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 REPLY BRIEF

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A. Contrary to the State's assertions, an officer's "contemplation" of or intention to arrest an individual is an element of resisting arrest

In its Respondent's brief, the State argues that "whether or not the officer 'contemplated' an arrest is not a statutory element of resisting arrest" and thus the State is not required to prove that the officer contemplated making a *felony* arrest to support a conviction for felony resisting arrest. (Resp. Br. 14). While it is true that nothing in Section 575.150 explicitly discusses for what an officer "contemplates" or intends to make an arrest, the statute does make it clear that the "gravamen of the offense is resisting an arrest" that is actually being made, and not just the defendant's flight from an officer or physical altercation with an officer. *State v. Long*, 802 S.W.2d 573, 575–76 (Mo. App. S.D. 1991). As such, in order to ensure the defendant actually resisted "an arrest," it is necessary to determine that the officer intended to arrest the defendant at the time of his resistance.

State v. Dossett is illustrative of this concept. In *Dossett*, the defendant was alerted by a police officer that he was driving with his high beam headlights on but did not turn them off. 851 S.W.2d 750, 751 (Mo. App. W.D. 1993). As a result, the police officer started following the defendant in his patrol car. *Id.* When the defendant stopped at an intersection, the police officer turned on his flashing lights and continued following the car as he believed the driver was attempting to find a place to pull over. *Id.* As he

followed, he noticed the car weaving in and out of lanes and eventually that it failed to stop at another intersection. *Id.* The officer turned on his siren at this point, which caused the defendant to accelerate his car at rapid speed. *Id.* As the officer followed the defendant through an intersection on a yellow light, his patrol car was struck by another car, which allowed the defendant to drive into another jurisdiction. *Id.* The officer testified that he was attempting to stop the defendant to "investigate to see if the driver was sleepy or intoxicated" but never testified that it was his intent to arrest the defendant. *Id.*

Following both *Long* and *State v. Wanner*, 751 S.W.2d 789 (Mo. App. 1988), the Western District in *Dossett* found that there was insufficient evidence to convict the defendant for resisting arrest because there was no evidence that the officer intended to arrest the defendant. 851 S.W. 2d at 752. The State argued that because the defendant later admitted she refused to stop for the police officer because she had a suspended driver's license, she knew she would be arrested once stopped and thus intended to "resist" that arrest. *Id.* The Western District disagreed, stating:

> "The State would base a conviction on an intent to resist arrest when and if an arrest were made. The statute does not allow a conviction to be based on an intent to resist in the event an arrest is made later. [The officer] was not making an arrest when he signaled for the [defendant] to stop or at any time during the chase. At that point he had simply signaled for Dossett to stop. When Dossett failed to stop she was fleeing from the officer who had not had an opportunity to make an arrest.

> As *Long* held, the statute does not make flight from an officer a crime when no arrest is being made.

Id.

As mentioned in Appellant's opening brief, the Southern and Eastern Districts have made similar determinations under similar facts. *State v. Joos*, 218 S.W.3d 543, 550 (Mo. App. S.D. 2007) (possibly sufficient evidence for felony resisting a lawful stop by flight under new statute, but insufficient evidence for felony resisting *arrest* where no evidence was presented that the officer intended to arrest before the defendant began his flight from police); *State v. Brooks*, 179 S.W. 3d 841, 851-852 (Mo. App. E.D. 2005) (while defendant was guilty of underlying offense of burglary, insufficient evidence to show that arresting officer was aware of this burglary at the time defendant fled or intended anything more an investigatory stop when he followed defendant in his vehicle).

It is clear from these cases that whether an officer intended to investigate, stop, detain, or arrest a defendant is central to whether the evidence is sufficient to support a conviction for resisting arrest. Contrary to the State's assertions, it is necessary for the State to present some evidence regarding the officer's intent in their interactions with the defendant, as the only way to discern whether an arrest is being made is evidence of the officer's ultimate intent. If the officer in question does not intend to arrest the defendant, their conduct might constitute some other offense, based on their interactions with the police officer. But, as *Dossett* illustrates, simply having a general intent to thwart a police officer's intentions, including resisting an arrest if it is eventually made, is not sufficient

to prove the offense of resisting arrest unless the officer *actually intended* to make an arrest.

It naturally follows from these cases that, for a defendant to be guilty of resisting arrest for a felony, the officer must similarly intend to arrest the defendant for a felony when he makes the arrest in question. Regardless of the nature or seriousness of the defendant's conduct that prompted the arrest, if the officer does not intend to arrest the defendant for a felony at the time of the arrest in question, the arrest cannot be said to be "for a felony" as required by the Section 575.150, any more than an defendant cannot be guilty of resisting arrest in general if the evidence only proves that the officer merely intended to stop or detain the defendant as in *Dossett, Joos,* and *Brooks*. If the police officer's slight difference in intention between a stop, detention, or arrest can ultimately change the nature of the offense, so too can a failure by the State to present any evidence that the police officer ultimately intended to arrest the defendant for a felony.

Respondent instead argues that the inquiry should be focused on the nature of the underlying conduct that prompted the arrest, instead of the officer's intent. They support this contention by arguing that the State presented sufficient evidence that Mr. Shaw's behavior that prompted his arrest satisfied all the elements of assault in the second degree. (Resp. Br. 13). Adding Respondent's proposed requirement to the offense of resisting arrest would mean that all prosecutions for the offense would essentially require proof beyond a reasonable doubt of all elements of the underlying offense that prompted the arrest. Section 575.150 merely states that "the offense of resisting…an arrest is a class D felony for an arrest for a… felony." 575.150.5(1) (2009). There is no requirement that

the defendant actually be guilty of a felony, and nothing else in the language of Section 575.150's language supports the conclusion that this is a necessary element of felony resisting arrest.

Not only would Respondent's proposed test require additional proof that the defendant was guilty of the underlying offense, which is not required by the governing statute, it would allow prosecutions for resisting arrest to be aggravated to a felony by the application of *post-hoc* justifications for the officer's behavior. Under Respondent's proposed framework, a police officer could merely intend to engage in an investigatory stop when interacting with an individual, but this could later be used to justify a charge of felony resisting arrest by information that is later gleaned after the arrest is completed. This allure of this mistake is illustrated by the State's attempt to argue that there were "multiple different felonies" Mr. Shaw could have been arrested for based on Mr. Shaw's behavior before Officer Mason came upon him in front of the church. (Resp. Br. 20). The State neglects to mention that these "multiple felonies" were based on behavior that Officer Mason was unaware of before he arrested Mr. Shaw, and thus could not have been the reason the officer arrested Mr. Shaw. (Tr. 76). Thus, Respondents argument seems to support a paradigm whereby any interaction an individual has with a police officer that results in arrest could result in a felony resisting arrest conviction, if the State can later find some felony that occurred before the arrest, regardless of the arresting officer's knowledge of that behavior at the time of the arrest. This expansive reading of Section 575.150 is most certainly not supported by its plain language.

What matters is whether the police officer was trying to execute one of the delineated official actions (stop, detention, arrest, felony arrest, etc.), whether the individual was aware or should have been aware they were attempting to effectuate that action, and whether that individual resisted or interfered with that action. Section 575.150 does not contain any other elements than these. There is no requirement that the individual actually be guilty of any other offense in order to be guilty of resisting arrest. As Respondent aptly points out, the State is only required to prove the statutory elements of the offense. Because the defendant actually being guilty of an underlying felony is not required for the officer to intend to arrest the defendant for a felony, it is not an element of the offense of felony resisting arrest.

B. The Court in *Bell* did not misapply the standard of review for challenges to the sufficiency of the evidence or rely on the now-disregarded "equally valid inferences rule" to reach its conclusion

Respondent argues in their brief that this Court should disregard *State v. Bell*, 30 S.W.3d 206 (Mo. App. S.D. 2000), because it "disregarded the standard of review" for sufficiency of the evidence and applied the now-disregarded "equally valid inferences" rule (Resp. Br. 16-17). The "equally valid inferences rule" held that "where two *equally valid* inferences can be drawn from the same evidence, the evidence does not establish guilt beyond a reasonable doubt." *State v. Roberts*, 709 S.W.2d 857, 862 (Mo. 1986) (emphasis in original) (internal citations omitted). In order for the rule to apply, it required that the evidence presented at trial was sufficient to support both an inference of

guilt and an inference of innocence. *Id.* The "equally valid inferences rule" was abolished by *State v. Grim*, 854 S.W.2d 403, 414 (Mo. 1993), which held that the rule violated the appellate court's requirement to presume the trier of fact drew all reasonable inferences in favor of the verdict, and thus, if sufficient evidence supported a finding of guilt, the verdict should always be upheld, regardless of what other inferences the evidence supported.

Respondent seems to posit that *Bell's* holding was an invocation of the "equally valid inferences" rule. (Resp. Br. 17). Specifically, it seems Respondent is arguing that because the Southern District in *Bell* found that the evidence did not make it clear for which of the several possible felony or misdemeanor offenses the officer was arresting the individual in question, it was essentially improperly holding there was insufficient evidence to support the conviction because there was two "equally valid inferences" the officer was arresting the individual for a felony or a misdemeanor.

However, the court in *Bell* did not find that the State presented both sufficient evidence beyond a reasonable doubt that the officer intended to arrest the individual for a felony and that the State presented sufficient evidence that the officer intended to arrest the individual for a misdemeanor, and therefore, because these two outcomes were "equally valid," that a guilty verdict could not stand. It found that there was not sufficient evidence to make *any* determination about the officer's intent in arresting the individual in question. It was not just that the officer in *Bell* could have been arresting the individual for some felony or some misdemeanor, but that there was no evidence to determine which offense, from a large number of felonies or misdemeanors, for which the officer

intended to arrest the individual. The court in *Bell* did not fail to view the evidence in the light most favorable to the verdict, as required by the standard of review, but found that, even when viewing the evidence in the light most favorable to the verdict, there was not sufficient evidence to determine the officer's intent beyond a reasonable doubt.

Mr. Shaw's case is no different. Officer Mason's testimony that he was trying to arrest Mr. Shaw for an "attempted assault" does not give the trier of fact enough information to have to decide between "valid" inferences supported by sufficient evidence that he was arresting Mr. Shaw for some specific felony or some specific misdemeanor. This testimony does not make it "equally valid" that Officer Mason was intending to arrest Mr. Shaw for some specific felony or some specific misdemeanor, it does not give enough information to make any sort of valid determination about his intent. Without the benefit of speculative or forced inferences, there is no way a rational trier of fact could discern from that testimony what degree or type of assault Officer Mason was actually arresting Mr. Shaw for, and whether that degree or type of assault was actually a felony. The fact finder could only infer that Officer Mason was arresting Mr. Shaw for some kind of assault, but any further determination about his intent would require speculation or more evidence not presented at trial.

Because a rational trier of fact could not find beyond a reasonable doubt that Officer Mason was arresting Mr. Shaw for a felony when he resisted arrest, Mr. Shaw's conviction for resisting arrest should be dismissed and he should be discharged from that offense.

CONCLUSION

As argued in the point relied on, this Court should reverse Mr. Shaw's conviction for felony resisting arrest and ordered him discharged from that offense.

Respectfully submitted,

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Certificate of Compliance

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 in Times New Roman size 13 point font. Excluding the cover page, the signature block, and this certificate of compliance, the brief contains 2,442 words, which does not exceed the 7,750 words allowed for an appellant's substitute reply brief.

/s/ Katie Curry

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Katie Curry