

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

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| STATE OF MISSOURI, Respondent, |) | No. ED100905 |
| |) | Appeal from the Circuit Court |
| vs. |) | of the City of St. Louis |
| |) | Honorable Steven R. Ohmer |
| KENNETH DUDLEY, Appellant. |) | Filed: April 21, 2015 |

A jury convicted the defendant, Kenneth Dudley, of selling marijuana, possessing drug paraphernalia, and felonious resisting arrest. Defendant asserts two points of trial-court error on appeal, both directed toward his conviction for resisting arrest. He challenges both the sufficiency of the evidence to support the conviction and the verdict-directing instruction submitting the count to the jury.

REVERSED IN PART; CAUSE REMANDED IN PART

DIVISION ONE HOLDS: The State presented sufficient evidence from which a reasonable juror could have found that defendant used physical force to resist his arrest. The verdict-directing instruction for resisting arrest included an element of a crime with which defendant had not been charged. The inclusion of that element misdirected the jury on the law and excused the State from its burden of proof on the charged crime. The trial court thus plainly erred in submitting the instruction to the jury. We therefore reverse the trial court's judgment entered on defendant's conviction for resisting arrest and remand the case to the trial court for a new trial on that count.

Opinion by: Lawrence E. Mooney, P.J. Clifford H. Ahrens, J. and Lisa VanAmburg, J.
concur.

Attorney for Appellant: Jessica M. Hathaway

Attorneys for Respondent: Chris Koster and Dora. A. Fichter

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| <p>THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.</p> |
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