

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

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22ND JUDICIAL CIRCUIT
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**MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)**

STATE OF MISSOURI,)
)
Plaintiff,)
)
vs.)
)
[REDACTED])
)
Defendant)

Cause No. 1922-CR01225

Division No. 26

ORDER AND JUDGMENT

On November 22, 2019, this cause came before the Court for a bench trial. [REDACTED] (“Defendant”) was charged with assault in the 4th degree, Section 565.056 RSMo, because the State alleged he “purposely placed E.I in apprehension of immediate physical injury by attempting to drive stun her with a taser while she was driving a police patrol car.”

The incident that lead to the charge took place on or about February 22, 2019. On that night, Defendant and E.I., both St. Louis Metropolitan Police Officers, were assigned to work together as partners. Upon leaving a call together, Defendant entered the passenger side of the police vehicle and E.I. entered the driver side. E.I. began to drive the vehicle away from their call when the incident occurred.

Defendant asked E.I. if she had ever been tazed in her police vest to which E.I. said no. Defendant told E.I. that it does not hurt when a person is tazed in their vest. Defendant then armed his tazer and applied a one second arc taze to his vest. Unaffected by the taze, Defendant

said to E.I. "see it doesn't hurt." Defendant then extended his arm holding the tazer toward E.I. as if he was going to taze her. E.I. told Defendant she did not want to be tazed and actively fended off Defendant with her right hand while driving.

Defendant then stopped and again administered a one second taze arc to his own vest. Unaffected, Defendant once again said "see it doesn't hurt". Then Defendant again extended his arm holding the tazer toward E.I. as if he was going to taze her. E.I. once again told Defendant she did not want to be tazed and actively fended off Defendant with her right hand while driving. Defendant then stopped, administered one last arc taze to his own vest to demonstrate to E.I. the non-effect the tazer had on him, and then holstered the tazer for good.

Section 565.056 (3) provides, "[a] person commits the offense of assault in the fourth degree if the person purposely places another in apprehension of immediate physical injury." Missouri Courts have held it is implicit that there are two elements to such an assault charge: (1) defendant must have intended to place the victim in apprehension of immediate physical injury, and (2) the victim must actually have been placed in such apprehension. J.D.B. v. Juvenile Officer, 2 S.W.3d 150, 152-53 (Mo. App. W.D. 2002).

There is no evidence in the record that Defendant intended to place E.I. in apprehension of immediate physical injury on the night in question. The State's own witness, E.I., who was the alleged victim in this case and the only other person present at the time of the incident, testified that she did not believe Defendant intended to hurt her or scare her that night. E.I. astutely pointed out on cross examination, however, that just because she did not believe Defendant intended to harm or scare her that night, she was still scared that he might, in fact, hurt her. The Court finds E.I.'s testimony to be credible.

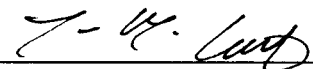
Thus, E.I.'s testimony proved the second element of the offense charged, that Defendant put E.I. in apprehension of immediate physical injury. However, there was no evidence presented that Defendant's intent that night was to put E.I. in immediate apprehension of physical danger. Not even E.I. believes that was Defendant's intent.

Defendant testified that he was only trying to train and educate E.I., not hurt or scare her. Defendant admitted his timing "sucked" and that he should not have taken his tazer out of its holster while in the police vehicle that night. The Court also finds Defendant's testimony to be credible.

Therefore, the only two people present at the time of the incident, Defendant and E.I., agree that Defendant did not intend to place E.I. in immediate apprehension of immediate physical injury despite the fact that Defendant's actions did, indeed, cause E.I. to be in such apprehension.

There is no evidence in the record that Defendant intended to place E.I. in apprehension of immediate physical injury on or about February 22, 2019. Therefore, the Court finds Defendant NOT GUILTY of the charge of Assault in the 4th Degree.

SO ORDERED:

 56703

**Honorable Thomas A. McCarthy
Associate Circuit Judge
Division 26**

Dated: 11-26-19