Filed 10/15/12 In re B.W. CA2/6

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re B.W., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B235799 (Super. Ct. No. JV47896) (San Luis Obispo County)
THE PEOPLE, Plaintiff and Respondent, v. B.W., Defendant and Appellant.	

B.W. appeals from the judgment of the juvenile court declaring him a ward of the court (Welf. & Inst. Code, § 602) entered after the court sustained petitions alleging his commission of trespass by "entering and occupying" property (Pen. Code, § 602, subd. (m)),[1] battery (§ 243, subd. (e)(1)), and false imprisonment (§ 236). After being sentenced to 165 days in juvenile hall with credit for 165 days served, he was placed on supervised probation.

[1] All statutory references are to the Penal Code unless otherwise stated.

B.W. contends that there was insufficient evidence to support the trespass offense.[2] We affirm.

FACTS AND PROCEDURAL HISTORY

In December 2008, Dr. Francis Lojacono owned an abandoned medical building. The doors were locked, "no trespassing" signs were posted, and he had given no one permission to enter the building. Prior to the charged trespass, Dr. Lojacono had reported four instances of where individuals had broken into the building but he was unaware of the identity of the intruders.

On December 30 2008, Gabrielle C. telephoned B.W., who was her friend. B.W. told her he was at the Lojacono medical building and asked Gabrielle to meet him there. When she arrived, Gabrielle saw B.W. waiting for her in the doorway of the building. Gabrielle and B.W. went inside. Gabrielle stayed for five or ten minutes and left. She did not know how long B.W. remained in the building after she left.

On the same day, police officer John Taylor was looking for Gabrielle who had been reported as a runaway. He had information that Gabrielle may be with B.W. and that B.W. could be found in the medical building with other transient juveniles. Officer Taylor drove to the medical building where he found the doors broken open and the inside in disarray. Food wrappers, empty cans and drug paraphernalia were strewn around the building. There was urine in a sink and a room used for defecation. There was a mattress in the building. Officer Taylor found clumps of curly blond hair on the floor. B.W. had curly blond hair and, when Taylor located B.W. later in the day, it looked as if he had cut his hair.

In 2009, a Welfare and Institutions Code section 602 petition was filed against B.W. alleging trespass by entering and occupying the building. (See § 602, subd. (m).) Four other petitions were filed against B.W. alleging various offenses including battery and false imprisonment. On June 14, 2011, the juvenile court sustained the

[2] B.W. does not contest the battery or false imprisonment adjudications.

trespass allegations, as well as the false imprisonment and battery allegations which were contained in another petition. All other charges were dismissed on the People's motion.

B.W. filed a timely notice of appeal, and contests only the trespass adjudication.

DISCUSSION

B.W. contends there was insufficient evidence to support the sustaining of the petition on the section 602, subdivision (m) trespass charge. A violation of that statute requires "entering *and occupying*" property without consent. (Italics added.)[3] B.W. concedes that he entered the Lojacono medical building on one occasion, but argues that there was no substantial evidence that he "occupied" the Lojacono medical building at any time. We disagree.

In reviewing an insufficient evidence claim, we consider the entire record in the light most favorable to the judgment to determine whether it discloses "substantial evidence—that is, evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.) Reversal for insufficient evidence is not warranted unless it appears there is no substantial evidence to support the conviction under any hypothesis. (*People v. Bolin* (1998) 18 Cal.4th 297, 331.) These principles apply to juvenile proceedings where the minor is alleged to have violated a criminal statute. (*In re Roderick P.* (1972) 7 Cal.3d 801, 809.)

In *People v. Wilkinson* (1967) 248 Cal.App.2d Supp. 906, the appellate department of the superior court construed the meaning of the term "occupying" in section 602, subdivision (m), formerly subdivision (l). Four defendants had camped overnight on private ranch property, and were arrested the following morning as they were packing up their campsite. (*Id.* at p. 908.) Noting legislative history that the statute

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[3] Section 602, subdivision (m) provides in its entirety: "Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession."

was enacted as a response to "an alarming increase in squatter occupancy of lands," the court construed the word "occupy" as requiring "a nontransient, continuous type of possession" with "some degree of dispossession and permanency." (*Id.* at pp. 910, 911.) The court concluded that the transient overnight use of a very small area of "a very large ranch for sleeping bags and campfire purposes was not the type of conduct which the Legislature intended to prevent when it used the word 'occupy.'" (*Id.* at p. 910.)

The California Supreme Court cited the *Wilkinson* standard with approval in *In re Catalano* (1981) 29 Cal.3d 1, 10, footnote 9, and *Wilkinson* is relied on for the current CALCRIM No. 2931 jury instruction on the statute which includes a requirement that, after an unlawful entry, the defendant must occupy "some part of the [property] continuously until removed."

Here, the evidence indicates a "continuous type of possession" with "some degree of dispossession and permanency." (*People v. Wilkinson, supra,* 248 Cal.App.2d Supp. at pp. 910, 911.) The presence of the mattress, the discards of food wrappings, urination in a sink and a separate room for fecal matter evidence that the medical building was being used on a regular basis as a form of residence or "crash pad," and not merely for temporary and short-term purposes.

This evidence, standing along, does not show that B.W. as opposed to another person or persons occupied that building as required by the statute. As B.W. points out, Gabrielle C. only saw B.W. in the building once, and Dr. Lojacono could not identify B.W. as one of the trespassers he had seen on previous occasions. Other evidence, however, ties B.W. more closely to occupancy of the building. Testimony by Officer Taylor indicates that B.W. used the building for the personal grooming task of cutting his hair. Further, testimony by Gabrielle C. that B.W. told her he was at the medical building and met her there later supports the inference that he was in the building on a regular basis and used it for personal meetings with others. We conclude, therefore,

that substantial evidence supports the judgment.

The judgment is affirmed.

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PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Ginger E. Garrett, Judge

Superior Court County of San Luis Obispo

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