

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI,)	No. ED92690
)	
Respondent,)	Appeal from the Circuit Court
)	of the City of St. Louis
v.)	
)	
RANDY LEE GIBBS,)	Honorable Robert H. Dierker, Jr.
)	
Appellant.)	Filed: March 16, 2010

Randy Gibbs (Defendant) appeals from the trial court's judgment, following a jury trial, convicting him of second degree burglary, in violation of Section 569.170 RSMo 2000, and felony resisting arrest, in violation of Section 575.150. Finding Defendant to be a prior and persistent offender as defined in Section 558.016, the trial court sentenced Defendant to consecutive terms of imprisonment of fifteen years for burglary and five years for resisting arrest.

AFFIRMED and REMANDED.

Division Four holds: The trial court did not err because the record demonstrates that a jury reasonably could have found that Defendant entered a residence with the intent to steal without finding that all the elements for stealing were satisfied. Additionally, the trial court's sentencing of Defendant as a prior and persistent offender based on Defendant's own admissions of prior crimes on the record, does not establish substantial grounds for believing a manifest injustice or miscarriage of justice has occurred. Defendant's conviction and sentence is affirmed, but this case is remanded to the trial court to correct the clerical mistake made in the written judgment which reflects that Defendant was both a prior and persistent offender and a prior and persistent *drug* offender.

Opinion by: Kurt S. Odenwald, P.J.
George W. Draper III, J., and Gary M. Gaertner, Jr., Concur

Attorney for Appellant: Gwenda Renee Robinson

Attorney for Respondent: Chris Koster and Jamie Pamela Rasmussen

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.