

**MISSOURI COURT OF APPEALS-WESTERN DISTRICT  
SPECIAL DIVISION  
CYNTHIA L. MARTIN, CHIEF JUDGE, PRESIDING  
GARY D. WITT, JUDGE  
W. BRENT POWELL, SPECIAL JUDGE  
JANUARY 26, 2022  
WILLIAM JEWELL COLLEGE  
LIBERTY, MISSOURI**

**WD84154**

**State of Missouri, Respondent,**

**v.**

**Joseph Richard Heintzelman, Appellant.**

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Joseph Heintzelman appeals from the circuit court's judgment convicting him of the class D felonies of forgery, possession of a controlled substance, and tampering in the first degree, and the class E felony of resisting arrest. At a bench trial, Heintzelman stipulated to the probable cause statement, which alleged that Heintzelman was arrested following an attempt to cash a stolen check. While an officer was speaking with Heintzelman, the officer was informed by radio that the truck, which Heintzelman claimed was his, was stolen. Heintzelman overheard this notification and ran from police but was eventually caught. The officers searched Heintzelman and found drug paraphernalia, four baggies that contained a crystal-like substance that tested positive for methamphetamine, and a small plastic jar containing a jelly like substance that tested positive for methamphetamine. Although Heintzelman stipulated to the probable cause statement, he argued that Count IV for the class E felony of resisting arrest should be, instead, a class A misdemeanor. Heintzelman asked that Count IV be dismissed as "wrongly filed" and for the court to sentence him instead on the Class A misdemeanor. Heintzelman contended that section 575.150, RSMo (2018), is ambiguous and that the rule of lenity states it should be construed in his favor. The court overruled Heintzelman's motion and his later motion for a directed verdict as to Count IV. The court found Heintzelman guilty of all counts as charged and sentenced Heintzelman to ten-years' imprisonment for forgery, possession of a controlled substance and tampering in the first degree, and one-year imprisonment for resisting arrest, all sentences to run concurrently. This appeal followed.

Appellant's points on appeal:

- (1) The trial court erred in entering judgment and sentence for the class E felony of resisting arrest, because this violated Mr. Heintzelman'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 show that at the time Mr. Heintzelman fled, the officers were attempting to stop, detain, or arrest him or that Mr. Heintzelman knew they were attempting to stop, detain, or arrest him.

- (2) The trial court erred in entering judgment and sentence for the class D felony of tampering in the first degree, because this violated Mr. Heintzelman'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 show that Mr. Heintzelman knew he did not have the permission of the owner to operate the truck.
- (3) The trial court erred in entering judgment and sentence for the class D felony of possession of a controlled substance, because this violated Mr. Heintzelman'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 show that the substance in question was methamphetamine.
- (4) The trial court erred in entering judgment and sentence for the class E felony of resisting arrest, because this violated Mr. Heintzelman'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 while one clause in section 575.150 states that it constitutes a felony to resist an arrest for a felony, another clause states that the offense is a misdemeanor "unless the person fleeing creates a substantial risk of serious physical injury or death to any person[.]" Because Mr. Heintzelman did not create a substantial risk of serious physical or death to any person, and because the two clauses at issue in section 575.150 cannot be reconciled, the rule of lenity should be applied in Mr. Heintzelman's favor, and this Court should enter a conviction for the class A misdemeanor of resisting arrest.

**WD84378**

**In the Interest of: J.N.W., Appellant,**

**v.**

**Juvenile Officer, Respondent.**

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J.N.W., a 15-year-old, appeals from the circuit court's order for certification to allow J.N.W. to be prosecuted under general law. In October 2020, J.N.W., his mother, and his five-year brother were traveling through Missouri by car. Their car was pulled over for speeding, and J.N.W.'s mother was arrested after she initially fled the stop. J.N.W. and his brother were taken into protective custody. While in protective custody at a Children's Division office, J.N.W. allegedly took a knife from the kitchen and held it to the throat of a Children's Division employee. In response, the State amended its petition for protective custody of J.N.W. to allege that he had committed what would be the class B felony of first-degree assault if he were an adult. The State also filed a Motion for Certification to Allow Prosecution Under General Law,

seeking to prosecute J.N.W. as an adult rather than as a juvenile. The juvenile division of the circuit court held a certification hearing. At the hearing, the Chief Juvenile Officer, a Community Coordinator for the Division of Youth Services, a child psychologist, the superintendent of the detention center at which J.N.W. was housed, and a part-time teacher at that center all testified. The Court also considered the police report of the incident, including photographs of the alleged victim. At the conclusion of the hearing, both the Juvenile Officer and J.N.W. requested that the Court deny the motion for certification. The court took the case under advisement and then issued its Order for Certification to Allow Prosecution under General Law. This appeal followed.

Appellant's points on appeal:

- (1) The juvenile court erred in granting the motion to certify J.N.W. as an adult and to allow prosecution under general law, in violation of J.N.W.'s right to due process and a fair hearing under the Fourteenth Amendment to the United States Constitution and Article I, section 10 of the Missouri Constitution, because the juvenile court's judgment must be supported by substantial evidence and a correct application of the law, in that the juvenile court's conclusions leading to certification had no substantial evidence to support them, the weight of the evidence went against them, and they erroneously applied the law.
- (2) J.N.W.'s certification counsel provided ineffective assistance of counsel, in violation of J.N.W.'s rights to due process and effective assistance of counsel under the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution, when counsel failed to object to the juvenile court considering the police report as evidence without limitation, because counsel is ineffective for a failure to object to evidence when the failure was not strategic, the objection would have been meritorious, and the failure to object resulted in substantial deprivation of the client's right to a fair hearing, in that certification counsel's failure to object to the juvenile court considering the police report as evidence for J.N.W. certification process was not the product of a reasonable strategy, an objection to the court considering the entire police report would have been meritorious, and J.N.W. was deprived his right to a fair hearing because the juvenile court relied on the police report in the order dismissing J.N.W.'s case from juvenile court to transfer J.N.W. for prosecution as an adult.
- (3) The court erred by prejudging evidentiary issues and failing to provide J.N.W. a fair hearing with an impartial decisionmaker, in violation of J.N.W.'s right to due process and a fair hearing under the Fourteenth Amendment to the United States Constitution and Article I, section 10 of the Missouri Constitution, because a litigant's right to due process is violated when the record of the proceeding as a whole demonstrates that a reasonable person would find an appearance of bias and doubt the impartiality of the court, in that J.N.W.'s right to due process in the certification hearing process

was violated because a reasonable person familiar with the entire record would find an appearance of bias and doubt the impartiality of the court.

**WD84464**

**B. Richest, Appellant,**

**v.**

**City of Kansas City, Missouri, Respondent.**

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Bobby Richest appeals from the circuit court's judgment dismissing Richest's petition for damages pursuant to Missouri Revised Statute section 105.055, *et seq.*, which prohibits the discipline of any employee of a public employer who reports alleged mismanagement or certain other prohibited activities. Richest worked for the City of Kansas City, Missouri, as a Public Works Inspector for approximately 12 years. Richest alleged that he had a conversation with his supervisor on February 21, 2019, in which he was instructed to change his time sheet to reflect his lunch break, which was taken during a shift in which he had worked overtime because of a snow event. After the conversation, Richest returned to his normal work duties but was later told to go home for the day due to a pending investigation regarding his conversation with his supervisor. He was later informed that he was suspended without pay for two weeks. Richest alleged that, following intervention by the union president, on February 25, 2019, his suspension was rescinded, with backpay, and he could return to work. According to the petition, Richest was terminated on April 5, 2019, for allegedly threatening his supervisor. Richest appealed the termination, but it was upheld by the City's Human Resources Board on November 5, 2019. On November 2, 2020, Richest filed a petition for damages alleging that he was subject to discipline in violation of section 105.055, RSMo. The City filed a motion to dismiss alleging that his claim was barred by a one-year statute of limitations. Richest opposed the motion contending that there was a continuing violation through the conclusion of the administrative process. The circuit court granted the City's motion. This appeal followed.

Appellant's point on appeal:

The trial court erred in dismissing Mr. Richest's petition for whistleblowing in violation of RSMo. § 105.055, *et. seq.*, because his claim was not barred by the statute of limitations in RSMo. § 105.055.7, in that the petition alleged a violation that occurred within one-year of the filing of his cause of action.

**WD84496**

**Fedra Ekres, Appellant,**

**v.**

**Division of Employment Security, Respondent; Franklin Energy Services, Defendant.**

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Fedra Ekres appeals the decision of the Labor and Industrial Relations Commission denying Ekres application for unemployment benefits. Ekres worked as a full-time customer care

specialist at Franklin Energy Services, LLC, in its St. Louis office. Sometime in March 2020, Ekres and her coworkers were notified that, due to the COVID-19 pandemic, Franklin was adopting a new remote-work policy, eliminating the need to first obtain manager approval, and mandating remote work. At the time the policy was adopted, Ekres resided in St. Louis City. Ekres alleged that, shortly after the policy was adopted, she notified her direct manager and regional manager by e-mail that she intended to move to New York State to be with family because of health concerns associated with the COVID-19 pandemic. Ekres indicated that she wanted to continue working for Franklin and requested an immediate response from Franklin if there was an issue. Ekres alleged that she received a response from Franklin that it appreciated that she advised it of her concerns and that it would “be in touch.” Ekres relocated and began working remotely from New York State on March 24, 2020. Ekres continued to do so through March 31, 2020. On March 31, 2020, representatives from Franklin contacted Ekres and informed her that she was being let go because she had moved to New York State. Following her termination, Ekres filed for unemployment benefits. Franklin protested the claim stating that Ekres voluntarily quit because she was moving. The Deputy found Ekres disqualified from receiving benefits because she voluntarily left employment. The Appeals Tribunal conducted a hearing and affirmed the Deputy’s determination. That determination was affirmed and adopted by the Commission. This appeal follows.

Appellant’s points on appeal:

- (1) The Labor and Industrial Relations Commission erred in affirming the decision of the Missouri Appeals Tribunal of the Department of Labor and Industrial Relations, Division of Employment, which the Commission adopted as its own, and disqualifying Appellant from unemployment benefits, because the facts found by the Commission do not support the decision under RSMo § 288.210, in that Appellant’s satisfactory work performance occurring out of state complied fully with her employer’s pandemic remote-work policy, such that her separation should not be deemed a voluntary quit under applicable law.
- (2) The Labor and Industrial Relations Commission erred in affirming the decision of the Missouri Appeals Tribunal of the Department of Labor and Industrial Relations, Division of Employment, which the Commission adopted as its own, and disqualifying Appellant from unemployment benefits, because there was no sufficient competent evidence in the record to warrant the decision under RSMo § 288.210, in that the record shows unequivocally that Appellant’s satisfactory work performance occurring out of state complied fully with her employer’s pandemic remote-work policy, such that her separation should not be deemed a voluntary quit under applicable law.
- (3) The Labor and Industrial Relations Commission erred in affirming the decision of the Missouri Appeals Tribunal of the Department of Labor and Industrial Relations, Division of Employment, which the Commission adopted as its own, and disqualifying Appellant from unemployment benefits, because the facts found by the Commission do not support the decision under RSMo § 288.210, in that Appellant was willing to relocate if and as necessary but was not given the opportunity to do so, such that her separation should not be deemed a voluntary quit under applicable law.

- (4) The Labor and Industrial Relations Commission erred in affirming the decision of the Missouri Appeals Tribunal of the Department of Labor and Industrial Relations, Division of Employment, which the Commission adopted as its own, and disqualifying Appellant from unemployment benefits, because there was no sufficient competent evidence in the record to warrant a decision under RSMo § 288.210, in that the record evidence shows unequivocally that Appellant was willing to relocate if and as necessary, but was not given the opportunity to do so, such that her separation should not be deemed a voluntary quit under applicable law.
- (5) The Labor and Industrial Relations Commission erred in affirming the decision of the Missouri Appeals Tribunal of the Department of Labor and Industrial Relations, Division of Unemployment, which the Commission adopted as its own, and disqualifying Appellant from unemployment benefits, because there was no sufficient competent evidence in the record to warrant the decision under RSMo § 288.210, in that the record evidence shows unequivocally that, if (in the alternative) Appellant's separation is deemed to have been voluntary, good cause is established by the unreasonable requirement that she be in St. Louis during the pandemic, a deviation from the remote-work policy requirements as applied to Appellant and not others working remotely, and as such did not constitute a voluntary quit without good cause under applicable law.