
In the Supreme Court of Ohio

16-1283

Li Ouyang
Appellant

On Appeal from the
Athens County Court of Appeals, Fourth
Appellate District

v

State of Ohio
Appellee

Court of Appeals
Case No. 15 CA 35

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT LI OUYANG

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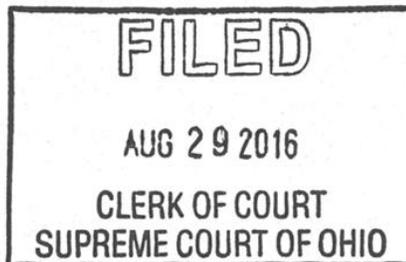


TABLE OF CONTENTS

Page

EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION1

STATEMENT OF THE CASE AND FACTS2

Proposition of Law6

The court violated my rights to due process and a fair trial when it denied my appeal against the manifest weight of the evidence and in the absence of sufficient evidence. Fifth and Fourteenth Amendments to the United States Constitution, and Article I, Section 16 of the Ohio Constitution. September 29, 2015 Journal Entry.

Issue Presented for Review

Does a defendant's study in the authorized area with permission from authorized agents constitute any criminal trespass when he/she is told (1) that he/she cannot study in the publicly open space because he/she is not affiliated with a public university and (2) that he/she can study in any non-publicly open space if he/ she gets permission?

Ineffective Assistance of Appellate Counsel6

The court violated my rights to due process and a fair trial when it denied my appeal based on incorrect premise of argument and logical pitfalls. Fifth, Eighth, Fourteenth Amendments to the United States Constitution, and Article I, Section 16 of the Ohio Constitution. September 29, 2015 Journal Entry.

Issue Presented for Review

Can university faculty and staff arbitrarily tell people not to study in public spaces? Does behaving in accordance with rules and directions

constitute a crime? Regardless of this, which does the U.S. constitution
deem a crime, (1) my study in the area of College of Medicine with
permission from College of Medicine professors, or (2) the intentional
infliction of wrongful criminal trespass that resulted in my arrest,
criminal charge, dismissal from my doctoral program, illegal immigration
status, and homelessness?6

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW6

CONCLUSION.....15

CERTIFICATE OF SERVICE

APPENDIX

Judgment Entry of the Athens County Municipal Court1

Opinion of the Athens County Court of Appeals2

EXPLANATION OF WHY MY CASE IS A CASE OF PUBLIC OR GREAT
GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL
QUESTION

In April 2016, I created my Facebook page, Help Our Sister Li Ouyang to Fight for Justice, to make my case public and transparent to the American people. Within three months, I have gained over 13k fans. From August 26 to August 28, 2016, two of the largest overseas Chinese media, Wenxue City and World Journal, reported my story that has aroused heated discussion in China, Canada, and United States.

The intense interest, which the American people and the people in the other parts of the world have demonstrated in my situation, arises from some critical messages my case has sent to the society: (1) that honesty, integrity, faithfulness, and hard work in women are actually punished as a crime today in this land of the American Dream, (2) that the U.S. tax payers' dollars and OU students' tuition have been wasted in some shameless effort to aggravate the personal injury that a domestic violence victim has suffered from an OU professor and physician, (3) that people are still struggling in the 21st century for the democratic values that the U.S. founding fathers put forward in the 18th century as the cornerstone of the Constitution, and (4) that a privileged few can stand above the law to abuse an overwhelming majority at their will. These messages happen to resonate with an increasing distrust in the U.S. justice system, setting millions of people pondering over the saying from Thomas Jefferson: "We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness."

Along with a blatant mockery of the principles enclosed in the Declaration of Independence and in the U.S. Constitution the Founding Fathers fought for in the 18th century, the court decision from Athens County Municipal Court and Athens County Court of Appeals

has aroused an increasing awareness of the institutional barrier that contributes to the unheard voice from Asian American female victims of domestic violence.

“When battered Asian women do seek help from outside agencies, the hurdles they face are tremendous. The primary institutional barriers are racism and homophobia and its variant expressions in the U.S. system. Racism is particularly problematic for Asian women. The attitude that immigrants don’t belong and shouldn’t ask for help or cause trouble is just one variant of racism. Another is the myth of the “model minority,” which assumes that Asian women don’t have issues with domestic violence. Yet another involves the xenophobic belief that people from colonized parts of the world are inferior to Americans.” (Warrier, S., Marin, L., & Masaki, B. (2004). *heard voices: Domestic violence in the Asian American community*. Family Violence Prevention Fund, San Francisco, California)

Moreover, the appeal opinion has brought into question a deficiency of legislation concerning the fact that affidavit of support without enforced fulfilment as in my case and racism in the mainstream social services can combine to make Asian American battered women fall prey to escalated abuse.

STATEMENT OF THE CASE AND FACTS

In July 2013, on reception of the affidavit of support and bank statements from my ex-fiance, an OU faculty and physician, MU agreed that I can leave my campus to join him in Ohio while doing my dissertation. Since I came to Ohio in August 2013, I have relied on his promise, because it is illegal for an international student to work off campus.

On Feb. 18, 2014, my ex-fiance broke our engagement as a result of his own unfaithful behaviors. From Feb. 2014 to Nov. 2014, my ex-fiance exerted intentional infliction of starvation and intentional infliction of emotional distress. The domestic violence not only made me

hospitalized in late Oct. 2014, but also left me a record of eviction and ultimately resulted in my dismissal from my doctoral program, illegal immigration status, and current homelessness.

In Sept and Oct. 2014, my ex-fiance filed a revengeful eviction in response to my request for his fulfilling the affidavit of support. During the jury trial of Sept. 29, 2016, Judge Grim stated that he still remembered me because he supported the eviction by my ex-fiancé against me one year before and that I should be inflicted with a severe punishment given my “bad” history. The same judge made a record in my life: The first civil case record and the first criminal case record during my four decades’ life.

Following my discharge from hospital in November 2014, my effort to regain independence, however, resulted in my being handcuffed, arrested, and charged with trespassing in 2015 when I worked hard on my academic paper in the authorized area with permission from authorized agents.

From May 2015 to July 2, 2015, I used different rooms in the ARC for study purpose, with *Room 227* often used due to its constant vacancy. Around 9am, July 2, 2015, Dr. Shawn Ostermann, an associate dean from OU College of Engineering, came to Room 227 and inquired about my situation. I explained in detail the domestic violence and abuse I suffered and my need to work hard on my dissertation. He told me that he would meet some other people and let me know if I could continue to use Room 227. Around 10:24 am, July 2, 2015 (according to the police report), Ms. Luanne Bowman, the chief financial accounting officer for the College of Engineering, reported me to OUPD with intentionally biased and misleading information.

Around 2 pm, July 2, 2015 Ms. Bowman came to Room 227 with two policemen. Under their request, I went out of Room 227 and placed a call to Dr. Ostermann who said in the morning that he would let me know later. Around 3:17 pm, July 2, 2015, Dr. Ostermann told me

by phone that I'd better check with the OU legal to ask about the possibility of my use of the ARC. Around 3:31 am, July 2, 2015, I talked to the OU legal counsel and was told that the concern was expressed specifically about Room 227 and that I need to ask the person in charge to inquire about the use of other rooms. Around 4 pm, I met Ms. Bowman in the hallway with Dr. Ostermannx standing beside us. When they told me that I am not affiliated with OU and therefore cannot use the ARC, I explained my situation and the reason for my long hours worked in the ARC. Ms. Bowman stated that only under the condition that I get permission from OU faculty can I use the ARC. I repeated her words to confirm the information further, and in response she said "Yes, you can use the ARC if you get permission, but I doubt you can get it". I kept silent at her words, although they made me feel hurt.

Around 6:30 pm, July 2, 2015, I wrote an email to Dr. Dennis Irwin, the dean of the College of Engineering to request any document clarifying whether I could use ARC or not. The email was not answered until 3:35 pm, July 7, 2015. Between 6 pm and 7 pm, a few minutes after I sent the email, I spoke to Dr. Coschigano, a professor with College of Medicine, and got permission to use the ARC, *Room 303*, a College of Medicine conference room. Dr. Coschigano told me that she would try to leave that door unlocked for me in the future, but could not guarantee that it would be unlocked. On July 6, 2015, I also received permission to use Conference Room 303 in the ARC from Dr. Aili Guo, a professor with the College of Medicine. I explained to both Dr. Coschigano and Dr. Aili Guo that "I was told that I cannot use the ARC because I am not affiliated with Ohio University" and that "I need to get permission" in order to study for my work from the University of Missouri. Dr. Guo unlocked the door to Room 303 for me. Dr. Guo told me that it was okay to use the room as long as it was not occupied by students or faculty of the College of Medicine.

Around 3:35 pm, July 7, 2015, Dean Irwin from the College of Engineering responded to my July 2 email. The email explained that because I was not an Ohio University student, I was not permitted to use the ARC facilities. I sent a responsive email to Dr. Irwin, one around 4:01 pm and the other around 5:26 pm, to inform him that I got permission to study in the area I used and to ask him if there was any problem. I have never received any response. Around 5:30 pm, July 7, 2015, I was arrested when two policemen told me that Ms. Bowman reported me to them for trespassing and I subsequently showed them the email from Dr. Aili Guo that stated she gave permission to me.

On July 8, 2015, I went to the College of Medicine office to explain my arrest the day before. Two office ladies were surprised that the College of Engineering should send any OUPD to the College of Medicine area to arrest me when I studied there with permission from two College of Medicine professors. Under their suggestion, I went to ARC in order to get a picture of Room 303. Instead of going inside the building, I requested a professor who happened to pass by to help me take the picture.

On July 9, 2016, human resources sent an email to Ohio University employees in the ARC instructing them not to allow me into the ARC. On July 9, August 6, and Sept. 24, 2015, I experienced three pre-trials. The investigation from the Public Defender's Office found that the Alden library staff Mr. Schoeppner (who stole my materials in April 2015 at Alden library) and the College of Engineering staff Ms. Bowman (who reported me to OUPD with biased and misleading information) are connected. On Sept. 29, 2015, two professors from the OU College of Medicine, Dr. Karen Coschigano and Dr. Aili Guo, told the judge honestly at the court that they opened the door to Room 303 for me with their own keys, they gave me permission to study there, and they had the authority to do so.

PROPOSITION OF LAW

Assignment of Error

Against the manifest weight of evidence and in the absence of sufficient evidence, a criminal-trespass conviction is not valid because I had expressed permission from the College of Medicine professors to be where I was (Room 303, College of Medicine conference room) when the College of Engineering administration told me (1) that I cannot study in the publicly open area (i.e. Room 227) because I am not affiliated with Ohio University and (2) that I can study in any non-publicly open space if I get permission . Fifth and Fourteenth Amendments to the United States Constitution, and Article I, Section 16 of the Ohio Constitution.

Ineffective Assistance Of Appellate Counsel

1. Can university faculty and staff arbitrarily tell people not to study in public spaces? Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.
2. Does behaving in accordance with rules and directions constitute a crime? Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.
3. Regardless of this, which does the U.S. constitution deem a crime, (1) my study in the area of College of Medicine with permission from College of Medicine professors, or (2) the report from the College of Engineering staff to the police with biased and misleading information that resulted in my arrest, criminal charge, dismissal from my doctoral program, and illegal immigration status...? Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Assignment of Error

Against the manifest weight of evidence and in the absence of sufficient evidence, the criminal-trespass conviction is no longer valid when I had expressed permission to be where I was from authorized agents (See Merit Brief for details). The conclusion from the appeals court is critically questionable regarding the validity and soundness of its argument that features logical pitfalls and factually flawed premises during the process of reasoning.

A. The appeals court neglects facts.

During the jury trial of Sept. 29, 2015, Dr. Ostermann testified that (1) he met me around 9 am on July 2, 2015 in the ARC Room 227, that (2) I told him about the domestic violence I suffered and my need to work long hours to regain independence, and that (3) he told me that he would let me know about my study at ARC later after his meeting with others.

This fact, purposefully neglected in the appeal opinion, is very important in the sense that it sets the tone for a series of happenings: Given the 9 am meeting with Dr. Ostermann, how is it possible that Ms. Bowman reported to OUPD with bias, lies, and misleading information at 10:24 am, July 2, 2015?

B. The appeal opinion distorts facts.

The appeal opinion states that Dr. Ostermann informed me on July 2 that I “could not stay in the building regardless of whose permission I got”. With no chronological order and circumstances specified, the appeal opinion distorts facts without any consideration given to Dr. Ostermann’s testifying to the contrary during the jury trial of Sept. 29, 2015.

During the jury trial of Sept. 29, 2015, Dr. Ostermann testified that I called him at 3:17 pm, July 2, 2015, that he told me he was not sure about my use of the other space in the ARC, and that he provided me with the phone number to the OU legal counsel for further information.

Although the Public Defender's Office could not locate the specific legal counsel whom I talked with, I submitted my cellphone calling history to the jury court that consistently indicated that I placed a subsequent call to the OU legal counsel at 3:31 pm on July 2, 2015.

As I stated during the jury trial, after the OU legal counsel told me that a specific concern was expressed over Room 227, that he had no answer as to whether I could study in the other publicly open space in the ARC, and that I needed to inquire with the person in charge, I accordingly went to see Ms. Bowman, who brought two policemen to Room 227 around 2 pm and told me that I could not study there.

Dr. Ostermann testified that I met Ms. Bowman in the hallway around 4 pm, that he joined us later, and that I was told that I could not study in the ARC because I am not affiliated with OU. When I questioned Dr. Ostermann at the court whether Ms. Bowmann said that I could study in the ARC if I get permission from the OU faculty, Dr. Ostermann stated, instead of acknowledging or denying it, that he could not remember it.

Given that Dr. Ostermann testified that (1) he met me on the morning of July 2, 2015, (2) he told me on the afternoon about his uncertainty about my study in the other space than Room 227, (3) he gave me the phone number to the OU legal counsel for further information, despite his evasive attitude towards Ms. Bowman's agreement, I was wondering how the appeals court reaches a counterfactual opinion that Dr. Ostermann informed me on July 2, 2015 that I "could not stay in the building regardless of whose permission I got"?

C. The appeal opinion hides facts.

During the jury trial of Sept. 29, 2015, Ms. Bowman testified that: (1) around 4 pm on July 2, 2015 (after my phone call to the OU legal counsel), she met me in the hallway with Dr. Ostermann standing beside us, (2) that she told me that I cannot use the ARC publicly open

space because I am not affiliated with OU, and (3) that I explained my need for long hours of work to regain independence as a domestic violence victim of an OU professor and physician. When confronted with her agreement that I can use the ARC with permission from the OU faculty, however, she refused to acknowledge her promise.

Despite her denial of the fact, I pursued further with her by reminding her that the reason both she and I should remember her words clearly is the scene on the afternoon of July 2, 2015: Following your statement on my use of ARC with permission, I immediately clarified with you “Do you mean that I can study here if I get permission from the OU faculty?” You responded at the time, “Yes, you can use the ARC if you get permission, but I doubt you can get it”...At your arrogant attitude, I kept silent at that time despite a hurt feeling...In front of my description of the scene, Ms. Bowman did not contradict any more during the jury trial; instead, she retorted “but you did not tell them (two professors who gave me permission to study in Room 303) you are prohibited from entering the building”...

FACT IS CLEAR: She did say that I can study in the ARC if I get permission from the OU faculty, but she believed that I got permission without telling the two professors about the “prohibition”.

D. The appeal opinion ignores facts.

When cross-checking data from multiple sources converges that Ms. Bowman lied about her own saying about my use of the ARC with permission, the appeals court simply ignores the direct source of information from the police report that clearly validates my words despite all the lies of the other party during the jury trial (two policemen were on duty on the day of my arrest, July 7, 2015, but only one of them turned up during the jury trial of Sept. 29, 2015).

During the jury trial, the policeman testified that between 5 and 6 pm, July 7, 2015, they saw me in the hallway outside Room 303, that I was very polite, obedient, and cooperative, and that I acknowledged I received the letter from Dean Irvin, and that I showed them the letter from Dr. Irvin on my laptop computer....However, the policeman denied that: (1) I showed them the permission email from Dr. Aili Guo and that (2) they placed any call to confirm with Ms. Bowman. I tried to help him to remember the scene: When you two questioned me if I received the letter from Dr. Irvin, I answered “yes” while pulling up the prohibition letter and the permission letter at the same time. When you read the email from Dr. Aili Guo, one of you went out of the room to confirm with Ms. Bowman. When he came back, he explained that Ms. Bowman said that it is ok that I use the professor’s own office if I get permission, but the conference room 303 is a common space, so I cannot use it even if I get permission...Despite my effort to elicit his memories, the policeman still denied that I showed them the permission letter. Moreover, he reiterated his opinion that the permission I got from a professor of the College of Medicine is invalid in front of the prohibition letter issued by the dean of the College of Engineering.

The police report of July 7, 2016, however, was written in black and white that reveals the truth: “I explained the reason we were there and asked her about the letter she received from Dean Dennis Irwin. She acknowledged she received it and even pulled it up on her laptop computer that was sitting on the conference room table. I then pointed to the part of the letter that showed she was not allowed to be in ARC. She responded by telling me Dean Irvin was over the Engineering Department and a professor (unable to recall any name if given) who was with the College of Medicine let her into the conference room. I verified she was not allowed to be in any

common/shared areas and I explained the letter cover the entire ARC building...” Is the truth clear enough?

- a) When two policemen approached and asked me if I knew I was prohibited, does anyone think that I would refuse to show the permission letter and instead I pulled up the prohibition letter to show how guilty I am (esp. considering that the permission email and prohibition letter stored in the same email address: dawn.dusk808@gmail.com)? Please resort to your common sense.
- b) When they read the permission letter, do you think I would refuse to tell them about Ms. Bowman’s words that I can study in the ARC if I get permission from the OU faculty?
- c) When they told me that the prohibition letter is from the dean and my permission letter is from a professor, what would you think I would respond? Yes, I told them that I studied in the area of the College of Medicine with permission from the College of Medicine professors, while the prohibition letter is from the College of Engineering dean.
- d) Under that circumstances, what do you think the policemen would do? Yes, one of them went out to call Ms. Bowman to make a confirmation. Consistently, the police report said that “I verified she was not allowed to be in any common/shared areas and I explained the letter cover the entire ARC building...”

The truth is self-evident now: Ms. Bowman did agree to my use of ARC with permission from the OU faculty on July 2, 2015. She even conveyed an edited version on the day of my arrest (July 7, 2015) to the policemen to convince them that her promise covers only the professor’s office but not the conference room 303.

E. The appeals court manipulates facts:

The appeals opinion makes an analogy between the joint authority of parents over their kid and that of the College of Medicine and College of Engineering over Room 303. The blurred

distinction between Room 303 and Room 227 definitely facilitates any intention to prove my guilt regardless of what the evidence suggests.

Room 303 (which I got permission to use after July 2, 2015): Locked area, a College of Medicine conference room that only the College of Medicine faculty have access to with their keys

Room 227 (which I used a lot before July 2, 2015): Unlocked area that is open to the general public.

The Academic and Research Center (ARC) consists of three parts: (1) the space dedicated to the College of Medicine, (2) the space dedicated to the College of Engineering, and (3) the common/ shared space that is unlocked. While the two colleges may serve as “parents” for the publicly open and shared space in the ARC, each of them understandably has their own unique authority over their own space.

Neither the jury trial of Sep. 29, 2015 nor the appeals court of July 15, 2016 respects the objective fact and truth by focusing on all the relevant evidence. On the contrary, for the purpose of proving what a blunder I committed to Ohio University as a domestic violence victim by an OU professor, both courts have tried to either belittle something important or to make a fuss over something trivial:

(a) My ignoring the letter from Dr. Irvin: Around 6:30 pm, July 2, 2015, I wrote an email to Dr. Irvin the dean of the College of Engineering to request any document clarifying whether I could use ARC or not. The email was not answered until 3:35 pm, July 7, 2015. Around 3:35 pm, July 7, 2015, Dean Irvin from the College of Engineering responded to my July 2 email. The email explained that because I was not an Ohio University student, I was not permitted to use the ARC facilities. I sent a responsive email to Dr. Irvin, one around 4:01 pm and the other around 5:26

pm, to inform him that I got permission to study in the area I used and to ask him if there was any problem. I have never received any response. On July 9, 2016, human resources sent an email to Ohio University employees in the ARC instructing them not to allow me into the ARC.

(b) My noon nap taking: When Ms. Bowman showed some concern over my noon nap, she has never taken any other students' noon nap seriously.

(c) My waiting beside the vending machine: When Ms. Bowman complained about my waiting beside the vending machine in order to talk to some OU professor and request permission, she seemed to get annoyed at my following her direction to get permission before I can study there.

(d) The storage of my book luggage near the ductwork: When I repeatedly stated at OUPD and in the jury trial that it is the OU employee in charge of the ARC 2nd and 3rd floor that directed me to put it there while I went out for food, why not confirm with the employee before making an issue out of my constant law-abiding behavior?

(e) My closeness to International Space University: My question is how to identify the level of confidentiality of the camp---If it is so important and confidential, do you think it should be set in the ARC that is open to the general public 24/7; If it is not so confidential, why did Ms.

Bowman make a fuss by wronging me as a spy?

(f) My appearance in front of the ARC on July 8, 2015: I explained clearly to the court during the jury trial of Sept. 29, 2015 that I went to the ARC on July 8, 2015, standing outside the building with a professor helping me take a picture of Room 303 as the evidence. If I entered the building to take the picture myself, why should I have troubled someone else?

On July 8, 2015, I went to the College of Medicine office to explain to the staff about my arrest the day before. Two office ladies were so nice that they stated that the College of Medicine would never make any decision for the College of Engineering, that the College of Medicine

would never report to OUPD concerning anyone who studies in the area of the College of Engineering...They helped me print the permission email from Dr. Aili Guo. They suggested that I take a picture of Room 303. Instead of going inside the building, I waited outside and asked a professor who happened to pass by to help take a picture of Room 303.

F. The appeals court supports and commits logical fallacies

During the jury trial, both Dr. Karen Coschigano and Dr. Aili Guo testified that I requested a permission respectively on July 2, 2015 and July 6, 2015, that they told me that there are a lot of publicly open space outside, that I made it clear that I was told I could not use the publicly open space in the ARC because I am not affiliated with OU, and that I told them that I need to get permission to study there.

Both professors further attested that (1) they opened the door to Room 303 with their own key for me, (2) they gave me permission to study there, and (3) they have authority to do so. They certified that they did not feel cheated by me when they gave permission, although Dr. Aili Guo stated that she would not give permission if there was really an official prohibition: If there is an official prohibition that bans me from the use of ARC regardless of from whom I get permission, why should I have taken any trouble to request a permission? It seems that Ms. Bowman enjoys playing a Catch-22:

*I cannot use the ARC public open space because I am not affiliated with OU, but I can use the publicly non-open space if I get permission from the OU faculty.

*I get permission from the OU faculty to study in the authorized area.

*The permission is invalid, because I should have informed the professors that I was prohibited from using the ARC so that I could never get permission.

When the whole world is speechless at such a logic, the Athens County Municipal Court and Athens County Court of Appeals accept this Catch-22 game! Their argument, justifiably, begs the question when it reasons in a circle or presupposes the truth of the very thing it is

intended to prove. It appears that the rigged system concludes that my trespassing must be true in virtue of what they want to be true instead of what the evidence suggests.

Ineffective Assistance Of Appellate Counsel

Based on the above argument, the appeal opinion also brings the following issues into question (Fifth, Eighth, and Fourteenth Amendments to the United States Constitution): Can university faculty and staff arbitrarily tell people not to study in public spaces? Does behaving in accordance with rules and directions constitute a crime? Regardless of this, which does the U.S. constitution deem a crime, (1) my study in the area of College of Medicine with permission from College of Medicine professors, or (2) intentional infliction of wrongful criminal trespass that resulted in my arrest, criminal charge, dismissal from my doctoral program, illegal immigration status, and homelessness?

CONCLUSION

When I was told on July 2, 2015 (1) that I cannot study in the publicly open space (i.e. Room 227) in the ARC because I am not affiliated with OU and (2) that I can study in the non-publicly open space if I get permission, my study in the College of Medicine locked area (Room 303) with permission from the College of Medicine professors does not constitute a crime. The appeal opinion is neither valid nor sound when it is reached on the basis of logical pitfalls and factually incorrect premise of the argument.

Li Ouyang

Phone: 573-639-9888

Facebook Page: Help Our Sister Li Ouyang to Fight for Justice

<https://www.facebook.com/help.li.fight.for.justice/>

Email: li_ouyang@helplifightforjustice.com

Li Ouyang

Certificate of Service

I hereby certify that a copy of the foregoing Memorandum in Support of Jurisdiction was forwarded by regular U.S. mail to counsel for appellees, Lisa A. Eliason, Athens City Law Director, and Tracy W. Meek, Assistant City Law Director, 8 E Washington St, Ste 301, Athens, OH 45701-2444 on August 29, 2016.

Li Ouyang

Li Ouyang

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Facebook Page: Help Our Sister Li Ouyang to Fight for Justice

Website: <https://www.facebook.com/help.li.fight.for.justice/>

Email: li_ouyang@helplifightforjustice.com

FILED
ATHENS COUNTY MUN. COURT

SEP 29 2015

CLERKS OFFICE
ATHENS COUNTY, OHIO

IN THE ATHENS COUNTY MUNICIPAL COURT
ATHENS OHIO

State of Ohio/City of Athens

Plaintiff,

v.

Li Ouyang

Defendant.

Case Number 15 CRB 01552

RECEIVED

SEP 30 2015

Journal Entry

This case came on for consideration upon the Motion Jury Trial - Verdict of Guilt
of Criminal Trespass RC 2911.21(A) Finding
of Guilty.

And for good cause shown, it is hereby ORDERED that 30 days jail suspended ^{2 YR}
probation law abiding citizen, not to be on any Ohio University property
public or private access, 16 hours community service within
next 30 days. Court costs including jury assessed to Defendant

Speedy trial time tolled pursuant to law for the period necessitated by consideration upon this motion until
the next hearing date.

Pretrial/trial set _____ 2015 at _____ m.

William A. Grim
William A. Grim, Judge

cc/approved:

[Signature]
Attorney for Defendant

Prosecuting Attorney

FILED
ATHENS COUNTY, OHIO

JUL 15 2016

Autumn CLERK
COURT OF APPEALS

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ATHENS COUNTY

STATE OF OHIO, :
Plaintiff-Appellee, : Case No. 15CA35
vs. :
LI OUYANG, : DECISION AND JUDGMENT ENTRY
Defendant-Appellant. :

APPEARANCES:

Timothy Young, Ohio Public Defender, and Allen Vender, Ohio
Assistant Public Defender, Columbus, Ohio

Lisa A. Eliason, Athens City Law Director, and Tracy W. Meek,
Assistant City Law Director, Athens, Ohio

CRIMINAL APPEAL FROM MUNICIPAL COURT

DATE JOURNALIZED:

ABELE, J.

This is an appeal from an Athens County Municipal Court judgment of conviction and sentence. A jury found Li Ouyang, defendant below and appellant herein, guilty of trespass in violation of R.C. 2911.21(A). Appellant assigns the following errors for review:

FIRST ASSIGNMENT OF ERROR:

"THE TRIAL COURT VIOLATED LI OUYANG'S RIGHT TO DUE PROCESS AND A FAIR TRIAL WHEN IT ENTERED A JUDGMENT OF CONVICTION FOR CRIMINAL TRESPASS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

SECOND ASSIGNMENT OF ERROR:

"THE TRIAL COURT VIOLATED LI OUYANG'S RIGHTS

JOURNALIZED

JUL 15 2016

JR: 28
PR: 100

TO DUE PROCESS AND A FAIR TRIAL WHEN, IN THE
ABSENCE OF SUFFICIENT EVIDENCE, IT ENTERED A
JUDGMENT OF CONVICTION FOR CRIMINAL
TRESPASS."

Appellant is from China and is a Psychology PhD. candidate at the University of Missouri. After finishing course work, she moved to Athens to be with her fiancé (a professor at Ohio University) while she completed her dissertation. Apparently, the couple broke up following a domestic violence incident that resulted in appellant's hospitalization. Also, some indication exists in the record that appellant had been recently evicted. At sentencing, appellant also informed the court that she suffers from gastritis, anxiety, depression and eats one meal every two days.

Around the time of the 2015 Ohio University commencement, several university employees noticed that appellant spent entire days in a project room at the Academic Research Center (ARC). After being observed sleeping in several places throughout the building, concerns arose that she was actually living in the building. On July 2, 2015, Luanne Bowman, Chief Administrative Officer for the College of Engineering, along with two Ohio University police officers, confronted appellant.¹ Once they determined that appellant had no affiliation whatsoever with the

¹ This confrontation took place in a project room described as being filled with a large number of books, journal articles and appellant's personal effects.

university as a student, faculty or staff member, she was informed that she had to leave the building.

Appellant reluctantly packed up her belongings and left, but was seen in ARC a short time later. Bowman found appellant near vending machines in ARC and told her, once again, that she had to leave the building. If not, she could be subject to arrest.

Appellant then sent e-mails to several university faculty, including Dean of the College of Engineering Richard Irwin, and sought permission to use the building. Dean Irwin did not respond for several days, but later returned her e-mail, along with an attached letter, and informed appellant that (1) she could not use the building, (2) she could not store personal belongings in ARC, and (3) she had to remove her belongings by 5 PM that day.²

After the 5 PM deadline, a member of the custodial staff again observed appellant in the building. University police were called and arrested appellant. The following day, appellant was again observed walking into ARC. Police were again called, but could not find appellant in the building.

A July 9, 2015 criminal complaint was filed that charged appellant with trespassing. She pled not guilty and opted to represent herself. At her jury trial, a number of university

²On July 6, 2015, appellant's suitcase was found hidden behind a large air-duct.

faculty and staff testified concerning these events. In her own defense appellant called Karen Coschigano, an associate professor at the university, who testified that she unlocked the door to a room for appellant to use on the evening July 2, 2015. Alie Guo, an assistant professor at the university, also testified that he opened a door for appellant on July 6, 2015. Appellant's theory of the case is that, due to these professors unlocking doors for her and allowing her to study in those rooms, she had permission to be in ARC and could not have trespassed.

After hearing all the evidence and after a one-half hour period of deliberation, the jury returned a guilty verdict. The trial court thereupon imposed a suspended thirty day jail sentence and ordered appellant to stay away from Ohio University property. This appeal followed.

I

We will consider the assignments of error in reverse order. In her second assignment of error, appellant asserts that insufficient evidence supports the jury's verdict.

When an appellate court reviews the sufficiency of the evidence, the inquiry focuses primarily upon the adequacy of the evidence; that is, whether the evidence, if believed, reasonably could support a finding of guilt beyond a reasonable doubt. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997); *State v. Jenks*, 61 Ohio St.3d 259, 273, 574 N.E.2d 492 (1991).

The standard of review is whether, after viewing the probative evidence and inferences reasonably drawn therefrom in the light most favorable to the prosecution, any rational trier of fact could have found all of the essential elements of the offense beyond a reasonable doubt. *Jenks*, supra at 273; *State v. Issa*, 93 Ohio St.3d 49, 66, 752 N.E.2d 904 (2001). Reviewing courts are not to assess "whether the state's evidence is to be believed, but whether, if believed, then the evidence against a defendant would support a conviction." *Thompkins*, 78 Ohio St.3d at 390, (Cook, J., concurring).

With these principles in mind, we note that R.C. 2911.21 states in pertinent part:

"(A) No person, without privilege to do so, shall do any of the following:

* * *

(2) Knowingly enter or remain on the land or premises of another, the use of which is lawfully restricted to certain persons, purposes, modes, or hours, when the offender knows the offender is in violation of any such restriction or is reckless in that regard[.]"

After our review of the entire record, we readily conclude that sufficient evidence was adduced at trial to prove each element of this offense. On July 2, 2015, Luanne Bowman and the campus police informed appellant that she could no longer be in ARC. She left, but returned later that day. Bowman once again approached appellant and told her that she could not be in the building. Shawn Osterman, Associate Dean for Research, met with

appellant the same day and informed her that she could not stay in the building "regardless of whose permission [she] got."

On July 7, 2015, the College of Engineering also sent appellant an e-mail along with an attached letter that reiterated that appellant could not be in the building and had to remove all of her personal possessions by 5 PM that evening. Nevertheless, a custodian and the arresting police officer testified that appellant was observed inside the building after the deadline. This is sufficient evidence for the jury to find her guilty of the offense.

Appellant does not actually challenge any of the foregoing evidence, but instead points to the testimony of Professors Coschigano and Guo who stated that although they knew that appellant had no affiliation with the university, they unlocked doors for her in ARC so that she could study. This, appellant concludes, gave her a "privilege" to be in the building and, thus, she could not have trespassed. In support of her theory, appellant cites *Columbus v. Parks*, 10th Dist. Franklin No. 10AP-574, 2011-Ohio-2164, in which the Franklin County Court of Appeals reversed a trial court judgment and found that the accused had a "privilege" to be in an apartment complex when invited by a tenant, despite having the property owner's security force issue a trespass warning. We believe, however, that her reliance on this case is misplaced.

The rationale for the *Parks* ruling is as follows:

"Although the parties stipulated that Officer Rogers, as an agent of the property owner, had previously given Parks notice that he was not permitted on the premises, prior warnings by an owner of rental property, or the owner's agent, do not preclude a finding of privilege. Ohio courts have held that an individual invited onto rental property by a tenant cannot be guilty of trespassing on the owner's premises even if the owner expressly instructed the individual not to come onto the property. See Hermann; Hites ("an owner of an apartment complex cannot prohibit guests, invited by the tenant, from being present on the property"). These holdings stem from the rationale that trespass is an invasion of the possessory interest in property, which a property owner sacrifices to a tenant, rather than an invasion of title."

The outcome in *Parks* was as much dictated by the law of property, specifically landlord-tenant law, as the law of trespass. There is no analogous relationship here. In fact, the situation here is more analogous to that of a child being told "no" by one parent and then going to the other parent hoping to hear "yes," but not telling second parent what the first had said. Indeed, although Professors Coschigano and Guo were aware that appellant was not affiliated with the university in any way, she did not bother to share with them the fact that several people told her to leave ARC. In particular, Guo testified that he would not have opened a room for appellant if he had known that she had been banned from the building.

We also hasten to add that Professor Coschigano opened a room for appellant on July 2nd and Professor Guo unlocked a door for appellant on July 6th. Both of these events pre-date Dean

Irwin's July 7th e-mail and letter that explicitly stated that appellant could no longer use the building and that all her personal possessions had to be removed from ARC by 5 PM that day. Whatever privilege appellant may have arguably imagined that she had conveyed to her by Professors Coschigano and Guo, she was nevertheless put on notice by Dean Irwin that it had been revoked.

For these reasons, we find no merit to appellant's second assignment of error and it is hereby overruled.

II

We now turn to appellant's first assignment of error wherein she asserts that her conviction is against the manifest weight of the evidence. Here again, the crux of appellant's argument is that although the College of Engineering told her to leave the building, two College of Medicine faculty members gave her permission. We, however, reject this argument for the same reasons that we discussed under her second assignment of error.

Here, the evidence reveals that the two professors from the College of Medicine (Coschigano and Guo) were not aware that their Engineering colleagues had informed appellant that she could not use, or be located in, the building. Bowman and campus police had already informed appellant that she could not be in the building and would be subject to arrest if she returned. More importantly, Dean Irwin sent appellant an e-mail and letter

that very clearly stated that she could not be in ARC.

In considering a claim that a conviction is against the manifest weight of the evidence, appellate courts will review the record, weigh the evidence, as well as all reasonable inferences to be taken therefrom, and determine whether the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *State v. Beverly*, 143 Ohio St.3d 258, 2015-Ohio-219, 37 N.E.3d 116, ¶17; *State v. Hunter*, 131 Ohio St.3d 67, 2011-Ohio-6524, 960 N.E.2d 955, ¶119.

We are very sympathetic concerning the events that have apparently transpired in appellant's personal life. We are also aware that English is not her native language, and could have caused some degree of difficulty during the trial court proceedings. Nevertheless, we find no manifest miscarriage of justice in this case. Our review of the record indicates that ample competent, credible evidence was adduced during the trial that supports the conclusion that appellant committed the trespass violation. Appellant was repeatedly told that she could not be in ARC, but she refused to accept and abide by that directive.

Accordingly, we hereby overrule appellant's first assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Athens County Municipal Court to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted, it is continued for a period of sixty days upon the bail previously posted. The purpose of said stay is to allow appellant to file with the Ohio Supreme Court an application for a stay during the pendency of the proceedings in that court. The stay as herein continued will terminate at the expiration of the sixty day period.

The stay will also terminate if appellant fails to file a notice of appeal with the Ohio Supreme Court in the forty-five day period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Ohio Supreme Court. Additionally, if the Ohio Supreme Court dismisses the appeal prior to the expiration of said sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Harsha, J. & Hoover, J.: Concur in Judgment & Opinion

For the Court

BY: 

Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.