STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1264

In the Matter of the Welfare of:
A. A. D., Jr., Child.

Filed June 13, 2022
Reversed
Ross, Judge

Hennepin County District Court
File No. 27-JV-20-3324

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant A. A. D., Jr.)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent State of Minnesota)

Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Ross, Judge.

SYLLABUS

1. A police officer's oral declaration to an unwelcome visitor on private property, "You're officially trespassed," does not meet the trespass-notice requirement of Minnesota Statutes section 609.605, subdivision 1(b)(8) (2020), which predicates a trespass violation on the alleged trespasser's having been previously "told to leave the property and not to return."

2. A police officer's refused attempt to hand-deliver a written notice informing an unwelcome visitor to leave a property and not return does not satisfy the trespass-notice "told" requirement of Minnesota Statutes section 609.605, subdivision 1(b)(8).

OPINION

ROSS, Judge

A teenaged boy returned to a Brooklyn Park grocery store two months after one police officer told him that he was "officially trespassed" and another attempted but failed to hand the teen a formal notice advising him not to return for a specific period. The state charged him with and the district court found him guilty of criminal trespass and stayed adjudication. The youth appeals from the finding, arguing that he had not effectively been "told to leave the property and not to return," which is the statutory prerequisite to a trespass violation. Because neither orally informing an unwelcome visitor that he is "officially trespassed" nor attempting but failing to hand-deliver the written notice meets the notice required by the statute, we reverse.

FACTS

Police officers Jeremiah Carlson and Nicole Matthewman were on patrol in June 2020 when they were dispatched to the Fast & Fresh grocery in a Brooklyn Park strip mall to investigate a report that unwelcome youth were refusing to leave the property. The officers encountered the group, including fifteen-year-old A.A.D., and began dispersing them. Officer Matthewman tried to hand A.A.D. a written notice that stated, "[Y]ou are hereby ordered to leave the property described below and not return." A.A.D. said, "I don't want that, bro," and turned away without taking the notice. Officer Carlson told A.A.D., "You're officially trespassed from here now so now you need to go." A.A.D. left the property.

Officer Brandon Schmitt encountered A.A.D. two months later inside the Fast & Fresh store. A.A.D. attempted to hide from the officer behind merchandise racks. Officer Schmitt arrested A.A.D., and the state filed a delinquency petition charging him with criminal trespass. The district court conducted a bench trial, found that the state proved the allegations against A.A.D., and stayed adjudication for 180 days. A.A.D. appeals.

ISSUE

Did the state prove that police "told [A.A.D.] to leave the property and not to return" under Minnesota Statutes section 609.605, subdivision 1(b)(8) (2020)?

ANALYSIS

A.A.D. challenges the district court's finding that he engaged in misdemeanor trespass, arguing that the state failed to prove that he had been given the prior notice required by statute. The parties do not dispute the material facts, and we review de novo the district court's application of a criminal statute. *State v. Degroot*, 946 N.W.2d 354, 360, 365 (Minn. 2020). We must decide only whether the officer's actual delivery of the oral notice or his partner's attempted delivery of the written notice satisfies the statutory prior-notice requirement. Based on a straightforward reading of the statute's plain language, our answer is no.

We focus on the operative word, "told." Unless a person has a "claim of right to the property [of another] or consent" to be there, he commits the crime of misdemeanor trespass if he "intentionally . . . returns to the property . . . within one year after being *told* to leave the property and not to return." Minn. Stat. § 609.605, subd. 1(b)(8). The district court determined A.A.D.'s guilt apparently on two grounds. It reasoned first that A.A.D.

violated the trespass statute "when he returned to the Fast & Fresh property . . . after being trespassed from the premises." It reasoned next that A.A.D. "was responsible for adhering to the conditions of the trespass notice that the officers attempted to give him, even though he refused to accept [it]." We interpret the district court's explanation as basing the guilt determination on both grounds—the oral pronouncement that A.A.D. was "officially trespassed" and the refused written notice that he must leave and not return. We consider whether, as to either alternative, police "told" A.A.D. to leave and not return to the Fast & Fresh.

Oral Advisory Did Not Satisfy Notice Requirement

The state argues that the statutory notice requirement was met here when "the [o]fficer told A.A.D. that he was 'officially trespassed' from the property." It bases this argument on the officer's testimony that, when a person is "officially trespassed," it means "they're not welcome [at the property] for one year from the date of the issuance . . . unless they get the owner to say that they're allowed back in." The state does not suggest that the officer's understanding of the term "officially trespassed" is shared by anyone outside of those police, lawyers, and judges who are familiar with the statute. It identifies no statute, common English dictionary, or even legal dictionary, that defines the verb "trespassed" in the shorthand way the officer used it here. Our understanding of the basic term in its usual setting informs us that "trespassed," the past-tense construction of the verb "trespass," commonly indicates a previous unlawful intrusion onto property rather than a current prohibition against future entry.

We recognize that words evolve over time. We likewise know that a half dozen unpublished opinions of this court have used the word "trespassed" to refer to a directive not to return to land. *See, e.g.*, *Little Earth of United Tribes Hous. Corp. v. Rojas*, No. A19-0297, 2019 WL 6838488, at *5 (Minn. App. Dec. 16, 2019) ("Officer Schmitt's narrative stated that Stevens 'was booked . . . for [t]respassing,' but the officer acknowledged that it was only his 'understanding' that Stevens had been trespassed."). But a brief survey of judicial opinions across the nation informs us that the officer's very specific use here is at most only developing in the law. That is, the term "officially trespassed" showed up in a publicly accessible judicial-opinion database for the first time only ten years ago in a nonprecedential Ohio Court of Appeals opinion, *State v. Smith*, No. 25048, 2012 WL 5076225, at *1 (Ohio Ct. App. Oct. 19, 2012) ("Officer Jezioro advised Defendant that he was officially trespassed from Marvin Gardens."), and it has appeared only once more, in a nonprecedential Texas Court of Appeals opinion two years later, *Yoc-H v. State*, No. 07-13-00222-CR, 2014 WL 1712625, at *1 (Tex. Ct. App. Apr. 28, 2014) ("On that same day, Lieutenant Kenneth Adams, of the TWU patrol service, prepared and sent to appellant a letter which apprised him of the fact that he had been officially 'trespassed' from TWU."). No Minnesota appellate opinion has ever used the phrase "officially trespassed" in any context. And we have found no court anywhere that has treated the directive, "You're officially trespassed," to mean specifically, *you are hereby ordered to leave the property and not reenter for one year*. We have no reason to believe that the general public would be certain enough of the officer's meaning to precipitate delinquent or criminal liability.

Most important to our analysis, the legislature has never expressly adopted the meaning the officer and the district court ascribed to it here. We have emphasized that "[t]he statutory requirements of a command both to leave the property and a command not to return ensure clarity and notice of exactly what behavior is prohibited." *State v. Kremmin*, 889 N.W.2d 318, 321 (Minn. App. 2017), *rev. denied* (Minn. Mar. 28, 2017). We need not decide whether a property owner or agent must use the precise statutory phrase verbatim, and of course we are in no position to predict whether the officer's phrase used here will ever become so commonly understood in ordinary usage that imposing criminal liability would be fair. We conclude only that one is not "told to leave the property and not to return" with any terminology—including routine police jargon—that fails to inform the visitor expressly of the duty to leave and the duty not to return. And we hold that the officer's declaration that A.A.D. was "officially trespassed" failed to meet the statutory notice requirement and cannot support the finding of guilt.

Undelivered Writing Did Not Satisfy Notice Requirement

We next consider the district court's conclusion that the officer told A.A.D. to leave and not return by drafting the trespass notice and unsuccessfully attempting to deliver it to him. The state points out that the officer's attempted "trespass notice contained all of the relevant information: the issuance date, that A.A.D. could not return, and the date that the trespass notice expired (one year later)." It then cites an 1866 case for the proposition that ignorance of the law cannot excuse a trespass, *Merrit v. City of St. Paul*, 11 Minn. 223, 231, 11 Gil. 145, 152 (1866), and it reasons that, by refusing to accept the notice that Officer Matthewman attempted to hand him, A.A.D. engaged in "willful ignorance of the

law." We reject the state's theory that one is "told" to leave property and not return when he willfully refuses to be handed a written notice that would order him to leave and not return.

Although the legislature did not define the term "told" in section 609.605, it indirectly revealed the meaning, explaining generally that statutory "words and phrases are construed according to rules of grammar and according to their common and approved usage." Minn. Stat. § 645.08 (2020). And dictionary definitions can inform us of a word's common usage. *Getz v. Peace*, 934 N.W.2d 347, 354 (Minn. 2019). The criminal trespass statute uses "told" as the past participle of "tell," which means: "To communicate by speech or writing; express with words," "To make known; disclose or reveal," "To inform (someone) positively; assure," or "To give instructions to; direct." *Am. Heritage Dictionary of the Eng. Language* 1791, 1829 (5th ed. 2018). This comports with definitions of "tell" in dictionaries published in the same era in which the legislature included the "told" requirement in the 1994 trespass statute. *See, e.g.*, *The New Shorter Oxford Eng. Dictionary* 3241 (4th ed. 1993).

Based on this common and continued meaning of the term, we are satisfied that the "told" prerequisite means that A.A.D. cannot be found to have engaged in criminal trespass unless he was actually informed of his leave-and-don't-return obligation. A mere attempt to perform an act is not performing the act. An attempt to communicate, or attempt to make known, or attempt to give instructions, falls short of telling. It therefore was not enough that the officers intended to so inform A.A.D. or even that they tried to so inform him. Our rationale follows the self-evident legislative intent to criminalize the intrusions only of

those who, by prior communication, possess actual knowledge rather than constructive knowledge that they are unwelcome. And this understanding defeats the state's theory that we should apply the ignorance-of-the-law-is-no-excuse maxim to criminal trespass.

We add that we do not share the state's concern that those who engage in "willful ignorance" by refusing to accept a written trespass notice can immunize themselves from criminal liability. First, an officer need not hand-deliver the notice; "telling" can be accomplished, and could have been accomplished in this case, simply by announcing the complete trespass notice orally. And second, any worry that the statute excuses willful ignorance is a concern only for the legislature because it is not our prerogative to look beyond the plain words of a statute to effectuate some broader, supposed policy objective. *See* Minn. Stat. § 645.16 (2020) ("When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit."). In sum, by merely attempting but failing to deliver the notice, police did not tell A.A.D. that he could not return to the property.

DECISION

The evidence does not establish that police told A.A.D. to leave and not return, either by their oral directive or their undelivered writing. The evidence therefore does not support the prior-notice element of A.A.D.'s alleged criminal-trespass violation.

Reversed.