

**In The**  
***Court of Appeals***  
***Ninth District of Texas at Beaumont***

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**NO. 09-17-00092-CR**

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**ISAAC HUDSON, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the County Court at Law No. 2**  
**Orange County, Texas**  
**Trial Cause No. E109303**

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**MEMORANDUM OPINION**

A jury convicted appellant, Isaac Hudson, of criminal trespass and the trial court sentenced him to 100 days of confinement in the county jail. In three issues, Hudson contends: (1) he was deprived of due process because the city library's trespass policy was unconstitutionally vague and violates procedural due process; (2) the criminal trespass statute is unconstitutional facially and as applied because it violated his rights under the First and Fourteenth Amendments; and (3) the evidence

is insufficient to sustain his conviction. We find the issues raised in the appellant's brief are without merit, and we affirm the trial court's judgment.

### **Background and Evidence**

The information alleged that Hudson "did then and there intentionally and knowingly enter a building of another, namely, Brenna Manasco, without the effective consent of the said Brenna Manasco, and the said defendant had notice that the entry was forbidden[.]" On the day testimony began for his trial, Hudson filed a motion to dismiss for "Deprivation of Due Process" and "Violation of the Defendant's First Amendment Rights[.]" The trial court took the motion under advisement, and the trial proceeded. Brenna Manasco, the Director of Library Services at the Orange Public Library, testified that she answers to the city manager and that she consults with the city manager before requesting a trespass warning. Manasco stated that she has the authority to act for the library and to consult with the city manager and have trespass warnings issued. She consults with the city manager because he is her boss and his permission is required. Neither the procedures nor a definition of harassment are posted in the library. Manasco testified that she spoke with the city manager and asked an officer to give Hudson a trespass warning on September 7, 2016. She did not approach Hudson to let him know that his actions would get him banned from the library before the warning was

administered. Hudson returned to the library on September 13, 2016, and Manasco called the police.

Detective Joseph Steele testified that the librarian contacted the police department and advised that Hudson needed to receive a trespass warning because he had created a disturbance several times, but Detective Steele was not aware of the details leading to the decision to issue a warning. On September 7, 2016, Detective Steele issued a verbal trespass warning to Hudson, informing Hudson that he would no longer be allowed to step back on the library's property. Information concerning the trespass warning was logged into the dispatch computer system.

Officer Nicholas Medina testified that on September 13, 2016, Manasco reported that Hudson had returned to the library after having been given a trespass warning. Hudson was standing at the library counter when Officer Medina arrived. He obtained a statement from Manasco and arrested Hudson for criminal trespass. He told Hudson why he was being arrested, not why he had originally received a trespass warning. According to Officer Medina, Hudson had received additional trespass warnings for causing disturbances at the police department and the district attorney's office.

After the State rested, Hudson moved for a directed verdict on the ground that the arrest was unlawful because the library did not provide due process before

revoking Hudson's right to enter the public library. The trial court denied Hudson's motion to dismiss and his motion for a directed verdict.

Hudson testified that he does not know the exact reasons why he was given a trespass warning. For eight months he went to the library to access Facebook and to conduct legal research on the computer. Hudson claimed Manasco stayed in the back of the library and only came to the front one time while he was there. All of his contact was with the two young women at the front desk. Hudson stated he joked and laughed with them and that he commented on one woman's weight gain, but he claimed he never intentionally offended anyone, and no one ever told him they were offended by something he said. He denied having any contact with Detective Steele and claimed he never received a trespass warning. Hudson testified he went to the district attorney's office because he wondered why he was being thrown out of the library, and someone at the district attorney's office told him he could go back to the library. On further cross-examination, Hudson added that he went to the district attorney's office after his arrest for trespassing.

### **Due Process**

In issue one, Hudson contends that the city library's unwritten trespass policy is unconstitutionally vague and violated procedural due process. In reviewing a claim of deprivation of procedural due process, the reviewing court determines

whether a protected liberty interest exists and, if so, whether sufficient safeguards are employed to assure the deprivation of that interest is not arbitrary. *Ex parte Montgomery*, 894 S.W.2d 324, 327 (Tex. Crim. App. 1995). We presume a statute is constitutional, and the defendant bears the burden to establish that the statute is unconstitutional. *Luquis v. State*, 72 S.W.3d 355, 365 (Tex. Crim. App. 2002).

Hudson argues he was unconstitutionally deprived of his liberty interest by state action when the city banned him from the library and subsequently had him arrested. Additionally, Hudson argues the trespass statute violates Hudson's right to due process because regardless of whether a procedure to challenge the ban existed, Hudson was not afforded notice and an opportunity to challenge the library director's decision to ban him from the library.

We addressed the effect of a city's building-use policy on a prosecution for criminal trespass in *Wilson v. State*, 504 S.W.3d 337, 344–45 (Tex. App.—Beaumont 2016, pet. ref'd). Wilson argued his constitutional right to receive procedural due process was violated by the City's unwritten building-use policy, which allowed the city manager to exercise his discretion about when to prohibit individuals from entering the city's community center. *Id.* at 339. Wilson further argued that the policy could not be enforced against him because it was too vague, and that the policy lacked sufficient guidelines to prevent the city manager from

enforcing the policy in an arbitrary and irrational manner. *Id.* at 339–40. We concluded that an adequate civil remedy exists for the types of complaints that Wilson raised in his trial concerning the city manager’s decision to permanently ban him from the city’s community center, and the State was not required to prove that Wilson had actual or constructive notice of its building-use policies to prove that he committed a trespass. *Id.* at 345–46.

Hudson seeks to distinguish *Wilson* because in his case, no evidence was developed regarding whether Hudson was put on notice regarding his right to challenge his ban from the city library. As the party challenging the adequacy of the process by which he was banned from the building, Hudson had the burden to establish that there was no procedure in place to challenge the decision to ban him from the library. *See id.* at 345 n.5. In the absence of any evidence regarding the city’s process for challenging a decision authorized by the city manager, Hudson has not established that he was deprived of procedural due process. We overrule issue one.

### **Constitutional Challenge**

In issue two, Hudson argues the criminal trespass statute is unconstitutional as applied to him because it violated his First and Fourteenth Amendment rights.

“Nothing in the Constitution requires the Government freely to grant access to all who wish to exercise their right to free speech on every type of Government property without regard to the nature of the property or to the disruption that might be caused by the speaker’s activities.” *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 799–800 (1985). “Even protected speech is not equally permissible in all places and at all times.” *Id.* at 799. We apply a forum analysis as a means of determining when the Government’s interest in limiting the use of its property to its intended purpose outweighs the interest of those wishing to use the property for other purposes. *Id.* at 800. Therefore, speakers can be excluded from a traditional public forum if the exclusion is necessary to serve a compelling state interest and the exclusion is narrowly drawn to achieve that interest. *Id.* Property the government has opened for use as a place for expressive activity for a limited amount of time, or a limited class of speakers, is a limited public forum. *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n.*, 460 U.S. 37, 45–46 (1983). With a limited public forum, as long as the Government retains the open character of the facility, it is bound by the same standards that apply in a traditional public forum. *Id.* at 46. “Reasonable time, place and manner regulations are permissible, and a content-based prohibition must be narrowly drawn to effectuate a compelling state interest.” *Id.* Finally, for public property which is not by tradition or designation a forum for

public communication, “[i]n addition to time, place, and manner regulations, the state may reserve the forum for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker’s view.” *Id.*

The city library falls in the third class of public property. No evidence was admitted during the trial to establish that the city created the public library as a place for public communication or that it permitted the library to be used for public communication under limited circumstances. Hudson was in the library to access the internet, but providing internet access in a public library does not create a designated public forum. *See U.S. v. Am. Library Ass’n. Inc.*, 539 U.S. 194, 206 (2003).

Hudson concedes that he was not visiting the library for expressive purposes, but he argues his First Amendment rights were violated because he was banned from the library based on his expression and speech. The jury heard testimony that Hudson was barred from the library because he had caused disturbances. “The United States Constitution does not forbid a State to control the use of its own property for its own lawful nondiscriminatory purpose.” *Adderley v. Florida*, 385 U.S. 39, 47 (1966).

Moreover, because one of the required elements of proving criminal trespass requires the State to prove that the entity in possession of the property warned the defendant that he could not return to the property, the statute does not require the defendant to speculate about what aspect of his conduct the statute proscribes.



*Wilson*, 504 S.W.3d at 346. The record does not support Hudson’s argument that the criminal trespass statute was unconstitutional as applied. We overrule issue two.

### **Sufficiency of the Evidence**

In issue three, Hudson argues that the evidence is insufficient to support his conviction for criminal trespass. To properly assess the sufficiency of evidence supporting a jury’s verdict of guilt, a reviewing court must “consider all the evidence in the light most favorable to the verdict and determine whether, based on that evidence and reasonable inferences therefrom, a rational juror could have found the essential elements of the crime beyond a reasonable doubt.” *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007) (citing *Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979)). In doing so, we defer to the jury’s factual findings and resolve all reasonable inferences in favor of their verdict, as the jury is the sole judge of the credibility of witnesses and the weight to be afforded to the testimony of each. *Dobbs v. State*, 434 S.W.3d 166, 170 (Tex. Crim. App. 2014); *Brooks v. State*, 323 S.W.3d 893, 902 (Tex. Crim. App. 2010). The jury may choose to believe or disbelieve any witness, or any portion of a witness’s testimony. *Sharp v. State*, 707 S.W.2d 611, 614 (Tex. Crim. App. 1986). We will uphold the jury’s verdict “unless a reasonable juror must have had a reasonable doubt as to at least one of the elements of the offense.” *Runningwolf v. State*, 360 S.W.3d 490, 494 (Tex. Crim. App. 2012).

A person commits the offense of criminal trespass if he enters or remains on or in the property of another without effective consent and after receiving notice that his entry onto the property was forbidden. Tex. Penal Code Ann. § 30.05(a)(1) (West Supp. 2017). According to Hudson, the evidence failed to sufficiently establish that he entered on the property of another without effective consent because the State failed to prove beyond a reasonable doubt that Manasco had a greater right to possession of the premises or that the trespass warning was valid. Additionally, Hudson argues the State failed to establish beyond a reasonable doubt that he received notice that his entry was forbidden.

“In a case involving public grounds, the State satisfies the burden of the ‘of another’ element of the criminal-trespass statute by proving, beyond a reasonable doubt, that the complainant has a greater right of possession of the property than does the accused.” *Wilson*, 504 S.W.3d at 347. The information named Manasco as the person in control of the property. Manasco testified that she is the director of library services and that she has the authority to act for the library and have trespass warnings issued after consulting with the city manager. As the director of the library with the authority to request trespass warnings, Manasco had a greater right of possession of the property than did Hudson. *See id.*

Hudson argues the State failed to prove the “without effective consent” element because the trespass warning was constitutionally invalid. We have resolved Hudson’s constitutional claims against him. Manasco testified that she requested a trespass warning be given to Hudson, and Detective Steele testified that on September 7, 2016, he told Hudson that Hudson was no longer allowed in the library. This testimony is sufficient to establish that Hudson’s entry on the property was without effective consent.

Having considered all the evidence in the light most favorable to the verdict, we conclude a rational juror could have found the essential elements of the offense of criminal trespass beyond a reasonable doubt. We overrule issue three, and we affirm the trial court’s judgment.

AFFIRMED.

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CHARLES KREGER  
Justice

Submitted on December 19, 2017  
Opinion Delivered December 20, 2017  
Do Not Publish

Before Kreger, Horton, and Johnson, JJ.