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IN THE
COURT OF APPEALS OF INDIANA

ERIC TAYLOR,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0812-CR-1062
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Louis Rosenberg, Judge Pro-Tempore
Cause No. 49F10-0712-CM-264607

July 30, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Eric Taylor ("Taylor") was convicted in Marion Superior Court of Class A misdemeanor criminal trespass. The trial court sentenced Taylor to 365 days in jail, with 351 days suspended and 180 days on probation. Taylor appeals and argues that the evidence presented was insufficient to support his conviction and that the criminal trespass statute violated Taylor's constitutional rights. We affirm.

Facts and Procedural History

On December 11, 2007, Taylor arrived at the Marion County Probation Department office to meet the community service bus so he could fulfill his community service requirements.[1] However, he arrived at 8:00 a.m. rather than his scheduled arrival time of 7:30 a.m., and was informed by the receptionist that the bus had left. Taylor asked the receptionist where the community service bus had gone, but the receptionist did not have that information. Taylor then asked to speak with his probation officer and a supervisor, but the receptionist told him that neither was available. The receptionist told Taylor that he could speak with his probation officer at 3:00 p.m. later that day. Taylor continued to argue with the receptionist.

The receptionist called Marion County Sheriff's Deputy Sean Morrison ("Deputy Morrison") for assistance in dealing with Taylor. Deputy Morrison was assigned to the probation office to "keep the peace," deal with safety issues, and make arrests as needed. Tr. p. 65. Deputy Morrison asked Taylor to lower his voice, leave the property multiple times, and told Taylor that he would be arrested for trespass if he returned. Deputy Morrison did this several times with no apparent effect. So, Deputy Morrison escorted

[1] Community service is not part of the probation department, but the probation department allows the probationers to meet the bus at the probation department. Tr. pp. 69, 74.

Taylor out of the building. However, approximately five minutes later, Taylor returned to the property, whereupon Deputy Morrison arrested Taylor for criminal trespass and disorderly conduct.

On December 11, 2007, the State charged Taylor with Class A misdemeanor criminal trespass and Class B misdemeanor disorderly conduct. The trial court granted Taylor's motion to dismiss the disorderly conduct charge after determining that Taylor's speech was protected. On September 30, 2008, the trial court found Taylor guilty of Class A misdemeanor criminal trespass and sentenced him to 365 days in jail, with 351 suspended and 180 days on probation. Taylor appeals.

I. Sufficiency of the Evidence

Taylor argues that the evidence presented at trial was insufficient to support a finding that Deputy Morrison did not have the authority to order Taylor from the property of the Probation Department for the crime of trespass. When we review a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id. If inferences may be reasonably drawn that enable the trier of fact to find the defendant guilty beyond a reasonable doubt then the circumstantial evidence will be sufficient. Id.

Under Indiana Code section 35-43-2-2(a) (2004), "[a] person who . . . not having a contractual interest in the property, knowingly or intentionally enters the real property of another person after having been denied entry by the other person or that person's agent commits criminal trespass, a Class A misdemeanor." Subsection (b) states that "[a] person has been denied entry under subdivision (a)(1) of this section when the person has been denied entry by means of personal communication, oral or written[.]"

Taylor contends that since Deputy Morrison did not work for the probation department and had not been given authority to remove persons from probation department property by a probation department employee, Deputy Morrison did not have the authority to order Taylor from the property and subsequently arrest him upon his return. Deputy Morrison did not in fact work for the Marion County Probation Department; however, he did work for the Marion County Sheriff's Department. Under Indiana Code section 36-2-13-5(a)(6), "[t]he sheriff shall: . . . (attend and preserve order in all courts of the county[.]"

In Indiana, probation is a judicial function. See Matter of Madison County Probation Officers' Salaries, 682 N.E.2d 498, 500 (Ind. 1997) ("The Indiana Legislature has determined that probation officers serve at the pleasure of the courts that appoint them and that the salaries of probation officers are to be fixed by the courts [and] ... [i]t has long been the law of this State that the judiciary has the constitutional authority to set salaries of probation officers.") See also Isaac v. State, 605 N.E.2d 144, 147 (Ind. 1992), Noble County Council v. State ex rel. Fifer, 234 Ind. 172, 125 N.E.2d 709 (1955), and Noethtich v. State, 676 N.E.2d 1078, 1081 (Ind. Ct. App. 1997).

Similarly, Indiana Code section 11-13-1-1(a) requires courts to appoint and supervise probation officers. Probation officers "serve at the pleasure of the appointing court and are directly responsible to and subject to the orders of the courts." I.C. § 11-13-1-1(c). The sheriff through his deputy, Deputy Morrison, had statutory authority to preserve order in the courts of the county and this duty extended to the probation department.

Taylor also argues that he had a legal obligation to report to the probation office, that he had a bona fide belief that he had a right to be at the probation office and that he acted in good faith when he returned. While we recognize that a bona fide belief will defeat the mens rea requirement for criminal trespass, the belief must be both fair and reasonable. Olsen v. State, 663 N.E.2d 1194, 1196 (Ind. Ct. App. 1996). Had Taylor's return been later that afternoon for his appointment with his probation officer, then he would have had a colorable claim to a bona fide belief. But Taylor returned approximately five minutes after being told to leave and threatened with arrest should he return. Taylor's belief and conduct were not reasonable under the circumstances.

The evidence presented is sufficient to support Taylor's conviction for Class A misdemeanor criminal trespass.

II. First Amendment

Taylor next argues that Officer Morrison could not use Taylor's legitimate free speech under both state and federal constitutions as a basis for Taylor's removal from the probation office. The First Amendment provides that "Congress shall make no law . . .

abridging the freedom of speech[.]"[2] Article One, Section 9 of the Indiana Constitution provides:

> No law shall be passed, restraining the free interchange of thought and opinion, or restricting the right to speak, write, or print, freely, on any subject whatever: but for the abuse of that right, every person shall be responsible.

However, the U.S. Supreme Court has regularly rejected the assertion that people who wish "to propagandize protests or views have a constitutional right to do so whenever and however and wherever they please." Adderly v. Florida, 385 U.S. 39, 47-48, (1966). See, e.g., Cox v. Louisiana ("Cox I"), 379 U.S. 536, 554-555 (1965); Cox v. Louisiana ("Cox II"), 379 U.S. 559, 563-564 (1965).

As noted in United States v. Grace, 461 U.S. 171, 177-178 (1983), there are some circumstances in which the government may ban the entry on to public property that is not a "public forum" of all persons except those who have legitimate business on the premises. "The State, no less than a private owner of property, has the power to preserve the property under its control for the use to which it is lawfully dedicated." Adderly v. Florida, 385 U.S. at 47. See Cox II, 379 U.S. at 563-564. The United States Constitution does not forbid a State to control the use of its own property for its own lawful nondiscriminatory purpose. Id.

The Marion County Probation Department office is not a public forum that is traditionally held open for expressive conduct. The probation office is a place for probationers to meet with their probation officer pursuant to court order. The probation

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[2] The First Amendment provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

office policy requires that probationers present themselves at the office at their assigned time but not otherwise. Tr. p. 74. This policy is an essential and reasonable tool for maintaining an orderly and efficient office, and this policy is applied to all probationers, not just Taylor.

The trial court, in dismissing the Class A misdemeanor disorderly conduct charge, determined that Taylor's speech was protected. The Class A misdemeanor criminal trespass charge did not merit dismissal because, while Taylor may not be prosecuted for disorderly conduct based on protected speech, Taylor did not have the unequivocal right to exercise his right to speak at any venue he chose, including the Marion County Probation Department, and he could lawfully be excluded from the probation office. As noted above, the probation department's office policy regarding probationers in the office outside of their appointment time is eminently reasonable and was applied in a nondiscriminatory manner.

In this case, Taylor came to the probation office to meet the community service bus; however, he arrived late and missed the bus. After loudly airing his complaints regarding the perceived lack of assistance he was receiving from the receptionist, Taylor was told to leave the office and that he could return for his regularly scheduled probation appointment later that day. Taylor finally left the office at the behest of Officer Morrison, who warned him against returning before his appointment time and told Taylor that he would be arrested for criminal trespass if he did.

While Taylor could air his perceived grievance against the probation department, he did not have the unequivocal right to do so within the confines of the probation office.

The Marion County Probation Department has the power to control the property under its auspices and exclude those persons who do not have legitimate business at the office. Because Taylor did not have legitimate business at the office and the probation office had a reasonable policy excluding probationers from the office outside of their appointment times, Taylor could lawfully be excluded from the probation office and arrested for criminal trespass for returning after being told to leave, despite his use of protected speech before being asked to leave the probation office.

Conclusion

The evidence presented at trial was sufficient to support the trial court's determination that Officer Morrison had the authority to warn and to later arrest Taylor for trespass. Taylor did not have a bona fide belief in his right to be in the probation office. The evidence was therefore sufficient to convict Taylor for Class A misdemeanor criminal trespass. Finally, Taylor's right to free speech under both the Indiana and U.S. constitutions was not infringed upon when he was asked to leave the probation office for disrupting the operations of that office and subsequently arrested for returning to the office.

Affirmed.

RILEY, J., and KIRSCH, J., concur.