

Arrested for “Defiant Trespass,” and Searched at the Police Station, a Criminal Defendant’s Drug Case Turns on the Statutory Definitions of “No Loitering” and “No Trespassing” and the Meaning of Probable Cause

October 4, 2021 | by Matthew Troiano

In 2014, the New Jersey Supreme Court decided *State v. David Gibson*, a criminal matter that raised questions about the seizure of drugs following an arrest for “defiant trespass.” While many criminal matters revolve around the legality of a search and seizure, the Gibson case focused on the arrest for defiant trespass. Was Gibson actually guilty of defiant trespass? And if not, was the subsequent search and seizure illegal?

Search & Seizure Incident to an Arrest

Generally, a warrant is required to sustain the reasonableness for a [search and seizure](#), but there are exceptions to the rule. One exception is when a search is “incident to an arrest.” The constitutionality of a search must be proven by the prosecutor, and often centers on the term “probable cause.”

Courts in New Jersey have held that probable cause “eludes precise definition,” that it means less than the legal evidence necessary to convict a person, but more than mere “naked suspicion.” It exists if at the time of the police action, there is a well-grounded suspicion that a crime has been or is being committed. In the Gibson case, the probable cause for the search and seizure in the police station was at question.

Gibson Arrested for Intent to Commit a “Defiant Tresspass”

At 3:20 a.m. on November 24, 2007, a police officer observed the defendant, David Gibson, leaning against a porch on private property, above which in a window was a posted sign that read “No

Loitering.” As the officer patrolled the area, which he said was known for its high crime rate, Gibson moved on, and walked a city block, at which point he was stopped and questioned by the officer.

The officer asked Gibson for his identification, where he was coming from, and whether he had permission to be on the private property. Gibson gave his name and explained that he was coming from his child’s mother’s home, located two blocks north of the property, and that he was waiting for a ride. Based on his observations and interaction with Gibson, the officer concluded that Gibson had the intent to commit a “defiant trespass” which is a petty disorderly persons offense, and arrested him.

The officer later testified that Gibson had appeared “very excited” and “somewhat evasive,” and that “he was looking around as though he was attempting to run.” The officer did not, however, elaborate on how Gibson was “evasive.”

At the police station, a subsequent search of Gibson uncovered thirteen bags containing crack cocaine. Gibson was charged with various drug crimes, and a trial was set.

Did the Police Officer Have Probable Cause to Arrest Gibson for “Defiant Trespass”?

Gibson’s lawyer filed a motion to suppress the drug evidence, arguing that the officer did not have probable cause to make the arrest.

The motion was denied, and Gibson was convicted at the trial court. The conviction, along with a finding that the arrest was proper, was affirmed by the Appellate Division of New Jersey.

The Supreme Court Examines the Arrest

Gibson appealed again, and the Supreme Court reached a different conclusion. Specifically, the Court referred to the statute for “defiant trespass,” which provides that a person is guilty of that offense “if, knowing that he is not licensed or privileged to do so, he **enters** or remains in any place as to which notice against trespass is given...in a manner...reasonably likely to come to the attention of intruders...”

(Emphasis added).

Conviction Reversed: “No Loitering” Does Not Have the Same Meaning as “No Trespassing”

The Court explained that “No Loitering” does not convey the same meaning as “No Trespassing.”

“Loitering” means remaining or lingering at a particular location for some indefinite period of time for no apparent purpose. “Trespassing” – particularly as used in the defiant trespass statute – prohibits the mere entering in a place when one is not licensed or privileged to do so. With a focus on the “entering” requirement for trespass, the Court concluded that the “No Loitering” sign in the porch window of the private property communicated that a person should not be idly remaining or loafing on its property.

The Court therefore reversed Gibson’s conviction, stating that the “No Loitering” notice did not subject Gibson to a defiant trespass arrest and prosecution. The Court did warn Gibson against loitering, pointing out its distinctly different meaning from trespassing. Accordingly, because momentarily leaning against a building, or in this case a porch, would not be considered trespassing to an objectively reasonable citizen, Gibson did not commit a “defiant trespass,” and therefore the arrest – and subsequent search – was improper.

Criminal Matters are Fact-Specific and Require Close Attention to Detail

Without any probable cause, according to the Court, Gibson’s lawyer was able to “knock out” the arrest which in turn “knocked out” or suppressed the drug evidence. This case is another example of how the specific facts of a defendant’s alleged criminal actions must be analyzed against the wording of criminal statutes to ensure that a defendant’s constitutional rights were in fact protected. For Gibson, who did not commit a defiant trespass, the arrest and search were not reasonable and he was acquitted.

If you or a loved one is arrested and evidence against you is seized (with or without a warrant), it is important for you to obtain legal representation. A skilled [criminal defense attorney](#) can identify the

search and seizure issues and either file the appropriate motion to address those issues, or, in the alternative, highlight those issues to the prosecuting agency. A worthy prosecutor knows the pitfalls of his or her case and, if presented to him or her in the appropriate manner, may be willing to plea bargain or dismiss the charges against you.