Filed 9/23/13 In re J.M. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re J.M., a Person Coming Under the Juvenile Court Law.	B244430 (Los Angeles County Super. Ct. No. VJ42423)
THE PEOPLE, Plaintiff and Respondent, v. J.M., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Stephanie M. Davis, Juvenile Court Referee. Reversed.

Courtney M. Selan, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Eric E. Reynolds and Connie H. Kan, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant J.M. appeals from a juvenile court decision finding a charge of trespass upon school grounds to be true, as part of a Welfare and Institutions Code section 602 petition. He contends the court lacked sufficient evidence to conclude that he violated the relevant trespass statute because the school failed to provide a sufficient hearing and notification. Without reaching appellant's claims, we find the evidence insufficient to support the court's ruling, because respondent failed to demonstrate appellant's willful and knowing entry upon the school campus. Accordingly, we reverse the judgment.

FACTUAL AND PROCEDURAL SUMMARY

On the morning of February 22, 2012, appellant J.M. was sent to the discipline office at his high school for defiant and disrespectful conduct toward a campus security officer. Pamela Trimble was a teacher on special assignment working in the discipline office that morning. She met with appellant, then in the ninth grade, to discuss the incident sometime between 8:15 and 8:30 a.m. She planned to place appellant on in-house suspension for his actions with the security officer. But as they discussed the incident, appellant became upset. He called her a "dirty ass teacher."

Trimble decided that appellant's comment merited more serious punishment. She spoke to the dean in charge of discipline, who made the final decision that appellant should be placed on a two-day suspension. After completing the notice of suspension form, Trimble ensured that appellant read and signed it, and orally informed him of its terms. During this process, Trimble provided an opportunity for appellant to explain his side of the story, as is standard procedure when suspending a pupil. She explained that during the two-day suspension, between February 22 and 23, he was not permitted to be on campus or attend any school events until the suspension ended. If he needed to retrieve items from his locker, appellant would need to do so "before he left. Because once he was suspended officially, he could not come back on campus."

Prior to releasing appellant, somebody in the school's discipline office called his mother to ask that she pick him up, or to obtain permission for him to walk home. Upon

receiving the call, and learning that her son had been suspended, the mother allowed him to walk home. Sometime between 8:30 and 8:45 a.m., after Trimble completed her meeting with appellant, the discipline secretary walked him up to the front office. Trimble believed that appellant then walked home.

At 9:20 a.m., campus security officer Maria del Carmen Rivera noticed that appellant was on campus in an outdoor area where student lockers were located. Rivera alerted Deputy Sheriff Cesar Gallegos, who was working on campus that morning. Appellant appeared to be opening a locker, so Gallegos asked him what he was doing. He responded, "You're a little bitch for stopping me. I was just here to get a baseball cap." Gallegos detained appellant for violating the suspension order, and escorted him to the discipline office.

On April 23, 2012, respondent filed a Welfare and Institutions Code section 602 petition. It charged a single count of trespass on school grounds, in violation of Penal Code section 626.2,[1] for the incident on February 22, 2012. Appellant denied the allegation.

The juvenile court found the petition true beyond a reasonable doubt, declared appellant a ward of the state, and ordered him to remain on home probation. In reaching this determination, the court addressed appellant's claims that the circumstances of his suspension satisfied neither the hearing nor notice requirements of section 626.2. It concluded that an opportunity to respond during the meeting with Trimble was sufficient to satisfy the "after a hearing" requirement of section 626.2. As to the requirement that the notice be sent by "registered or certified mail," the court determined that "actual notice trumps all written notice." It identified a portion of section 626.2 that provides "[t]he presumption [of knowledge if notice has been given as prescribed in this section] established by this section is a presumption affecting the burden of proof." (§ 626.2, subd. (c).) The court concluded that where "a person actually knows about something,"

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[1] Statutory references are to the Penal Code unless otherwise indicated.

as appellant knew about his two-day suspension, then the statutory notice requirements are "excused." Accordingly, it declared the violation a misdemeanor, and awarded appellant five days of custody credits. This appeal followed.

DISCUSSION

Appellant contends the court erred in finding the Welfare and Institutions Code section 602 petition to be true beyond a reasonable doubt. He argues that the court lacked sufficient evidence to conclude that he violated section 626.2. Raising procedural deficiencies, he contends the court failed to satisfy the hearing and notice requirements of the statute, and thus lacked sufficient evidence to sustain the charge against him. Finding the court lacked sufficient evidence that appellant willfully and knowingly entered the school campus, we need not address his claims.

Section 626.2 prohibits a pupil, under a current suspension order, from entering a school campus. It provides, in relevant part: "Every student or employee who, after a hearing, has been suspended or dismissed from a community college, a state university, the university, or a public or private school for disrupting the orderly operation of the campus or facility of the institution, and as a condition of the suspension or dismissal has been denied access to the campus or facility, or both, of the institution for the period of the suspension or in the case of dismissal for a period not to exceed one year; who has been served by registered or certified mail, at the last address given by that person, with a written notice of the suspension or dismissal and condition; and *who willfully and knowingly enters upon the campus or facility of the institution to which he or she has been denied access*, without the express written permission of the chief administrative officer of the campus or facility, is guilty of a misdemeanor . . . ." (§ 626.2, italics added.)

It is the prosecution's burden to prove all elements of a crime. (§ 1096 [placing the burden of proof on the state to prove defendant guilty beyond a reasonable doubt]; Evid. Code, § 520 ["The party claiming that a person is guilty of crime or wrongdoing

has the burden of proof on that issue."].) In the present case, respondent must prove beyond a reasonable doubt that appellant willfully and knowingly *entered* the high school campus following his suspension, in addition to the other elements of the crime. (§ 626.2.)

"The test to determine a claim of insufficient evidence is whether, on the entire record, a rational trier of fact could find appellant guilty beyond a reasonable doubt." (*In re Leon S.* (2005) 133 Cal.App.4th 1556, 1560 citing *People v. Johnson* (1980) 26 Cal.3d 557, 576–577 (*Johnson*).) In determining whether the evidence for each essential element is substantial, we "review the whole record in the light most favorable to the judgment below." (*Johnson*, at p. 562.)

The record fails to establish that appellant entered the campus following his suspension. Section 626.2 requires that the pupil "willfully and knowingly enter[] upon the campus or facility of the institution to which he or she has been denied access." After school officials escorted appellant to the front office following his suspension meeting, the record is silent as to where he went next. Trimble assumed he walked home, as his mother had authorized him to, but there is no evidence indicating that he did so. Trimble recounted that 40 minutes passed between the time appellant was released at the front office and the time he was seen near the lockers. This narrow window of time supports, at a minimum, an inference that appellant remained on campus, and thus committed no willful and knowing entry in defiance of his suspension order.

In the trial court transcript, respondent emphasized that the discipline secretary escorted appellant to the front of the school following his suspension. While this may support an inference that appellant proceeded to walk off campus, and then returned to his locker to retrieve his baseball cap, there is no evidence that he exited and entered the campus. Any conclusion at trial that appellant entered the campus following his suspension is speculative. In fact, respondent all but concedes appellant never left the school. Its brief states that prior to arresting him, school officials received a "radio call that he was *still on* campus." (Italics added.) Because the facts are silent as to

appellant's alleged willful and knowing entry, we find that the record fails to supply evidence sufficient for the trial court to reasonably conclude that appellant violated section 626.2.

DISPOSITION

The judgment is reversed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

SUZUKAWA, J.