

On February 24, 2010, Sylvia Hahn, a swimming and fitness teacher at the school was in the school's weight room sometime between 3:00 and 3:30 p.m., when she saw a person, who she later identified as F.M., standing outside the building on one of the stairs leading to the building from the path. RP 23-24. F.M. was with three other people and Hahn saw what looked like marijuana being exchanged. RP 24. Hahn called 911 and while she was speaking to the operator the individuals, including F.M., left. RP 24-25.²

F.M. testified that on February 4, 2010 he went to the Center to meet his counselor, who was taking F.M. and others to a gym downtown.

² Hahn said she saw F.M. in the same location sometime in late February or early March, which was the basis for count II. RP 12, 27. That count was dismissed because there was no evidence Hahn saw F.M. before 4:00 p.m. RP 105.

RP 115-116. F.M. used the path to get to the Center as he frequently does and nothing unusual happened on the way. RP 118-119. F.M. also uses the path to the Center on Mondays and Wednesdays for counseling sessions. RP 116.

The court entered written findings of fact and conclusions of law. The court found F.M. was trespassed from Garfield High School on September 16, 2009 for one year. Supp. CP __ (finding of fact A, appendix). It found that on February 4, 2010, F.M. was on the stairs leading to the School's weight room between 3:00 and 3:30 p.m. and he was on notice that area was part of the school's property. Supp. CP __ (finding of fact B, appendix)). The court concluded F.M. was guilty of second degree trespass. Supp. CP __ (conclusions of law II and IV, appendix)).

C. ARGUMENT

THE EVIDENCE DOES NOT SUPPORT CONVICTION OR
THE COURT'S FINDINGS.

Due process under the Fourteenth Amendment of the United States Constitution requires the State to prove all necessary facts of the crime beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); State v. Smith, 155 Wn.2d 496, 502, 120 P. 3d 559 (2005). Evidence is insufficient to support a conviction unless,

viewed in the light most favorable to the State, a rational trier of fact could find each essential element of the crime beyond a reasonable doubt. State v. Chapin, 118 Wn.2d 681, 691, 826 P.2d 194 (1992).

To sustain conviction following a bench trial, this Court must determine whether (1) the evidence supports the findings of fact; (2) the findings of fact support the conclusions of law; and (3) the conclusions of law support the judgment. State v. Enlow, 143 Wn. App. 463, 467, 178 P.3d 366 (2008). In determining the sufficiency of evidence, existence of a fact cannot rest upon guess, speculation, or conjecture. State v. Colquitt, 133 Wn. App. 789, 796, 137 P.3d 892 (2006).

To support a second degree criminal trespass conviction, the State must prove that the person "knowingly enter[ed] or remain[ed] unlawfully upon premises of another[.]" RCW 9A.52.080(1). To establish the person was "unlawfully" on the premises, the State must prove that the person was "not then licensed, invited, or otherwise privileged to so enter or remain." RCW 9A.52.010(3). Where the evidence shows the premises are open to the public, the State bears the burden to disprove beyond a reasonable doubt 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 or 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. RCW 9A.52.090; Bremerton v. Widell, 146 Wn.2d 561, 570, 51 P.3d 733 (2002); State v. Finley, 97 Wn. App. 129, 138, 982 P.2d 681 (1999); State v. R.H., 86 Wn. App. 807, 939 P.2d 217 (1997).

Furthermore, a trespass admonishment or 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.” State v. Green, 157 Wn. App. 833, 239 P.3d 1130, 1138-1139 (2010). It does not, however, relieve the State of its burden to prove the exclusion was lawful. Id.

Streets and sidewalks, even where technically owned by a private party, are open to the public. No private property rights are violated when members of the public are present in these areas. Flower v. United States, 407 U.S. 197, 32 L. Ed. 2d 653, 92 S. Ct. 1842 (1972); Marsh v. Alabama, 326 U.S. 501, 90 L. Ed. 265, 66 S. Ct. 276 (1946); Hague v. CIO, 307 U.S. 496, 515, 83 L. Ed. 1423, 59 S. Ct. 954 (1939). Walking down a public way is a right enjoyed by every individual in our society. State v. Martinez, 85 Wn.2d 671, 675, 538 P.2d 521 overruled on other grounds in State v. Smith, 93 Wn.2d 329, 610 P.2d 869, cert. denied, 449 U.S. 873 (1980); Seattle v. Pullman, 82 Wn.2d 794, 800-01, 514 P.2d 1059 (1973). Here, the paved path that ran alongside the gymnasium and Center was

used as a public thoroughfare. F.M. had the right to be on the path regardless of the time of day and his presence there is not a trespass. State v. Fox, 82 Wn.2d 289, 510 P.2d 230 (1973), cert. denied 414 U.S. 1130 (1974).

The State failed to prove F.M. was unlawfully on the stairs. In State v. Allen, 90 Wn. App. 957, 955 P.2d 403 (1998), the court recognized there was no statute or case law addressing the issue of whether a school is open to the public during school hours. The Allen court, however, cited State v. Brooks, 741 S.W.2d 920, 923 (Tenn.Crim.App.1987), where the court did address the issue. Allen, 90 Wn. App at 960-961. In Brooks, the court reversed trespassing convictions on school grounds. Tennessee defined trespass as “unlawfully entering upon the premises of another.” Brooks, 741 S.W.2d at 923. The court dismissed the convictions holding “[w]e are of the opinion the language of this statute is not broad enough to encompass property which is owned and operated by a governmental entity and is open to the public.” Id. The Allen court distinguished Brooks on the grounds that in Brooks “the defendants were merely trespassing on the school's lawn; here, Mr. Allen was not just on the grounds but beyond the general administrative areas and means of ingress and egress” Allen, 90 Wn. App. at 961.

Under RCW 9A.52.080 second degree criminal trespass is defined as knowingly “enters or remains unlawfully in or upon premises of another.” That definition is similar to the Tennessee definition of criminal trespass at issue in Brooks. As in Brooks, the statute is not broad enough to encompass the means of ingress and egress to school buildings.

Here, Hahn testified F.M. was standing on the stairway leading to the weight room. The court found F.M. “was on notice that the area where he was standing was part of Garfield High school property.” Supp. CP. ___ (finding of fact B, appendix). That finding is unsupported. The State presented no evidence F.M. was ever told by any school official that the stairs were part of the school grounds and the stairs are not identified as such in the admonishment. Because the court’s finding is unsupported, it does not support the conclusion that F.M. did not have the right to be on the stairs and therefore committed trespass.

Assuming F.M. had been told the stairs were part of the school’s property for purposes of the admonishment, they are nonetheless open to the public as the means of ingress and egress to the building. See, State v. Jesson, 142 Wn. App. 852, 858, 177 P.3d 139 (2008) (an access route to a home is impliedly open to the public, absent a clear indication that the owner does not expect uninvited visitors). Because the stairs were open to the public, just like the path, and the criminal trespass statute does not

encompass that area of ingress and egress. Thus, F.M.'s presence on the stairs is insufficient to prove he knowingly entered or remained unlawfully upon the school premises.

For the above reasons the State failed to prove F.M. committed second degree trespass. His conviction should be reversed.

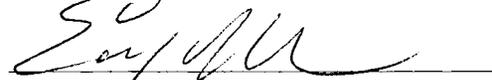
D. CONCLUSION

This Court should vacate the trial court's disposition order and remand for dismissal with prejudice.

DATED this 24 day of February, 2011.

Respectfully submitted,

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Attorneys for Appellant

FILED
KING COUNTY WASHINGTON

FEB 03 2011

SUPERIOR COURT CLERK
BY MICHELLE GIVNIN
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY
JUVENILE DIVISION

STATE OF WASHINGTON,

Plaintiff,

No 10-8-02268-8

vs

FABIAN D MANION,
DOB 07-24-93

Respondent,

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
PURSUANT TO JuCR 7 11(d)

THE ABOVE-ENTITLED CAUSE having come on for trial on September 3, 2010 before Judge Anthony Wartnik, in the above-entitled court, the State of Washington having been represented by Deputy Prosecuting Attorney Brandi Archer, the Respondent appearing in person and having been represented by his attorney, Amy Bowles, 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

The following events took place within King County, Washington

A On September 16, 2009, the Respondent was trespassed from Garfield High School, located at 400 23rd Ave , Seattle, WA, for one year for gang activity and harassment of students The Respondent had also been told on several occasions, ~~prior to that date and~~ after that date, by Officer Radford and Mr Ted Howard, principal of Garfield High School, that he was not allowed on Garfield High School Property

B On February 4, 2010, Sylvia Hahn, a teacher at Garfield High School, saw the Respondent on the stairs outside the school's weight room, between the hours of three and

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FINDINGS OF FACT AND CONCLUSIONS OF LAW
PURSUANT TO JuCR 7 11(d) - 1

ORIGINAL

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1 three thirty in the afternoon, exchanging plastic baggies of what she believed to be
 2 marijuana with students she recognized as Garfield High School students Respondent
 3 spent a considerable amount of time outside of the weight room with the students who
 attend Garfield High School. Respondent was on notice that the area where he was
 standing was part of Garfield High School property on that date. *OPW*

4 C Ms Hahn saw Respondent again on Garfield High School grounds in late February/early
 5 March 2010 with a group of students Ms Hahn approached the students, who all began
 to scatter Ms Hahn then saw Respondent walk over to the Garfield Teen Life Center

6 D Ms Hahn went to the Garfield Teen Life Center to speak with the students about the
 7 incident she had witnessed involving the Respondent Ms Hahn also spoke to the staff
 and pointed Respondent out to them The staff told Ms Hahn the Respondent's name
 was "Bo "

8 E Later, Ms Hahn spoke to the School Resource Officer, ^{SPD} Officer Radford, about the *OPW*
 9 incidents she had witnessed Officer Radford informed Detective Whalen of
 Respondent's trespass on the Garfield High School premises

10 F Detective Whalen took a photo montage to Ms Hahn, and Ms Hahn identified the
 11 Respondent as the person she had seen on campus on February 4, 2010

12 G The Court had the opportunity to hear from Officer Radford and finds his testimony
 credible

13 H The Court had the opportunity to hear from Ms Hahn and finds her testimony credible

14 I The Court had the opportunity to hear from Mr Howard and finds his testimony credible

15 J Respondent was validly issued a no trespass notice from Garfield High School prior to
 16 the February 4, 2010, incident The Court finds there was probable cause to charge the
 Respondent with Criminal Trespass in the Second Degree

17 K The Court finds the Respondent entered and remained on the premises of Garfield High
 School during school hours on February 4, 2010

18 And having made those Findings of Fact, the Court also now enters the following
 19

20 CONCLUSIONS OF LAW

21 I

22 The above-entitled court has jurisdiction of the subject matter and of the Respondent,
 Fabian D Manion, who was born on 7-24-94, in the above-entitled cause

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II

The following elements of the crime of Criminal Trespass in the Second Degree have been proven by the State beyond a reasonable doubt

A That on or about the 4th day of February 2010, the Respondent knowingly entered and remained unlawfully upon the premises of Garfield High School, located at 400 23rd Avenue, Seattle, and

B That the acts occurred in King County, Washington

In making these findings, the court relied upon the testimony of witnesses and evidence introduced at trial

III

The defense's motion to dismiss is denied as to count I and granted as to count II

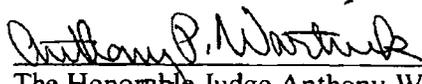
IV

The Respondent is guilty of the crime of Criminal Trespass in the Second Degree as charged in count I only

V

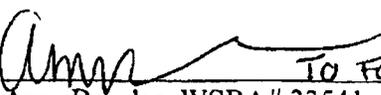
Judgment should be entered in accordance with Conclusion of Law IV In addition to these written findings and conclusions, the Court hereby incorporates its oral findings and conclusions as reflected in the record

SIGNED this 3rd day of February, 2011


The Honorable Judge Anthony Wartnik

Presented by


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FINDINGS OF FACT AND CONCLUSIONS OF LAW
PURSUANT TO JuCR 7 11(d) - 3

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