

No. SC94927

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IN THE  
**Supreme Court of Missouri**

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**STATE OF MISSOURI,**

*Respondent,*

v.

**DERRICK L. CARRAWELL,**

*Appellant.*

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Appeal from the St. Louis City Circuit Court  
Twenty-second Judicial Circuit  
The Honorable Steven Russell Ohmer, Judge

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**RESPONDENT'S SUBSTITUTE BRIEF**

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES..... 2

STATEMENT OF FACTS..... 5

ARGUMENT..... 11

    I. .... 11

        The trial court did not plainly err, clearly err, or abuse its discretion in denying Mr. Carrawell’s motion to suppress and in admitting evidence seized incident to Mr. Carrawell’s arrest. .... 11

CONCLUSION..... 47

**TABLE OF AUTHORITIES**

**Cases**

*Arizona v. Gant*, 556 U.S. 332 (2009) ..... 42

*Buffkins v. City of Omaha*, 922 F.2d 465 (8th Cir. 1990) ..... 27

*California v. Acevedo*, 500 U.S. 565 (1982) ..... 41

*California v. Hodari D.*, 499 U.S. 621 (1991) ..... 13

*Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942) ..... 26

*Chimel v. California*, 395 U.S. 752 (1969)..... 40

*City of St. Louis v. Tinker*, 542 S.W.2d 512 (Mo. 1976) ..... 35

*City of St. Louis v. Young*, 154 S.W. 87 (Mo. 1913)..... 34

*Curd v. City Court of Judsonia, Ark.*, 141 F.3d 839 (8th Cir. 1998)..... 38

*Florida v. Wells*, 495 U.S. 1 (1990) ..... 45

*Gilles v. Davis*, 427 F.3d 197 (3rd Cir. 2005) ..... 26

*Gower v. Vercler*, 377 F.3d 661 (7th Cir. 2004) ..... 26

*Gustafson v. Florida*, 414 U.S. 260 (1973)..... 37

*Heien v. North Carolina*, 135 S.Ct. 530 (2014)..... 29

*Illinois v. Lafayette*, 462 U.S. 640 (1983)..... 44, 45

*Johnson v. Campbell*, 332 F.3d 199 (3rd Cir. 2003)..... 27

*New York v. Belton*, 453 U.S. 454 (1981) ..... 41

*Queen of Diamonds, Inc. v. Quinn*, 569 S.W.2d 317 (Mo. 1978)..... 34

*State v. Baxter*, 204 S.W.3d 650 (Mo. 2006) ..... 17, 18

*State v. Carpenter*, 736 S.W.2d 406 (Mo. 1987)..... 27, 28

*State v. Dye*, 272 S.W.3d 879, 881 (Mo.App. S.D. 2008) ..... 36

*State v. Ellis*, 355 S.W.3d 522 (Mo.App. E.D. 2011) ..... 38, 39, 42

*State v. Friend*, 711 S.W.2d 508 (Mo. 1986) ..... 43

*State v. Furne*, 642 S.W.2d 614 (Mo. 1982) ..... 36

*State v. Galazin*, 58 S.W.3d 500 (Mo. 2001) ..... 16, 17

*State v. Gardner*, 741 S.W.2d 1 (Mo. 1987) ..... 29

*State v. Glass*, 136 S.W.3d 496 (Mo. 2004) ..... 23, 32

*State v. Goff*, 129 S.W.3d 857 (Mo. 2004) ..... 22

*State v. Greene*, 785 S.W.2d 574 (Mo.App. W.D. 1990)..... 38

*State v. Hosier*, 454 S.W.3d 883 (Mo. 2015)..... 18, 22

*State v. Johnson*, 354 S.W.3d 627 (Mo. 2011) ..... 42

*State v. Knese*, 985 S.W.2d 759 (Mo. 1999)..... 17

*State v. McCabe*, 708 S.W.2d 288 (Mo.App. E.D. 1986)..... 38

*State v. Ramires*, 152 S.W.3d 385 (Mo.App. W.D. 2004) ..... 45

*State v. Rattler*, 639 S.W.2d 277 (Mo.App. E.D. 1982)..... 38

*State v. Swoboda*, 658 S.W.2d 24 (Mo. 1983) ..... 27, 28

*State v. Vitale*, 795 S.W.2d 484 (Mo.App. E.D. 1990) ..... 38

*State v. Woods*, 637 S.W.2d 113 (Mo.App.1982)..... 38

*United States v. Chadwick*, 433 U.S. 1 (1977)..... 41

*United States v. Edwards*, 415 U.S. 800 (1974) ..... 38, 39, 44

*United States v. Oakley*, 153 F.3d 696 (8th Cir. 1998) ..... 38

*United States v. Robinson*, 414 U.S. 218 (1973)..... 22, 23, 37

**Statutes**

§ 490.240, RSMo 2000 ..... 34

§ 571.150, RSMo Cum. Supp. 2013 ..... 31

§ 574.010, RSMo 2000 ..... 23, 25, 26

## STATEMENT OF FACTS

Mr. Carrawell appeals his conviction of the class C felony of possession of a controlled substance (heroin), § 195.202, RSMo Cum. Supp. 2013 (L.F. 23). He asserts that the trial court erred in overruling his motion to suppress and abused its discretion in admitting the evidence seized during a search incident to his arrest (App.Br. 12).

\* \* \*

On April 9, 2012, Sergeant Curtis Burgdorf and some detectives were on the 2000 block of Madison in the City of St. Louis (Tr. 191-192). They were investigating neighborhood complaints “due to an increase in violent crimes in that area in addition to gang and narcotic activity” (Tr. 192). They were talking to neighborhood residents who wished to speak with them “to get a feel for what [was] going on in the neighborhood” (Tr. 193). Because it was “hard at this time and age to get anyone really to cooperate,” the police felt it was “good for [them] to go out and . . . build a rapport with the neighborhood” (Tr. 193). The police preferred “to go out and actually talk to the neighborhood citizens and let them tell [the police] what’s going on” (Tr. 193).

As they were talking to neighborhood residents, Sergeant Burgdorf’s attention was drawn to a vehicle on the other side of the street (Tr. 194). The vehicle pulled up to a parking spot, but the driver, Mr. Carrawell, did not immediately park next to the curb (Tr. 194, 197). Instead, Mr. Carrawell

“stayed in the traffic lane and began staring over at our direction” (Tr. 194). Mr. Carrawell remained stopped in the traffic lane for about thirty seconds (Tr. 194). Sergeant Burgdorf thought it was odd because Mr. Carrawell “could have easily parked and pulled into that spot” (Tr. 194). Sergeant Burgdorf continued to talk to neighborhood residents, but because Mr. Carrawell kept staring at them, he kept an eye on him as he exited his vehicle (Tr. 194).

After Mr. Carrawell got out of his vehicle, he continued to stare at Sergeant Burgdorf, and then he “grabbed his crotch and spit in [Sergeant Burgdorf’s] direction, and stated, ‘What the f\*\*\* are you looking at b\*\*ch’ ” (Tr. 194-195). Sergeant Burgdorf was “extremely taken aback” because they had never met, and “all of a sudden” Mr. Carrawell was “yelling at [the police] for no reason” (Tr. 195).

There were three other officers with Sergeant Burgdorf, and they were standing with neighborhood residents, including a seven-year-old daughter of one of the residents (Tr. 195). The street was “fairly busy” (Tr. 196). There were two or three women a short distance away, and four or five people on the side of the street where Mr. Carrawell had parked his car (Tr. 195-196).

Mr. Carrawell then walked to the passenger side of his vehicle “with his agitation” (Tr. 196). Sergeant Burgdorf “kept a closer eye on what he was doing” (Tr. 196). Mr. Carrawell opened the passenger-side door, leaning into his vehicle, and retrieved a white plastic bag (Tr. 196). Sergeant Burgdorf

“was concerned that he was removing something from his vehicle” (Tr. 196).

Mr. Carrawell “continued his vulgar approach at” the police, but Sergeant Burgdorf “couldn’t really tell exactly what he was saying because it was muttered most of the time” (Tr. 196-197). Mr. Carrawell “continued his profanities towards” the officers (Tr. 197). Mr. Carrawell continually stared at the officers and said, “mother f\*\*\*ing police” (Tr. 197). Mr. Carrawell also “continued to scream profanities” at the police, and he was causing “a pretty big disturbance” (Tr. 221).

One of the neighborhood residents “grabbed his daughter” and “covered her ear with his hand then put her head and covered up her other ear with his leg” (Tr. 198). At that point, Sergeant Burgdorf thought “it was clear . . . that [the resident] was uncomfortable with his daughter hearing the language that he was speaking” (Tr. 198). The other people on the street were “mostly taken aback that he was speaking to the police like that,” and they appeared to be “confused to why [the police] weren’t taking action to do anything” (Tr. 198).

Sergeant Burgdorf then crossed the street, and Mr. Carrawell said, “What the f\*\*\* are you going to do” (Tr. 198-199). Mr. Carrawell backed away toward the gate of an apartment complex (Tr. 198). Mr. Carrawell’s daughter opened a gate for him, and once he was inside, Mr. Carrawell told her to close the gate (Tr. 201). Sergeant Burgdorf stepped through the gate and advised

Mr. Carrawell that he was under arrest for peace disturbance (Tr. 199, 201). Sergeant Burgdorf told Mr. Carrawell to stop, but Mr. Carrawell did not cooperate (Tr. 199, 201-202). Instead, he attempted to enter an apartment, and Sergeant Burgdorf grabbed his arm and pulled him back (Tr. 201-202). Mr. Carrawell was still holding the bag in his hand (Tr. 203).

Mr. Carrawell tried to pull away from Sergeant Burgdorf, but Sergeant Burgdorf pushed him up against the gate (Tr. 203). Other officers attempted to handcuff Mr. Carrawell as Mr. Carrawell held onto the fence (Tr. 205). Sergeant Burgdorf continued to struggle with Mr. Carrawell's right arm, and he repeatedly told Mr. Carrawell to drop the plastic bag, but Mr. Carrawell would not comply (Tr. 205). Sergeant Burgdorf "ended up ripping it from his hands," and then he was able to put the handcuffs on Mr. Carrawell (Tr. 205-206). Sergeant Burgdorf let the bag fall to the ground, and he heard a "breaking sound" (Tr. 206).

After Mr. Carrawell was in handcuffs, Sergeant Burgdorf retrieved the bag and conveyed Mr. Carrawell to the police vehicle (Tr. 206). Mr. Carrawell "continued screaming vulgarities," and he called the police "a bunch of racists" (Tr. 207). At one point, Mr. Carrawell called Sergeant Burgdorf "a n\*\*\*er-headed devil" (Tr. 207). Mr. Carrawell "just continued on trying to rile up the neighborhood that was out there still" (Tr. 207). Mr. Carrawell was "screaming at the top of his lungs" (Tr. 207).

As Sergeant Burgdorf tried to put Mr. Carrawell into the police vehicle, Mr. Carrawell “lunged his body forward closing the door with his body” (Tr. 207). Mr. Carrawell “began screaming again and advised the neighborhood, he said, ‘Look at this mother f\*\*\*er. He’s beating me and calling me n\*\*\*er” (Tr. 207). Sergeant Burgdorf eventually succeeded in placing Mr. Carrawell into the vehicle (Tr. 208).

After Mr. Carrawell had been placed in the vehicle, Sergeant Burgdorf looked inside the plastic bag and found a broken plate and a small plastic bag containing a tan powder substance (Tr. 208-210). Sergeant Burgdorf believed the substance was heroin (Tr. 210).

At the police station, Sergeant Burgdorf informed Mr. Carrawell that he would also be charged with possessing heroin (Tr. 214-215). Mr. Carrawell interrupted Sergeant Burgdorf during the *Miranda* warnings, saying that “he was a veteran and that he fought for those rights and that [Sergeant Burgdorf] didn’t have to read him s\*\*\*” (Tr. 215). Mr. Carrawell also said, “You’re going to lie to me anyway so it doesn’t matter, do what you have got to do” (Tr. 215). After Sergeant Burgdorf advised Mr. Carrawell of his rights, Mr. Carrawell said, “Good job. You got yourself a bigtime heroin dealer” (Tr. 215). Mr. Carrawell was not cooperative during booking (Tr. 215-216).

Subsequent testing of the tan powder confirmed that it contained heroin (Tr. 240).

The State charged Mr. Carrawell with possessing heroin, a controlled substance (L.F. 10). The State additionally charged that Mr. Carrawell was a prior offender, and a prior and persistent drug offender (L.F. 10-11).

The case went to trial on July 1, 2013 (Tr. 4). Before submission of the case to the jury, the trial court found beyond a reasonable doubt that Mr. Carrawell was a prior offender and a prior and persistent drug offender (Tr. 245-246). The jury found Mr. Carrawell guilty of possession of a controlled substance (Tr. 268; L.F. 17).

The court sentenced Mr. Carrawell to twelve years' imprisonment (Tr. 288; L.F. 23-25).

## ARGUMENT

### I.

**The trial court did not plainly err, clearly err, or abuse its discretion in denying Mr. Carrawell's motion to suppress and in admitting evidence seized incident to Mr. Carrawell's arrest.**

Mr. Carrawell asserts that the admission of evidence found in a bag he was holding at the time of his arrest violated his constitutional rights to be free from unreasonable searches and seizures (App.Br. 13). He argues that the search of his bag was unreasonable for three reasons: (1) that he did not voluntarily abandon his bag; (2) that the State failed to prove that his arrest was lawful, in that the State failed to prove that he violated the provisions of the St. Louis City peace-disturbance ordinance; and (3) that, even if the arrest was lawful, the officers could not lawfully search his bag without a search warrant (App.Br. 13).

Only the first and third of these arguments were made to the trial court; thus, the second argument was not preserved for review. In any event, because the police searched Mr. Carrawell's bag incident to a lawful arrest, the trial court did not err in admitting the evidence.

#### **A. Preservation and the standard of review**

Mr. Carrawell filed a pre-trial motion to suppress, and the trial court held a suppression hearing (*see* L.F. 12; Tr. 157). The motion included a

boilerplate allegation that “[t]he search and seizure were not incident to a lawful arrest” (L.F. 13). After the presentation of evidence—where the State presented evidence that Mr. Carrawell was arrested for peace disturbance—defense counsel did not argue that the arrest was unlawful; rather, she argued that the police could not search Mr. Carrawell’s bag incident to arrest without first obtaining a search warrant (Tr. 176-180). Defense counsel argued that because Mr. Carrawell had been secured in a police vehicle, there was no justification for searching the bag (Tr. 177).

The prosecutor argued that the case involved “a classic search incident to arrest, search incident to a lawful arrest” (Tr. 179). The prosecutor pointed out that Mr. Carrawell had been holding his bag at the time of the arrest, and he pointed out that “officers can’t just leave an arrestee’s personal property that was dropped at the scene of an arrest” (Tr. 179). The prosecutor then pointed out that if this was not a search incident to arrest, the bag “is obviously going to be looked at during an inventory search at the station when it’s put into the defendant’s personal property” (Tr. 179-180).

Defense counsel responded that the bag was part of Mr. Carrawell’s “personal effects and he’s entitled to his privacy” (Tr. 180). Defense counsel asserted that Mr. Carrawell was “at the apartment of his daughter and her mother,” and counsel argued that he “wasn’t leaving this bag in the middle of nowhere” (Tr. 180). Counsel reiterated that “there was no threat to this bag,”

and that the police could have obtained a search warrant (Tr. 180).

The trial court stated that this case was more similar to cases where a defendant abandons property (Tr. 181). The court stated, “He’s just – he’s throwing it away. It is like *Hodari*<sup>1</sup> where the guy starts running and, you know, he’s throwing stuff” (Tr. 181). The court also observed that the police would not leave property because “then they are subject to a claim of, you know, what if he says there was ten thousand dollars in there and they don’t do anything and they just walk away” (Tr. 181).

Defense counsel responded by arguing that Mr. Carrawell had no intent to abandon the bag (Tr. 182). She pointed out that he “didn’t voluntarily abandon this property,” that “[h]e wasn’t throwing it,” and that “[i]t fell out of his hand as the officer was placing him under arrest” (Tr. 182).

The court observed that “if he intended to keep it then, then it would have been inventoried at booking and found” (Tr. 182-183). Defense counsel asserted that Mr. Carrawell’s “family could have recovered the personal items” (Tr. 183). The court observed, however, that “there [was] no evidence of that,” and that that was merely “speculation” (Tr. 183). The court denied the motion to suppress and granted a continuing objection (Tr. 183-184).

At no point at trial did defense counsel argue that the arrest itself was

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<sup>1</sup> See *California v. Hodari D.*, 499 U.S. 621 (1991).

unlawful, or that the State had failed to prove what the provisions of the St. Louis City peace disturbance prohibited (*see* Tr. 176-184). To the contrary, in opening statement, defense counsel argued, “You will hear evidence that [the police] placed [Mr. Carrawell] under arrest for a general peace disturbance, a municipal charge” (Tr. 189). Then, on cross-examination of the arresting officer, defense counsel elicited that the officer had arrested Mr. Carrawell for peace disturbance, and she elicited that it was “a city ordinance violation” (Tr. 222). Similarly, in closing argument, defense counsel argued that Mr. Carrawell was arrested for peace disturbance; she argued:

Words can light fires in the minds of men. On April 9th, 2012, that’s exactly what happened. Derrick Carrawell’s words lit a fire in the mind of Detective Burgdorf. Now, when Mr. Carrawell pulled up he noticed these officers had cornered several young men and they were talking to them on the street. Mr. Carrawell got out of his car, began to yell at these officers, cussed at them, caused a scene.

A crowd gathered watching as a 53-year-old men – man cussed out a bunch of cops. Children were present. Parents were covering their ears. Mr. Carrawell continued to scream. Now the officers were annoyed. Who wouldn’t be? This type of behavior is uncomfortable. So Officer Burgdorf decided to arrest Mr.

Carrawell for peace disturbance. He had been interfering with their investigation, interfering with information they were trying to collect.

(Tr. 259). Defense counsel also essentially acknowledged that Mr. Carrawell had disturbed the peace; she summarized the evidence as follows:

First Detective Burgdorf came and told you what happened that day. He testified that Mr. Carrawell was behaving poorly to put it mildly cussing, yelling profanities, making crude hand gestures, causing a huge scene. He was riling up the crowd. Disrespecting these detectives.

(Tr. 261).<sup>2</sup>

Defense counsel then argued that the heroin had been planted on Mr. Carrawell in retaliation for Mr. Carrawell's peace disturbance (Tr. 263). She argued, "Ladies and gentlemen, a peace disturbance isn't a significant charge. It's a municipal ordinance violation as Detective Burgdorf told you" (Tr. 263). Counsel argued that, accordingly, the officers "needed more," and

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<sup>2</sup> Defense counsel's argument was designed to show that Mr. Carrawell had not been in possession of the heroin because, according to defense counsel's theory, a person who was possessing heroin would not provoke the police to arrest him for disturbing the peace (Tr. 261-262).

they “needed something that would stick” (Tr. 263). She concluded, “They retaliated. They made something stick” (Tr. 263).

The motion for new trial likewise failed to assert that the arrest was not lawful, or that the State had failed to prove that the provisions of the St. Louis City peace-disturbance ordinance were violated (L.F. 26-28). Instead, the motion seemed to presuppose the legality of the arrest; it alleged: “Officers lacked probable cause for the warrantless search of Defendant’s bag. Said bag was not within Defendant’s wingspan and thus not subject to a search incident to arrest” (L.F. 26). The motion alleged generally that evidence was obtained as “the result of an unlawful search and seizure,” but it did not specify that the unlawful seizure was the arrest (as opposed to the seizure of the bag), and it did not assert that the arrest was unlawful because the State failed to prove what the provisions of the St. Louis City ordinance prohibited (L.F. 27). Defense counsel made no arguments on the motion for new trial (Tr. 274).

In light of the objections and arguments made at trial, Mr. Carrawell’s second argument, which is based on the State’s failing to present proof of what the city ordinance prohibited, was not preserved. “One purpose of the requirement that unlawful search and seizure claims be made before trial is to avoid delays during trial in determining this issue.” *State v. Galazin*, 58 S.W.3d 500, 505 (Mo. 2001). “Another reason for the requirement is so the

basis of the claim of unlawful search or seizure will be known, giving the state a fair chance to respond and the trial court a fair opportunity to rule on the claim.” *Id.* “The rule helps to eliminate the possibility of sandbagging with respect to an issue not relating to guilt or punishment.” *Id.*

Here, while a pre-trial motion asserted generally that the arrest was “unlawful,” the motion did not state any basis for that allegation, and defense counsel never enunciated any basis thereafter. Accordingly, Mr. Carrawell’s claim on appeal that the arrest was not lawful because “the state failed to show what the St. Louis City ordinance pertaining to peace disturbance says and otherwise failed to show that the officers had probable cause to arrest [him] for violating its provisions” (App.Br. 13) was not preserved. The State did not have “a fair chance to respond” to that particular claim, and the trial court never had “a fair opportunity to rule on the claim.” “To preserve an objection to evidence for review, the objection must be specific, and the point raised on appeal must be based upon the same theory.” *State v. Knese*, 985 S.W.2d 759, 766 (Mo. 1999).

“Where the claim was not properly raised, however, this Court has discretion to review for plain error ‘when the court finds that manifest injustice or miscarriage of justice has resulted[.]’ ” *State v. Baxter*, 204 S.W.3d 650, 652 (Mo. 2006). “[U]nder Missouri law, plain error can serve as the basis for granting a new trial on direct appeal only if the error was outcome

determinative[.]’ ” *Id.* “Manifest injustice is determined by the facts and circumstances of the case, and the defendant bears the burden of establishing manifest injustice.” *Id.*

On the other hand, when a claim of error is preserved, “[a] trial court has wide discretion in deciding whether to admit evidence, and its decision will only be overturned for an abuse of discretion.” *State v. Hosier*, 454 S.W.3d 883, 895 (Mo. 2015). “When reviewing the trial court’s decision to overrule a motion to suppress, this Court considers the evidence presented both at the suppression hearing and at trial to determine whether sufficient evidence exists in the record to support the trial court’s decision.” *Id.* at 891.

“This Court defers to the trial court’s credibility determinations and factual findings, inquiring only whether the decision is supported by substantial evidence, and reverses only if the trial court’s decision is clearly erroneous.” *Id.* “Determinations of whether there was reasonable suspicion or probable cause are questions of law that are reviewed de novo.” *Id.*

## **B. The trial court properly admitted the evidence found in Mr. Carrawell’s bag after his arrest**

### **1. Factual background**

At the suppression hearing, Sergeant Burgdorf testified that he had been an officer for ten years (Tr. 158). On April 9, 2012, he was on the 2000 block of Madison investigating complaints from department members and

citizens about “increased gang activity in the area” (Tr. 159).

The police targeted an apartment building that “seemed to be the focus of the majority of the complaints” (Tr. 159). They focused their efforts on “individuals that were standing out in front of that building” (Tr. 159). They stopped and talked to people “if they [were] willing to talk to” the police (Tr. 159). Three people told the police that they were “willing to speak with [them] relative to area problems” (Tr. 160).

As he was talking to people, Sergeant Burgdorf saw a vehicle pull up to a parking space (Tr. 160). The driver was “staring” in the direction of the police (Tr. 160). The driver stared “for approximately 30 seconds,” and Sergeant Burgdorf “took note of that because it was an extremely long time that he took to park” (Tr. 160). Instead of parking, the driver “just continued to stare at” the police (Tr. 160).

The driver, Mr. Carrawell, finally got out of his vehicle (Tr. 160-161). As Mr. Carrawell stepped out, he took one step towards the police, reached down with his right hand “to his genital area, grabbed his crotch, spit in [their] direction and said, ‘What the f\*\*\* are you looking at, b\*\*ch?’ ” (Tr. 161). Sergeant Burgdorf was “on the northern sidewalk basically across the street from where he was parked” (Tr. 161).

At the time Mr. Carrawell confronted Sergeant Burgdorf, there were “probably about ten” people in the area, including three adults and “a minor”

who were talking to the police (Tr. 162). There were two or three women “a little bit west of [the police] on the same side of the street and several other individuals that were leaning against the wall next to the apartment building on the outside” (Tr. 162). The people “seemed to be concerned with what [Mr. Carrawell] was saying” (Tr. 162).

Mr. Carrawell went to the front passenger-side door of his vehicle, leaned inside the vehicle, and removed a white plastic bag (Tr. 162). As he did so, “[h]e was continually speaking vulgarities” (Tr. 162). A lot of his speech was “kind of muttered,” and Sergeant Burgdorf could not understand what he was saying (Tr. 162). Sergeant Burgdorf “wanted to kind of keep an eye on what he was doing” (Tr. 163). Because Mr. Carrawell “was already fairly agitated with our first encounter for no apparent reason,” Sergeant Burgdorf “wanted to continue watching him reaching into his car to see what he was going to remove” (Tr. 163).

As Mr. Carrawell continued his “vulgar assaults,” one of the people present, who was accompanied by his young daughter, “placed his hand over her ear and then pulled her in and covered her other ear with his leg (Tr. 163). Sergeant Burgdorf believed that the man was “obviously . . . disturbed by what was going on” (Tr. 163). Sergeant Burgdorf decided to approach Mr. Carrawell and arrest him for peace disturbance (Tr. 163).

When Sergeant Burgdorf reached the sidewalk where Mr. Carrawell

was, he advised Mr. Carrawell that he was placing him under arrest (Tr. 163). Mr. Carrawell backed up toward the entry gate of the apartment, still holding the plastic bag in his hand (Tr. 163-164). Sergeant Burgdorf could not tell what was inside the bag (Tr. 164). Mr. Carrawell attempted to enter an apartment, and Sergeant Burgdorf grabbed his arm (Tr. 165). Mr. Carrawell pulled away, but Sergeant Burgdorf pushed him against a fence (Tr. 165). Two other officers assisted in handcuffing Mr. Carrawell (Tr. 166). When Mr. Carrawell grabbed the fence with his left arm, the other officers “were able to forcefully remove his hand and place a handcuff on him” (Tr. 166).

Sergeant Burgdorf asked Mr. Carrawell to drop the plastic bag numerous times, but Mr. Carrawell did not comply (Tr. 166). Sergeant Burgdorf finally “forcefully removed” the bag, and it fell to the ground (Tr. 166). There was “breaking sound” (Tr. 166). The officers then managed to put both handcuffs on Mr. Carrawell, and they put him in a police car (Tr. 166). Sergeant Burgdorf retrieved the plastic bag (Tr. 167). The white plastic bag contained a bag of what appeared to be heroin (Tr. 168).

From the time that Sergeant Burgdorf first approached Mr. Carrawell until Mr. Carrawell was placed in the car, Mr. Carrawell was “[c]ontinually screaming vulgarities” (Tr. 167). Mr. Carrawell “kept screaming at the people in the neighborhood stating that [the police] were beating him” and “calling him n\*\*\*er” (Tr. 167). To Sergeant Burgdorf, it appeared that Mr. Carrawell

was attempting “to rile up the neighborhood” (Tr. 167).

As set forth in the Statement of Facts, above, Sergeant Burgdorf offered similar testimony at trial (*see* Tr. 191-210). Again, “[w]here, as here, a motion to suppress was overruled and the evidence was introduced at trial, an appellate court will consider the evidence presented both at the suppression hearing and at trial in determining whether the motion should have been granted.” *State v. Goff*, 129 S.W.3d 857, 861-862 (Mo. 2004).

## **2. Mr. Carrawell’s bag was properly searched incident to arrest**

Under the Fourth Amendment to the United States Constitution and Article I, section 15 of the Missouri Constitution, the people have a right to be free from unreasonable searches and seizures. *State v. Hosier*, 454 S.W.3d at 892 n. 6. The Missouri provision is coextensive with the Fourth Amendment, and the same analysis applies under both provisions. *Id.*

The search of an individual incident to a lawful arrest has been held to be a reasonable search under the Fourth Amendment. In *United States v. Robinson*, 414 U.S. 218, 235 (1973)—in upholding the search of a cigarette pack found on the arrested person—the United States Supreme Court stated, “A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification.” The Court continued, “It is the fact of the lawful arrest which established the authority

to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a ‘reasonable’ search under that Amendment.” *Id.*

**(a) Sergeant Burgdorf had probable cause to arrest**

Here, Mr. Carrawell was lawfully arrested. As outlined above, Sergeant Burgdorf testified that he arrested Mr. Carrawell for disturbing the peace (Tr. 163). Under state law, a person commits the crime of “peace disturbance” if he “unreasonably and knowingly disturbs or alarms another person or persons by: (a) Loud noise; or (b) Offensive language addressed in a face-to-face manner to a specific individual and uttered under circumstances which are likely to produce an immediate violent response from a reasonable recipient[.]” § 574.010, RSMo 2000.

Here, there was ample evidence of “peace disturbance” committed in the presence of Sergeant Burgdorf. To support a finding of probable cause to arrest, the facts and circumstances must merely be “sufficient to cause a person of reasonable caution to believe that [the suspect] ha[s] committed an offense.” *See State v. Glass*, 136 S.W.3d 496, 510 (Mo. 2004).

Here, the evidence showed that Mr. Carrawell took a step toward the police, reached down with his right hand “to his genital area, grabbed his crotch, spit in [their] direction and said, ‘What the f\*\*\* are you looking at,

b\*\*ch?” (Tr. 161, 194-195). At that time, there were “probably about ten” people in the area, including three adults and “a minor” who were standing near the officers (Tr. 162). The people in the area “seemed to be concerned with what [Mr. Carrawell] was saying” (Tr. 162). Sergeant Burgdorf was “extremely taken aback” because “all of a sudden” Mr. Carrawell was “yelling at [the police] for no reason” (Tr. 195).

Mr. Carrawell then went to the front passenger-side door of his vehicle, leaned inside the vehicle, and removed a white plastic bag (Tr. 162). As he did so, “[h]e was continually speaking vulgarities” (Tr. 162, 197). A lot of his speech was “kind of muttered,” and Sergeant Burgdorf could not understand what he was saying, but Mr. Carrawell continually stared at the officers and said, “mother f\*\*\*ing police” (Tr. 162, 196-197). Mr. Carrawell also “continued to scream profanities” at the police, and he was causing “a pretty big disturbance” (Tr. 221).

As Mr. Carrawell continued his “vulgar assaults,” one of the people present, who was accompanied by his young daughter, was “uncomfortable” and he “placed his hand over her ear and then pulled her in and covered her other ear with his leg (Tr. 163, 198). Sergeant Burgdorf believed that the man was “obviously . . . disturbed by what was going on” (Tr. 163). Other bystanders were “taken aback” and “confused [as] to why [the police] weren’t taking action to do anything” (Tr. 198).

From the time that Sergeant Burgdorf first approached him, Mr. Carrawell was “[c]ontinually screaming vulgarities” (Tr. 167). Mr. Carrawell “kept screaming at the people in the neighborhood stating that [the police] were beating him” and “calling him n\*\*\*er” (Tr. 167). To Sergeant Burgdorf, it appeared that Mr. Carrawell was attempting “to rile up the neighborhood” (Tr. 167). After his arrest, Mr. Carrawell “just continued on trying to rile up the neighborhood” (Tr. 207).

In light of these facts, Sergeant Burgdorf reasonably believed that Mr. Carrawell had committed the crime of peace disturbance, *i.e.*, he reasonably could have concluded that Mr. Carrawell had “unreasonably and knowingly disturb[ed] or alarm[ed] another person or persons by . . . Loud noise[.]” *See* § 574.010.1(1)(a), RSMo 2000. A person of “reasonable caution” could have believed that Mr. Carrawell’s continual screaming (regardless of the words he employed) constituted “loud noise,” and that it disturbed or alarmed the people who were in the immediate vicinity. There was, thus, probable cause to arrest Mr. Carrawell for disturbing the peace.

A person of reasonable caution also could have concluded that Mr. Carrawell had unreasonably and knowingly disturbed or alarmed another person or persons by “[o]ffensive language addressed in a face-to-face manner to a specific individual and uttered under circumstances which are likely to produce an immediate violent response from a reasonable recipient[.]” *See*

§ 574.010, RSMo 2000. The evidence showed that Mr. Carrawell was face-to-face with Sergeant Burgdorf, that he uttered (and also screamed) offensive language (including, “What the f\*\*\* are you looking at, b\*\*ch?”), and that he did so in conjunction with confrontational conduct, which included stepping toward the officers, spitting toward the officers, and grabbing his crotch.

A person of reasonable caution could have concluded that Mr. Carrawell’s offensive language, uttered under those circumstances, was “likely to produce an immediate violent response from a reasonable recipient.” *See generally Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942) (“Argument is unnecessary to demonstrate that the appellations ‘damn racketeer’ and ‘damn Fascist’ are epithets likely to provoke the average person to retaliation, and thereby cause a breach of the peace.”); *see also Gilles v. Davis*, 427 F.3d 197, 205 (3rd Cir. 2005) (“epithets directed at the woman who identified herself as a Christian and a lesbian (‘Christian lesbo,’ ‘lesbian for Jesus,’ ‘do you lay down with dogs,’ ‘are you a bestiality lover’) were especially abusive and constituted fighting words”); *Gower v. Vercler*, 377 F.3d 661, 670 (7th Cir. 2004) (“Gower’s repeated remarks to the Taylors of “fuck you,” his calling of his father-in-law a “fat son-of-a-bitch,” and his attempt to humiliate his father-in-law by essentially calling him a coward (i.e., clucking like a chicken), together plainly represent fighting words, because they are “personally abusive epithets which, when addressed to the

ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction.”). Accordingly, there was probable cause to arrest Mr. Carrawell for disturbing the peace.<sup>3</sup> Cf. *Johnson v. Campbell*, 332 F.3d 199, 212-213 (3rd Cir. 2003) (muttering “son of a b\*\*ch” without any other threatening or tumultuous behavior did not constitute “fighting words”); *Buffkins v. City of Omaha*, 922 F.2d 465, 467 (8th Cir. 1990) (a woman telling a police officer, “I will have a nice day, asshole” did not constitute “fighting words” where the woman did not become violent or threatening).

Contrary to Mr. Carrawell’s argument on appeal, this conclusion is not inconsistent with the Court’s decisions in *State v. Swoboda*, 658 S.W.2d 24 (Mo. 1983), and *State v. Carpenter*, 736 S.W.2d 406 (Mo. 1987) (App.Br. 25). In both of those cases, the Court held unconstitutional broader language that is no longer present in the current statute. In *Carpenter*, the statute predicated criminal liability upon “unreasonably and knowingly disturb[ing] or alarm[ing] another person or persons by . . . [t]hreatening to commit a

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<sup>3</sup> Even defense counsel implicitly acknowledged in closing argument that Mr. Carrawell employed “fighting words”; she argued, ““Words are powerful. They have the ability to change the way we react in any situation. They have the ability to insight [sic] retaliation. They have the ability to change someone’s life. And on April 9, 2012, words changed Mr. Carrawell’s life” (Tr. 263).

crime against any persons[].” 736 S.W.3d at 407. In *Swoboda*, the statute predicated criminal liability upon “unreasonably and knowingly” causing “alarm” by means of “loud and abusive language.” 658 S.W.2d at 26. In both cases, the Court concluded that the statutes were too broad to survive a challenge to the constitutionality of the statute, in that they prohibited more than “fighting words.” See *Carpenter*, 736 S.W.2d at 408; *Swoboda*, 658 S.W.2d at 26-27. In neither case did the Court suggest that the type of language employed by Mr. Carrawell, under the circumstances present in this case, would not constitute “fighting words.”

To the contrary, in *Swoboda*, the Court observed that “the words ‘motherf\*\*\*er,’ ‘cocksucker,’ and ‘going to knock your damn head off’ “are among the ‘lewd and obscene, profane, libelous and insulting’ words that have been held not to raise any constitutional problems.” 658 S.W.2d at 25. The problem in *Swoboda* was that the statute sought “to punish more than face-to-face words.” *Id.* at 26. There, “Defendant’s conduct took place entirely on his own property and was not in any way directed towards the complainant.” *Id.* By contrast, here, Mr. Carrawell uttered his words in a face-to-face confrontation with Sergeant Burgdorf in a public place. Thus, Sergeant Burgdorf reasonably concluded that Mr. Carrawell had committed the offense of peace disturbance.

Moreover, even if Sergeant Burgdorf were ultimately incorrect in his

conclusion that Mr. Carrawell had committed peace disturbance, that would not preclude a finding of probable cause. It is well settled that “the ultimate touchstone of the Fourth Amendment is “reasonableness.” ’ ” *Heien v. North Carolina*, 135 S.Ct. 530, 536 (2014). An arrest is reasonable if it is supported by probable cause, and the probable cause determination “encompass[es] suspicion based on reasonable mistakes of both fact and law.” *Id.* at 537. In other words, an arrest based on a reasonable belief that a person has broken the law (even if the belief is ultimately mistaken under the facts or law) is a valid arrest under the Fourth Amendment. *See id.* at 536-540.

Here, in light of the evidence outlined above, it was reasonable for Sergeant Burgdorf to believe that Mr. Carrawell had committed the offense of peace disturbance, even if legal technicians could argue about the ultimate legality of Mr. Carrawell’s conduct and speech. *See State v. Gardner*, 741 S.W.2d 1, 8 (Mo. 1987) (“Probable cause to make an arrest depends upon knowledge of facts and circumstances sufficient for a prudent person to believe that the suspect is committing or has committed an offense and is determined not on hindsight of legal technicians but on practical considerations of everyday life on which reasonable persons act.”).

Under the Fourth Amendment, the relevant inquiry is whether Sergeant Burgdorf reasonably believed that Mr. Carrawell had committed an offense. And, as outlined above, the evidence showed that Mr. Carrawell spat

at the officers and grabbed his crotch, and that he employed “fighting words” in his face-to-face confrontation with Sergeant Burgdorf. If there was error in concluding that this conduct and speech constituted disturbance of the peace, the mistake was a reasonable mistake on the part of Sergeant Burgdorf.

In addition, before he searched Mr. Carrawell’s bag, Sergeant Burgdorf had probable cause to arrest Mr. Carrawell for another offense, namely, resisting arrest. The evidence showed that Sergeant Burgdorf informed Mr. Carrawell that he was under arrest for disturbing the peace (Tr. 199, 201). Sergeant Burgdorf told Mr. Carrawell to stop, but Mr. Carrawell did not cooperate (Tr. 199, 201-202). Instead, Mr. Carrawell attempted to enter an apartment, and Sergeant Burgdorf grabbed his arm and pulled him back (Tr. 201-202). Mr. Carrawell tried to pull away from Sergeant Burgdorf, but Sergeant Burgdorf pushed him up against the gate (Tr. 203).

Other officers then attempted to handcuff Mr. Carrawell as he held onto the fence with his left hand (Tr. 205). Sergeant Burgdorf continued to struggle with Mr. Carrawell’s right arm, and he repeatedly told Mr. Carrawell to drop the plastic bag, but Mr. Carrawell would not comply (Tr. 205). Sergeant Burgdorf “ended up ripping [the bag] from his hands,” and then he was able to finish putting the handcuffs on Mr. Carrawell (Tr. 205-206). Mr. Carrawell continued to struggle before he was finally secured inside a police vehicle (Tr. 207-208).

A person commits the crime of resisting or interfering with arrest if the person knows or “reasonably should know” that the officer is making an arrest, and the person “[r]esists the arrest . . . by using or threatening the use of violence or physical force or by fleeing from such officer[.]” § 571.150.1(1), RSMo Cum. Supp. 2013. The statute defining the offense applies to arrests made “with or without warrants” and to arrests “for any crime, infraction, or ordinance violation.” § 571.150.2(1)-(2), RSMo Cum. Supp. 2013. “It is no defense to a prosecution pursuant to subsection 1 of this section that the law enforcement officer was acting unlawfully in making the arrest.” § 571.150.3, RSMo Cum. Supp. 2013.

Here, as outlined above, the evidence showed that Sergeant Burgdorf informed Mr. Carrawell that he was being arrested for peace disturbance; thus, Mr. Carrawell knew or reasonably should have known that he was being arrested for a crime. The evidence also showed that Mr. Carrawell used physical force to resist the arrest and struggled against the multiple officers who were trying to put him in handcuffs. And, finally, even if the intended arrest for peace disturbance was not lawful, Mr. Carrawell was not entitled to use force to resist the arrest. In short, a person of reasonable caution could have concluded that Mr. Carrawell resisted arrest; thus, there was probable cause to arrest him for that offense, as well.

Mr. Carrawell argues that, according to Sergeant Burgdorf’s testimony,

“the only thing [he] was under arrest for was for allegedly violating the St. Louis City ordinance pertaining to peace disturbance” (App.Br. 19-20). Thus, he argues that the relevant question is whether Mr. Carrawell violated that particular ordinance (App.Br. 20). But it is well settled that “[p]robable cause is not dependent on the subjective intention of the officer.” *See State v. Glass*, 136 S.W.3d at 510 n. 6. It is, therefore, irrelevant that Sergeant Burgdorf might have thought at the time of the arrest that he was enforcing a city ordinance (as opposed to some other state law). The relevant inquiry is whether Sergeant Burgdorf observed facts and circumstances that “were sufficient to cause a person of reasonable caution to believe that [Mr. Carrawell] had committed an offense.” *Id.* at 510.

But even under the city ordinance, which is quoted in Mr. Carrawell’s brief (App.Br. 20-21), Sergeant Burgdorf had probable cause to arrest Mr. Carrawell for peace disturbance; thus, it would not have been plain error for the trial court to find that there was probable cause to arrest under the ordinance. The ordinance states:

Any person who shall disturb the peace of others by noisy, riotous or disorderly conduct, or by violent, tumultuous, offensive or obstreperous conduct or carriage, or by loud and unusual noises, or by unseemly, profane, obscene, indecent, lewd or offensive language, calculated to provoke a breach of the peace, or by

assaulting, striking or fighting another in any park, street, alley, highway, thoroughfare, public place or public resort within the City, or any person who, in the City, shall permit any such conduct in or upon any house or premises owned or possessed by him or under his management or control, so that others in the vicinity are disturbed thereby, shall be guilty of a misdemeanor.

(App.Br. 20-21; *see* 15.46.030, St. Louis Rev. Code).

Here, in light of the evidence outlined above, a person of reasonable caution could have concluded that Mr. Carrawell exhibited noisy and disorderly conduct, and that he employed profane and offensive language, in a manner “calculated to provoke a breach of the peace.” The evidence showed that Mr. Carrawell employed fighting words, that he screamed at the police periodically from the outset of the encounter, and that he seemed to be trying to “rile up the neighborhood” (Tr. 167, 207). Thus, there was probable cause to believe that Mr. Carrawell had committed peace disturbance under the city ordinance, in that he attempted to breach the peace; and, as discussed above, even if Sergeant Burgdorf was incorrect in his conclusion, his mistake was a reasonable mistake that did not preclude a finding of probable cause.

Mr. Carrawell next asserts that the State failed to prove that the arrest was lawful because, “other than remarks made by Officer Burgdorf, the record does not reveal information about a St. Louis City ordinance

pertaining to peace disturbance” (App.Br. 27). He points out that “[n]o city ordinance was offered or admitted in evidence,” and he concludes, “As such, there was no evidence before the trial court upon which it could have decided that Officer Burgdorf had probable cause to arrest [him] for violating a St. Louis City ordinance pertaining to peace disturbance” (App.Br. 27). He also points out that Missouri courts have held that “neither trial nor appellate courts will take judicial notice of municipal ordinances and that such ordinances may be recognized by the Court only if admitted into evidence or stipulated to by the parties” (App.Br. 28, citing *Queen of Diamonds, Inc. v. Quinn*, 569 S.W.2d 317, 319 (Mo. 1978)). *See also City of St. Louis v. Young*, 154 S.W. 87 (Mo. 1913) (observing that appellate courts and trial courts do not take judicial notice of town ordinances).

As outlined above, however, at no point before, during, or after trial did Mr. Carrawell assert either that he did not violate the city ordinance or that his conduct did not fall within the prohibitions of the ordinance. If Mr. Carrawell had made a timely objection about the ordinance, the State would have been on notice of Mr. Carrawell’s claim and had a fair opportunity to admit a copy of the ordinance pursuant to § 490.240, RSMo 2000.

In any event, Mr. Carrawell has not carried his burden of proving plain error resulting in manifest injustice. The record shows that defense counsel specifically elicited (and did not dispute) that Sergeant Burgdorf arrested Mr.

Carrawell based on a violation of the city ordinance (*see* Tr. 222). Accordingly, his testimony gave rise to an inference that Mr. Carrawell's conduct fell within the parameters of the ordinance, as the trial court could reasonably infer that an officer with ten years' experience on the police force would be familiar with local ordinances.

Moreover, the St. Louis City peace-disturbance ordinance has been the subject of litigation over the years, and the relevant provisions of the ordinance have remained unchanged for decades. *See City of St. Louis v. Tinker*, 542 S.W.2d 512, 514 (Mo. 1976).<sup>4</sup> Thus, the trial court did not need to take judicial notice of the ordinance; rather, the trial court (which is presumed to know the law) could have relied on case law to ascertain whether Sergeant Burgdorf had probable cause to arrest Mr. Carrawell for peace disturbance. Such reliance would not have been plainly erroneous or resulted in manifest injustice, as the current city ordinance contains the

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<sup>4</sup> The only material difference between the current ordinance and the prior version analyzed in *Tinker* is that the current ordinance includes language extending criminal liability to any person who permits the prohibited disturbances "in or upon any house or premises owned or possessed by him or under his management or control[.]" *See Tinker*, 542 S.W.2d at 514; 15.46.030, St. Louis Rev. Code.

same relevant prohibitions. In short, Mr. Carrawell has not demonstrated either plain error or manifest injustice.

Ultimately, however, there was also no need to present evidence of the city ordinance because, as discussed above, there was probable cause to arrest Mr. Carrawell for violations of state law—either for peace disturbance under § 574.010 or resisting arrest under § 575.150. As such, the trial court could have found probable cause based upon violations of state law. *See State v. Furne*, 642 S.W.2d 614 (Mo. 1982) (“Had the information charged that appellant resisted arrest for peace disturbance, the trial court could have taken, and this Court could take, judicial notice that peace disturbance constitutes an offense under state statute.”); *cf. State v. Dye*, 272 S.W.3d 879, 881, 881 n. 2 (Mo.App. S.D. 2008) (an officer stopped the defendant for “panhandling,” but the alleged offense of “panhandling” was not an offense under state law, and “[n]o city ordinance was offered or admitted in evidence”; thus, there was no evidence of criminal conduct “on which [the officer] could have legitimately made an investigative stop.”).

In sum, Sergeant Burgdorf had probable cause to arrest Mr. Carrawell for multiple offenses, and the trial court did not clearly or plainly err in concluding that Mr. Carrawell was lawfully arrested.

**(b) It was permissible to search the bag incident to arrest**

Mr. Carrawell argues lastly that, even if he was lawfully arrested, the

police could not lawfully search his bag (App.Br. 31). He offers two theories. First, he argues that the search of his bag was not a valid “inventory search” because the State failed to prove that the St. Louis City police had a standard policy of opening closed bags in an arrestee’s possession (App.Br. 32-34). This argument was not made at trial; thus, review, if any, is limited to plain error review.

Mr. Carrawell also argues that a search incident to arrest could not be justified “on the grounds that they were looking for the instrumentalities of the crime,” because “[t]here are no instrumentalities of the crime for which [Mr. Carrawell] was arrested” (App.Br. 34). He further asserts that, because he was secured in a police vehicle and in the presence of four officers, there was no need to search the bag for weapons (App.Br. 34-35).

But these arguments are misplaced. “A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification.” *United States v. Robinson*, 414 U.S. at 235. “It is the fact of the lawful arrest which established the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a ‘reasonable’ search under that Amendment.” *Id. See Gustafson v. Florida*, 414 U.S. 260, 266 (1973) (“Since it

is the fact of custodial arrest which gives rise to the authority to search, it is of no moment that [the officer] did not indicate any subjective fear of the petitioner or that he did not himself suspect that the petitioner was armed. Having in the course of his lawful search come upon the box of cigarettes, [the officer] was entitled to inspect it; and when his inspection revealed the homemade cigarettes which he believed to contain an unlawful substance, he was entitled to seize them as ‘fruits, instrumentalities or contraband’ probative of criminal conduct.”).

Numerous cases have held that a search incident to arrest permits an officer to search, as part of the search of the person, the personal effects on the person at the time of the arrest. *See State v. Ellis*, 355 S.W.3d 522, 524 (Mo.App. E.D. 2011) (citing *United States v. Edwards*, 415 U.S. 800, 803-804 (1974) (clothing); *State v. Vitale*, 795 S.W.2d 484, 486-487 (Mo.App. E.D. 1990) (jacket); *State v. Greene*, 785 S.W.2d 574, 576-577 (Mo.App. W.D. 1990) (purse); *State v. McCabe*, 708 S.W.2d 288, 291 (Mo.App. E.D. 1986) (boots and piece of paper); *State v. Rattler*, 639 S.W.2d 277, 278 (Mo.App. E.D. 1982) (purse); *State v. Woods*, 637 S.W.2d 113, 116 (Mo.App.1982) (purse); *United States v. Oakley*, 153 F.3d 696, 698 (8th Cir. 1998) (backpack); *Curd v. City Court of Judsonia, Ark.*, 141 F.3d 839, 842–44 (8th Cir. 1998) (purse)).

“Further, a search and seizure that could have been made at the time of the arrest may also be conducted when the arrestee arrives at a place of

detention.” *State v. Ellis*, 355 S.W.3d at 524-525 (citing *Edwards*, 415 U.S. at 803). “A search of the person at the place of detention likewise includes a search of the property that had been on the arrestee’s person.” *Id.* (citing *Edwards*, 415 U.S. at 403-404). “The reason that property on a person, such as a purse, wallet, or backpack, may be searched as part of a search of a person is that such property is more ‘immediately associated’ with the ‘person’ of the arrestee than other personal property.” *Id.*

Here, Mr. Carrawell’s plastic bag was on his person (clutched in his hand) during the arrest, and he refused to let go of it when the police ordered him to do so (Tr. 166). When Sergeant Burgdorf took the bag from his hand during the arrest, it would have been permissible for Sergeant Burgdorf to immediately search the bag. As such, his search of the bag immediately thereafter was within the search-incident-to-arrest exception to the warrant requirement, and the search was reasonable.

Moreover, contrary to Mr. Carrawell’s assertion, the plastic bag and its contents were evidence connected to one of the offenses that Mr. Carrawell committed. In resisting arrest, Mr. Carrawell struggled to retain control of the bag, and, consequently, Sergeant Burgdorf was unable to put him in handcuffs (Tr. 166, 205-206). It was, therefore, reasonable to believe from Mr. Carrawell’s attempt to escape, his resisting arrest, and his struggling over the bag, that the bag held some sort of contraband that Mr. Carrawell did not

want the officers to find or obtain. Sergeant Burgdorf testified that, “[w]ith his reluctance to let go of [the bag] or show me what was in there, I was concerned here may have been a weapon in there” (Tr. 208). In short, a person of reasonable caution could have believed that the bag and its contents were contraband; and it was, thus, reasonable to search the bag incident to arrest.

Contrary to Mr. Carrawell’s argument, the scene also was not secure. While Mr. Carrawell had been put inside the vehicle, there were other people present, including Mr. Carrawell’s daughter (who had opened the apartment gate for Mr. Carrawell). Accordingly, it was reasonable for Sergeant Burgdorf to seize the bag and make sure that it did not contain evidence that might be concealed by a co-actor, or any weapons or items that could be used to harm the officers. The record shows that when the bag fell to the ground, Sergeant Burgdorf heard a “breaking sound” (Tr. 166); thus, it was possible that there were sharp objects in the bag that could have been used to harm the officers. *See Chimel v. California*, 395 U.S. 752, 763 (1969) (to safeguard himself and others, and to prevent the loss of evidence, it is reasonable for the arresting officer to conduct a prompt, warrantless “search of the arrestee’s person and the area ‘within his immediate control’ construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence”).

Mr. Carrawell cites *United States v. Chadwick*, 433 U.S. 1, 15 (1977), which held, “Once law enforcement officers have reduced luggage or other personal property not immediately associated with the person of the arrestee to their exclusive control, and there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence, a search of that property is no longer an incident of the arrest” (App.Br. 34-35). But *Chadwick* dealt with a locked container found in the trunk of a vehicle that was searched more than an hour after it was seized and the defendants were securely in custody, *id.* at 15; thus, it is distinguishable from the facts of Mr. Carrawell’s case, where an item that was in the defendant’s hand during the arrest was searched immediately after the arrest.

In any event, the rule in *Chadwick* was later abrogated by the Court in *California v. Acevedo*, 500 U.S. 565, 575-580 (1982) (holding that “[t]he police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained”). And, notably, in *Acevedo*, the Court observed that “the police often will be able to search containers without a warrant, despite the *Chadwick-Sanders* rule, as a search incident to a lawful arrest.” *Id.* at 575 (quoting *New York v. Belton*, 453 U.S. 454 (1981), which held that an officer may search the passenger compartment of a vehicle incident to arrest, along with “the contents of any containers found within the passenger compartment”).

Mr. Carrawell might argue in reply that his argument is supported by the Court's more recent decision in *Arizona v. Gant*, 556 U.S. 332, 351 (2009), which held that “[p]olice may search a vehicle incident to a recent occupant’s arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest.” But, as is evident, *Gant* dealt with the search of a vehicle incident to arrest—not the search of personal effects on the suspect’s person at the time of the arrest; thus, *Gant* would not control the outcome of this case.

Additionally, even if the Court were to conclude that *Gant* could be extended to personal effects taken away from the suspect, such an extension would be a change in the law that police officers would not be expected to anticipate in carrying out their duties. And, in light of the numerous cases permitting a search of the suspect’s personal effects incident to arrest, the search in this case would have been conducted in objective, good-faith reliance on the law; thus, the exclusionary rule should not apply. *See State v. Ellis*, 355 S.W.3d at 524-525. *See also State v. Johnson*, 354 S.W.3d 627, 633 (Mo. 2011) (holding that a search that would have been prohibited under *Gant*, did not trigger the exclusionary rule because “the searching officers acted in ‘objectively reasonable reliance’ on” pre-*Gant* law).

Finally, the heroin in Mr. Carrawell’s bag would have been inevitably

discovered when the police conducted a routine search of his personal effects upon arrest or during booking. Sergeant Burgdorf testified at the suppression hearing that “per our department policy we have to inventory items in possession of defendants when they are arrested” (Tr. 168). He testified at trial that “it is our department policy once somebody is taken into custody we have to inventory all their property” (Tr. 208).

Sergeant Burgdorf also testified that Mr. Carrawell was arrested and booked at the central patrol station (Tr. 214). During booking Mr. Carrawell’s property was inventoried, but Mr. Carrawell would only sign the bag that contained his money (*see* Tr. 215-216). He refused to sign any other property or his field booking form” (Tr. 216). Some of Mr. Carrawell’s property was then stored in the property room, and some of it (the suspected heroin) was sent to the lab for further analysis (Tr. 216-217).

It is well settled that, “[a]t the station house, it is entirely proper for police to remove and list or inventory property found on the person or in the possession of an arrested person who is to be jailed.” *State v. Friend*, 711 S.W.2d 508, 510 (Mo. 1986). “The inventory search of an arrested individual and his effects does not violate the Fourth Amendment.” *Id.*

“The governmental interests underlying a stationhouse search of the arrestee’s person and possessions may in some circumstances be even greater than those supporting a search immediately following arrest.” *Illinois v.*

*Lafayette*, 462 U.S. 640, 645 (1983). “For example, the interests supporting a search incident to arrest would hardly justify disrobing an arrestee on the street, but the practical necessities of routine jail administration may even justify taking a prisoner’s clothes before confining him, although that step would be rare.” *Id.* As the Court made plain in *United States v. Edwards*, 415 U.S. at 804, “With or without probable cause, the authorities were entitled [at the stationhouse] not only to search [the arrestee’s] clothing but also to take it from him and keep it in official custody.”

“At the stationhouse, it is entirely proper for police to remove and list or inventory property found on the person or in the possession of an arrested person who is to be jailed.” *Illinois v. Lafayette*, 462 U.S. at 646. “A range of governmental interests support an inventory process.” *Id.* “It is not unheard of for persons employed in police activities to steal property taken from arrested persons; similarly, arrested persons have been known to make false claims regarding what was taken from their possession at the stationhouse.” *Id.* “A standardized procedure for making a list or inventory as soon as reasonable after reaching the stationhouse not only deters false claims but also inhibits theft or careless handling of articles taken from the arrested person.” *Id.* “Arrested persons have also been known to injure themselves—or others—with belts, knives, drugs or other items on their person while being detained.” *Id.* “Dangerous instrumentalities—such as razor blades, bombs, or

weapons—can be concealed in innocent-looking articles taken from the arrestee’s possession.” *Id.*

“Examining all the items removed from the arrestee’s person or possession and listing or inventorying them is an entirely reasonable administrative procedure.” *Id.* “It is immaterial whether the police actually fear any particular package or container; the need to protect against such risks arises independent of a particular officer’s subjective concerns.” *Id.* “Finally, inspection of an arrestee’s personal property may assist the police in ascertaining or verifying his identity.” *Id.*

Mr. Carrawell cites *State v. Ramires*, 152 S.W.3d 385 (Mo.App. W.D. 2004), for the proposition that there must be evidence “that the seizing officer’s police department had standardized criteria or established routine for opening closed containers, such as an opaque white plastic bag” (App.Br. 32). In *Ramires*, the Court of Appeals held that, under *Florida v. Wells*, 495 U.S. 1 (1990), the State “had to introduce evidence at the suppression hearing that the Parkville Police Department had standardized criteria or established routine for opening closed containers, such as the opaque white plastic bag found during the inventory search of the vehicle the appellant was driving when arrested.” 152 S.W.3d at 403-404. But because the State had not presented that specific evidence, the Court of Appeals concluded that the State had failed to carry its burden. *Id.* at 404.

While *Ramires* is instructive, vehicle inventory searches and inventory searches of arrestees taken into custody differ significantly. As outlined above, numerous concerns are implicated when an arrestee is taken into custody and incarcerated, and it is important for a host of reasons for the police to have a complete inventory of all of an arrestee's property.

In Mr. Carrawell's case—which involved the search of the personal effects of an arrestee taken into custody—the department policy was to “inventory items in possession of defendants when they are arrested” and to “inventory all their property” (Tr. 168, 208). Given the nature of the search and the numerous concerns implicated by putting a person into a patrol vehicle and holding them in a place of detention, a policy directing officers to inventory “all” items or property in the arrestee's possession was sufficient to permit a search of the contents of Mr. Carrawell's bag, which was in his possession at the time of his arrest. *See Illinois v. Lafayette*, 462 U.S. at 646-647 (“every consideration of orderly police administration benefiting both police and the public points toward the appropriateness of the examination of respondent's shoulder bag prior to his incarceration”).

In sum, there was probable cause to arrest Mr. Carrawell for multiple offenses, and the search of Mr. Carrawell's plastic bag incident to that arrest was lawful as a search incident to arrest or an inventory search. This point should be denied.

**CONCLUSION**

The Court should affirm Mr. Carrawell's conviction and sentence.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE AND SERVICE**

I certify that the attached brief complies with Rule 84.06(b) and contains 10,554 words, excluding the cover, this certification, and the signature block, as counted by Microsoft Word; and that an electronic copy of this brief was sent through the Missouri eFiling System on this 1<sup>st</sup> day of October, 2015, to:

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