Summary of SC99799, *State of Missouri v. Jason Michael Hurst*
Appeal from the Newton County circuit court; Judge Kevin L. Selby
Argued and submitted January 25, 2023; opinion issued March 21, 2023

Attorneys: Hurst was represented by Ellen H. Flottman of the public defender's office in Columbia, (573) 777-9977. The state was represented by Julia E. Rives of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It is provided by 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: A defendant appeals from a judgment of conviction for first-degree tampering and resisting arrest. In a decision written by Judge Mary R. Russell and joined by five judges, the Supreme Court of Missouri affirms the circuit court's judgment. The defendant was not entitled to instructions on the necessity defense because he failed to establish that the situation developed through no fault of his own and that his actions were objectively reasonable in light of the circumstances.

Judge W. Brent Powell concurs. He agrees the circuit court did not err in refusing to submit the necessity defense instruction. He writes separately to emphasize the unique nature of the defense of necessity and to underscore the narrow limits of its applicability.

Facts: In 2017, Jason Hurst and his wife were being evicted from the trailer park in which they lived. Law enforcement arrived at the trailer park on eviction day. An altercation between Hurst and the officers ensued. During the altercation, Hurst's wife fled the trailer to a relative's nearby parked vehicle. Once Hurst was handcuffed and placed in the police cruiser, the officers attempted to remove his wife from the nearby vehicle. While the officers were attending to his wife, Hurst was able to maneuver into the front seat of the police vehicle and drive away from the trailer park. He led the officers on a chase, doubling back to the trailer park and then into the nearby town of Neosho. He used the police radio to call for help. The chase ended with the officers performing a technique to stop Hurst's vehicle, which eventually overturned. Hurst contended the officers initiated the physical altercation without provocation and that he had been beaten, tased and maced to the verge of unconsciousness. He further claimed he believed the officers were going to kill him and the officers had threatened to hurt his wife. Therefore, he alleged, he stole the vehicle and led the officers on the chase to protect his wife and ensure any further altercations would be caught on camera in town. The officers contended Hurst ignored their instructions and warnings and became combative when they attempted to arrest him. At trial, Hurst requested the jury be instructed on the defense of necessity. The circuit court refused to give the instruction. The jury found Hurst guilty as charged. Hurst appeals.

AFFIRMED.

Court en banc holds: Hurst was not entitled to instructions on the necessity defense to justify his actions. Pursuant to section 563.026, otherwise criminal conduct is justified when (1) it is necessary as an emergency measure (2) to avoid an imminent public or private injury (3) that is

about to occur through no fault of the defendant and (4) it is objectively reasonable in light of the injury to be avoided. The court must make a preliminary determination, as a matter of law, whether the defendant's conduct, with the evidence viewed in the light most favorable to submission of the instruction, was objectively reasonable under the circumstances. Hurst could not show his actions were necessary as an emergency measure, as his flight from the scene increased the risk of harm to the public. Even if he had a fear of imminent harm to himself or his wife, there were significantly more reasonable choices to prevent that harm from occurring. Any imminent harm Hurst or his wife allegedly may have faced clearly was outweighed by the risk of harm to the public he caused by leading the police on the chase. Additionally, Hurst could not prove the situation developed through no fault of his own, as the entire incident began because Hurst and his wife were trespassing at the trailer park after being evicted.

Concurring opinion by Judge Powell: The author writes separately to emphasize the unique nature of the defense of necessity and to underscore the narrow limits of its applicability. He explains there are key differences between self-defense and the defense of necessity; therefore, courts should be cautious in relying on self-defense case law and other justification defenses when determining whether to instruct on the necessity defense. He further emphasized the court's gatekeeper role in making the value judgment determination.