

[Cite as *State v. Webster*, 2010-Ohio-699.]

COURT OF APPEALS
GUERNSEY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Plaintiff-Appellee	:	Hon. Sheila G. Farmer, J.
	:	Hon. John W. Wise, J.
-vs-	:	
	:	
JAMIE WEBSTER	:	Case No. 09CA0029
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Cambridge Municipal Court, Case No. 09CRB00290

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: February 23, 2010

APPEARANCES:

For Plaintiff-Appellee

JAMES R. SKELTON
309 Main Street
Coshocton, OH 43812

For Defendant-Appellant

BRIAN W. BENBOW
605 Market Street
Zanesville, OH 43701

Farmer, J.

{¶1} Appellant, Jamie Webster, was once married to Brent Kasper. During the marriage, a child was born, Ashley Kasper. Mother of Brent Kasper is Kay Kasper. Kay Kasper lived at 60126 Wintergreen Road in Senecaville, Ohio, with another son, Steven Kasper.

{¶2} In 2008, Ashley spent several nights at Kay Kasper's home. Several of Ashley's personal belongings were inside the home. In early 2009, Steven Kasper informed appellant she was not permitted on the property.

{¶3} On March 2, 2009, appellant, together with her daughter, arrived at Kay Kasper's home to retrieve Ashley's belongings. They were denied access to the home.

{¶4} On March 24, 2009, appellant was charged with criminal trespass in violation of R.C. 2911.21(A)(1). A bench trial commenced on July 20, 2009. The trial court found appellant guilty, and sentenced her to ten days in jail, with ten days suspended.

{¶5} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶6} "THE TRIAL COURT'S JULY 20, 2009 JUDGMENT ENTRY FINDING APPELLANT GUILTY OF CRIMINAL TRESPASS WAS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE."

I

{¶7} Appellant claims her conviction for criminal trespass was against the manifest weight of the evidence. We disagree.

{¶8} On review for manifest weight, a reviewing court is to examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine "whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *State v. Martin* (1983), 20 Ohio App.3d 172, 175. See also, *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52. The granting of a new trial "should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *Martin* at 175.

{¶9} Appellant was convicted of criminal trespassing in violation of R.C. 2911.21(A)(1) which states, "[n]o person, without privilege to do so, shall***[k]nowingly enter or remain on the land or premises of another."

{¶10} It is appellant's contention that the property owner, Kay Kasper, did not exclude her from the property, but her agent, her son Steven Kasper, did. Appellant argues the evidence establishes she may have violated R.C. 2911.21(A)(4), but not R.C. 2911.21(A)(1):

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

{¶12} "(4) Being on the land or premises of another, negligently fail or refuse to leave upon being notified by signage posted in a conspicuous place or otherwise being notified to do so by the owner or occupant, or the agent or servant of either."

{¶13} R.C. 2911.21(A)(1) requires that an act of trespass be done knowingly. R.C. 2901.22(B) defines "knowingly" as, "[a] person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will

probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist."

{¶14} On March 2, 2009, Steven Kasper was living with his mother because of her mental incompetency. Steven Kasper testified prior to March 2, 2009, he had told appellant she was not welcome on the premises. T. at 15. Even appellant testified Steven Kasper had told her in early 2009 that she was not welcome at the home. T. at 86-87. Nevertheless, on March 2, 2009, between the hours of 9:30 p.m. and 11:00 p.m., appellant, together with her daughter, arrived at Kay Kasper's front door. T. at 76. The lights went off. T. at 63, 77. Although they could see Steven Kasper inside the home, he did not answer the door. T. at 63, 79-80. Appellant and her daughter returned to their vehicle whereupon appellant called the sheriff's department. T. at 80. The sheriff's department had Steven Kasper on another line and advised appellant to leave the premises. Id. Appellant testified she left after the telephone call. T. at 81.

{¶15} Appellant argues her entry onto the premises was innocent as she was merely trying to retrieve her daughter's personal belongings left there in 2008. T. at 59-60, 74. However, the lateness of the hour (between 9:30 p.m. and 11:00 p.m.), belies appellant's claim of innocent behavior. Once Steven, who was a resident of the home, refused appellant's admission into the home, appellant remained in the driveway for some fifteen to twenty minutes. T. at 63-64, 83. This action, coupled with appellant's understanding that she was not welcome on the premises, established a violation of R.C. 2911.21(A)(1).

{¶16} We find appellant's argument, that she was not barred from the property by Kay Kasper herself therefore she could not have knowingly entered and remained on

the premise without privilege to do so, to be without merit. Prior to the incident, Steven Kasper, who was living in the home at the time, had instructed appellant not to enter the premises. During the incident, Steven Kasper refused to admit appellant into the home, yet appellant remained on the premises for some fifteen to twenty minutes.

{¶17} Upon review, we find no manifest miscarriage of justice.

{¶18} The sole assignment of error is denied.

{¶19} The judgment of the Cambridge Municipal Court of Guernsey County, Ohio is hereby affirmed.

By Farmer, J.

Hoffman, P.J. and

Wise, J. concur.

s/ Sheila G. Farmer

s/ William B. Hoffman

s/ John W. Wise

JUDGES

