

NOT DESIGNATED FOR PUBLICATION

No. 120,561

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

CITY OF GREAT BEND, KANSAS,  
*Appellee,*

v.

EDWIN LOUIS NELSON JR.,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Barton District Court; SCOTT E. MCPHERSON, judge. Opinion filed October 25, 2019. Affirmed.

*Bradley T. Steen*, of Law Office of B. Truman Steen, LLC, of Ellsworth, for appellant.

*Robert G. Suelter*, city attorney, for appellee.

Before GREEN, P.J., BRUNS, J., and WALKER, S.J.

PER CURIAM: The City of Great Bend has a 13-mile levee that protects it from flooding. The City has fenced the entire levee system but included several gates for pedestrians as well as one gate for authorized vehicles. At each gate, the City posted a sign—reading "Authorized Vehicles Only"—to protect against damage to the levee. Despite this signage and other warnings, Edwin Louis Nelson Jr. was seen riding a custom-built vehicle on the levee. After being convicted in municipal court of criminal trespass in violation of a municipal ordinance, Nelson appealed to the district court. At the conclusion of a bench trial, the district court also found Nelson guilty of criminal

trespass in violation of the municipal ordinance. Finding sufficient evidence to support the conviction, we affirm.

On appeal, Nelson contends that his conviction is not supported by substantial evidence. In particular, Nelson argues that the district court failed to give any consideration to his assertion that City police officers had given him permission to bring what he described as a custom-built "machine" or "tractor" onto the levee. When a defendant challenges the sufficiency of the evidence in a criminal case, we review the evidence in a light most favorable to the prosecution to determine whether a rational factfinder could have found the defendant guilty beyond a reasonable doubt. *State v. Chandler*, 307 Kan. 657, 668, 414 P.3d 713 (2018); see *City of Arkansas v. Sybrant*, 44 Kan. App. 2d 891, 900, 241 P.3d 581 (2010). In reviewing the record, we are not to reweigh the evidence, resolve evidentiary conflicts, or assess the credibility of witnesses. *State v. Daws*, 303 Kan. 785, 789, 368 P.3d 1074 (2016).

Here, the district court convicted Nelson of violating Section 6.7 of the Uniform Public Offense Code for Kansas Cities, which had been adopted by the City of Great Bend. Section 6.7 provides, in relevant part, as follows:

"(a) Criminal trespass is,

(1) Entering or remaining upon or in any land . . . by a person who knows such person is not authorized or privileged to do so, and:

. . . .

(B) such . . . property [is] posted in a manner reasonably likely to come to the attention of intruders, or is locked or fenced or otherwise enclosed, or shut or secured against passage or entry."

A review of the record reveals that Nelson admitted at the bench trial that he took his custom-built machine or tractor on the levee on December 6, 2017. In addition, the City of Great Bend presented evidence that the City had marked the levee with signs stating that only authorized vehicles were permitted on the property. Likewise, the City presented evidence that Nelson had been previously warned to stay off the levee with his vehicle.

Regarding the charged trespass violation, the City's street department supervisor testified that he observed Nelson riding on the levee, dismount his vehicle, push it through the gate, and walk to a nearby house. He also testified regarding the placement of fencing along the levee and the signs posted at the gates to protect the levee from damage that could potentially endanger City residents during a flood. According to the supervisor, he had previously explained to Nelson that the City's intent was not to restrict public access to the Arkansas River but was, instead, to protect the levee from damage caused by unauthorized vehicles.

During his testimony, Nelson candidly admitted that, on December 6, 2017, he took, what he referred to as, a custom-built machine or tractor onto the levee. Nelson described the machine as a 540-pound "two wheel-tractor" that he had built to "cut trail" and "skid logs" by the river. Nelson testified that he had frequently taken his machine onto the levee and claimed that he had been given permission to do so by police officers. However, he did not identify the officer or officers who allegedly gave him permission to take his machine on the levee nor did he identify the date on which the conversation occurred. Moreover, Nelson did not call any officers or other witnesses to corroborate his story.

As indicated above, our role is not to reweigh the evidence or to replace our judgment for that of the district court regarding the credibility of witnesses. Rather, our role is to determine if there is sufficient evidence in the record—viewed in the light most

favorable to the City—upon which a reasonable fact-finder could conclude that Nelson was guilty of criminal trespass beyond a reasonable doubt. Here, the City presented evidence at the bench trial to establish that it had marked the levee with signs limiting access to authorized vehicles, that it had previously warned Nelson about taking his machine or tractor onto the levee, and that he was seen riding the machine or tractor on the levee. Furthermore, Nelson admitted taking his machine or tractor on the levee. Although Nelson alone claimed that he had been given permission to do so, the district court weighed the evidence and concluded that Nelson was guilty of criminal trespass in violation of the municipal ordinance.

In summary, viewing the evidence—as well as the reasonable inferences to be drawn therefrom—in the light most favorable to the City, we find that there was sufficient evidence presented at trial to establish beyond a reasonable doubt that Nelson was guilty of criminal trespass, in violation of Section 6.7 of the Uniform Public Offense Code. In particular, we find that there is sufficient evidence in the record to establish beyond a reasonable doubt that Nelson took his machine or tractor onto the levee knowing that he was not authorized to do so. Likewise, we find that there is sufficient evidence in the record to establish beyond a reasonable doubt that the City had fenced the levee and had posted signs at the gates to advise members of the public that they should not enter the property with an unauthorized vehicle.

Affirmed.