

IN THE COURT OF APPEALS OF IOWA

No. 5-200 / 93-1826

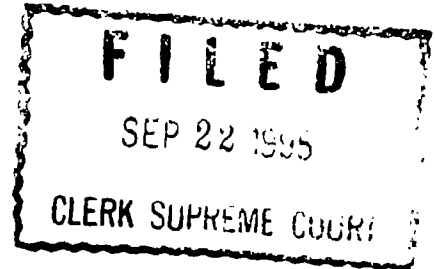
STATE OF IOWA,

Plaintiff-Appellee,

vs.

DAVID J. SHEDLOCK,

Defendant-Appellant.



Appeal from the Iowa District Court for Polk County, Ray A. Fenton, Judge,
and Vincent Hanrahan, District Associate Judge.

Defendant appeals his conviction and sentence for trespass in violation of Iowa
Code section 716.7(2)(b) (1991). **AFFIRMED AND REMANDED FOR
RESENTENCING.**

Linda Del Gallo, State Appellate Defender, and Annette L. Hitchcock,
Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas G. Fisher, Jr., Assistant Attorney
General, John P. Sarcone, County Attorney, and Harlan Lemon, Assistant County
Attorney, for appellee.

Heard Hayden, P.J., and Sackett and Cady, JJ.

CADY, J.

David Shedlock appeals his conviction and sentence for criminal trespass in violation of Iowa Code section 716.7(2)(b) (1991). We affirm the conviction, but remand for sentencing.

David Shedlock is a protester. He was arrested on October 10, 1992 for trespassing on the Apple Valley Shopping Center in Windsor Heights, Iowa. Prior to his arrest, a police officer warned Shedlock not to enter the shopping center property, including the access road. Shedlock was denied access by the property owner after his protest activities at the shopping center began to harass tenants and patrons.

The case was tried before a jury in district associate court. Shedlock represented himself at trial. His central defense was that he believed he was on a public street at the time of his arrest.

Following conviction, the district associate court sentenced Shedlock to 30 days in jail, with 15 days suspended under certain conditions including he not enter the Apple Valley Shopping Center property. Shedlock appealed his conviction to district court. The district court affirmed the conviction, but suspended all 30 days of his sentence. Shedlock sought further appeal.

Shedlock raises a host of claims on appeal. He asserts his right to counsel was violated at sentencing hearing, the sentencing court improperly enjoined him from entering the shopping center property as a condition of his probation, the sentencing

court abused its discretion in imposing sentence, the trial court erred in instructing the jury on the elements of criminal trespass, and he was denied a fair trial due to comments made by the trial judge in the presence of the jury. Because we conclude the case must be remanded for resentencing, we first consider Shedlock's challenges to the conviction.

I. Jury Instruction

Trespass is defined by statute in Iowa. Its definition is broad, and includes: "entering or remaining upon property without justification after being notified or requested to abstain from entering . . . by the owner . . . or by any police officer . . ." Iowa Code section 716.7(2)(b) (1991).

The marshalling instruction given to the jury at trial set forth the following elements of trespass to support a conviction:

1. On or about the 10th day of October, 1992, the defendant knowingly entered property of another.
2. The defendant acted after being notified not to enter.
3. Officers from the Windsor Heights Police Department notified defendant not to enter.

(Emphasis added).

Shedlock argues that the jury should have been instructed that the State must prove he "knowingly trespassed," not "knowingly entered." He admits he intended to enter the location where he was arrested on October 10, 1992, but believed the property was a public street and he did not intend to trespass. Shedlock asserts the

instruction permits the jury to convict a person who innocently enters property of another.

We acknowledge criminal trespass requires the intrusion to be knowingly committed. *See* Iowa Code § 716.8(1) (1993); 75 Am. Jur. 2d *Trespass* § 181 (1991). The knowledge requirement is primarily designed to exclude from criminal responsibility the inadvertent trespasser as well as the trespasser who believes he or she has permission to enter the land. *See Warfield v. State*, 554 A.2d 1238, 1250 (Md. 1989). Notwithstanding, we believe the instructions given by the trial court adequately explained the knowledge requirement.

The court instructed the jury the defendant must have "knowingly entered the property of another . . . after being notified not to enter." Knowingly means to have a conscious awareness of the element of the crime requiring knowledge. *See* Iowa Uniform Jury Instruction 200.3. Thus, the jury was clearly instructed that the defendant must have been consciously aware he "entered the property of another." This is a fair statement of the law, and allowed Shedlock to fairly present his defense that he did not know he was on the prohibited property at the time.

II. Fair Trial

Shedlock claims he was denied a fair trial due to comments made by the trial judge in the presence of the jury on two occasions. Shedlock believes these remarks casted him as an antagonist and a "troublemaker." Although Shedlock failed to preserve error on this issue by objecting to the court's statements, we find no merit

to the claim. The remarks cited by Shedlock were isolated, and were clearly subject to an interpretation different than the interpretations given by Shedlock. Shedlock was not denied a fair trial.

III. Remaining Claims.

The remaining claims raised by Shedlock concern sentencing. We conclude the case must be remanded to the trial court for resentencing because of the failure of the sentencing court to explain the reasons for imposing sentence. Trial courts are required to state their reasons for imposing a sentence. *State v. Luedtke*, 279 N.W.2d 7, 8 (Iowa 1979).

Because we remand for resentencing, it is unnecessary to address the remaining claims raised by Shedlock. We remand to the original trial court.

AFFIRMED AND REMANDED FOR RESENTENCING.

Hayden, P.J., and Cady, J., concur; Sackett, J., dissents.

SACKETT, J. (dissenting)

I agree with defendant the jury was not properly instructed.

Iowa Code section 716.7(2), in applicable part, provides:

2. The term "trespass" shall mean one or more of the following acts:

* * *

b. Entering or remaining upon or in property without justification after being notified or requested to abstain from entering or to remove or vacate therefrom by the owner, lessee, or person in lawful possession, or the agent or employee of the owner, lessee, or person in lawful possession, or by any peace officer, magistrate, or public employee whose duty it is to supervise the use or maintenance of the property.

Iowa Code § 716.7(2)(b) (1991).

Defendant claims the focal issue in his trial was whether he was on public or private property. He asked the jury be instructed the State had to show he knowingly trespassed, not knowingly entered. Defendant contended he did not know he was on private property and, consequently, he did not knowingly trespass, although he could have knowingly entered. Defendant's contention was he believed the area he entered was a public street and not private property. There had been confusion as to where the public street ended and the private property of the shopping center started. Defendant **argues**, while he intended to enter the property because he thought it was a public street, he did not intend to trespass.

The following marshalling instruction was given the jury on the elements of trespass:

1. On or about the 10th day of October, 1992, the defendant *knowingly entered* the property of another.
2. The defendant acted after being notified not to enter.
3. Officers from the Windsor Heights Police Department notified defendant to not enter. (Emphasis supplied.)

Defendant contends the instruction should have used the words "knowingly trespassed upon", not "knowingly entered".

The State contends the instruction was accurate and there is no distinction between the words "trespass" and "enter". I disagree with the State that there is no distinction between the words "trespass" and "enter". A trespasser enters without consent or privilege, while entry on the property of another done with consent or privilege is not trespass. *See Black's Law Dictionary* 1347 (5th ed. 1979).

The State also advances the instruction was sufficient because, had the jury accepted defendant's defense, they would have found him innocent because the instruction put the burden on the State to show defendant entered the property of another. What the State's argument misses is knowledge also is an element of this offense. Defendant's point the instruction did not advise the jury he entered knowingly knowing he was entering the property of another is well taken.¹

I note, too, the jury seemed to have had some confusion. The jury sent three notes to the judge. Two dealt with matters relevant to this issue. In the first note, the jury asked to see the officer's testimony concerning the conversation he had with

¹ A better instruction would be "... defendant knowingly entered what he knew to be the property of another."

defendant whether the property was public or private. The second note asked if there is a difference between criminal and regular trespass and, if so, what is the difference.

I would remand for a new trial.