ELECTRONICALLY FILED MAR 13, 2019 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA
Supreme Court No. 18-1119

STATE OF IOWA,
Plaintiff-Appellee,

vs.
JAMES L. MATHIAS,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR SCOTT COUNTY
THE HONORABLE NANCY S. TABOR AND HENRY W. LATHAM II,
JUDGES

APPELLEE'S BRIEF

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Authorities

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ROUTING STATEMENT

This case can be decided based on existing legal principles. Transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

The defendant, James Mathias, appeals the judgment and sentence imposed upon his conviction of carrying a firearm on the grounds of a school in violation of Iowa Code section 724B.4B. Mathias argues the State did not present sufficient evidence to prove the Brady Street Stadium and parking lot were "grounds of a school;" therefore, the district court erred in denying his motion for judgment

of acquittal. Further, Mathias argues the district court erred in submitting an instruction to the jury, over his objection, that defined the phrase "grounds of a school."

Course of Proceedings

The State accepts Mathias' course of proceedings as adequate and essentially correct. Iowa R. App. P. 6.903(3).

Facts

At approximately 9:00 p.m. on September 22, 2017, Davenport Police Officer Jamie Brown, wearing his police uniform, was working in a security capacity at the Davenport North versus Davenport Central football game at the Brady Street Stadium. Trial Tr. p. 263, line 4-p. 264, line 8, p. 267, lines 14-15. A concerned citizen approached him and told him there was a man in the parking lot placing flyers on the cars. Trial Tr. p. 266, lines 2-7.

Officer Brown located Mathias at the back of the parking lot and asked him what he was doing. Trial Tr. p. 267, line 22-p. 268, line 25. Mathias responded, "freedom of speech." Trial Tr. p. 267, line 24-p. 268, line 1.

Mathias appeared agitated and Officer Brown asked to see his identification. Trial Tr. p. 268, lines 2-3. As Mathias pulled

identification out of his pocked his shirt rose up and exposed a bulge on his side. Trial Tr. p. 268, lines 3-5. Officer Brown thought the bulge was consistent with a handgun and asked Mathias if he had a firearm. Trial Tr. p. 268, lines 6-7. Mathias answered, "Yes, but I have a permit." Trial Tr. p. 268, line 8. Mathias then showed Officer Brown his permit. Trial Tr. p. 268, lines 8-9.

Officer Brown "felt that based on where I was out there in the parking lot, his demeanor, the firearm, that it was best that we just get him off the property and move him on and then I could take care of anything that needed to be done as far as applicable laws that apply." Trial Tr. p. 268, lines 12-22. Later, Officer Brown consulted with the Scott County Attorney's Office and, on February 19, 2018, the State filed a trial information charging Mathias with carrying weapons on school grounds in violation of Iowa Code section 724.4B. Trial Information; App. 4.

Mathias filed a motion to dismiss the trial information and a motion to suppress evidence. Motion to Dismiss, Motion to Suppress; App. 9, 14. In Mathias' motion to dismiss he asserted that the Brady Street Stadium did not constitute the "grounds of a school;" therefore, he could not be found guilty of violating section 724.4B.

Following an April 10, 2018 hearing, the district court denied both of Mathias' motions. Order (4-18-2018); App. 19-30. Following trial, the jury found Mathias guilty as charged. Verdict.

Additional facts will be set forth below as relevant to the State's argument.

ARGUMENT

I. Because the State Presented Sufficient Evidence to Prove Mathias Carried a Firearm on the Grounds of a School, The District Court Did Not Err in Denying Mathias' Motion for Judgment of Acquittal.

Preservation of Error

The State agrees Mathias preserved error on this claim by raising it in his motion for judgment of acquittal and obtaining the district court's ruling on the motion. Trial Tr. p. 285, line 24-p. 287, line 8, p. 289, line 7-p. 290, line 18. *See State v. Schories*, 827 N.W.2d 659, 664 (Iowa 2013), as corrected (Feb. 25, 2013) (noting "that in order to preserve error on a motion to acquit, the defendant must specifically identify the elements for which there was insufficient evidence").

Standard of Review

Review of a challenge to the sufficiency of the evidence is on assigned error. *State v. McPhillips*, 580 N.W.2d 748, 753 (Iowa

1998). The reviewing court will uphold the denial of a motion for judgment of acquittal if there is substantial evidence in the record to support the defendant's conviction. *Id.* at 752. Substantial evidence is evidence that could convince a trier of fact that the defendant is guilty of the crime charged beyond a reasonable doubt. *State v. Crone*, 545 N.W.2d 267, 270 (Iowa 1996). In determining whether there is sufficient evidence, the court considers all the evidence. *State v. Robinson*, 288 N.W.2d 337, 340 (Iowa 1980). However, the court views the evidence in a light most favorable to the State and makes all reasonable inferences that may be drawn from the evidence. *McPhillips*, 580 N.W.2d at 752.

Merits

Mathias contends that the district court erred in denying his motion for judgment of acquittal because the State failed to present sufficient evidence he was "on the grounds of a school" when he was carrying a firearm. He maintains that the Brady Street Stadium and parking lot are not the "grounds of a school" pursuant to Iowa Code section 724.4B.

Iowa Code section 724.4B(1) provides:

> A person who goes armed with, carries, or transports a firearm of any kind, whether concealed or not, on the grounds of a

> school commits a class ‘D’ felony. For the purposes of this section, ‘school’ means a public or nonpublic school as defined in section 280.2.

(Emphasis added.)

Iowa Code section 280.2 provides that a:

> 1. “Nonpublic school” means any school, other than a public school, which is accredited pursuant to section 256.11.
> 2. “Public school” means any school directly supported in whole or in part by taxation.

The “grounds of a school” refers to the grounds of a public school under the circumstances of this case.

Paul Flynn, Athletic Director of the Davenport Community School District, testified that the Brady Street Stadium is a school district facility. Trial Tr. p. 251, lines 6-13. He explained that the Brady Street Stadium is used by Central Davenport High School for several types of school athletic events including football, baseball, tennis, and softball. Trial Tr. p. 251, lines 17-25. Flynn testified that he would expect law enforcement to treat someone armed with a firearm at the Brady Street Stadium as though they were at an actual school in the district. Trial Tr. p. 252, lines 3-12.

Andre Neyrinck, a Davenport Police Officer who works as a liaison to the Davenport School System, testified that Davenport School District events include football, soccer, and track. Trial Tr. p.

253, line 24-p.254, line 12. Neyrinck also testified that he would treat a person carrying a firearm at the Brady Street Stadium the same as if the person was carrying a firearm at Davenport's Central's campus. Trial Tr. p. 258, lines 8-16.

The State presented to the jury pictures of the Brady Street Stadium property in which there are prominent signs reading "Davenport School District." Exhibits 2-5; Exhibit App. 8-11. It also presented pictures showing the parking lot adjacent to the stadium and Davenport School District signage visible from the parking lot adjacent to the Stadium. Exhibits 2-5; Exhibit App. 8-11. Officer Brown testified that the parking lot is used for events held at the Brady Street Stadium. Trial Tr. 265, lines 4-8.

Property, such as the Brady Street Stadium and adjacent parking lot, owned by and used by a school district for school athletics is logically included in the grounds of a public school "directly in whole or in part supported by taxation." *See State v. Peterson*, 490 N.W.2d 53, 55 (Iowa 1992) ("We believe that the words "real property comprising a school" are commonly understood to include not only the school buildings but also the contiguous land surrounding the buildings."). A school district manages, controls and governs public

schools. *Silver Lake Consol. Sch. Dist. v. Parker*, 238 Iowa 984, 989, 29 N.W.2d 214, 217 (1947). A school district "is defined as a political or civil subdivision of the state for the purpose of aiding in *the exercise of that governmental function which relates to the education of children*." *Id.* (emphasis added). The Brady Street Stadium and the adjacent parking lot are used by the school district for school purposes. *See La Loma, Inc. v. City & Cty. of Denver*, 572 P.2d 1219, 1220 (Colo. 1977) ("Land owned by the school board and used for the purpose of carrying out the physical education and athletic programs of the school is, therefore, "land used for school purposes."); *Moyer v. Bd. of Ed. of Sch. Dist. No. 186*, 62 N.E.2d 802, 805 (Ill. 1945) ("grounds and buildings used for athletic purposes are a reasonable and necessary adjunct of recreational and educational processes").

Because Mathias was present in the parking lot adjacent to the Brady Street Stadium, which is used for events at the Stadium, the State presented sufficient evidence that Mathias was on the grounds of a school. *See State v. Johnson*, 401 P.3d 504, 505 (Ariz. Ct. App. 2017), review denied (Jan. 26, 2018) (defendant carrying weapon in

parking lot guilty of carrying firearms on school grounds where "'School grounds' means in, or on the grounds of, a school.").

Mathias contends that the Court must engage in statutory construction because the legislature did not define the phrase "grounds of a school" in section 724.4B. Appellant's Br. p. 18. "When examining a statutory term, [the reviewing court] give[s] words their ordinary meaning, absent any legislative definition or particular meaning in the law. The dictionary is an acceptable source for the common meaning of a word." *State v. White*, 545 N.W.2d 552, 555–56 (Iowa 1996).

Of course, the legislature did provide that "[f]or the purposes of this section, 'school' means a public or nonpublic school as defined in section 280.2." Iowa Code § 724.4B. The word "school" is defined broadly in section 280.2; therefore, the legislature intended that it be defined broadly for purposes of section 724.4B. [1]

As for the phrase "grounds of a school" Iowa Code section 4.1(38) provides that "[w]ords and phrases shall be construed according to the context and the approved usage of the language."

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[1] Pursuant to 18 U.S.C.A. § 921(26) of the federal Gun Control Act, "[t]he term 'school' means a school which provides elementary or secondary education, as determined under State law."

The Merriam-Webster's Online Dictionary defines "grounds" as "the area around and belonging to a house or other building." http://www.merriam-webster.com/dictionary/grounds, 4.c. (last visited Feb. 5, 2019).

In Iowa Code section 724.4A, which enhances penalties for the commission of a public offense involving a firearm, the legislature provided that a "'weapons free zone' means the area in or on, or within one thousand feet of, the real property comprising a public or private elementary or secondary school, or in or on the real property comprising a public park." By not using the same language as in section 724.4A, "real property comprising a public or private elementary or secondary school," the legislature evidenced its intent that the crime of carrying a firearm on the "grounds of a school" in section 724.4B, apply more broadly.

"The primary rule of statutory interpretation is to give effect to the intention of the legislature." *State v. Casey's Gen. Stores, Inc.*, 587 N.W.2d 599, 601 (Iowa 1998). Section 724.4B, like its federal counterpart, is designed to protect students at school events. *See Jeffrey v. United States*, 892 A.2d 1122, 1129 (D.C. 2006) ("it is evident that the [federal] statute [prohibiting firearm possession at

schools] is intended to protect children from being exposed to criminal activity"); *People v. Tapia*, 29 Cal. Rptr. 3d 158, 167 (Cal. Ct. App. 2005). ("From the legislative history, therefore, the most we can reasonably glean is the unsurprising fact that the intent of the Legislature in enacting the [gun] law was to further the safety of students at and on their way to and from school."); *Com. v. Giordano*, 121 A.3d 998, 1004 (Penn. 2015) (statute prohibiting possession of weapon "in the buildings of, on the grounds of, or in any conveyance providing transportation to or from any elementary or secondary publicly-funded educational institution, any elementary or secondary private school licensed by the Department of Education or any elementary or secondary parochial school" "is designed to protect students from the presence of weapons where they are learning").

The entire phrase "grounds of a school" includes a school and its grounds. The "grounds of a school" include the Brady Street Stadium and parking lot on which Mathias was carrying a firearm; therefore, the district court correctly denied Mathias' motion for a judgment of acquittal.

II. The District Court Did Not Abuse Its Discretion in Providing the Jury a Definition of the Phrase "Grounds of a School."

Preservation of Error

The State agrees that Mathias preserved error on this issue by requesting the district court not to instruct the jury on the phrase "grounds of a school" and obtaining the district court's ruling on his request. Trial Tr. p. 297, lines 11-24, p. 298, line 14-p. 299, line 18. *See State v. Taggart*, 430 N.W.2d 423, 425 (Iowa 1988) ("timely objection to jury instructions in criminal prosecutions is necessary in order to preserve any error thereon for appellate review").

Standard of Review

The appellate court "review[s] challenges to jury instructions for correction of errors at law." *State v. Coleman*, 907 N.W.2d 124, 134 (Iowa 2018). "[H]owever, if the jury instruction is not required but discretionary, we review for an abuse of discretion." *State v. Plain*, 898 N.W.2d 801, 811 (Iowa 2017). "Trial courts have a rather broad discretion in the language that may be chosen to convey a particular idea to the jury." *Stringer v. State,* 522 N.W.2d 797, 800 (Iowa 1994).

Merits

Mathias argues that the district court erred in submitting a definitional instruction for the phrase "grounds of a school." He maintains there is no uniform jury instruction for the phrase and that the district court's instruction was prejudicial to him because it was overly broad.

The district court did not abuse its discretion in instructing the jury that the phrase "'grounds of a school' may mean recreational facilities, cultural facilities, or school building at which instruction is given." Instruction No. 18; App. 33. The instruction provided clarification of an undefined phrase but did not require the jury to find that the Brady Street Stadium or parking lot constituted "grounds of a school."

Mathias contends the instruction was erroneous because the phrase "grounds of a school" was not meant to include cultural or recreational facilities. However, the definition of a public school provided in section 280.2(2) means any school directly supported in whole or in part by taxation. Public schools include facilities that are used for cultural and recreational activities for their students. A school auditorium is an example of a school facility used for cultural

activities. A football stadium owned and used by a school district is an example of a facility used for school recreational activities.

In *Montague v. City of Cedar Rapids*, 449 N.W.2d 91, 94 (Iowa Ct. App. 1989), the Court grappled with the question of whether an adult bookstore could be operated within 450 feet of a gymnasium under a city ordinance providing that no adult bookstore "'shall be located within 450 feet of any school, church, or residential zoning district, as defined in this chapter.'" *Montague v. City of Cedar Rapids,* 449 N.W.2d 91, 92 (Iowa Ct. App. 1989). "The ordinance define[d] a 'school' as: 'Any building or part thereof which is designed or used for presenting formalized courses or curriculum for educational purposes.'" *Id.* at 93.

The trial court found the Sokol Gymnasium was not a "school" under the ordinance. *Id.* at 91. The Supreme Court stated it could not "agree with the trial court's conclusion that athletic and physical training cannot constitute an educational purpose within the meaning of the ordinance." It reasoned that "determining if a structure, or part of a structure, is a "school" for purposes of this ordinance, the use of the building, not the type of the building, is determinative." *Id.* at 93.

The same principle applies to the meaning of the phrase "grounds of a school." That is, the use of the grounds should be determinative. The Brady Street Stadium and parking lot are facilities used for school recreational activities. The district court did not abuse its discretion in fashioning a definitional instruction for the phrase "grounds of a school." *See Stringer v. State*, 522 N.W.2d 797, 800 (Iowa 1994) ("Unless the choice of words results in an incorrect statement of law or omits a matter essential for the jury's consideration, no error results.").

However, if the district court erred in instructing the jury, this case "is reversible only if the error is prejudicial." *State v. Ambrose*, 861 N.W.2d 550, 554 (Iowa 2015). The reviewing court "presume[s] prejudice and [will] reverse unless the record affirmatively establishes there was no prejudice." *State v. Hanes*, 790 N.W.2d 545, 551 (Iowa 2010). "[T]he test of prejudice is whether it sufficiently appears that the rights of the complaining party have been injuriously affected or that the party has suffered a miscarriage of justice." *State v. Gansz*, 376 N.W.2d 887, 891 (Iowa 1985), overruled on other grounds by *Alcala v. Marriott Int'l, Inc.*, 880 N.W.2d 699, 708 (Iowa 2016). The "analysis of prejudice is also influenced by an evaluation of whether a

jury instruction could reasonably have misled or misdirected the jury." *Hanes*, 790 N.W.2d at 551.

Again, Instruction 18 left the jury free to find the stadium and parking lot are "grounds of a school" but did not mandate such a finding. Further, the instruction was not prejudicial because there is no likelihood that the jury would have found the Stadium and parking lot were "cultural facilities" or a "school building at which instruction is given." *See* Instruction 18; App. 33.

The district court did not abuse its discretion in instructing the jury. Moreover, Mathias was not prejudiced by any alleged error in the instructions.

CONCLUSION

For all the reasons set forth above, the State respectfully requests this Court to affirm Mathias' conviction of possessing a firearm on the grounds of a school.

REQUEST FOR NONORAL SUBMISSION

The State believes that this case can be resolved by reference to the briefs without further elaboration at oral argument.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **3,076** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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