

Summary of SC90444, *State of Missouri v. Gail L. Daws*

Appeal from the Platte County circuit court, Judge Abe Schafer
Argued and submitted April 15, 2010; opinion issued May 25, 2010

Attorneys: The state was represented by Jayne T. Woods of the attorney general's office in Jefferson City, (573) 751-3321, and Daws was represented by Rosalynn Koch of the public defender's office in Columbia, (573) 882-9855.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The state appeals a trial court's dismissal, on double jeopardy grounds, of a charge for resisting arrest against a woman who previously had pleaded guilty to failure to yield to an emergency vehicle. In a unanimous decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri reverses the judgment and remands (sends back) the case for further proceedings. Double jeopardy does not bar the subsequent prosecution because failure to yield to an emergency vehicle is not a lesser-included offense of resisting arrest.

Facts: In January 2008, police officers activated emergency sirens and signaled for Gail Daws to stop her vehicle. She did not. Instead, she fled, driving in excess of 100 mph and disregarding traffic signals along the way. When she finally stopped, she was cited for failing to yield to an emergency vehicle, a misdemeanor. In March 2008, she pleaded guilty to the charge. The next month, the state charged Daws with felony resisting arrest and driving with a revoked license. She moved to dismiss the resisting arrest charge, arguing her previous conviction for failing to yield to an emergency vehicle charge is a lesser-included offense of resisting arrest and, therefore, the new charge violated her right to be free from double jeopardy. The trial court granted Daws' motion, dismissed the resisting arrest charge, accepted Daws' guilty plea to driving while her license was revoked and sentenced her to one year in prison. The state appeals.

REVERSED AND REMANDED.

Court en banc holds: The trial court erred in dismissing the charge for felony resisting arrest. To determine whether a successive prosecution is barred by double jeopardy, a trial court must determine whether the offenses contain the same elements; if each offense contains an element not contained in the other, double jeopardy does not apply. The focus is on the elements of the offenses at issue, not the underlying conduct that resulted in the charges. Here, failure to yield to an emergency vehicle is not a lesser-included offense of resisting arrest because each contains elements that the other does not. The crime of failure to yield is premised on the failure to heed the approach of an emergency vehicle using lights and sirens. The crime of resisting arrest is premised on resistance to a lawful arrest or stop – whether executed on foot, from a vehicle or in any other manner – and makes no mention of emergency vehicles, lights or sirens. Although there is an evidentiary presumption of flight in a resisting arrest charge that may effectively incorporate two elements of failure to yield, this is not an element of the offense of resisting arrest. As an evidentiary presumption, it may be rebutted by evidence. To the extent that *State v. Clark*, 263 S.W.3d 666, 673-74 (Mo. App. 2008), suggests that this evidentiary presumption supports a double jeopardy claim for a later prosecution for resisting arrest, it is incorrect.