



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. SAMKEITA JAHVEH JURDEN  
CR-15-0236-PR**

**PARTIES:**

*Petitioner/Appellee/Plaintiff:* The State of Arizona

*Respondent/Appellant/Defendant:* Samkeita Jahveh Jurden

**FACTS:**

On September 24, 2012, Jurden—shirtless and shoeless—walked into a department store with an unleashed dog. A store security guard called police after Jurden refused to leave. Two police officers arrived and asked Jurden to leave the store, but he refused to do so. The officers then attempted to arrest Jurden for criminal trespass and a struggle broke out between Jurden and the officers. Jurden resisted their attempts to arrest him by biting and kicking one officer, and by flailing and pulling his arms away from the other officer. After struggling with Jurden for about two minutes, the officers subdued and handcuffed him.

A grand jury indicted Jurden on two counts of aggravated assault, two counts of resisting arrest (counts 3 and 4) under A.R.S. § 13-2508(A)(1)—one count for each officer—and one count of criminal trespass in the second degree. The jury found Jurden guilty on one count of aggravated assault, on both counts of resisting arrest, and on the criminal trespass count. The superior court sentenced Jurden to 10 years for aggravated assault, 3.75 years on each resisting arrest conviction, and 4 months for criminal trespass, with the sentences to run concurrently. In imposing concurrent sentences, the court explained:

I can't make a determination or I can't find, based on what I saw at trial or what I see in the video, that the defendant was somehow targeting or intending to commit the offenses specifically as to one officer and then another. Perhaps, if there were some lengthy delay between one event and another, there might be a better justification of the idea of consecutive sentences. But this all starts and ends in just one big melee, really, and so the idea of consecutive sentences here doesn't seem appropriate to me, under the circumstances.

Jurden appealed, arguing that the two resisting arrest convictions, one for each officer involved in the altercation, constituted a single offense under the resisting arrest statute, A.R.S. § 13-2508(A)(1), and thus his second resisting arrest conviction and sentence violated the Double Jeopardy Clause.

The court of appeals' majority began by stating that the case "requires us to determine what the Arizona Legislature has defined as the allowable unit of prosecution under A.R.S. § 13-2508.

Is it—as Jurden contends—the *arrest* itself, thus giving rise to only one possible offense of resisting arrest no matter how many peace officers are involved in the incident, or is it—as the State contends—the number of *peace officers* involved in the incident, thus giving rise to the possibility of multiple offenses and multiple punishments for resisting arrest?” Op. ¶ 9. After determining that the statute is ambiguous, the court looked to “historical background, statutory content, and other relevant factors” and concluded that “the Legislature’s intended unit of prosecution was the arrest itself.” *Id.* ¶ 11.

The court found support for this conclusion in the Legislature’s 1977 enactment of a new criminal code, in which “the Legislature specified that a person would be guilty of resisting arrest even if the arrest was illegal. Thus, under the new statutory language, a person would be guilty of resisting arrest if he intentionally prevented a ‘person reasonably known to him to be a peace officer, acting under color of such peace officer’s official authority, from effecting an arrest.’ In adopting this wording and breaking with prior precedent, we believe the Legislature intended to criminalize conduct that interfered with state authority, that is, conduct that interfered with the arrest. In so doing, the Legislature embraced the common law’s understanding of resisting arrest—that the gravamen of the offense is against state authority.” *Id.* ¶ 13. Similarly, the court found support in the Legislature’s placement of the resisting arrest statute in the same chapter with statutes dealing with other crimes against state authority.

The court found further support in the Legislature’s 2012 amendment that broadened the definition of resisting arrest to include “passive resistance,” which appears to describe a unit of prosecution grounded in the arrest, not the officer. A.R.S. § 13-2508(C).

With respect to the dissent’s argument that the court has previously recognized that resisting arrest is a victim-directed offense, the court observed that none of the cases cited by the dissent addressed the double jeopardy issue presented here. Furthermore, as to the dissent’s focus on the elements of the offense in finding the statute unambiguous, the court stated “that is not the applicable test under the Double Jeopardy Clause when, as here, a person is convicted of multiple violations of a single statute. In such a case, the legislature’s description of the scope of the conduct that constitutes the criminal act controls, not the individual elements that make up the crime. As the Kansas Supreme Court has explained:

The determination of the appropriate unit of prosecution is not necessarily dependent upon whether there is a single physical action or a single victim. Rather, the key is the nature of the conduct proscribed. . . . The unit of prosecution [is] determined by the scope of the course of conduct defined by the statute rather than the discrete physical acts making up that course of conduct or the number of victims injured by the conduct.

*Schoonover*, 133 P.3d at 65.” *Id.* ¶ 19.

In the end, the court agreed with Jurden’s double jeopardy argument, concluding as follows:

When, as here, there is a single uninterrupted event, the number of officers involved in the event does not turn a single offense into multiple offenses under A.R.S. § 13-2508. We agree with Jurden that only one offense of resisting arrest occurred under the circumstances presented here, and thus, he was sentenced to multiple punishments in violation of the Double Jeopardy Clause. *See State v. Brown*, 217 Ariz. 617, 621, ¶ 13, 177 P.3d 878, 882 (App. 2008) (“[W]hen a defendant is *convicted* more than once for the same offense, his double jeopardy rights are violated even when, as in the current case, he receives concurrent sentences.”). We therefore vacate his second conviction for resisting arrest (count 4) and the sentence imposed on that count. *See Powers*, 200 Ariz. at 127, ¶ 16, 23 P.3d at 672 (vacating second conviction and sentence for multiplicitous offense); *see also State v. Jones*, 185 Ariz. 403, 407-08, 916 P.2d 1119, 1123-24 (App. 1995) (vacating second kidnapping conviction and sentence arising out of single, definite act).

Op. ¶ 21. Thus, the court vacated Jurden’s second conviction and sentence for resisting arrest and affirmed his other convictions and sentences.

Judge Howe dissented, finding that the resisting arrest statute is unambiguous and that the offense is a victim-directed offense. Judge Howe explained his reasoning as follows:

The statute’s plain language demonstrates that resistance to arrest depends on each person resisted—on each victim—not on the event of the arrest itself. As the preamble provides, to violate A.R.S. § 13-2508, an individual must perform one of the actions defined by subsection (A) to prevent “a person” from effecting an arrest. The statute then lists alternative ways in which the individual can commit the offense; all these alternatives are directed towards “a person,” whether it be a peace officer or another. Specifically, for subsections (A)(1) and (A)(2), the individual must use or threaten to use physical force “against the peace officer or another” or use any other means that creates a substantial risk or causes physical injury “to the peace officer or another.” A.R.S. § 13-2508(A)(1)-(2). For subsection (A)(3), an individual resists arrest by intentionally engaging in passive resistance, that is, by engaging in a nonviolent physical act or failing to act intending to impede, hinder, or delay a person from effecting an arrest. Under the words of the statute, an individual commits the offense not by resisting the event of an arrest, but by resisting the peace officer effecting the arrest. The statute is thus not event-directed, but victim-directed.

\* \* \* \*

Because the plain language demonstrates that resisting arrest is a victim-directed crime, when a defendant has resisted more than one person, the individual can be charged with and convicted of more than one count of resisting arrest—one for each person that the individual has committed criminal conduct against—without running afoul of the Double Jeopardy Clause. *See Albermaz*, 450 U.S. at 344 (“Where Congress intended . . . to impose multiple punishments, imposition of such sentences does not violate the Constitution.”); *see also State v. Burdick*, 211 Ariz. 583, 585-86 ¶¶ 5-10, 125 P.3d 1039, 1041-42 (App. 2005) (“[W]here crimes

against persons are involved we believe a separate interest of society has been invaded with each victim and that, therefore, where two persons are assaulted, there are two separate offenses.”); *State v. Riley*, 196 Ariz. 40, 45–46 ¶¶ 17–19, 992 P.2d 1135, 1140–41 (App. 1999) (holding the defendant properly convicted of multiple counts of armed robbery against bank employees even though the defendant robbed only the bank). Consequently, Jurden’s two convictions for resisting arrest arising from his single arrest do not violate the Double Jeopardy Clause.

Op. ¶¶ 28, 30.

The State filed its petition for review in this Court.

**ISSUE FOR WHICH REVIEW WAS GRANTED:**

The plain wording of the resisting arrest statute, as well as prior decisions of the court of appeals, make clear that Arizona’s resisting arrest statute is a “victim-directed” offense. Did the majority of the panel in this case err in holding that convictions for two counts of resisting arrest against two peace officers constituted multiple convictions for the same offense in violation of the Double Jeopardy Clause?

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