

FILED  
Court of Appeals  
Division III  
State of Washington  
4/5/2018 4:32 PM

Supreme Court No. 95720-7  
Court of Appeals No. 34905-5-III

THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

Antonio Marcell Mitchell,

Petitioner.

---

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF  
WASHINGTON FOR SPOKANE COUNTY

---

PETITION FOR REVIEW

---

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**REVIEW BY THIS COURT IS NEEDED TO DECIDE A MATTER OF CONSTITUTIONAL CONCERN AND PUBLIC INTEREST: CAN A PERSON BE ARRESTED AND CONVICTED FOR TRESPASSING IN AN AREA OTHERWISE OPEN TO THE PUBLIC, BASED SOLELY ON A PRIVATE SECURITY GUARD REVOKING HIS PRIVILEGE, WHERE THE STATE DOES NOT PRESENT EVIDENCE OF A LAWFUL TRESPASS ORDER? .....4**

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A. IDENTITY OF PETITIONER

Antonio Marcell Mitchell, petitioner here and appellant below, asks this Court to accept review of the Court of Appeals decision 34905-5-III pursuant to RAP 13.3 and RAP 13.4(3) issued on March 6, 2018. The opinion is attached to this petition.

B. ISSUE PRESENTED FOR REVIEW

The Court of Appeals determined that despite no evidence of a written trespass notice, there was nonetheless “overwhelming evidence that Mr. Mitchell refused to comply with a lawful order to leave the Intermodal, orally issued by the Intermodal’s security guard.” Slip Op. at 4. Can a person be arrested and convicted for trespassing in an area open to the public, based solely on a private security guard revoking the person’s privilege to enter, without evidence of a lawful trespass order having been issued?

C. STATEMENT OF THE CASE.

The Spokane Intermodal is a bus station that is open to the public twenty four hours a day. RP 164, 169. The doors are never locked. RP 164. It houses the Greyhound bus station, a police substation, the Amtrak train station, a gift shop, restaurant, and restrooms. RP 150-51, 165. The police substation in the Intermodal is

staffed by uniformed officers from about 8:30 to 5:00, and private security agents after hours. RP 100.

Mr. Mitchell is homeless. RP 230. Whenever he went to the Intermodal bus station to sit on a bench, the private security agent, Christopher Power would tell him to leave. RP 154. Mr. Power did not know if Mr. Mitchell ever received a trespass admonishment form from the Intermodal. RP 163. And he didn't know for certain that Mr. Mitchell was trespassed; he described only, "to the best of my knowledge, [he] had been trespassed from the premises." RP 153. Despite the fact that Mr. Power did not know whether Mr. Mitchell was in fact trespassed from the Intermodal, he asked Mr. Mitchell to leave on previous occasions, and Mr. Mitchell complied with Mr. Power's demands. RP 158-159. When Mr. Mitchell would later return, Mr. Power told him to leave and he complied. RP 157, 158, 163.

On the day of Mr. Mitchell's arrest, he was sitting on a bench at the Intermodal when Mr. Power approached him and asked if he had a ticket, which Mr. Mitchell did not have. RP 153-154. Without confirming that Mr. Mitchell was in fact trespassed from the Intermodal, he again told him he was trespassing and had to leave. RP 153, 154. Mr. Mitchell complied but came back over three hours later.

RP 154. This time, Mr. Power did not ask him if he had a ticket; he just told Mr. Mitchell to leave. RP 155. Mr. Mitchell complied but returned soon after. RP 155. Again, without asking Mr. Mitchell his purpose for being there or confirming that there was a trespass order in effect, he again told Mr. Mitchell that he was trespassing and had to leave. RP 153, 155. This time, Mr. Mitchell did not immediately comply with Mr. Power's demand. RP 155.

Mr. Power called police and sought to press charges against Mr. Mitchell for trespass, despite the fact that Mr. Power did not confirm that Mr. Mitchell was trespassed, did not know whether a trespass order existed, or that Mr. Mitchell had ever been provided with notice of the trespass and its terms. RP 153, 155, 156-157, 163. Mr. Mitchell had not otherwise done anything unlawful. RP 175.

Officer Kester, the officer who responded to Mr. Power's call, did not have personal knowledge that Mr. Mitchell was given a trespass notice or whether he was told how to appeal it, because police officers are not involved with informing a person about how to challenge a trespass order. RP 102-103. Officer Kester just checked with dispatch, who informed her that Mr. Mitchell was trespassed. RP 90. She then



approached Mr. Mitchell and told him he was being arrested for trespass. RP 91.

Mr. Mitchell was taken to jail where he was searched prior to being booked. RP 92. The corrections officer found a folded up dollar bill in Mr. Mitchell's sock containing .2 grams of methamphetamine. RP 109, 120.

Mr. Mitchell was charged with trespass and possession of controlled substance, and convicted of both counts at jury trial. CP 1; 22-23. Rather than moving to suppress the methamphetamine as a result of an unlawful arrest, Mr. Mitchell's counsel challenged the lawfulness of Mr. Mitchell's alleged trespassing at trial, as a defense to the charge of trespass. On appeal, Mr. Mitchell argued that the unlawful trespass should have been challenged as a motion to suppress evidence seized as a result of his illegal arrest for trespass. The Court of Appeals found the verbal statement by the private security guard in a public location was lawful, and affirmed Mr. Mitchell's conviction. Slip Op. at 3-4.

D. ARGUMENT WHY REVIEW SHOULD BE GRANTED

1. **The high rates of homelessness in the region and the lack of available shelter make the question of the lawfulness of a trespass order from a public place a matter of constitutional concern and public interest.**

The Court of Appeals' failure to require fair notice and evidence of the lawfulness of the underlying trespass in Mr. Mitchell's case is a matter of public concern because the homeless population is disproportionately affected by such exclusions from public places, and this Court must ensure that such exclusions are lawful and constitutional. *See* Terry Skolnik, *Homelessness and the Impossibility to Obey the Law*, 43 Fordham Urb. L.J. 741, 771 (2016) (The places a homeless can go is largely limited and contingent upon the permission of others to access private property); *see also* Kathryn Hansel, *Constitutional Othering: Citizenship and the Insufficiency of Negative Rights-Based Challenges to Anti-Homeless Systems*, 6 NW J.L. & Soc. Pol'y 445, 468 (2011) ("Public space is only public for those who have houses. Those who do not may be excluded, not only from public space itself, but from the very definition of public"). This Court should ensure that people forced to rely on public spaces for shelter are not unlawfully excluded from them.

**2. The State failed to prove that Mr. Mitchell unlawfully entered or remained at the Intermodal.**

- a. The State did not meet its burden to prove the lawfulness of Mr. Mitchell's exclusion from the Intermodal.

The State failed to prove that a trespass order was even issued against Mr. Mitchell, much less that it was lawfully issued.

A conviction for trespass requires the State to prove the defendant entered or remained unlawfully in a building. RCW 9A.52.070. It is a defense to the crime that “the premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining on the premises.” CP 25; RCW 9A.52.090(2). It is the State's burden to prove the legality of his exclusion beyond a reasonable doubt. *State v. Green*, 157 Wn. App. 833, 851, 239 P.3d 1130 (2010); *City of Bremerton v. Widell*, 146 Wn.2d 561, 569, 51 P.3d 733 (2002).

Notice to the accused that his license to enter the premises has been revoked is not enough to meet this burden. *Green*, 157 Wn. App. at 851. In *Green*, the school issued a trespass notice against the mother of a child attending a public school. *Id.* Though the State established the mother was given notice she was trespassed, it presented no witnesses with personal knowledge of the facts underlying the trespass.

*Id.* at 851-852. Without “competent testimony” to establish a factual basis for the trespass, the prosecution failed to meet its burden that the mother’s right to access the school had lawfully revoked. *Id.* at 852.

Information contained in a police dispatch record is not competent evidence that the order is legally issued. *See Widell*, 146 Wn.2d at 569 (The court does not extend the same deference granted judicial orders to exclusion issued by individual police officers). This form of incompetent evidence was the sole evidence presented by the State to show that Mr. Mitchell was trespassed, because neither Officer Kester nor Mr. Power had a physical trespass notice, and Officer Kester only learned of the alleged trespass through dispatch. RP 90, 102. And Officer Kester did not know why Mr. Mitchell was trespassed. RP 103.

Mr. Power did not give Mr. Mitchell a trespass admonishment form. RP 166. He did not know if Mr. Mitchell had ever been provided one. RP 163. Police never requested to see the Intermodal’s trespass admonishment form for Mr. Mitchell, and Mr. Power did not provide one to police, because to his knowledge, there wasn’t one. RP 176.

Contrary to Officer Kester’s testimony, Mr. Power described that when security determines a person should be trespassed, they request the police department to issue a trespass notice and to notify the individual

of the trespass. RP 162-163. Mr. Power had previously offered Mr. Mitchell a notice to sign, but he refused. RP 166. However, even when someone refuses to sign, the form tells the person that it will stay on file. RP 166. Mr. Power had never provided information to Mr. Mitchell about how to contest a trespass. RP 167.

The State thus presented no evidence of the terms of Mr. Mitchell's exclusion, or why he was excluded. There was no evidence that Mr. Mitchell had been given notice of the specific terms of the trespass, and no information about how he could contest or appeal his alleged trespass. Thus, the State failed to present sufficient evidence of the lawfulness of Mr. Mitchell's exclusion from the Intermodal. *Green*, 157 Wn. App. at 851.

b. The State did not prove that Mr. Mitchell acted unlawfully while at the Intermodal.

Nor can it be argued that the State produced any evidence from which a rational trier of fact could conclude beyond a reasonable doubt that Mr. Mitchell did not comply with the lawful conditions of access to the premises as required by RCW 9A.52.090 (2). *State v. R.H.*, 86 Wn. App. 807, 812-813, 939 P.2d 217 (1997). If the defense negates an element of the crime charged, the State has the burden to prove beyond

a reasonable doubt that the accused did not comply with lawful conditions of access to the premises. *Id.*

Mr. Power testified that besides his unconfirmed belief that Mr. Mitchell was trespassed from the Intermodal, Mr. Mitchell was not doing anything unlawful when Mr. Power called the police. RP 175. Officer Kester approached Mr. Mitchell and immediately told him he was under arrest for trespass. RP 91. Though the State attempted to show that Mr. Mitchell was loitering, Officer Kester did not ask Mr. Mitchell about his purpose for being there before she arrested him. RP 91. And Mr. Power did not ask Mr. Mitchell if he had a lawful purpose for being there when he called police. RP 155.

The Court of Appeals erred in its finding that he was not “arrested for trespass based merely on his entry into the Intermodal.” Slip Op. At 5. Though this was the third time Mr. Mitchell entered the Intermodal that day, the State did not present evidence that upon this third entry he was engaging in unlawful behavior. Absent evidence of a lawful trespass order, or evidence that he did not comply with lawful use of the premises, there was no evidence of unlawful conduct when police arrested Mr. Mitchell for trespass.

**3. Mr. Mitchell’s constitutional right to effective assistance of counsel was violated by defense counsel’s failure to move to**

**suppress the .2 grams of methamphetamine found pursuant to Mr. Mitchell's illegal arrest for trespass.**

Mr. Mitchell's counsel argued for the illegality of the trespass order to the jury, but did not move to suppress the minute quantity of drugs found in Mr. Mitchell's sock pursuant to his illegal arrest. This was ineffective assistance of counsel that the Court of Appeals failed to address because it ruled the trespass was lawful. Slip op. at 5. This Court should review whether Mr. Mitchell's constitutional right to effective assistance of counsel was violated.

- a. Defense counsel was ineffective for not bringing a motion to suppress where police lacked probable cause to arrest Mr. Mitchell absent evidence of a lawful trespass order.

The accused has the constitutional right to effective assistance of counsel. *In re Khan*, 184 Wn.2d 679, 688, 363 P.3d 577 (2015) (citing *Strickland v. Washington*, 466 U.S. 668, 684–86, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)); U.S. Const. amend. VI; Const. art. I, § 22. “The right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to counsel’s skill and knowledge is necessary to accord defendants the ample opportunity to meet the case of the prosecution to which they are entitled.” *Strickland*, 466 U.S. at 685 (internal citations omitted). A claim of error may be raised for the first time on appeal if it is a “manifest error affecting a

constitutional right.” RAP 2.5(a)(3); *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995) (addressing for the first time constitutional errors arising from trial counsel’s failure to make a motion to suppress evidence obtained following a warrantless arrest). Ineffective assistance of counsel is established when (1) “counsel’s representation fell below an objective standard of reasonableness” and (2) “the deficient performance prejudiced the defense.” *In re Yates*, 177 Wn.2d 1, 35, 296 P.3d 872 (2013) (citing *Strickland*, 466 U.S. at 687–88.).

The presumption that counsel acted reasonably is rebutted by demonstrating that “there is no conceivable legitimate tactic explaining counsel’s performance.” *In re Caldellis*, 187 Wn.2d 127, 141, 385 P.3d 135 (2016) (citing *State v. Reichenbach*, 153 Wn.2d 126, 130, 101 P.3d 80 (2004)). “A claim of ineffective assistance of counsel presents a mixed question of fact and law reviewed de novo.” *State v. Sutherby*, 165 Wn.2d 870, 883, 204 P.3d 916 (2009).

Defense counsel knew that the State did not intend to introduce a trespass order prior to trial, and that the State’s case was plagued by its inability to prove the lawfulness of Mr. Mitchell’s trespass:

There are no trespass notices. There’s nothing that gives Mr. Mitchell notice that he is trespassed other than what



I anticipate based on Mr. Power's previous testimony and what he will probably testify today is his statement saying I've told him he's not suppose[d] to come back, and that's just not sufficient. It's not constitutionally sufficient and doesn't rise to a crime.

RP 146. Mr. Mitchell's defense counsel even described that a previous court had specifically invalidated the trespass procedures used at the Intermodal: "Their trespass policy has been deemed constitutionally insufficient by Judge O'Connor." RP 142. Defense counsel then described that Mr. Mitchell's previous attorney, who represented him on nearly identical charges, moved to suppress the drugs found pursuant to Mr. Mitchell's illegal arrest for trespass under this same fact pattern. RP 141. Yet despite knowing all of this, Mr. Mitchell's counsel failed to argue for suppression pursuant to Mr. Mitchell's illegal arrest.

This failure to move for suppression followed defense counsel's pattern of failing to make the appropriate legal arguments on Mr. Mitchell's behalf. For example, despite eliciting the State's inability to prove the lawfulness of Mr. Mitchell's exclusion from the Intermodal, defense counsel failed to ask the judge to rule on this issue as a matter of law. *Green*, 157 Wn. App. at 841 (the lawfulness of a trespass order is a question of law to be decided by the trial court judge). Instead,

defense counsel argued to the jury a question of law that should have been decided by the trial court judge. RP 206-212.

There is thus no question that this failure to challenge Mr. Mitchell's search was objectively unreasonable, where defense counsel described that this same trespass procedure was already invalidated by a previous judge, yet failed to move for suppression based on the known illegality of Mr. Mitchell's exclusion from the Intermodal. And there can be no legitimate trial tactic in foregoing such a motion, where suppression could only benefit Mr. Mitchell.

- b. Mr. Mitchell would likely have prevailed on a motion to suppress.

It is ineffective to not make a plausible motion to suppress that would likely have been successful. *Meckelson*, 133 Wn. App. 431, 436, 135 P.3d 991 (2006). Here, where the State failed to prove the lawfulness of the trespass order, and the only evidence that Mr. Mitchell was trespassed came through police dispatch, Officer Kester lacked probable cause for arrest, and Mr. Mitchell would have prevailed on a motion to suppress. RP 90; CrR 3.6.

A dispatch record alone does not supply probable cause for arrest. *See State v. Marcum*, 116 Wn. App. 526, 531, 66 P.3d 690 (2003) (citing *State v. O'Cain*, 108 Wn. App. 542, 555, 31 P.3d 733

(2001) (“[A] conclusory allegation obtained from an unverified computer compilation is not, by itself, sufficient” to establish probable cause); *O’Cain*, 108 Wn. App. at 545) (“Because the record in this case contains no evidence from which the underlying reliability of the police dispatch can be assessed, and because police had no other lawful basis for the stop in this case,” the trial court’s suppression ruling is reversed.).

Police have probable cause to arrest when “there is reasonable ground for suspicion, supported by circumstances within the knowledge of the arresting officer, which would warrant a cautious person’s belief that the individual is guilty of a crime.” *State v. Blair*, 65 Wn. App. 64, 69, 827 P.2d 356 (1992) (citing *State v. Green*, 91 Wn.2d 431, 436, 588 P.2d 1370 (1979), *on reconsideration*, 94 Wn.2d 216, 616 P.2d 628 (1980)). Like in *Blair*, when the statutory offense to trespass was asserted, whether the officer had probable cause depends on the circumstances known to the officer indicating the suspect was not on the property for legitimate purposes. *Blair*, 65 Wn. App. at 69. In *Blair*, the officer knew that the suspect did not live in the publicly-owned apartment complex, and had previously admonished him not to return to the property after arresting him for a drug transaction. *Id.* 70. But on

this occasion, the officer did not witness Blair loitering on the property or exhibiting behavior that would lead the officer to believe he was unlawfully on the property. *Id.* at 69. Thus, the officer had only “an articulable suspicion” that Blair might be trespassing, which meant only that he could properly stop him to “ask why he was on the premises, and investigate to see if his purpose for being there was in fact legitimate.” *Id.* at 70. But because the officer immediately approached Blair and arrested him, rather than established that he was in fact not authorized to be on the premises at that time, the officer did not have probable cause to arrest him for the charge of criminal trespass. *Id.* at 70. *Accord State v. Little*, 116 Wn.2d 488, 497, 806 P.2d 749 (1991) (“Based on the officers’ familiarity with the residents, the posted warnings prohibiting trespassing and loitering, and the flight of the appellants, the officers had reasonable suspicion to believe that a criminal trespass was being committed and properly attempted to conduct an investigatory stop.”).

Like in *Blair*, absent evidence of a lawful trespass order, Officer Kester possessed only reasonable suspicion to inquire further whether Mr. Mitchell had a lawful right to be on the premises. Officer Kester never asked for, looked for, or saw a trespass order from the

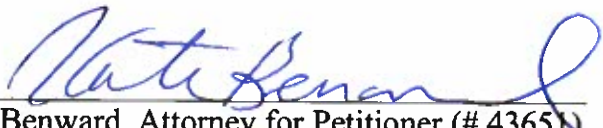
Intermodal. Mr. Power did not believe there was a trespass form issued against Mr. Mitchell. RP 176. Mr. Power affirmed that Mr. Mitchell was not engaged in illegal conduct, other than allegedly trespassing, prior to police being called. RP 175. Nevertheless, Officer Kester immediately arrested him without asking him about whether he had a lawful purpose for being on the premises. This was an unlawful arrest, and the search conducted subsequent to the illegal arrest required suppression of the minute amount of methamphetamine found in the dollar bill inside Mr. Mitchell's sock. RP 109, 120; CrR 3.6; *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963); *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961).

Failure to move for suppression was most certainly prejudicial, because suppression would have resulted in dismissal of the felony charge of possession of a controlled substance. *Meckelson*, 133 Wn. App. at 438 (The possession of methamphetamine charge would have been dismissed without the drug evidence). This Court should review whether counsel's deficiency in failing to challenge Mr. Mitchell's trespass from the Intermodal as a grounds for suppression deprived him of his constitutional right to effective assistance of counsel.

E. CONCLUSION

This Court should accept review to determine whether an arrest and conviction for trespass can stand when the State fails to establish the facts necessary to prove a person is lawfully trespassed from a public place, and whether trial counsel is ineffective for not litigating the unlawfulness of the trespass order through a motion to suppress.

Respectfully submitted this the 5th day of April 2018.

  
\_\_\_\_\_  
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Washington Appellate Project - 91052  
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**FILED**  
**MARCH 6, 2018**  
In the Office of the Clerk of Court  
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION THREE

STATE OF WASHINGTON,	)	No. 34905-5-III
	)	
Respondent,	)	
	)	
v.	)	UNPUBLISHED OPINION
	)	
ANTONIO MARCELL MITCHELL,	)	
	)	
Appellant.	)	

PENNELL, J. — Antonio Mitchell appeals his convictions for first degree criminal trespass and possession of a controlled substance. We affirm.

FACTS

On July 15, 2016, Mr. Mitchell had several interactions with a security guard at the Spokane Intermodal Center (the Intermodal). The Intermodal houses a bus and train station. There is also a gift shop, restaurant, restrooms, and police substation. The police substation is staffed from about 8:30 a.m. to 5:00 p.m. When officers are not present at

the substation, private security guards patrol the Intermodal. The Intermodal has posted signs stating, “no ticket no loitering.” Verbatim Report of Proceedings (VRP) (Oct. 25, 2016) at 152.

Mr. Mitchell’s first interaction with the security guard took place around 5:00 p.m. The guard noticed Mr. Mitchell sitting on a bench and asked if he had a ticket. Mr. Mitchell said he did not. The guard then told Mr. Mitchell to leave and Mr. Mitchell complied. Mr. Mitchell returned to the Intermodal at 8:00 p.m. and again at 8:30 p.m. On both occasions, Mr. Mitchell complied with the guard’s instructions to leave. Mr. Mitchell returned to the Intermodal a final time at 8:50 p.m. This time, Mr. Mitchell was not compliant. The security guard told Mr. Mitchell he was trespassing, but Mr. Mitchell refused to leave. By this point in the evening, none of the businesses at the Intermodal were open and the restrooms were closed and locked.

July 15 was not the first time Mr. Mitchell was discovered loitering at the Intermodal. The security guard had several previous interactions with Mr. Mitchell. The guard was not certain as to whether Mr. Mitchell had ever been issued a written trespass notice. However, the guard knew he had told Mr. Mitchell “numerous times” that he was trespassed and that Mr. Mitchell would not be allowed inside the Intermodal if he was not “actually travelling.” VRP (Oct. 25, 2016) at 173.



After Mr. Mitchell refused to leave the Intermodal on July 15, the security guard contacted law enforcement. An officer with the Spokane Police Department responded to the scene, spoke to the security officer, and confirmed via dispatch that Mr. Mitchell had previously received a formal trespass notice from the Intermodal. The police officer then arrested Mr. Mitchell for trespass. During a subsequent search incident to arrest, law enforcement found methamphetamine on Mr. Mitchell's person. Mr. Mitchell was charged with both first degree criminal trespass and possession of a controlled substance.

During Mr. Mitchell's jury trial, the State presented testimony from the security guard and the police officer regarding the foregoing events. No documentary evidence was produced regarding the formal trespass notice referenced during the police officer's testimony. The jury convicted Mr. Mitchell of both trespass and unlawful possession of a controlled substance. Mr. Mitchell appeals.

### ANALYSIS

Mr. Mitchell's entire appeal turns on whether there were sufficient facts to justify his arrest and conviction for criminal trespass. Mr. Mitchell focuses on the State's inability to produce a written trespass notice, confirming Mr. Mitchell had been validly trespassed from the Intermodal prior to July 15, 2016. Mr. Mitchell's argument misses the mark. Proof of a written trespass notice was not critical to the State's case. The State

presented overwhelming evidence that Mr. Mitchell refused to comply with a lawful order to leave the Intermodal, orally issued by the Intermodal's security guard. This was enough to justify Mr. Mitchell's arrest and conviction.

First degree criminal trespass occurs when an individual "knowingly enters or remains unlawfully in a building." RCW 9A.52.070. A person "enters or remains unlawfully" in a building "when he or she is not then licensed, invited, or otherwise privileged to so enter or remain." RCW 9A.52.010(2). It is a defense to trespass that a building was "at the time open to members of the public" and that the individual "complied with all lawful conditions imposed on access to or remaining in" the building. RCW 9A.52.090(2).

There are no set legal requirements for a valid trespass order. A security guard can issue an oral trespass order, revoking an individual's license to remain in a building that is otherwise open to the public. *State v. Kutch*, 90 Wn. App. 244, 247, 951 P.2d 1139 (1998). To withstand a defense under RCW 9A.52.090(2), the guard's order must be based on an individual's failure to comply with lawful conditions imposed on access to the building. One type of lawful condition is that members of the public refrain from loitering. *See, e.g., State v. R.H.*, 86 Wn. App. 807, 812, 939 P.2d 217 (1997).

Here, the security guard lawfully ordered Mr. Mitchell to leave the Intermodal. Although the Intermodal is a building generally open to the public, access is limited to those individuals who are “actually travelling,” dropping off or picking up someone who is travelling, or otherwise patronizing the Intermodal’s businesses. The conditions on public access to the Intermodal are clearly stated on signs prohibiting loitering by individuals who do not have tickets for travel. The conditions were also relayed to Mr. Mitchell, who was told he could not be at the Intermodal unless he was actually at the Intermodal to travel or purchase a ticket for travel.

This would be a different case had Mr. Mitchell been arrested for trespass based merely on his entry into the Intermodal. In such circumstances, the State would need to prove Mr. Mitchell’s entry was prohibited by a lawfully-issued trespass notice, informing Mr. Mitchell of the terms of his exclusion. *Kutch*, 90 Wn. App. at 248-49; *State v. Green*, 157 Wn. App. 833, 851, 239 P.3d 1130 (2010).

But Mr. Mitchell was arrested for unlawfully *remaining* at the Intermodal after he admitted he did not meet the conditions for entry and refused to leave. In such circumstances, there was no need for a previously issued order. The facts surrounding the oral trespass order are sufficient to establish Mr. Mitchell’s unlawful presence at the Intermodal. *Green*, 157 Wn. App. at 852 (due process satisfied so long as the State


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*State v. Mitchell*

proves factual basis for trespass order).

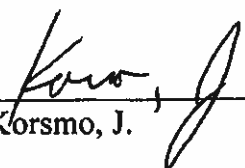
CONCLUSION

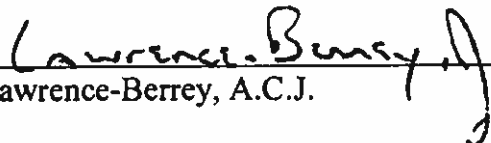
The judgment of conviction is affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

  
\_\_\_\_\_  
Pennell, J.

WE CONCUR:

  
\_\_\_\_\_  
Korsmo, J.

  
\_\_\_\_\_  
Lawrence-Berrey, A.C.J.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, )  
 )  
RESPONDENT, )  
 )  
v. ) COA NO. 34905-5-III  
 )  
ANTONIO MITCHELL, )  
 )  
PETITIONER. )

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 5<sup>TH</sup> DAY OF APRIL, 2018, I CAUSED THE ORIGINAL **PETITION FOR REVIEW TO THE SUPREME COURT** TO BE FILED IN THE COURT OF APPEALS - DIVISION THREE AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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SIGNED IN SEATTLE, WASHINGTON THIS 5<sup>TH</sup> DAY OF APRIL, 2018.

X \_\_\_\_\_  


**Washington Appellate Project**  
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# WASHINGTON APPELLATE PROJECT

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**Appellate Court Case Title:** State of Washington v. Antonio Marcell Mitchell  
**Superior Court Case Number:** 16-1-02749-1

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