

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI,	)	No. ED96753
	)	
Respondent,	)	Appeal from the Circuit Court
	)	of City of St. Louis
vs.	)	
	)	
KENNETH J. RICHIE,	)	Honorable Paula Perkins Bryant
	)	
Appellant.	)	FILED: June 5, 2012

Kenneth J. Richie ("Defendant") appeals from the trial court's judgment, following a conviction by a jury, of the class B misdemeanor of first-degree trespass and the class A misdemeanor of resisting a lawful detention.

REVERSED IN PART; AFFIRMED IN PART

Division One Holds: Where the act constituting the crime is specified in the charge and the verdict director, the State is held to proof of that act, and a defendant may be convicted only on that act. State v. Jackson, 896 S.W.2d 77, 82-83 (Mo. App. W.D. 1995). The State charged that Defendant "knowingly entered unlawfully upon real property located at 707 Pine . . ." Thus, the State must prove that act. The evidence at trial showed that Defendant entered the parking garage "open to the public." The trial court erred in overruling Defendant's motion for judgment of acquittal at the close of all evidence. Defendant's first point is granted.

Defendant also argues the trial court erred in overruling his motion for judgment of acquittal on the charge of resisting a lawful detention, and in overruling Defendant's objection to the instruction on that count. We find the evidence that Defendant "ran into a parking garage and up the stairs and after a reasonable amount of time was not seen leaving with or in a vehicle" was sufficient to create a reasonable suspicion such that the police would investigate and detain Defendant, and those facts were properly included in the jury instruction. The facts allowed the court to determine whether there was a lawful basis for the detention. Defendant's second and third points are denied.

Opinion by: Roy L. Richter, P.J.  
Clifford H. Ahrens, J., and Gary M. Gaertner, Jr., J., concurs

Attorney for Appellant: Margaret M. Johnston

Attorneys for Respondent: Christopher J. Finney

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