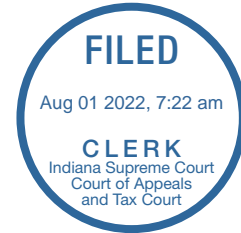


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Daniel Ross Lytle, Jr.,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

August 1, 2022

Court of Appeals Case No.  
21A-CR-2456

Appeal from the Noble Superior  
Court

The Honorable Steven C. Hagen,  
Judge

Trial Court Cause No.  
57D02-2008-CM-496

**Tavitas, Judge.**

## Case Summary

- [1] Daniel R. Lytle, Jr. appeals his conviction for criminal trespass, a Class A misdemeanor. Lytle argues that the State failed to provide sufficient evidence of criminal trespass because the State failed to prove the Kendallville Police Department (“KPD”) was an agent of the City of Kendallville Park and Recreation Department (“Park Department”). Specifically, Lytle contends that the Park Department did not exert control over KPD and, thus, that Lytle was not denied entry to the park by the Park Department’s agents. We disagree. Finding the evidence sufficient, we affirm.

## Issue

- [2] Lytle raises one issue, which we restate as whether the State presented evidence sufficient to sustain Lytle’s conviction for criminal trespass.

## Facts

- [3] On July 8, 2019, the Park Department adopted a policy creating a principal-agent relationship agreement with KPD, which authorized KPD officers to conduct trespass enforcement. Minutes from the July 8, 2019, Kendallville Park and Recreation Board meeting contain the approval of the agency relationship between the parties:

The Kendallville Park Board does hereby delegate to any Kendallville Police Officer who responds to a situation in or on the Park grounds, to use his or her discretion in determining the need for the issuance of a Park Ban Notice to the individual(s). The officer’s discretion should be exercised based upon

individual(s), as to whether, and the degree to which, the actions of the individual(s) were inappropriate for the public environment of the Park.

Once the Park ban is imposed, the police may enter it into their records and if violated by an individual, may then, in their discretion without need for approval by the Park, pursue Trespass charges against the individual in violation of the Park ban.

Any Park Ban Notice issued by the Kendallville Police Officer should specify that the ban will expire automatically 3 months after the date of the Notice, and that the Ban cannot be otherwise lifted.

St. Ex. 3. The Park Department's delegation declaration created an agency relationship. KPD officers and Jim Pankop, Park Director, testified regarding their knowledge of the agency relationship and the authority to impose and enforce any park ban. This delegation gave discretion to KPD in their decision to enforce trespass on park grounds.

[4] On July 25, 2002, KPD Officer Matthew Gillison issued a park ban notice to Lytle due to "damage that was done" on Bixler Lake Park property. Tr. Vol. II p. 156. Officer Gillison orally warned Lytle that Lytle had been banned from park property and that a repeated trespass on park property would result in an arrest for criminal trespass. Lytle confirmed that he understood. Lytle was not informed that the park ban would be in effect for ninety days and could not be lifted otherwise. In addition, Officer Gillison, through dispatch, notified the Park Department that Lytle had been issued a park ban notice.

[5] Three days later, KPD Officer Robert Kline responded to a report of a person trespassing on park property; the person was later confirmed to be Lytle.

Officer Kline located Lytle at his home, and Lytle acknowledged that he had been on park property on July 28, 2020, and acknowledged that he was aware of his park ban notice.

[6] On August 13, 2020, the State charged Lytle with criminal trespass, a Class A misdemeanor. On October 6, 2021, a jury found Lytle guilty as charged. That same day, the trial court sentenced Lytle to 180 days in jail. Lytle now appeals.

### **Analysis**

[7] Lytle argues that the State failed to provide sufficient evidence to support his conviction for criminal trespass. Sufficiency of evidence claims “warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility.” *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020) (citing *Perry v. State*, 638 N.E.2d 1236, 1242 (Ind. 1994)). We consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Id.* (citing *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018), *cert. denied*). “We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt.” *Id.* We affirm the conviction “unless no reasonable factfinder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is

sufficient if an inference may reasonably be drawn from it to support the verdict.” *Sutton v. State*, 167 N.E.3d 800, 801 (Ind. Ct. App. 2021) (quoting *Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007)).

[8] To be convicted of criminal trespass, a person must, “not having a contractual interest in the property, knowingly or intentionally enter [] the real property of another person after having been denied entry by the other person or that person’s agent.” Ind. Code § 35-43-2-2(b)(1). Lytle argues that the State failed to prove an agency relationship between the Park Department and KDP. According to Lytle, he was not denied entry by the Park Department’s agent because the Park Department did not exert control over the KPD officers.

[9] The Park Department delegated authority to the KPD, which created an agency relationship on July 8, 2019, during an official City of Kendallville Park and Recreations Department board meeting. Pursuant to Indiana Code Section 36-10-3-10(a)(3), a county Park and Recreation Board “shall provide police protection for its property and activities . . . by requesting assistance from state, municipal, or county authorities.”

[10] “When one person gives another person authority to act on his behalf, an agency relationship is created.” *Glispie v. State*, 955 N.E.2d 819, 822 (Ind. Ct. App. 2011). This Court has held:

Agency is a relationship resulting from the manifestation of consent by one party to another that the latter will act as an agent for the former. To establish an actual agency relationship, three elements must be shown: (1) manifestation of consent by the

principal, (2) acceptance of authority by the agent; and (3) control exerted by the principal over the agent. These elements may be proven by circumstantial evidence, and there is no requirement that the agent's authority to act be in writing.

*Demming v. Underwood*, 943 N.E.2d 878, 883 (Ind. Ct. App. 2011) (internal citations omitted), *reh'g denied, trans. denied*. One who asserts that there was an agency relationship has the burden of proving its existence. *Smith v. Brown*, 778 N.E.2d 490, 495 (Ind. Ct. App. 2002).

[11] Lytle concedes that the State established the first two of the three elements required by *Demming*: (1) manifestation of consent by the principal, and (2) acceptance of authority by the agent. Lytle, however, contends that the State failed to establish the third element—whether the principal exerted control over the agent. Whether an agency relationship existed between both parties is a question of fact. *Demming*, 943 N.E.2d at 885. To satisfy the control element, “[i]t is necessary that the agent be subject to the control of the principal with respect to the details of the work.” *Id.* (quoting *Turner v. Bd. of Aviation Comm’rs*, 743 N.E.2d 1153, 1163 (Ind. Ct. App. 2001), *trans. denied*). Our Supreme Court has held that the “‘right to control’ does not require the [principal] actually exercising control over the actions of the agent, but merely having the right to do so.” *Smith v. Delta Tau Delta*, 9 N.E.3d 154, 164 (Ind. 2014).

[12] The Park Department established a procedure and directed the KPD in the manner in which to issue trespass bans by describing the persons that should receive trespass bans and the length of the ban. The discretion given to the

KPD does not change the control that the Park Department has over the KPD with respect to park trespassers. The control maintained by the Park Department is evident in the policy. When a principal directs an agent to use discretion regarding the work for which the agency relationship is created, the principal does not relinquish control. *Demming*, 943 N.E.2d at 885. We conclude that the State presented sufficient evidence that the Park Department did not relinquish control over KPD with respect to park trespassers.

[13] For these reasons, the State presented sufficient evidence that the Park Department exerted control over KPD satisfying the three elements set forth in *Demming* needed to create an agency relationship. Accordingly, the State presented sufficient evidence to establish that KPD acted as agents of the Park Department when issuing a park ban notice and pursuing trespass charges against Lytle. Thus, the evidence is sufficient to sustain Lytle's conviction for criminal trespass.

## **Conclusion**

[14] The State presented sufficient evidence to support Lytle's conviction for criminal trespass. Accordingly, we affirm.

[15] Affirmed.

Riley, J., and May, J., concur.