

IN THE
SUPREME COURT OF MISSOURI

STATE OF MISSOURI,)	
)	
Respondent,)	
)	
vs.)	No. SC97605
)	
CHARLES C. SHAW III,)	
)	
Appellant.)	

APPEAL TO THE SUPREME COURT OF MISSOURI
FROM THE CIRCUIT COURT OF
POLK COUNTY, MISSOURI
THIRTIETH JUDICIAL CIRCUIT
THE HONORABLE MICHAEL O. HENDRICKSON, JUDGE

APPELLANT'S SUBSTITUTE BRIEF

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JURISDICTIONAL STATEMENT

Appellant Charles C. Shaw III appeals his conviction after a jury trial in Polk County, Missouri, for one count of assault in the first degree, Section 565.050, and one count of resisting arrest for a felony, Section 575.150. Polk County is within the jurisdiction of the Southern District Court of Appeals. Section 477.060. On June 27, 2017, Judge Michael O. Hendrickson signed a final judgment wherein he sentenced Mr. Shaw to ten years of incarceration in the Department of Corrections for the conviction for assault in the first degree, and three years of incarceration in the Department of Corrections for the conviction for resisting an arrest for a felony, both to run consecutively. (LF. 40).

Jurisdiction of this appeal originally was in the Missouri Court of Appeals, Southern District. Article V, § 3, Mo. Const. Following an opinion by that court en banc, this Court granted Mr. Shaw's application for transfer and has jurisdiction. Article V, sections 3 and 10, Mo. Const.; Rule 83.04.

STATEMENT OF FACTS

Charles Shaw was charged by information with the class B felony of assault in the first degree under Section 565.050 RSMo. (Count I), the class B felony of attempted child kidnapping under Section 564.011 RSMo. (Count II), and the class D felony of resisting an arrest under Section 575.150 RSMo. (Count III). (LF. 15-16). For Count I, the information alleged Mr. Shaw “struck the victim, and such conduct was a substantial step toward the commission of the crime of attempting to cause serious physical injury to Matt Clark, and was done for the purpose of committing such assault.” (LF. 15). For Count II, the information alleged Mr. Shaw, “who was not related to Juvenile EC, by blood or marriage, knowingly and unlawfully attempted to remove Juvenile EC, a child under the age of fourteen years, from his father, and that such conduct was a substantial step toward the commission of the crime of Attempted Child Kidnapping of Juvenile EC, and was done for the purpose of committing such Child Kidnapping, without the consent of a parent or guardian.” (LF. 16). For Count III, the information alleged “Mark Mason, a law enforcement officer, was making an arrest of [Mr. Shaw] for attempted assault in the 2nd degree, and the defendant knew or reasonably should have known that officer was making an arrest, and for the purpose of preventing the officer from effecting the arrest, resisted the arrest of [Mr. Shaw] by using or threatening the use of violence or physical force.” (LF. 16).

On the date of the offenses, Mr. Shaw was outside of the Harvest Assembly Church, in Fair Play, Missouri. (Tr. 44-46). Matt Clark, who was in attendance at

Harvest Assembly, stepped outside in the middle of an ongoing service with his two year old son and saw Mr. Shaw standing outside. (Tr. 44-46). He asked Mr. Shaw if he needed any help, and Mr. Shaw turned and said “I’m the sorriest, sickest motherfucker alive and I need someone to beat my ass.” (Tr. 46-47).

Mr. Clark declined Mr. Shaw’s request, and replied that someone inside the church could help him. (Tr. 47). Mr. Shaw responded by walking over to Mr. Clark and attempting to punch him in the head. (Tr. 47-48). Mr. Clark was holding his son at the time, but was able to block most of the punches with his left hand. (Tr. 48). Mr. Shaw never managed to hit him with his fists. (Tr. 48). Mr. Clark received some mild bruising on his left forearm from blocking the punches, and also hurt his forehead from having his arm driven back into it. (Tr. 51). Mr. Clark never sought any medical attention for the injuries he sustained. (Tr. 68). Mr. Shaw also never hit or grabbed for Mr. Clark’s son during the whole altercation. (Tr. 64-65).

Mr. Clark managed to strike Mr. Shaw with an open hand and escaped to the Church’s parking lot. (Tr. 52). Mr. Shaw continued to approach Mr. Clark sporadically while they remained in the parking lot. (Tr. 53). At some point during this series of events, Mr. Shaw told Mr. Clark “I’m going to kick your ass, motherfucker, and I’m going to have your kid.” (Tr. 53). Mr. Clark was eventually able to circle back around to the Church’s entrance and reenter the Church’s auditorium. (Tr. 54).

Mr. Clark directed someone to call 911, and watched Mr. Shaw at the door. (Tr. 55). Someone quickly locked the door while Mr. Shaw attempted to get inside. (Tr. 56). Officer Mark Mason eventually arrived and addressed Mr. Shaw, but he initially did not turn away from the door to the church. (Tr. 73). After a few seconds of Officer Mason's questioning, Mr. Shaw turned and charged Officer Mason, and started throwing punches at him, though none actually landed. (Tr. 73, 81). Officer Mason then deployed mace against Mr. Shaw. (Tr. 74, 75). When Mr. Shaw stopped to rub his eyes, Officer Mason circled around behind Mr. Shaw and tackled him. (Tr. 75-76).

Mr. Shaw continued to struggle once he was taken to the ground. (Tr. 76, 87-88). Some individuals from the Church then emerged to assist Officer Mason in subduing Mr. Shaw. (Tr. 76-77). With their assistance, Officer Mason was able to handcuff Mr. Shaw in order to arrest him. (Tr. 76, 83). According to Officer Mason, Mr. Shaw was arrested for his attempted assault on Officer Mason, but he did not recall if he ever informed Mr. Shaw that he was under arrest. (Tr. 82).

Officer Mason attempted to then sit Mr. Shaw upright, as he believed he was calming down, but Mr. Shaw began attempting to spit on the people surrounding him. (Tr. 78). Officer Mason returned him to a face-down position, and Mr. Shaw threatened the individuals around him and used profanity at them. (Tr. 78). Officer Mason called an ambulance and Mr. Shaw was eventually loaded onto it. (Tr. 78).

During the pendency of Mr. Shaw's case, there was some concern that he was not competent to proceed. (LF. 19-33, Tr. 4-6, 9). As a result, several mental competency examinations were ordered by the trial court to assess his competency, and also to make a finding regarding whether he suffered from a mental disease or defect at the time of the offense that kept him from understanding the wrongfulness of his conduct. (LF. 19-20, 22-23, 26-29, 32-33, Tr. 9). The results of these examinations were uniform in finding that Mr. Shaw suffered from a schizo-affective disorder at the time of the offense, and, as a result, did not understand the wrongfulness of his conduct. (Tr. 5). A final examination was done shortly before trial that found Mr. Shaw competent to stand trial, but again reiterated that he could not appreciate the wrongfulness of his conduct at the time of the offense. (Tr. 13.) Mr. Shaw decided to forgo pursuing a defense of not guilty by reason of mental disease or defect (NRGI), however, and waived his right to a jury trial. (Tr. 7. 11-13). After soliciting answers from Mr. Shaw regarding the nature of the proceedings, charges against him, and right to trial by jury, the trial court found him competent to proceed and accepted his waiver of jury trial (Tr. 28-29, 32).

After the close of the State's evidence at trial, Mr. Shaw moved for a judgment of acquittal on all three counts, on the basis that the State did not present sufficient evidence to prove Mr. Shaw committed the offenses as charged. (Tr. 92-93). The trial court sustained the motion in regards to the charge of attempted kidnapping (Count II), and overruled it in regards to the other two counts. (Tr.

104, 108). After closing arguments, the trial court found Mr. Shaw guilty of the two remaining counts. (Tr. 129, 131) For the first count, he was sentenced to ten years in the Department of Corrections, and for the third count he was sentenced to three years in the Department of Corrections. (Tr.151). Both sentences were to run consecutively with each other and consecutive to another conviction Mr. Shaw recently received. (LF. 37, 40; Tr. 151). This appeal follows.

POINT RELIED ON

The trial court erred in overruling Mr. Shaw's motion for judgment of acquittal at the close of the State's evidence, and in entering judgment and sentence for the class D felony of resisting an arrest, because this violated Mr. Shaw's rights guaranteed by the Due Process Clause of the 14th Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution, in that there was insufficient evidence to establish that Mr. Shaw was being arrested for a felony when he resisted the arrest in question.

State v. Bell, 30 S.W.3d 206 (Mo. App. S.D. 2000);

State v. Merritt, 805 S.W.2d 337 (Mo. App. E.D. 1991);

State v. Wanner, 751 S.W.2d 789 (Mo. App. E.D. 1988);

United States Constitution, Amendment XIV;

Missouri State Constitution, Article I, Section 10;

575.150 RSMo. (2009);

565.060 RSMo. (2006); and

Mo. Sup. Ct. Rule 29.11.

ARGUMENT

The trial court erred in overruling Mr. Shaw’s motion for judgment of acquittal at the close of all evidence, and in entering judgment and sentence for the class D felony of resisting an arrest, because this violated Mr. Shaw’s rights guaranteed by the Due Process Clause of the 14th Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution, in that there was insufficient evidence to establish that Mr. Shaw was being arrested for a felony when he resisted the arrest in question.

A. Standard of Review and Preservation of Error

The Due Process Clause protects a defendant against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. *In re Winship*, 397 U.S. 358, 364 (1970); U.S. Const., Amend. 14; Mo. Const. Art. I, § 10. This impresses “upon the fact finder the need to reach a subjective state of near certitude of the guilt of the accused” and thereby symbolizes the significance that our society attaches to liberty. *Jackson v. Virginia*, 443 U.S. 307, 315 (1979).

In reviewing a challenge to the sufficiency of the evidence, this Court accepts as true all evidence and its inferences in a light most favorable to the verdict. The State may rely upon direct and circumstantial evidence to meet its burden of proof. *State v. Howell*, 143 S.W.3d 747, 752 (Mo. App. W.D. 2004). The Court disregards contrary inferences, unless they are such a natural and

logical extension of the evidence that a reasonable trier of fact would be unable to disregard them. *State v. Grim*, 854 S.W.2d 403, 411 (Mo. banc 1993). But the Court may not supply missing evidence, or give the State the benefit of unreasonable, speculative, or forced inferences. *State v. Whalen*, 49 S.W.3d 181, 184 (Mo. banc 2001). “[T]he relevant question is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. Bateman*, 318 S.W.3d 681, 687 (Mo. banc 2010).

Mr. Shaw argued in his motion for acquittal at the close of the state’s evidence that the evidence was insufficient as a matter of law to support a finding of guilt on all counts. (LF. 35). Regardless, claims regarding the sufficiency of evidence to sustain a criminal conviction are always preserved for appellate review. Mo. Sup. Ct. Rule 29.11(e), *State v. Claycomb*, 470 S.W.3d 358, 362 (Mo. banc. 2015).

B. Analysis

Under Section 575.150 RSMo. (2009),¹ a person commits the offense of resisting an arrest

¹ Section 575.150 RSMo., and all other Missouri criminal statutes referenced *infra*, were repealed by L.2014, S.B. No. 491, § A effective January 1, 2017. Mr. Shaw was charged by information on December 23, 2014. (LF. 5). As a result, all criminal statutes further referenced in Mr. Shaw’s brief will be the versions that were effective when Mr. Shaw was charged. Section 1.160 RSMo (2005).

“if, knowing that a law enforcement officer is making an arrest...or the person reasonably should know that a law enforcement officer is making an arrest..., for the purpose of preventing the officer from effecting the arrest,... the person...[r]esists the arrest...of such person by using or threatening the use of violence or physical force or by fleeing from such officer...”

575.150.1 RSMo. (2009).

For a defendant’s conduct to amount to resisting arrest generally, the law enforcement officer must intend to arrest or “contemplate” arresting the defendant. *State v. Wanner*, 751 S.W.2d 789, 791 (Mo. App. E.D. 1988) (insufficient evidence to convict for resisting arrest where officer testified he only intended to warn defendant about his driving habits when he fled from the police officer); *State v. Long*, 802 S.W.2d 573, 576 (Mo. App. S.D. 1991) (in case of resistance by flight from the arresting officer, officer did not know defendant actually committed the offense for which he later arrested defendant before actually stopping defendant, and thus could have had the intent to arrest the defendant at the time of flight); *State v. Joos*, 218 S.W.3d 543, 549 (Mo. App. S.D. 2007) (insufficient evidence where officer only initially intended to stop defendant to determine if vehicle was properly registered, and never testified that he ever formed the intent to arrest the defendant at any point during the eleven minute chase that followed).

In cases of resisting arrest for a felony, this concept has been expanded to require some evidence that the officer intended or contemplated an arrest for a felony. *State v. Merritt*, 805 S.W.2d 337 (Mo. App. E.D. 1991). This reflects the plain language of Section 570.150, which states specifically that “the offense of resisting...an arrest is a class D felony *for an arrest for a...* felony.” 575.150.5(1) (emphasis added). The inquiry is thus focused on the purpose of the arrest, and not the nature of the underlying conduct that prompted the arrest. The relevant model jury instruction for the offense reflects this fact, as it requires the jury to find that the law enforcement officer “[was] making an arrest of (the defendant) for [name of offense].” MAI-CR3d 329.60. It does not require the jury to make a factual finding that defendant’s underlying conduct met the elements of some felony offense, but just that the purpose of the arrest was for the felony identified by the law enforcement officer.

The circumstances of *Merritt* illustrate why Section 575.150 places the basis of the inquiry on the intent of the officer and not the underlying conduct of the defendant. There, the arresting officer believed the defendant was engaged in a felony drug transaction which prompted his attempt to arrest the defendant. 805 S.W.2d at 338. However, the evidence of the defendant’s underlying conduct did not actually support the conclusion that the defendant was engaged in a felony drug crime, but merely that the defendant possessed a misdemeanor amount of marijuana. *Id.* at 339. The Eastern District found that the officer’s intent to arrest the defendant for a felony still provided sufficient evidence for a conviction for

felony resisting arrest, because Section 575.150 plainly states that the *arrest* in question must be for a felony, regardless of the nature of the underlying conduct that prompted the arrest. *Id.* at 339; 575.150.5 RSMo. (2009). The Eastern District held that the “relevant inquiry to determine whether [defendant]’s resistance constituted a felony [was] not whether the defendant is guilty of the underlying charge,” but whether the officer “contemplat[ed] making a felony arrest.” *Id.* at 339.²

In the instance case, the State has failed to produce sufficient evidence to prove that Officer Mason intended to arrest Mr. Shaw for a felony when Mr. Shaw resisted arrest. According to Officer Mason, when he arrived in response to the 911 call, Mr. Shaw was standing against the door of the church, with his nose up to the glass of the door. (Tr. 72). When Officer Mason approached him and began questioning him, Mr. Shaw did not respond or acknowledge Officer Mason’s presence for about ten seconds. (Tr. 73). However, after these ten seconds, Mr. Shaw suddenly turned and charged Officer Mason, and started throwing punches. (Tr. 73). Officer Mason was within two feet of Mr. Shaw when this occurred, but

² See also *State v. Johnson*, 830 S.W.2d 36, 38 (Mo. W.D. App. 1992) (held that no evidence was presented to prove that the offense for which defendant was being arrested was a felony, and thus reverses conviction for felony resisting arrest); *State v. Jordan*, 181 S.W.3d 588, 593 (Mo. E.D. App. 2005) (Insufficient evidence of felony resisting arrest where officer involved only testify that they were stopping defendant to get him “under control” and State presented no other evidence of what felony offense for which the officer’s intended to arrest the defendant); *DeClue v. State*, 3 S.W.3d 395, 399 (Mo. E.D. App. 1999) (there was an insufficient factual basis for movant’s guilty plea to felony resisting arrest because the record did not indicate that the arresting officer intended to arrest movant for felony).

he was able to avoid Mr. Shaw's attacks. (Tr. 73). Officer Mason then deployed mace against Mr. Shaw. (Tr. 74). The first deployment did not make good contact, so he deployed it a second time. (Tr. 74). After this, Mr. Shaw stopped to rub his face and eyes, and this gave Officer Mason the opportunity to circle around behind him and tackle him. (Tr. 75). Mr. Shaw continued to struggle, but three individuals from inside the church came out and helped Officer Mason handcuff Mr. Shaw and effectuate an arrest. (Tr. 76). During Officer Mason's testimony at trial, he stated his reason for arresting Mr. Shaw at this point was "due to the fact that he was attacking me." (Tr. 76). Specifically he stated, "[a]t the point when I placed him in handcuffs, and arrested him, it was [for] an attempted assault on me." (Tr. 82). At no point before or during Officer Mason's arrest of Mr. Shaw did he have any information about the events that precipitated the 911 call. (Tr. 75, 76).

The only evidence the State presented regarding the basis for Officer Mason's arrest was his testimony that he was arresting Mr. Shaw for his "attempted assault" on the officer. (Tr. 82). There was no specific evidence presented regarding what exact type of criminal assault Officer Mason was referring to, or whether that criminal assault was a felony. There were many different criminal offenses defined in Missouri law at the time of Mr. Shaw's arrest that could apply to Mr. Shaw's behavior towards Officer Mason that could be reasonably labeled as "assault," and not all of those offenses were felonies. For instance, while it's possible Officer Mason was arresting Mr. Shaw for first

degree³ or second degree⁴ assault of a law enforcement officer, which are class B and C felonies respectively, it was also possible he was arresting him for third degree assault of a law enforcement officer⁵, which is a class A misdemeanor. 565.081-083 RSMo. (2012). Officer Mason could have also been arresting Mr. Shaw for one of the various criminal provisions that defined assault generally, of which there were also some that were set out as felonies and others that were defined as misdemeanors⁶.

In *State v. Bell*, the Southern District similarly found insufficient evidence to sustain a conviction for felony resisting arrest where the basis for an officer's arrest was unclear from the evidence presented, and could have been a number of criminal offenses defined as assault that were both felonies and misdemeanors.

³ “A person commits the crime of assault of a law enforcement officer... in the first degree if such person attempts to kill or knowingly causes or attempts to cause serious physical injury to a law enforcement officer...” 565.081.1(RSMo. (2012).

⁴ “A person commits the crime of assault of a law enforcement officer... in the second degree if such person... knowingly causes or attempts to cause physical injury to a law enforcement officer... by means other than a deadly weapon or dangerous instrument...” 565.082.1(2) RSMo. (2012).

⁵ “A person commits the crime of assault of a law enforcement officer... in the third degree if... such a person purposely places a law enforcement officer... in apprehension of immediate physical injury [or]... knowingly causes or attempts to cause physical contact with a law enforcement officer.. without the consent of the law enforcement officer.” 565.083.1(2) and (3) RSMo. (2012).

⁶ For instance, while 1st and 2nd degree assaults are defined as felonies, Officer Mason could have also been arresting Mr. Shaw for assault in the third degree, a class A misdemeanor, which is defined as “attempt[ing] to cause physical injury to another person” or “purposely place[ing] another person in apprehension of immediate physic injury” or “knowingly caus[ing] physical contact with another person knowing the other person will regard the contact as offensive or provocative.” 565.050 RSMo. (1984), 565.060 RSMo. (2006), and 565.070 .1(1), (3), and (5) RSMo. (1998)

State v. Bell, 30 S.W.3d 206, 208 (Mo. App. S.D. 2000). In *Bell*, a man named Gregory Campbell “stomp kicked” and knocked over a police officer attempting to arrest him for a noise ordinance violation, and began kicking him the face and body repeatedly while he was on the ground. *Id.* at 206. His brother, Kenneth Campbell, joined in kicking the officer, and ran when other officers arrived to assist. *Id.* When the officers chased Kenneth down and attempted to arrest him, a crowd formed and began throwing rocks at the officers, and the defendant, Dimitri Bell, was among them. *Id.* at 207. The defendant was charged with interfering with an arrest of a felony⁷ and convicted of a class D felony. *Id.*

The jury was instructed they had to find that, when the defendant interfered, the officers were making an arrest of Kenneth Campbell for assault of a law enforcement officer in the first degree. *Id.* However, no direct evidence was presented indicating the charge for which Kenneth Campbell was arrested. *Id.* The Court then considered whether “it would be reasonable for a jury to conclude beyond a reasonable doubt that, when Defendant interfered, the officer was attempting an arrest for a felony” under the statute governing assaulting a police officer in the first degree. *Id.* In its consideration, the Southern District stated that “even if we assume that Kenneth Campbell was being arrested for assault” there

⁷ The same statute, Section 575.150 RSMo., defines the criminal offenses for both resisting and interfering with an arrest, with the difference between the two being whether the defendant is the subject of the arrest or merely interfering with the arrest of another. The provision in question here, which governs whether either rises to the level of a felony, is the same for both and was the same in the statute that governed the offense at the time of Mr. Shaw’s offense. 575.150.5 RSMo. (2009).

were still numerous different criminal offenses labeled “assault” that were both misdemeanors and could have been the basis for the arrest, including third degree assault of a law enforcement officer. *Id.* at 208. The Southern District found that there was “no reasonable basis” in the evidence presented by the State “to determine if the officer attempted the arrest for the commission of a felony or a misdemeanor”, stating:

“It may have been probable that Kenneth Campbell was being arrested for felony assault on a law enforcement officer as there was evidence of a severe and prolonged attack upon the officer by Kenneth Campbell and his brother.... But the evidence falls short of establishing this basis for arrest beyond a reasonable doubt. There was a variety of charges for which Kenneth Campbell could have been arrested. It would have been simple for the State to show what the officer was arresting Campbell for. Failing to show this, when it could have been easily established, casts doubt on the State’s contentions.”

Id.

The Eastern District followed *Bell’s* logic when finding insufficient evidence to support a conviction for felony resisting arrest in *State v. Jordan*. In *Jordan*, an off-duty police officer observed defendant driving a vehicle without brake lights or a license plate. 181 S.W. 3d at 590. After waiving the car down and having a verbal altercation with the defendant, the officer attempted to reach into

the vehicle and turn off the ignition. *Id.* at 590-591. The defendant then accelerated, catching the officer's arm in the car until he was able to free it, and then turned car away, causing the car to hit the officer's right knee. *Id.* Several other officers responded to the scene after the original officer radioed for assistance, which lead to a high speed chase through a residential area during which the defendant rammed one of officers' cars with his vehicle. *Id.* After the collision, one of the officers exited his vehicle an approached the defendant from the side of his vehicle to "get [him] under control," which caused the defendant to attempt to pull the officer into the car. *Id.* Eventually, the defendant was removed from his vehicle and arrested. *Id.*

The defendant was charged with resisting this last officer's attempt to arrest him after he collided with his car. *Id.* at 592. This officer testified that it was his intention to stop the defendant and to "bring him under control," while the officer who initially interacted with him said he was being arrested because "he struck" an officer. The Eastern District found that at "no point in [the testimony of the officer who actually arrested the defendant] did he indicate contemplating arresting Defendant or that he intended to arrest Defendant for a felony. Since there were a variety of charges for which Defendant could have been arrested, [the Court could not] say the evidence established a basis for a felony arrest beyond a reasonable doubt." *Id.* at 593

Mr. Shaw's situation is not substantially different from the situations in *Bell* and *Jordan*, It is possible that the "assault" for which Officer Mason was arresting

Mr. Shaw was a felony assault of some type, and it might have been a simple matter for the State to present evidence to that effect. But they did not. Instead, they chose, in their charging information, to indicate that a specific felony was the basis for Mr. Shaw's arrest, and failed to show at trial that the specific felony in question was actually the basis for Mr. Shaw's arrest.

There was no evidence that Mr. Shaw was being arrested for any type of felony. As in *Bell* and *Jordan*, there is only a description of the general events leading up to the arrest, and Officer Mason's testimony that he was arresting Mr. Shaw for some type of assault. Those general events may describe a number of felony assaults, but, as in *Bell* they can also describe a number of misdemeanor offenses. Because no direct evidence was presented regarding the officer's basis for arresting Mr. Shaw other than "for an assault," the State failed to present sufficient evidence from which a rational trier of fact could find beyond a reasonable doubt that Mr. Shaw was being arrested for a felony when he resisted his arrest. This Court should therefore reverse Mr. Shaw's conviction for resisting arrest and order him discharged from that offense.

CONCLUSION

Because there was insufficient evidence to support Mr. Shaw's conviction resisting arrest, this Court should reverse his conviction and order him discharged from that offense.

Respectfully submitted,

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Certificate of Compliance and Service

I, Katie Curry, hereby certify to the following. The attached brief complies with the limitations contained in Rule 84.06(b). The brief was completed using Microsoft Word, Office 2010, in Times New Roman size 13 point font. Excluding the cover page, the signature block, this certificate of compliance and service, and appendix, the brief contains 4,850 words, which does not exceed the 31,000 words allowed for an appellant's brief.

On this 17th day of April, 2019, electronic copies of Appellant's Substitute Brief and Appellant's Substitute Brief Appendix were placed for delivery through the Missouri e-Filing System to Robert Jefferson Bartholomew, Assistant Attorney General, at Jeff.Bartholomew@ago.mo.gov.

/s/ Katie Curry

Katie Curry

