

*Note: In the case title, an asterisk (\*) indicates an appellant and a double asterisk (\*\*) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2019-067

JULY TERM, 2019

State of Vermont v. Ronald C. Davis*	}	APPEALED FROM:
	}	
	}	Superior Court, Chittenden Unit,
	}	Criminal Division
	}	
	}	DOCKET NO. 2270-7-18 Cncr
		Trial Judge: Martin A. Maley

In the above-entitled cause, the Clerk will enter:

Defendant appeals his conviction of unlawful trespass. On appeal, defendant argues the State presented insufficient evidence to demonstrate that he did not have lawful possession of the property. We affirm.

In July 2018, defendant was charged with unlawful trespass in violation of 13 V.S.A. § 3705(a). The information alleged that defendant went onto the property of his neighbors without legal authority or consent and having previously received a notice against trespass. The attached affidavit stated that in 2009, defendant and his neighbors were involved in a boundary-dispute lawsuit, and the civil court issued an order adjusting the property line and an injunction prohibiting defendant from encroaching onto neighbors' property. The affidavit also stated that this Court affirmed the civil division order on appeal. Davis v. Gabaree, No. 2009-180, 2010 WL 1266129 (Vt. April 1, 2010) (unpub. mem.), <https://www.vermontjudiciary.org/sites/default/files/documents/eo09-180.pdf> [<https://perma.cc/L5NR-CSD2>].

Defendant moved to dismiss the charge. The motion appeared to allege that the civil court lacked authority to establish the boundary between the properties because nothing was recorded in the town office. The court held a hearing on the motion to dismiss. At the hearing, defendant's neighbor testified concerning the civil boundary dispute and the resulting court order that established the boundary line. She stated that the boundary between the properties was marked, she observed defendant trespassing on her property, and she notified the police. The police officer who responded testified that he observed defendant on neighbors' property. He also stated that he had previously advised defendant not to enter neighbors' property. The court denied the motion to dismiss, concluding that the evidence, when viewed in a light most favorable to the State, was sufficient for the jury to find defendant guilty. The State filed a motion in limine seeking to prevent defendant from testifying about the previous court orders. Prior to trial, the court explained that defendant could offer evidence about the location of the boundary but warned defendant that there

would likely be objections from the State if defendant tried to challenge the validity of the superior court order regarding the location of the boundary.\*

At trial, the State presented testimony from defendant's neighbor and from the police officer. Defendant testified on his own behalf. The jury found defendant guilty, and defendant appealed.

To support the charge, the State had to demonstrate that defendant, "without legal authority or the consent of the person in lawful possession," entered his neighbors' land and had notice against trespass. 13 V.S.A. § 3705(a)(1). Defendant argues that there was insufficient evidence to show that he did not have lawful possession of the land he entered and therefore he was entitled to dismissal. On appeal, we "consider whether the evidence presented at trial, as viewed in the light most favorable to the State, fairly and reasonably demonstrates" that defendant committed unlawful trespass. State v. Hinchliffe, 2009 VT 111, ¶ 17, 186 Vt. 487.

Defendant claims that the State could not demonstrate that he lacked lawful possession because the boundary established by a final judgment in the civil litigation was invalid. He asserts that the civil court order did not establish a lawful boundary because, among other things, it was not submitted to the town, not part of a plat, and not made by a licensed surveyor. We conclude that the State could rely on the civil court order to demonstrate that defendant did not have lawful possession of the land that he entered. "The unlawful trespass statute protects parties from intrusions on their lawful possession of land." State v. Gillard, 2013 VT 108, ¶ 18, 195 Vt. 259. Lawful possession can be demonstrated from "leases, court orders, or the circumstances of land's use." Id. ¶ 22. Here, there was evidence to demonstrate that defendant did not have lawful possession of the property. Defendant's neighbor testified that following a civil lawsuit, the court issued an order establishing the boundary line between the properties and enjoining defendant from entering his neighbors' property. The State offered, and the court admitted, a redacted version of the trial court order. Defendant's neighbor further testified that the boundary was marked and she observed defendant on her side of the boundary.

This evidence was sufficient for the jury to find that defendant did not have lawful possession of the land.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice

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\* In his opening statement at trial, defendant attempted to argue that the court order establishing the boundary violated a statute. The court sustained the State's objection, explaining that the court would not allow any argument that the decision is invalid.