

No. 289010

IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,

Respondent,

vs.

JULIO CESAR RODRIGUEZ,

Appellant.

BRIEF OF RESPONDENT

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Attorney for Respondent

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I. ASSIGNMENTS OF ERROR

A. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR.

Appellant makes four assignments of error. These can be summarized as follows;

1. Did the prosecution and the court err by failing to enter findings and conclusions?
2. Did the Grandview officer have a legal basis to permanently trespass appellant?
3. Were appellants due process rights violated when he was trespassed?
4. Was the State's evidence sufficient to support the charges and overcome the statutory defense to criminal trespass?

B. ANSWERS TO ASSIGNMENTS OF ERROR.

1. Albeit late, findings and conclusions were entered.
2. The Grandview officer had a legal basis to permanently trespass appellant.
3. Appellant's due process rights were not violated.
4. The evidence presented was sufficient to support the charges and to overcome the statutory defense to criminal trespass.

II. STATEMENT OF THE CASE

The substantive and procedural facts have been adequately set forth in appellants brief. Therefore, pursuant to RAP 10.3(b); the State shall not set forth an additional facts section in this brief. The State shall refer to and quote specific sections of the verbatim report of proceedings as need to respond to the allegations set forth by appellant.

III. ARGUMENT.

RESPONSE TO ASSIGNMENT OF ERROR ONE – ALTHOUGH LATE, FINDINGS AND CONCLUSIONS WERE ENTERED.

JuCr 7.11 ADJUDICATORY HEARING

(d) Written Findings and Conclusions on Appeal. The court shall enter written findings and conclusions in a case that is appealed. The findings shall state the ultimate facts as to each element of the crime and the evidence upon which the court relied in reaching its decision. The findings and conclusions may be entered after the notice of appeal is filed. The prosecution must submit such findings and conclusions within 21 days after receiving the juvenile's notice of appeal.

The findings of fact and conclusions of law have been filed. The notice of appeal was date stamped on March 26, 2010. The findings of fact and conclusions of law were entered on July 13, 2010. (CP 21-24) While it is uncontroverted that the findings of fact and conclusions of law were entered late it is equally uncontroverted that appellant has not alleged, and can not demonstrate to this court, that he has suffered any prejudice from this late filing.

Trial counsel for appellant participated in the entry of the findings and her only specific objection, other than the findings do not support the conclusions, was that one of the conclusions of law was an incorrect even though it was what the trial court had stated. The trial court indicated this one conclusion reflected what the court had stated and therefore was it was a valid conclusion.

State v. Alvarez, 128 Wn.2d 1, 904 P.2d 754 (1995) addressed a more egregious allegation than that presented in this case. There the court determined “The trial court in this case did enter findings of fact and conclusions of law, but the findings did not state ultimate facts on each element of the offense required under JuCR 7.11(d). If findings of fact and conclusions of law do not state "ultimate" facts, that error can be cured by remand.”

Here the trial court entered finding which were sufficient, appellant did not challenge the actual findings nor the content of those findings and conclusions at the trial court nor here. The allegation is purely whether the State and the court met the twenty-one day mandate set out in the court rule.

State v. Royster, 43 Wn. App. 613, 621, 719 P.2d 149 (1986):

Appellant contends that under State v. Commodore, 38 Wn. App. 244, 250, 684 P.2d 1364 (1984), a trial court in a juvenile adjudication must enter written findings and conclusions within 30 days of the notice of appeal. However, Commodore only *suggests* filing within 30 days. Absent a showing of prejudice, delayed entry of findings of fact and conclusions of law is not grounds for reversal. State v. McGary, 37 Wn. App. 856, 861, 683 P.2d 1125 (1984).

See also State v. BJS, 72 Wn. App. 368, 371, 864 P.2d 432 (Div. 3 1994) “Such a delay in filing the findings of fact would result in dismissal if the delay was prejudicial. (Emphasis mine.) State v. Royal, 122

Wash.2d 413, 858 P.2d 259 (1993). However, BJS does not contend she was prejudiced by the delay in filing the findings of fact.”

Findings and conclusions have been entered, they are a portion of the record, appellant has suffered no prejudice from this late filing.

Any ambiguity in the findings may be clarified with resort to the trial court's oral opinion. State v. White, 31 Wn. App. 655, 658, 644 P.2d 693 (1982).

RESPONSE TO ASSIGNMENT OF ERROR; TWO – FOUR.

THE OFFICER HAD THE RIGHT AND ABILITY TO TRESPASS APPELLANT, DUE PROCESS WITH COMPLIED WITH, THE EVIDENCE WAS SUFFICIENT.

The state has exclusive jurisdiction over juvenile criminal matters. RCW 13.04.030 sets forth the jurisdiction of the State to prosecute this offender. “Juvenile court - Exclusive original jurisdiction - Exceptions (1) Except as provided in this section, the juvenile courts in this state shall have exclusive original jurisdiction over all proceedings: ... (e) Relating to juveniles alleged or found to have committed offenses, traffic or civil infractions, or violations as provided in RCW 13.40.020 through 13.40.230, ...”

The State charged the appellant under RCW 9A.52.080. The city of Grandview has adopted this statute. Grandview Municipal Code adopted the above Criminal Trespass statute in municipal code section

9.24.010 “Adoption – The following sections of the Revised Code of Washington are hereby adopted by reference: 9A.52.080.”

The State therefore had the legal right to prosecute under either the city municipal code or the concurrent state RCW.

This court must note appellant does not dispute the Grandview officer had the legal authority to trespass appellant or allege that appellant was unlawfully trespassed, the challenge here is that the officer did not have the legal ability to trespass appellant **permanently**. Appellant at no time in the trial court raised the claim that this action, should have; or did arise; or was controlled by the section of the Grandview municipal code now cited. Further, an error is not manifest if the appellant chose not to litigate the issue at the trial court and no error appears on the record as a result. State v. Valladares, 99 Wash.2d 663, 671-72, 664 P.2d 508 (1983).

The actions of the officer were legal. Appellant confuses the issue. If the officer had cited appellant under the city code appellant may well have been trespassed from the location for one year. However there is no record that this Grandview code was the basis for the trespass. The fact that his was an officer of the city does not limit the inherent authority of the officer to trespass an individual. The code does not take exclusive control over all actions regarding trespass just because it addresses damage to part of the park from which appellant was trespassed. The

officer had the concurrent ability to trespass appellant under this authority as an officer. This would be no different than if an individual were to come to your home and you have them “trespassed” from the property.

Appellant frames the question as whether the State had the ability to prosecute him for the commission of the crime of criminal trespass when he had not been found in violation of Grandview Municipal Code section 12.20.050. The State does not need to prove a violation of this specific municipal code or any of the other municipal codes that appellant violated, in order to charge appellant with a violation of an RCW. It would have also been possible to charge him with a violation of Grandview Municipal code 9.24.100;

“Injuring property - It is unlawful to intentionally cut, mar, injure, deface, spoil, break or destroy any fence, sidewalk, house, building, tree, plant or any other property of another, or public property within the city, whether real or personal property; or, without municipal authority, to deface, mutilate, tear down or destroy any lawful signboard or post within the corporate limits of the city. Injuring property is a misdemeanor if the property is valued at less than \$50.00 or a gross misdemeanor if the property injured or destroyed had a value of over \$50.00. (Ord. 2007-18 § 2).”

It is clear the officer considered the actions of appellant to be criminal not civil; this was not disputed at trial;

Q. Does the city give you authority --

A Yes.

Q -- to trespass an individual for stealing flowers from the park?

- A Right. I have the power to trespass someone from the city park if they are committing a criminal law violation.
- Q Let's talk about this. When you trespass somebody what do you normally do?
- A Simply I contact them, I tell them they are criminally trespassed, they can't return, they'll be arrested if they return and I have a notification made in Spillman.
(RP 9-10)

Appellant's claim that there was no legal basis to permanently trespass him falls apart when the facts are look at. This was not an instance were he was found in the park by an officer some years later. The initial contact occurred on June 5, 2009 the second contact occurred just minutes later. It was at this second contact that the officer trespassed appellant. On July 16, 2009 the final contact was made from which the charges herein arose. Even under the scenario proposed by appellant; that there is a one year time limit to this type of trespass, there still would have been approximately eleven months before appellant would legitimately be able to raise this issue on appeal.

Appellant asserts the rights of a citizen of Grandview to a "liberty interest" in using the park. However he fails to explain to this court how the lawful order by the officer that appellant was trespassed from the property on two occasions is void except to assert that the one year time

frame should be imposed and that he was not previously convicted of some violation of that one section of the municipal code.

The record reflects nothing which would refute the statements of the officers that they had the legal ability to trespass appellant. Appellant did not have anyone take the stand who indicated that the actions of the officers violated the municipal code. They acknowledge that there was a department trespass form issued and that there was a record generated which would allow other officers to confirm the actions of the trespassing officer.

State v. Kirwin, 137 Wn. App. 387, 395, 153 P.3d 883 (2007)

addressed the ability of an officer to enforce city codes even if they were later found to be unconstitutional. Here the officer did not actually cite nor did the State charge under the city code now challenged. Kirwin; “Police may rely on ordinances as written. State v. Potter, 129 Wash.App. 494, 497, 119 P.3d 877 (2005), *aff’d*, 156 Wash.2d 835, 132 P.3d 1089 (2006). An arrest is not invalid for lack of legal authority simply because the ordinance a defendant is arrested under is later found to be unconstitutional. State v. Pacas, 130 Wash.App. 446, 449, 123 P.3d 130 (2005) (citing State v. White, 97 Wash.2d 92, 102-04, 640 P.2d 1061 (1982)). Rather, the arrest is invalid only if the ordinance is flagrantly unconstitutional on its face. Pacas, 130 Wash.App. at 449, 123 P.3d 130.”

Evidence is sufficient to support a jury's verdict if a rational person viewing the evidence in the light most favorable to the State could find

each element beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980). State v. Kennard, 101 Wn. App. 533, 6 P.3d 38 (2000):

We will find that evidence is sufficient to support a conviction if, after viewing the evidence in a light most favorable to the State, we determine that "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." State v. Randhawa, 133 Wn.2d 67, 73, 941 P.2d 661 (1997) (internal quotations and citations omitted). A claim that the evidence is insufficient admits the truth of the State's evidence and all reasonable inferences therefrom. See State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). All reasonable inferences are drawn in favor of the State and strongly against the defendant. See State v. Jackson, 137 Wn.2d 712, 730, 976 P.2d 1229 (1999).

See also State v. Ware, 111 Wn. App. 738, 741-42, 46 P.3d 280

(2002);

In a juvenile offender proceeding like adult proceedings, the State must prove each element of the alleged offense beyond a reasonable doubt.

"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." "When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." The reviewing court considers circumstantial evidence to be as equally reliable as

direct evidence. The appellate court reviews the juvenile court's findings of fact "to determine whether they are supported by substantial evidence, which is a sufficient quantity of evidence to persuade a fair-minded, rational person of the truth of the allegation." Echeverria, The juvenile court's unchallenged findings of fact are verities on appeal.

(Citations omitted.)

Rodriguez disputes the actions of the State indicating appellant did not have occasion to be heard. He had a trial the very forum established by our society to address questions of law. He apparently did not take advantage of the trial, nor any of the pretrial hearing, to supply the court with evidence which would have been placed on the record.

If Rodriguez would set forth on the record at this trial that which he now says was not "heard" from him, this court would have a record to review. What the appellant now claims he did not know or understand with regard to not being allowed in the park is not found in the record. The only record before this court is there was an acknowledgement on the part of the appellant that he was not allowed on that property. The officer did not trespass the appellant from the city just from this one park. He was given notice on two occasions that he was not allowed in the park it was only after the third occasion that he was formally charged. He had the ability in this trial to be

heard on the violation. Due process was not violated, he was afforded due process.

State v. Finley, 97 Wn. App. 129, 136, 82 P.2d 681 (1999) as was cited to the trial court addresses the allegation raised:

To convict Mr. Finley of second degree criminal trespass, the State had to prove that "he knowingly enter[ed] or remain[ed] unlawfully in or upon premises of another under circumstances not constituting criminal trespass in the first degree." RCW 9A.52.080(1); State v. R.H., 86 Wn. App. 807, 810, 939 P.2d 217 (1997). A person "enters or remains unlawfully" in or upon premises when he or she is not then licensed, invited, or privileged to so enter or remain. RCW 9A.52.010(3); State v. Kutch, 90 Wn. App. 244, 246-47, 951 P.2d 1139 (1998).

"Due process requires that the State prove every element of an offense beyond a reasonable doubt; if a defense negates an element of the charged crime, the State has the constitutional burden to prove the absence of the defense beyond a reasonable doubt." R.H., 86 Wn. App. at 812 (citing State v. Lively, 130 Wn.2d 1, 10-11, 921 P.2d 1035 (1996)).

Appellant needed to present a viable defense or create reasonable doubt about the two prior trespasses or demonstrate there had been insufficient notice at the time he was trespassed by the officer in order for the court believed his defense, his theory of the case. Rodriguez apparently did not choose to present the argument now advanced. take that course.

State v. Batten, 20 Wn. App. 77, 80-1, 578 P.2d 896 (1978);

We hold that a defendant may assert a claim of right as a defense to a criminal trespass charge, State v. Larason, supra; People v. Johnson, supra; **however, he must not only believe he had a right to enter and remain, but have reasonable grounds for such belief.** State v. Baker, 231 N.C. 136, 56 S.E.2d 424 (1949); State v. Faggart, 170 N.C. 737, 87 S.E. 31 (1915). (Emphasis mine.)

It is hard to conceive how any reasonable person could believe, based on the facts in this case, that he had a “reasonable grounds to believe that he could enter the city park again.

State v. Finley, 97 Wn. App. 129, 137-38, 982 P.2d 681 (1999)

addresses appellant’s ability to raise this defense:

It is a defense to criminal trespass that “[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 in the premises[.]**” RCW 9A.52.090(2).

If the premises were open to the public and Mr. Finley complied with “all lawful conditions,” he could access or remain on the premises. This “privilege” negates the requirement for criminal trespass that the entry be unlawful. Because it does, the State must then prove the absence of the defense beyond a reasonable doubt. R.H., 86 Wn. App. at 812 (rejecting State's argument that public premises is an affirmative defense that the defendant must prove) (citing RCW 9A.52.080(1), .010(3)). (Footnote omitted, emphasis mine.)

There is nothing in the record before this court that would indicate appellant had complied with all lawful conditions. He had just weeks earlier been ordered by a uniformed officer to stay out

of the park, off of this city property, that he was "criminally trespassed." He therefore did not even have a legal basis to present this defense.

State v. Finley, 97 Wn. App. 129, 138-39, 982 P.2d 681 (1999):

What Mr. Finley "understood" or "believed" is not relevant to whether his presence was unlawful under the public premises defense, RCW 9A.52.090(2). The pertinent viewpoint is that of a "rational trier of fact," not Mr. Finley. R.H., 86 Wn. App. at 812-13.

Moreover, Ms. Barrett and the officers told Mr. Finley he could not return to the entire premises of the Thunderbird. Officer Willis found Mr. Finley standing in the doorway of the bar. The restaurant was closed. His claim then that he was in the restaurant, not the bar, is specious.

A reasonable trier of fact could conclude beyond a reasonable doubt that Mr. Finley knowingly entered or remained unlawfully in the Thunderbird. See R.H., 86 Wn. App. at 812. Mr. Finley entered the Thunderbird bar. Ms. Barrett asked Mr. Finley to leave twice. She and the officers explained to Mr. Finley that he could not return to the Thunderbird Restaurant and Bar. Mr. Finley told the officer "he wasn't in here" as Officer Willis was escorting him out.

Mr. Finley argues that the State failed to prove Ms. Barrett had the authority to exclude him from the Thunderbird. See State v. R.H., 86 Wn. App. at 811. Ms. Barrett testified "[m]y authority is that if anybody who is in there and I don't want them in there they have to leave, you know." Her testimony is unrefuted and sufficient. Salinas, 119 Wn.2d at 201; R.H., 86 Wn. App. at 812. (Citations to record omitted)

IV. CONCLUSION

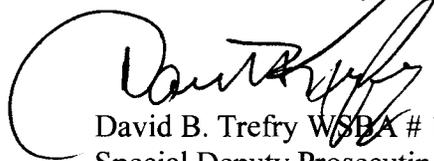
To paraphrase what this court stated in Finley at 136 “Rodriguez argues that the State failed to prove revocation of the license. Specifically, he claims the State failed to prove that Officer Arraj had the authority to "eighty-six" him from the park. We disagree.”

The findings and conclusion while late were complete and set forth the basis for the courts determination. Appellant has not demonstrated he was even able to assert the “statutory defense.” Further the facts presented were not disputed by any additional testimony by appellant and are sufficient to support the conviction.

Appellant had his occasion to address the actions of the City of Grandview at his trial; his due process rights were not violated.

The actions of the trial court should be upheld, this appeal should be dismissed.

Respectfully submitted this 18th day of March, 2011.



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