

OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI,)	No. ED98478
)	
Plaintiff/Respondent,)	Appeal from the Circuit Court
)	of the City of St. Louis
v.)	
)	
BRUCE PIERCE,)	Honorable Thomas C. Grady
)	
Defendant/Appellant.)	Filed: February 26, 2013

Bruce Pierce (Appellant) appeals from the trial court’s judgment entered upon a jury verdict convicting him of second-degree trafficking and resisting a felony arrest. On appeal, Appellant argues that the trial court erred in (1) denying his motion to dismiss and in retrying his case four terms after his first trial ended in a mistrial due to a hung jury because Article I, Section 19 of the Missouri Constitution limits the circuit court’s authority and jurisdiction to retry such cases to the next term of court; (2) denying his motion for judgment of acquittal because there was insufficient evidence to support his conviction for resisting arrest, in that the State failed to prove he fled from a law enforcement officer for the purpose of preventing his arrest; and (3) failing to submit his proffered instruction on the lesser-included offense of possession of a controlled substance on the trafficking charge based on discrepancies in the evidence as to the weight of the controlled substance.

AFFIRMED.

Division One Holds: The trial court did not err in (1) denying Appellant’s motion to dismiss because Appellant waived his Article I, Section 19 Constitutional right to be retried within the same or next term of court by failing to timely assert the right; (2) denying Appellant’s motion for judgment of acquittal, in that the State presented sufficient evidence from which a reasonable trier of fact could conclude that Appellant knew or reasonably should have known that the officer was making an arrest and that Appellant fled from him for the purpose of preventing his arrest; and (3) refusing to submit Appellant’s lesser-included instruction in that the uncontested evidence was that the controlled substance weighed more than two grams and, therefore, there was no basis for the jury to acquit Appellant of the offense of second-degree trafficking while convicting him of the lesser included offense of possession of a controlled substance.

Opinion by: Sherri B. Sullivan, J. Clifford H. Ahrens, P.J., and Glenn A. Norton, J., concur.

Attorney for Appellant: Roxanna A. Mason

Attorneys for Respondent: Karen L. Kramer

<p>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.</p>
