[Cite as *In re C.J.*, 2009-Ohio-5617.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
HURON COUNTY

In the matter of: C.J.

Court of Appeals No. H-09-003

Trial Court No. JUV 2008 00711

DECISION AND JUDGMENT

Decided: October 23, 2009

* * * * *

George C. Ford, Huron County Public Defender, and James Joel Sitterly, Assistant Public Defender, for appellant.

Russell Leffler, Huron County Prosecuting Attorney, and Dina Shenker, Assistant Prosecuting Attorney, for appellee.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This is an appeal from the February 12, 2009 judgment of the Huron County Court of Common Pleas, Juvenile Division, which adjudicated appellant, C.J., delinquent for committing the offense of criminal trespass and ordered him to maintain certain conduct, ordered him to perform 20 hours of community service, and ordered him

to write a 1,000 word essay on respecting the property of others. From this judgment, appellant raises the following assignment of error:

{¶ 2} "I. The State failed to meet its constitutional burden of proof beyond a reasonable doubt on the charge of criminal trespass when it failed to introduce sufficient evidence that Child/Appellant was unprivileged to be on St. Paul Catholic School or Church premises."

{¶ 3} On December 24, 2008, a complaint was filed charging appellant with delinquency in connection with an alleged criminal trespass which occurred on December 20, 2008, on the property owned by St. Paul's Catholic Church and School in Norwalk, Huron County, Ohio. The case proceeded to an adjudicatory trial where the following evidence was presented.

{¶ 4} Daniel Nye testified that he is the maintenance worker at St. Paul's. Nye's responsibilities included general maintenance of the school buildings and the church, checking the doors at night, and making sure that the parking lot lights were on for nighttime events. Nye stated that on the evening of December 20, 2008, he was checking the buildings and he heard voices. Nye then discovered that the police had been called to the property.

{¶ 5} Nye testified that on St. Paul's property, there is an access ladder attached to the Monroe Street gym. Nye further stated that on the evening of December 20, 2008, there was no basketball game, no church services, and school was not in session.

{¶ 6} Norwalk Police Officer Jared Ferris testified that on December 20, 2008, he received a call that there were at least two people on the roof of the old gym at St. Paul's. When Officer Ferris arrived at the location he observed two juveniles next to a ladder, one descending the ladder, and a fourth on the roof. Appellant was one of the individuals standing next to the ladder. When questioned as to what they were doing, one of the boys responded that they were bored and just "messing around."

{¶ 7} Officer Ferris testified that Daniel Nye is the key holder for St. Paul's property. Nye is listed at the police department as a contact for alarm calls. Officer Ferris stated that Nye has the ability to check the property if the alarm goes off or if there is a problem. Ferris testified that the key holder is generally considered the agent of the property. According to Ferris, Nye indicated that on the date of the incident there was no school or church activities that would explain the boys' presence on the property. Officer Ferris did not speak with either the school principal or the church pastor regarding the incident. Further, it is undisputed that appellant did not attend St. Paul's school.

{¶ 8} Based on this evidence, the trial court determined that appellant was delinquent for committing the offense of criminal trespass, a violation of 2911.21(A)(1). During the dispositional hearing, appellant was ordered to maintain good behavior, to submit to the control of his parents, to pursue his education and maintain the best possible grades, to follow his probations officer's rules, to comply with a curfew, to refrain from using alcohol or illegal substances, to seek and maintain employment, to complete successfully 20 hours of volunteer work, to write a letter of apology to Norwalk Catholic

Schools, to write a 1,000 word essay on respecting the property rights of others, and to pay a $100 fine and court costs. This appeal followed.

{¶ 9} In appellant's sole assignment of error, he contends that the state failed to provide sufficient evidence to demonstrate that appellant lacked privilege to be on St. Paul's property. Specifically, appellant argues that the state failed to present evidence that appellant or his friends did not have permission to be on the property or that maintenance employee, Daniel Nye, had custody or control over the premises.

{¶ 10} We first note that due process affords juveniles the same protections afforded criminal defendants, notwithstanding the civil nature of juvenile proceedings. *In the Matter of: Jesse A.C.* (Dec. 7, 2001), 6th Dist. No. L-01-1271. Accordingly, "we review juvenile delinquency adjudications using the same weight and sufficiency standards that we would use for criminal defendants." Id.

{¶ 11} Sufficiency of the evidence and manifest weight of the evidence are quantitatively and qualitatively different legal concepts. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. Sufficiency of the evidence is purely a question of law. Id. Under this standard of adequacy, a court must consider whether the evidence was sufficient to support the conviction, as a matter of law. Id. The proper analysis is "'whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.'" *State v. Williams*, 74 Ohio St.3d 569, 576, 1996-Ohio-91, quoting *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus.

{¶ 12} Appellant was found delinquent for conduct which, if he were an adult, would constitute criminal trespass, in violation of R.C. 2911.21(A)(1). This statute provides:

{¶ 13} "(A) No person, without privilege to do so, shall do any of the following:

{¶ 14} "(1) Knowingly enter or remain on the land or premises of another; * * *."

{¶ 15} R.C. 2901.01(A)(12) defines "privilege" as an "immunity, license, or right conferred by law, bestowed by express or implied grant, arising out of status, position, office, or relationship, or growing out of necessity."

{¶ 16} Appellant first argues that the state failed to present sufficient evidence that appellant lacked privilege or permission to be on St. Paul's property. In support of his argument, appellant relies on *Beachwood v. Cohen* (1986), 29 Ohio App.3d 226. In *Cohen*, the defendant was charged with trespassing in a nursing home employee parking lot. The defendant's vehicle and description matched that of prior complaints of a male, in a blue Cadillac, harassing the staff. Id. at 227.

{¶ 17} At trial, the state presented evidence that the parking lot where the defendant was found is an employee parking lot but that drivers were permitted to drop off and pick up employees. Id. The defendant presented testimony that he was in the lot to pick up an employee; he stated that he had told the woman that he would pick her up when the weather was bad. The employee confirmed the defendant's testimony and testified that she had just ended her employment two days prior to the incident and that the defendant had no way of knowing that fact. Id. at 228. The defendant was found

guilty. On appeal, the Eighth Appellate District reversed the conviction and held that the state failed to prove that the defendant was unlawfully on the property. Id. at 232.

{¶ 18} The facts of the present case are distinguishable. At trial, state's witness, Daniel Nye, testified that on the night in question there was no event at the school or church that would justify appellant's presence on the property. In *State v. Barksdale* (1983), 2 Ohio St.3d 126, the Supreme Court of Ohio discussed "privilege" regarding access to a private automobile dealer's lot. The court observed that the dealer had extended a "tacit" invitation to the public to view the vehicles on his lot; this was a grant of privilege. Id. at 128.

{¶ 19} Like *Barksdale*, in the present case the trial court, during the dispositional phase of the proceedings, explained to appellant the circumstances in which a tacit invitation to be on St. Paul's property would exist; the court explained:

{¶ 20} "St. Paul is a church like many other churches in our community where certain people, for certain purposes have privilege to be on the premises, even though they don't own it. Uh, you can be on St. Paul's premises with privilege to be there for sporting events, cultural activities, classes that are held at the parish center, to go to church, to worship, to pray, to be alone with God in the actual sanctuary. But you told the officer that you were there with three other people and you were watching people climb on the roof without privilege to do so. So that was why you were there. And so that, I think, is an important distinction here."

{¶ 21} Thus, we conclude that on the night that appellant was found on St. Paul's property, there were no activities for which a "tacit" invitation to be on the property was extended to the public.

{¶ 22} Appellant next argues that the state failed to present sufficient evidence that the alleged trespass occurred on land "belonging to, controlled by, or in custody of another, * * *." R.C. 2911.21(E). Appellant contends that maintenance worker, Daniel Nye, did not have custody or control of St. Paul's property and, thus, his testimony was insufficient to establish the "premises of another" element.

{¶ 23} In support of his argument, appellant cites *State v. Garrett*, 9th Dist. No. 24412, 2009-Ohio-1522, where the Ninth Appellate District ruled that the state failed to prove the elements of criminal damaging because the owner of the broken surveillance camera did not testify at trial. The Akron municipal code section at issue prohibited harm or substantial risk of harm to another's property without his or her consent. The criminal trespass statute does not specifically require proof that the owner did not consent to a person's presence on the property; rather, the statute prohibits unauthorized entrance on "the land or premises of another." It is undisputed that appellant does not have an ownership interest in St. Paul's. Further, as discussed above, Daniel Nye, maintenance worker and "key holder" for the property, testified that there were no events on the property that night to justify appellant's presence.

{¶ 24} Based on the foregoing, we find that the trial court's judgment that appellant was delinquent for committing the offense of criminal trespass was supported by sufficient evidence. Appellant's assignment of error is not well-taken.

{¶ 25} On consideration whereof, we find that appellant was not prejudiced or prevented from having a fair trial and the judgment of the Huron County Court of Common Pleas, Juvenile Division, is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, J. _____
CONCUR.
JUDGE