# IN THE MISSOURI COURT OF APPEALS
# WESTERN DISTRICT

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**COMPLETE TITLE OF CASE**

STATE OF MISSOURI,

Respondent,

v.

KHAMIS D. PITIYA,

Appellant.

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**DOCKET NUMBER WD**83502

**MISSOURI COURT OF APPEALS**
**WESTERN DISTRICT**

**DATE:** May 4, 2021

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**APPEAL FROM**

The Circuit Court of Linn County, Missouri
The Honorable Terry A. Tschannen, Judge

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**JUDGES**

Division Two: Pfeiffer, P.J., and Ahuja and Mitchell, JJ. CONCURRING.

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**ATTORNEYS**

Eric S. Schmitt, Attorney General, and Robert J. (Jeff) Bartholomew, Assistant Attorney General, Jefferson City, MO, Attorneys for Respondent.

Samuel Buffaloe, Assistant Public Defender, Columbia, MO, Attorney for Appellant.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS**
**WESTERN DISTRICT**

**STATE OF MISSOURI, Respondent,**
**v.**
**KHAMIS D. PITIYA, Appellant.**

**WD83502** **Linn County**

**Before Division Two Judges:** Mark D. Pfeiffer, Presiding Judge, and Alok Ahuja and Karen King Mitchell, Judges

Khamis Pitiya appeals, following a bench trial, his convictions of two counts of felony resisting arrest and one count of armed criminal action, for which he was sentenced to concurrent terms of three years' imprisonment on each count. Pitiya raises two points on appeal. In his first point, he argues that his two convictions for resisting arrest are in violation of his right to be free from double jeopardy insofar as his resistance constituted a continuous course of conduct for which he could be punished only once. In his second point, Pitiya argues that the evidence was insufficient to support the second count of resisting arrest and that both that count and its associated count of armed criminal action should be reversed. Finding merit in Pitiya's second claim, we affirm in part, reverse in part, and remand.

**AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

**Division Two holds:**

1. Because § 575.150.1, RSMo (resisting arrest) provides two distinct acts that constitute resistance—(1) threatening the use of violence or physical force and (2) fleeing the officer attempting the stop—a person who engages in both acts may be charged with and convicted of multiple offenses without violating the prohibition on double jeopardy.

2. Resisting arrest by means of physical force is a felony only if the underlying arrest is for a felony, a warrant issued for failure to appear on a felony case, or a warrant issued for a probation violation on a felony case. Resistance by flight, however, is a felony if the person fleeing creates a substantial risk of serious physical injury or death to any person. Here, the State charged Pitiya with felony resisting arrest for resisting by physical force and thereby creating a substantial risk of serious physical injury. At trial, the State made no effort to establish that the underlying arrest was for a felony or a warrant issued for either failure to appear or a probation violation on a felony case; therefore, it failed to establish felony resisting arrest by physical force and, instead, established only misdemeanor resisting arrest.

**Opinion by: Karen King Mitchell, Judge** May 4, 2021

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THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.