

No. SC 94081

THE SUPREME COURT OF MISSOURI

STATE OF MISSOURI

Respondent

vs.

CHRISTOPHER ERIC HUNT

Appellant

Appeal From the Circuit Court of Montgomery County
The Honorable Keith Sutherland, Judge

**SUBSTITUTE BRIEF OF AMICUS CURIAE
MISSOURI FRATERNAL ORDER OF POLICE
IN SUPPORT OF APPELLANT**

James P. Towey, Jr. [35351]
General Counsel
MISSOURI FRATERNAL ORDER OF POLICE
715 Jefferson Street
Jefferson City, Missouri 65101
Telephone: (314) 392-5200

Michael Gross [23600]
MICHAEL GROSS LAW OFFICE
231 South Bemiston Avenue, Suite 250
St. Louis, Missouri 63105
Telephone: (314) 863-5887

*Attorneys for Amicus Curiae
Missouri Fraternal Order of Police*

INTEREST OF AMICUS CURIAE

The Missouri Fraternal Order of Police is an organization of more than 5,300 individuals, most of whom are full-time rank-and-file law enforcement officers employed within this state. The organization was founded by a group of police officers in 1973. It advocates the interests of law enforcement officers and the general public before the Missouri Legislature and elsewhere. The general objective of that advocacy is the safety and protection of the public in Missouri and the creation and preservation of a safe and functional working environment for individuals who work in law enforcement.

The outcome of this case is likely to have an abiding impact upon the ability of police officers to perform their job, and in particular to make and execute the best decisions for law enforcement and for the safety of themselves and others, when tasked with the execution of an arrest warrant at a residence and when effecting the arrest of a resistant or confused individual. The Missouri Fraternal Order of Police seek to ensure the Court's awareness of the profound implications that its decision in the appeal may have upon the ability of law enforcement officers to perform their jobs effectively and safely for the common weal.

TABLE OF CONTENTS

	Page
Interest of Amicus Curiae	i
Table of Contents	ii
Table of Authorities	iii
Statement of Facts	1
Point Relied On	5
Argument	7
Conclusion	18
Certificate of Compliance and Service	19

TABLE OF AUTHORITIES

	Page
 <u>Cases</u>	
<i>Brock v. Firemens Fund of America Insurance Co.</i> , 637 S.W.2d 824 (Mo.App.E.D. 1982)	16
<i>Centerre Bank of Kansas City vs. Angle</i> , 976 S.W.2d 608 (Mo.App.W.D. 1998)	16
<i>Coon v. Dryden</i> , 46 S.W.3d 81 (Mo.App.W.D. 2001)	16
<i>Davis v. Moore</i> , 601 S.W.2d 316 (Mo.App. E.D. 1980)	9
<i>Reed v. Jackson County</i> , 142 S.W.2d 862 (Mo. 1940)	11-12
<i>Seitz v. Lemay Bank and Trust Co.</i> , 959 S.W.2d 458 (Mo.1998)	16
<i>State v. Cushenberry</i> , 56 S.W. 737 (Mo. 1900)	9
<i>State v. Krause</i> , 682 S.W.2d 55 (Mo.App.E.D. 1984)	9
<i>State v. Nolan</i> , 192 S.W.2d 980 (Mo. 1946)	9
<i>Twin City Pipe Line Co. v. Harding Glass Co.</i> , 283 U.S. 353 (1931)	11
<i>United States v. United States District Court</i> , 407 U.S. 297 (1972)	10-12
<i>White v. Kansas City Public Service Co.</i> , 149 S.W.2d 375 (Mo. 1941)	15-16
 <u>Statutes</u>	
Mo. Rev. Stat. § 105.240	7-8, 14, 16
Mo. Rev. Stat. § 544.200	8-9
Mo. Rev. Stat. § 569.160	<i>passim</i>

STATEMENT OF FACTS

A. Parties and Charges

The State of Missouri charged Christopher Hunt with first degree burglary, second degree property damage, and third degree assault. Legal File at 75-76. Deputy Hunt is a St. Charles County deputy sheriff assigned to the St. Charles County Regional Drug Task Force. Tr. at 503, 507. The task force is a multidistrict enforcement group operating pursuant to Mo. Rev. Stat. § 195.505. Deputy Hunt has been a police officer since 1998. Id. at 503. Prior to his career in civilian law enforcement, he served for four years as a United States Marine. Id. at 504.

B. Summary of Evidence

Several police officers drove to a mobile home in Montgomery County on the evening of February 5, 2009. Tr. at 127-29, 132-39, 250, 476. The officers had a warrant for the arrest of Phil Alberternst, a fugitive with a history of methamphetamine-related crimes and violence toward police officers, whom they believed to be living in the residence. Tr. at 278-79, 284, 508. Deputy Hunt knew Mr. Alberternst well: he had arrested this violence-prone meth cook on several occasions and Mr. Alberternst lately had served as an informant for him. Tr. at 508-09. But Deputy Hunt was not with the officers when they arrived. Id. at 140, 264.

Ruth Ann Blake, a friend of Mr. Alberternst, had agreed to lead officers to his residence. Tr. at 181-84, 472-73. Police had provided Ms Blake with a quantity of pseudoephedrine for delivery to Mr. Alterternst, who was expecting her to deliver that substance so that he could manufacture methamphetamine. Tr. at 181, 244, 362, 473.

When the officers arrived at the mobile home Ms Blake's automobile was parked outside and the home was dark. *Id.* at 139, 272, 320.

Two officers knocked on the door of the residence and announced that they were policemen. *Id.* at 136, 197, 258. There was no response. *Id.* The officers retreated from the front door but remained on the premises. *Id.* at 139. The record makes it clear that there was reason for police to believe that both the informant who had led them to the residence and the pseudoephedrine that they had given her were inside the trailer with Mr. Alberternst. *See, e.g.,* *Tr.* at 127-40, 225-30, 241-42, 245-58.

Officers on the scene who worked with Deputy Hunt as a multidistrict enforcement team had kept him informed about events of the day and evening and ultimately called him to the scene. *Id.* at 496-98, 514-22. Deputy Hunt arrived as the police officers who had knocked on the door and gotten no response were walking away from the mobile home. *Id.* at 140, 264. He drove up to the trailer, got out of his truck, and put on a protective vest. *Id.* at 140-41, 264. Deputy Hunt then approached the mobile home, may or may not have looked in through windows, kicked in the door, and entered the trailer. *Id.* at 266-68. Other officers immediately followed him into the residence. *Id.* at 268, 324.

Deputy Hunt encountered Mr. Alberternst inside the residence and a struggle ensued, at first between Deputy Hunt and Mr. Alberternst but soon joined by other officers. Several witnesses described that confrontation, giving differing interpretations of the extent of resistance and struggle offered by Mr. Alberternst and the degree and

nature of force employed by Deputy Hunt while subduing and arresting Mr. Alberternst. *See, e.g.*, Tr. at 144-51, 234, 308-17, 325-26, 357, 394, 418, 484.

C. Instructions Regarding Burglary and Assault

The case was tried before a jury. Section 569.160, which defines the crime of first degree burglary, includes a *mens rea* element providing in part: “A person commits the crime of burglary in the first degree if he knowingly enters unlawfully . . . a building or inhabitable structure for the purpose of committing a crime therein.” Section 569.010 defines “enter unlawfully” as entry by an individual who “is not licensed or privileged to do so.” The Circuit Court submitted the elements of first degree burglary as defined in § 569.160 but did not provide the jury with an definition of other guidance regarding the element of knowing unlawful entry. Legal File at 96-108. Section 565.070 defines third degree assault as attempting to cause or recklessly causing physical injury to another person. In its submission of this charge the Circuit Court apprised the jury of the offense elements and provided substantial additional instruction regarding defenses that might be available to a police officer charged with assault in the course of effecting an arrest. Legal File at 96-108. Those instructions posited that such a policeman-defendant must have been making “a lawful arrest or what he reasonably believed to be a lawful arrest.” *Id.* at 103. Again, the Circuit Court had not provided the jury with any definition of “unlawful entry” or “knowing unlawful entry” in its submission of the burglary charge. *Id.* at 96-108.

The jury returned verdicts finding Deputy Hunt guilty of all charged offenses. *Id.* at 115-17. The Circuit Court sentenced him to serve five years in prison. *Id.* at 176-78.

The Court of Appeals concluded that the prosecution had made a submissible showing that Deputy Hunt committed first degree burglary. Slip op. at 9-10. That Court reversed the conviction of that offense, however, because of the absence of any instruction defining the term “entered unlawfully.” Id. at 11-16.¹ Deputy Hunt’s conviction of second degree property damage also was reversed because “[t]he charge of property damage was also dependent on whether Defendant ‘entered unlawfully’ or was justified in entering.” Id. at 16-18.² The Court of Appeals found no error, instructional or otherwise, in connection with Deputy Hunt’s conviction of third degree assault. Id. at 18-20. It affirmed that part of the judgment. Id. at 20.

¹ The Court of Appeals concluded that Deputy Hunt’s claim of instructional error had not been preserved for appellate review, and reversed the judgment of conviction on the basis of plain error under Mo. R. Crim. P. 30.20. Slip op. at 11-12.

² The Court of Appeals also reversed the second degree property damage conviction as plain error under Mo. R. Crim. P. 30.20. Slip op. at 17-18.

POINTS RELIED ON

I.

The Circuit Court erred in denying Mr. Hunt's motions for a directed verdict and for judgment notwithstanding the verdict on the charge of first degree burglary, because the evidence was insufficient to support a finding of guilt and the resulting judgment of conviction is or should in conflict with public policy regarding the criminal liability of police officers who elect to enter a residence forcibly to execute an arrest warrant after knocking and announcing themselves, in that (1) knowingly unlawful entry of a building or habitable structure is an element of first degree burglary as defined by MO. REV. STAT. § 569.160; (2) MO. REV. STAT. § 105.240 authorizes "[e]very officer [seeking] to execute a warrant . . . for the arrest of any person" to "break open doors and enclosures" for that purpose "if, upon public demand and an announcement of his official character, they be not opened"; and (3) Missouri recognizes a presumption that a police officer is lawfully discharging his duty; so (4) it is as a matter of law, and is or should be as a matter of policy, impossible to establish that police officers (a) possessing a warrant for the arrest of a person believed to be inside a residence or other building, (b) having knocked and announced their authority and gotten no response, and (c) having decided to force entry into the premises, have made a knowingly unlawful entry that might subject them to criminal liability under § 569.160.

State v. Nolan, 192 S.W.2d 980 (Mo. 1946)

Reed v. Jackson County, 142 S.W.2d 862 (Mo. 1940)

MO. REV. STAT. §§ 105.240, 544.200, and 569.160

II.

The Circuit Court committed plain error in failing to instruct the jury that Deputy Hunt’s forced entry into the residence was lawful because that instruction was necessary to properly guide the jury in applying the law to its own factual findings with respect to the charge of third degree assault, in that (A) MO. REV. STAT. § 105.240 authorizes “[e]very officer [seeking] to execute a warrant . . . for the arrest of any person” to “break open doors and enclosures” for that purpose “if, upon public demand and an announcement of his official character, they be not opened”; (B) those conditions were met in this case; (C) a guilty verdict depended upon the jury’s persuasion beyond a reasonable doubt that at the time of the arrest Deputy Hunt was not acting as a law enforcement officer lawfully using force to make an arrest; and (D) the omission of an instruction advising that Deputy Hunt’s forced entry to arrest Mr. Alberternst was privileged and permissible gave jurors a roving commission to decide according their own opinions and beliefs whether Deputy Hunt was acting lawfully when he effected the arrest forcibly inside the residence.

Seitz v. Lemay Bank and Trust Co., 959 S.W.2d 458 (Mo.1998)

Centerre Bank of Kansas City vs. Angle, 976 S.W.2d 608 (Mo.App.W.D. 1998)

Coon v. Dryden, 46 S.W.3d 81 (Mo.App.W.D. 2001)

MO. REV. STAT. §§ 105.240

ARGUMENT

I.

The Circuit Court erred in denying Mr. Hunt's motions for a directed verdict and for judgment notwithstanding the verdict on the charge of first degree burglary, because the evidence was insufficient to support a finding of guilt and the resulting judgment of conviction is or should in conflict with public policy regarding the criminal liability of police officers who elect to enter a residence forcibly to execute an arrest warrant after knocking and announcing themselves, in that (A) knowingly unlawful entry of a building or habitable structure is an element of first degree burglary as defined by MO. REV. STAT. § 569.160; (B) MO. REV. STAT. § 105.240 authorizes "[e]very officer [seeking] to execute a warrant . . . for the arrest of any person" to "break open doors and enclosures" for that purpose "if, upon public demand and an announcement of his official character, they be not opened"; and (C) Missouri recognizes a presumption that a police officer is lawfully discharging his duty; so (D) it is as a matter of law, and is or should be as a matter of policy, impossible to establish that police officers (a) possessing a warrant for the arrest of a person believed to be inside a residence or other building, (b) having knocked and announced their authority and gotten no response, and (c) having decided to force entry into the premises, have made a knowingly unlawful entry that might subject them to criminal liability under § 569.160.

Allowed to stand, Deputy Hunt's burglary conviction will be part of the equation every time a law enforcement officer in Missouri has to decide whether to force his or her way into a building to execute an arrest warrant. The risk that he or she may end up spending years in prison on account of the *post hoc* analysis of what might have been on his or her mind other than discharging the duty to make an arrest inevitably will weigh on every police officer in that already difficult circumstance. That this hindsight analysis is to be performed in the first instance by a succession of elected prosecuting attorneys and assistant prosecutors serving at the pleasure of those elected officials will be of little comfort.

Added to the risk inherent in forcing one's way into premises occupied by an individual charged with crime—perhaps with violent crime, and perhaps someone like Mr. Alberternst who has a history of violence toward police officers—this new danger of prosecution and imprisonment can be expected at the very least to reduce the frequency and effectiveness with which the law gets enforced. Likely it will do worse: the last thing a police officer faced with the dilemma of whether to force his way into confrontation with a criminal suspect needs is this new, weighty, and unnecessary factor in the calculus.

This Court should reverse the burglary conviction in this case because it cannot be reconciled with governing law. By statute law enforcement officers are granted unequivocal authority to “break open doors and enclosures to execute a warrant . . . for the arrest of any person,” provided that they have first knocked and announced themselves to no avail. Mo. Rev. Stat. § 105.240; *see also* Mo. Rev. Stat. § 544.200

(authorizing officers to “break open any outer or inner door or window” in order “[t]o make an arrest in criminal actions,” again provided that he or she has announced his office and purpose and not granted entry). Further, Missouri common law *presumes* that a police officer taking such action is acting lawfully when making or attempting an arrest. *See State v. Cushenberry*, 56 S.W. 737, 742-43 (Mo. 1900) (recognizing a presumption consistent with “all the precedents” that a constable attempting to make an arrest “acted by right, and not by wrong”); *State v. Nolan*, 192 S.W.2d 980, 990 (Mo. 1946) (acknowledging “the presumption . . . that peace officers are in the lawful discharge of their duty in attempting to make arrests”); *Davis v. Moore*, 601 S.W.2d 316, 319 (Mo.App. E.D. 1980) (stating that “[t]here is a common law presumption that a police officer is lawfully discharging his duty”). Deputy Hunt’s burglary conviction flies in the face of the discretion vested in police officers seeking to make warranted arrests by the Legislature. It also extinguishes or grossly undermines the longstanding common law presumption that the conduct of an officer attempting to make an arrest is lawful.

One statutory component of first degree burglary is *knowingly making unlawful entry* to a building. Mo. Rev. Stat. § 569.160.1. This Court has identified that *mens rea* requirement as “an essential element of burglary.” *State v. Krause*, 682 S.W.2d 55, 56 (Mo.App.E.D. 1984). Because every police officer knows that he is cloaked with both the statutory authority to “break open doors” in order to execute an arrest warrant when knocking and announcing his presence has been of no avail, and protected as well by the common law presumption that his or her action in making a warranted arrest is lawful, this Court should hold that it is impossible as a matter of law to prove the element of

“knowingly . . . unlawful entry” by a law enforcement officer who (a) has a warrant for the arrest of an individual whom he knows or believes to be inside a building, (b) fails to gain entry by announcing his presence and his authority, and (c) elects to break into that building. What the police officer in that situation knows for certain, beyond a reasonable doubt, is the *opposite* of the statutory *mens rea* element of first degree burglary: Missouri law authorizes him or her to make that forced entry and presumes that his choice and action are lawful.

In addition to the statutory and presumptive barriers to the proof of first degree burglary under those circumstances, public policy does or ought to preclude Deputy Hunt’s conviction. The United States Supreme Court has recognized the value that ultimately is at stake in this case:

It has been said that “[t]he most basic function of any government is to provide for the security of the individual and of his property” And unless Government safeguards its own capacity to function and to preserve the security of its people, society itself could become so disordered that all rights and liberties would be endangered. As Chief Justice Hughes reminded us in *Cox v. New Hampshire*, 312 U.S. 569, 574 (1941): “Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses.”

United States v. United States District Court, 407 U.S. 297, 312 (1972) (internal citations omitted). Imprisoning Deputy Hunt in this case constitutes a direct blow against that value.

This brief does not contend that police officers are above the law. A prosecuting attorney convinced that he or she has evidence sufficient to prove an officer's commission of a cognizable crime beyond a reasonable doubt must be free to have the officer hailed into court to answer the charge. But first degree burglary as defined by § 569.160.1 cannot be a cognizable crime when the predicate conduct is forcible entry into a building while in possession of a warrant to arrest a person inside who has refused a clear request for admission. The Legislature saw fit to authorize exactly such conduct under just those circumstances, and the police officer on the spot knows of and relies upon that authority. The common law presumption of lawfulness makes that reliance all the more reasonable. It is important to the maintenance of "an organized society" that a police officer be able to decide whether to exercise his or her statutory authority without having to worry about prosecution, conviction, and imprisonment on the basis of after-the-fact second-guessing of that election.

Legislatures are the primary source of public policy. *Twin City Pipe Line Co. v. Harding Glass Co.*, 283 U.S. 353, 357 (1931); *Reed v. Jackson County*, 142 S.W.2d 862, 865 (Mo. 1940) (recognizing that "[t]he very highest evidence of the public policy of any state is its statutory law"). That the Missouri Legislature meant to grant police officers the latitude to decide upon forcible entry for the execution of an arrest warrant without the complication of worrying about prosecution and imprisonment for first degree

burglary is manifest from the unequivocal grant of authority to make that decision conferred by §§ 105.240 and 544.200, as well as from the inclusion of the knowingly unlawful entry element in the statutory definition of the first degree burglary. Mo. Rev. Stat. § 569.160.

A second source of public policy is judicial decision-making. *Reed*, 142 S.W.2d at 865. The repeated recognition of a common law presumption that police are acting lawfully when attempting to make an arrest, viewed together with the legislation cited above, bolsters the argument that Missouri public policy is offended by Deputy Hunt's burglary conviction. *See, e.g., Cushenberry*, 56 S.W. at 742-43; *Nolan*, 192 S.W.2d at 990; *Davis*, 601 S.W.2d at 319.³

The liberty of us all depends upon "the existence of an organized society maintaining public order." *United States District Court*, 407 U.S. at 312. The conviction of Christopher Hunt for first degree burglary is an assault upon the orderliness of society. Arrest warrants are issued and placed in the hands of police officers for execution. In Missouri those officers enjoy the discretion to choose between forcible entry and retreat when an individual for whom they have an arrest warrant refuses to open his door. That choice already is fraught: the safety and well-being of the putative arrestee, the police

³ At the very least, the jury should have been instructed with respect to the first degree burglary submission that under Missouri law the conduct of a police officer in making or attempting to execute an arrest warrant is presumed to be lawful. No such instruction was given in this case. Legal File at 96-108.

officer, and others—and ultimately the security of society, measured by its ability to arrest and prosecute individuals charged with crime—may depend upon the policeman’s choice. This Court should recognize and restore the ability of law enforcement officers to decide on the best course of action without fear that an election made in good faith nonetheless may result in their own arrest, prosecution, and imprisonment.

II.

The Circuit Court committed plain error in failing to instruct the jury that Deputy Hunt’s forced entry into the residence was lawful because that instruction was necessary to properly guide the jury in applying the law to its own factual findings with respect to the charge of third degree assault, in that (A) MO. REV. STAT. § 105.240 authorizes “[e]very officer [seeking] to execute a warrant . . . for the arrest of any person” to “break open doors and enclosures” for that purpose “if, upon public demand and an announcement of his official character, they be not opened”; (B) those conditions were met in this case; (C) a guilty verdict depended upon the jury’s persuasion beyond a reasonable doubt that at the time of the arrest Deputy Hunt was not acting as a law enforcement officer lawfully using force to make an arrest; and (D) the omission of an instruction advising that Deputy Hunt’s forced entry to arrest Mr. Alberternst was privileged and permissible gave jurors a roving commission to decide according their own opinions and beliefs whether Deputy Hunt was acting lawfully when he effected the arrest forcibly inside the residence.

By definition, the objective of police officers forcing entry into a residence under the conditions contemplated by § 105.240 is to arrest a suspected criminal. When the statutory conditions in fact exist, the police entry is privileged and lawful. Police in that position know that inevitably, on some occasions, they will encounter resistance—from the fugitive they are pursuing, perhaps from others inside the premises they are invading—and that this may be armed resistance. Law enforcement officers forcing

entry into a home to arrest one or more of its occupants may have to make life-or-death decisions instantaneously. When a policeman's or policewoman's decision to apply force results in assault charges, there can be no excuse for allowing jurors to guess at whether the officer's entry was lawful or not.

Guesswork or unguided assumptions about the lawfulness of Deputy Hunt's forcible entry into Mr. Alberternst's residence necessarily occurred in this case. Because there actually was a submission of first degree burglary and second degree property damage, the Circuit Court let jurors know that the officer might have been privileged to force his way into Mr. Alberternst's residence. Legal File at 100. But by failing to define knowing unlawful entry, the court left jurors free to decide according to their own standards whether the officer's presence in the fugitive's home was authorized or criminal. *Id.*⁴ That freedom green-lighted a guilty verdict on the third degree assault charges, where jurors were called upon to decide whether (1) Deputy Hunt had been functioning "as a law enforcement officer lawfully using force to make an arrest" and (2) whether he was "making a lawful arrest or an arrest which he reasonably believe[d] to be lawful." *Id.* at 102-03.

"The office or purpose of instructions is to inform the jury as to the law of the case applicable to the facts in such a manner that the jury may not be misled." *White v.*

⁴ In its brief in the Court of Appeals, the State acknowledged that this omission rendered Deputy Hunt's burglary conviction unsustainable. The Court of Appeals agreed. *See slip op.* at 11.

Kansas City Public Service Co., 149 S.W.2d 375, 377 (Mo. 1941). For its instructions to fulfill that purpose, “a trial court must define for the jury legal . . . terms occurring in the instructions, for their meaning is not within the ken of the ordinary juror.” *Brock v. Firemens Fund of America Insurance Co.*, 637 S.W.2d 824, 827 (Mo.App.E.D. 1982). “A ‘roving commission’ occurs when an instruction . . . submits an abstract legal question that allows the jury ‘to roam freely through the evidence and choose any facts which suited its fancy or its perception of logic’ to impose liability.” *Seitz v. Lemay Bank and Trust Co.*, 959 S.W.2d 458, 463 (Mo.1998). An instruction can serve as a roving commission when it is “too general” or when it is “submitted in a broad, abstract way.” *Centerre Bank of Kansas City vs. Angle*, 976 S.W.2d 608, 617 (Mo.App.W.D. 1998); *see also Coon v. Dryden*, 46 S.W.3d 81, 92-93 (Mo.App.W.D. 2001) (recognizing that an instruction can grant a roving commission “when it is too general or when it submits a question to the jury in a broad, abstract way”). In this case, having no judicial guidance about the factors that would determine whether Deputy Hunt’s forcible entry was lawful or unlawful, the jury was left free to resolve that critical issue according to its own whim.

Even when no burglary charge is to be submitted—Point I of this brief is amicus curiae’s argument such charges should be precluded as a matter of law and of public policy when officers force entry into a residence and the conditions of § 105.240 are met—the lawfulness of a law enforcement officer’s presence at the site of a forcible arrest should be made clear to jurors. When a policeman or policewoman has forced entry into a citizen’s home—and has a warrant for the occupant’s arrest, reasonably

believes the fugitive to be present, and was not granted entry after knocking and announcing himself or herself as a law officer—the jury should be instructed that the defendant was privileged to break into the residence. Otherwise juries will be at liberty to decide that the defendant-officer could not have been “lawfully using force to make an arrest” or “making a lawful arrest” because his very presence in the arrestee’s home was unlawful.

Deputy Hunt’s conviction of third degree assault represents another threat to the ability of Missouri law enforcement officers to make the best choice when executing an important and inherently dangerous duty. The Court should reverse that conviction in the interest of justice for Deputy Hunt and of safe and effective law enforcement for all.

CONCLUSION

The Missouri Fraternal Order of Police as amicus curiae requests that this Court reverse the judgment of conviction with respect to all counts, and issue an opinion recognizing and explaining the statutory and public policy grounds for that decision, in consonance with the reasons set forth in this brief.

Respectfully submitted:

James P. Towey, Jr. [35351]
General Counsel
Missouri Fraternal Order of Police
715 Jefferson Street
Jefferson City, Missouri 65101
Telephone: (314) 392-5200

/s/ Michael Gross
Michael Gross [23600]
MICHAEL GROSS LAW OFFICE
231 South Bemiston Avenue, Suite 250
St. Louis, Missouri 63105
Telephone: (314) 863-5887

*Attorneys for Amicus Curiae
Missouri Fraternal Order of Police*

CERTIFICATE OF COMPLIANCE AND SERVICE

This brief contains the information required by Mo. R. Civ. P. 55.03. The brief complies with the limitations set forth in Mo. R. Civ. P. 84.06(b), in that the brief contains 4,698 words as determined by the word processing application Microsoft Word for Macintosh 2011, version 14.4.2. All characters in the brief are printed in 13 point Times New Roman font provided by that application.

The brief has been submitted to the Court's electronic filing system on June 10, 2014, for review by the Court and service upon all counsel of record.

/s/ Michael Gross