# Juvenile Law Case Summaries

By
**Robert O. Dawson**
Bryant Smith Chair in Law
University of Texas School of Law

2001 Case Summaries 2000 Case Summaries 1999 Case Summaries

---

***Assistant Principal can be owner of school in criminal trespass case; no fatal variance in proof of owner's name [In re. A.I.] (01-2-03).***

On March 8, 2001, the Austin Court of Appeals held that an assistant principal of a high school can be named the owner for a criminal trespass case. The Court of Appeals also held that an error in spelling the assistant principal's name did not give rise to a fatal variance at trial.

¶ 01-2-03. In the Matter of A.I., UNPUBLISHED, No. 03-00-00428-CV, 2001 WL 223294, 2001 Tex.App.Lexis __ (Tex.App.—Austin 3/8/01)[Texas Juvenile Law (5th Edition 2000)].

Facts: On May 23, 2000, the juvenile court found that A.I. had engaged in delinquent conduct by committing the offense of criminal trespass. See Tex. Penal Code Ann. § 30.05 (West Supp.2001). The court ordered A.I. placed on "intensive supervision probation" in the custody of his mother for nine months. A.I. appeals in a single point of error, contending the evidence was legally insufficient to support his conviction. We will affirm.

A.I. withdrew from McCallum High School on November 18, 1999. At the time of his withdrawal, school officials verbally warned A.I. that if he entered the school premises, he would be arrested for criminal trespass. A.I. was also issued a written trespass warning by school officials. However, on December 1, 1999, A.I. entered the school property without permission. On that date, assistant principal Cheryl Davis had closed and chained the gate to the property and remained there to enforce school rules which prohibited students from leaving the campus during the lunch break. While stationed at the gate, Davis saw A.I. on the property. Austin Independent School District police officers Craig Rigtrip and Kim Pierce also saw A.I. on the property on December 1, 1999.

A.I. was charged with the offense of criminal trespass. See id. A.I. bases his appeal on paragraph III of the amended petition, which alleges delinquent conduct and reads as follows:

III.

> The said child is alleged to have engaged in delinquent conduct, to-wit: on or about the 1st day of December, 1999, in Travis County, State of Texas, the said child violated a penal law of this State punishable by confinement in jail, to-wit: Section 30.05 of the Texas Penal Code (Criminal Trespass), in that he did then and there intentionally and knowingly enter and remain on the property of Sharyl Davis, the owner, without the effective consent of said owner and the said child after having received notice to depart, to-wit: prior criminal trespass warning.

After A.I. waived his right to trial by jury, the juvenile court adjudged that A.I. had engaged in delinquent conduct by committing the charged offense and placed him on intensive supervisory probation for nine months under the custody of his mother.

Held: Affirmed.

Opinion Text: A.I. appeals the juvenile court order, arguing that the evidence presented at trial was legally insufficient to support the court's ruling. A legal sufficiency review calls upon the reviewing court to view the relevant evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found

the essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319 (1979); Staley v. State, 887 S.W.2d 885, 888 (Tex.Crim.App.1994). Any inconsistencies in the evidence should be resolved in favor of the verdict. Moreno v. State, 775 S.W.2d 866, 867 (Tex.Crim.App.1988). This standard of review is the same for both direct and circumstantial evidence. Green v. State, 840 S.W.2d 394, 401 (Tex.Crim.App.1992).

A.I. does not dispute that he was on the McCallum High School campus on December 1, 1999. Instead, he argues there was an error in the State's petition and there was insufficient evidence adduced at trial to establish ownership of the property by Cheryl Davis. First, A.I. takes issue with the spelling of Davis's name. The State alleged "Sharyl" Davis as the owner in the amended petition, but the complainant's name is correctly spelled "Cheryl" Davis. Absolute accuracy in spelling a name is not required. Loven v. State, 167 S.W.2d 515, 516 (Tex.Crim.App.1943). The use of a name is merely designed to designate the person intended, and that object is fully accomplished when the name given her has the same sound as her true name. Id. The appellant must raise questions challenging correctness of a name at trial; if not raised in the first instance in the trial court proceeding, the complaint is waived and there is nothing to review on appeal. Martin v. State, 541 S.W.2d 605, 608 (Tex.Crim.App.1976). The record does not show that A.I. raised the issue of idem sonans at trial and, therefore, A.I. waived his complaint.

A.I. further argues that the record lacks evidence to prove Davis owned the property in question. The offense of criminal trespass occurs when: (1) a person, (2) without effective consent, (3) enters or remains on the property or any building of another, and (4) the person had notice that the entry was forbidden or received notice to depart but failed to do so. See Tex. Penal Code Ann. § 30.05(a). The Texas criminal trespass statute does not require the State to prove ownership of the property on which a defendant allegedly trespassed. Langston v. State, 855 S.W.2d 718, 721 (Tex.Crim.App.1993). The statute requires only that the defendant enter the property "of another." Id. However, when the State alleges who owns the property instead of merely that the accused trespassed on the property of "another," the State then assumes the burden of proving ownership. Id. The State alleged that Cheryl Davis owned the property in question. Thus, the State assumed the burden of proving the property's ownership. An owner is defined as a person who has (1) title to the property, (2) possession of the property, whether lawful or not, or (3) a greater right to possession of the property than the actor. Tex. Penal Code Ann. § 1.07(a)(35) (West 1994). The definition of "possession" includes actual care, custody, control, or management of property. Id. § 1.07(a)(39). Thus, under the law, an owner is any person who has a greater right to the actual care, custody, control, or management of the property than the actor. Alexander v. State, 753 S.W.2d 390, 392 (Tex.Crim.App.1988). In criminal trespass cases, where the State alleges ownership, the State may establish ownership by proving, beyond a reasonable doubt, that the complainant had a greater right to possession of the property than the defendant. Arnold v. State, 867 S.W.2d 378, 379 (Tex.Crim.App.1993). With respect to public property, the State satisfies its burden by proving beyond a reasonable doubt that the complainant has a greater right to possession of the public property than does the accused. Bader v. State, 15 S.W.3d 599, 607-08 (Tex.App.-- Austin 2000, pet. ref'd).

A.I. contends that Davis's position as assistant principal alone is inadequate to establish ownership. To support his argument, A.I. relies on Freeman v. State, 707 S.W.2d 597 (Tex.Crim.App.1986), in which the court noted that proof of a management position alone is insufficient to sustain ownership of the property absent some showing that the named owner had exercised some degree of care, custody, control, or management over the property. Id. at 603.

Freeman was a theft case in which the appellant was a sales clerk and the complainant was a security guard at the same store. Id. at 604. As employees, both parties had an equal and competing possessory interest in the store's property until the theft actually occurred. Id. The State was therefore required to prove that the complainant had a greater right to possession than the appellant. Id. Here, even if A.I. had an equal and competing possessory interest in the school property when he was a student at McCallum High School, it ended at the time he withdrew and received the trespass warnings. In addition to Davis's management position, she did exercise some degree of care, custody, control, or management of the property by chaining the gate of the property to prohibit the students from leaving. A review of the evidence reveals that there is sufficient evidence to conclude Davis maintained a greater right to possession than A.I. at the time of the incident.

The State must establish the relationship between the property and the alleged owner, and there must be some evidence from which the fact-finder might infer that the alleged owner had some right to possession of the property. Dingler v. State, 705 S.W.2d 144, 146 (Tex.Crim.App.1984). The record reveals that Davis was watching the gate of the property in order to keep students from leaving the campus during the lunch break when she saw A.I. on the property. A rational trier of fact could infer that these actions provide sufficient evidence that the alleged owner, Davis, had a right to possession of the property and that she had a greater right to possession of the property than A.I.

After viewing all the evidence in the light most favorable to the verdict, we hold that a rational trier of fact could have found the essential elements of criminal trespass beyond a reasonable doubt. We further hold that the fact- finder

might reasonably infer that Davis had a greater right to possession of the school property and that she exercised some degree of care, custody, control, or management over the property. We therefore overrule A.I.'s sole point of error and affirm the trial court's judgment.

---

2001 Case Summaries 2000 Case Summaries 1999 Case Summaries