

Before the  
Administrative Hearing Commission  
State of Missouri

SCOTT W. OUTHOUSE,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 13-0242 PO
	)	
DIRECTOR OF PUBLIC SAFETY,	)	
	)	
Respondent.	)	

**DECISION**

The Director of the Department of Public Safety (“the Director”) has cause to deny the application of Scott Outhouse for entrance into a basic training course for peace officers because he committed the criminal offenses of possessing less than 35 grams of marijuana, possessing marijuana paraphernalia, and disturbing the peace.

**Procedure**

On February 13, 2013, Outhouse appealed the denial of his application. The Director filed an answer. We held a hearing on December 4, 2013. Cynthia L. Northcutt of The Crites Law Firm represented Outhouse. Ron Dreisilker represented the Director. The case became ready for our decision on April 18, 2014, the date the last written argument was due.

**Findings of Fact**

1. On February 12, 2005, Outhouse received a call from his brother, who reported he had just been in a motor vehicle accident in Reeds Spring, Missouri.
2. The accident scene was close to Outhouse’s residence, so he drove to the scene to check on the welfare of his brother.

3. At the same time, Reeds Spring Police Chief David Holloway went to the scene on foot.

4. Because Holloway was recovering from shoulder surgery, he was not in uniform but was wearing blue jeans and a pullover shirt with a police insignia, and his arm was in a sling.

5. Before walking to the accident scene, Holloway contacted the Reeds Spring dispatcher and advised that the Highway Patrol needed to come investigate the accident because he did not think he should do it.<sup>1</sup>

6. Outhouse did not immediately recognize that Holloway was a police officer. As Holloway approached the scene, he ordered Outhouse to get back in his car.

7. Outhouse defied the order and proceeded to his brother's vehicle, while directing profanity at Holloway. At some point during the verbal exchange, the two men were face to face in close proximity, and Holloway became apprehensive about his fitness to engage physically with Outhouse because of the condition of his shoulder.

8. Holloway drew his weapon from a fanny pack around his waist and ordered Outhouse to his knees, identifying himself as Chief of Police and stating Outhouse was under arrest. Outhouse then complied.

9. On a pat-down incident to the arrest, Holloway discovered a marijuana pipe in Outhouse's shirt pocket, and after Outhouse was conveyed to the Stone County jail, he was also discovered to possess marijuana.

10. Outhouse was issued five citations as follows: UC #031414126 for *possession of marijuana (less than 35 grams)* in violation of § 195.202, RSMo; UC #031414127 for *possession of drug paraphernalia (marijuana pipe)* in violation of § 195.233, RSMo;

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<sup>1</sup> Holloway actually stated in his testimony that he was not "suited" for the accident investigation. We are unable to conclude whether he was expressing concern about his lack of uniform or his physical infirmity.

UC #031414128 for *disorderly conduct (consistently used profanity in public place towards peace officer performing official duty)* and UC #031414129 for *obstructing a peace officer (subject refused to obey verbal directions at an accident scene involving a relative)*, both in violation of Reeds Spring city ordinance 4.0409; and UC #031414130 for *resisting arrest by assault (3<sup>rd</sup>) and flight attempt* in violation of Reeds Spring city ordinance 4.0202.<sup>2</sup>

11. Outhouse was tried in the Reeds Spring Municipal Court, without a jury or defense counsel.<sup>3</sup> He was found guilty of each of the five charges and was sentenced on May 5, 2005.<sup>4</sup>

12. Outhouse was sentenced to pay a \$200 fine for possession of marijuana, a \$100 fine for possession of paraphernalia, and received three concurrent sentences of incarceration for 90 days each for disorderly conduct, obstructing a peace officer, and resisting arrest. Of the 90-day commitment, imposition of 80 days was suspended, and Outhouse was placed on probation for two years. He served the 10-day jail commitment on weekends in May and June of 2005 and paid fines, court costs, and incarceration fees of \$649.50.

13. In 2012, Outhouse applied to attend the Missouri Sheriff's Training Academy. He began attending the program in January of 2013, but was removed pursuant to the Director's decision.

### **Conclusions of Law**

We have jurisdiction of Outhouse's appeal. Section 590.100.3.<sup>5</sup> Outhouse has the burden of proving he is qualified to enter into a basic training course. Section 621.120. Outhouse must prove his qualifications by a preponderance of the evidence, or "evidence which

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<sup>2</sup> Italicized text is the offense, as described by Holloway, on the uniform citations he issued.

<sup>3</sup> There is no attorney of record listed for Outhouse anywhere in the court records, and the notation "—waived" is all that appears in the blank for defense attorney on the sentencing form, which states Outhouse was found guilty by the court.

<sup>4</sup> The uniform citations indicate a court date of March 14, 2005, but they were not signed by the municipal prosecuting attorney until April 11, 2005. The certified court records we were provided contain one hand-written docket sheet listing only the sentencing date of May 5, 2005, so we are unable to determine when the case was tried.

<sup>5</sup> RSMo Supp. 2013. Other statutory references are to RSMo 2000 unless otherwise noted.

as a whole shows the fact to be proved to be more probable than not.” *State Board of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App., W.D. 2000).

The Director’s answer provides notice of the facts and law at issue. *Ballew v. Ainsworth*, 670 S.W.2d 94, 103 (Mo. App., E.D. 1984). The Director relies upon § 590.100, which provides:

1. The director shall have cause to deny any application for a peace officer license or entrance into a basic training course when the director has knowledge that would constitute cause to discipline the applicant if the applicant were licensed[;]

and § 590.080.1(2), which authorizes discipline of any peace officer who “[h]as committed any criminal offense, whether or not a criminal charge has been filed[.]” Section 556.016 defines a criminal offense as follows:

1. An offense defined by this code or by any other statute of this state, for which a sentence of death or imprisonment is authorized, constitutes a “**crime**”. Crimes are classified as felonies and misdemeanors.

A municipal ordinance violation is not a criminal offense. *City of Cape Girardeau v. Jones*, 725 S.W.2d 904, 907 (Mo. App., E.D. 1987).

#### Possession of Marijuana and Drug Paraphernalia

Because the only criminal offenses Outhouse was charged with under Missouri statutes were the offenses of possession of marijuana and marijuana paraphernalia, we begin by determining whether there is proof, by a preponderance of the evidence, that Outhouse’s conduct satisfied the elements set forth in § 195.202:

1. Except as authorized by sections 195.005 to 195.425, it is unlawful for any person to possess or have under his control a controlled substance.

\* \* \*

3. Any person who violates this section with respect to not more than thirty-five grams of marijuana is guilty of a class A misdemeanor[;]

and whether it satisfied the elements set forth in § 195.233:

1. It is unlawful for any person to use, or to possess with the intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, rest, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance or imitation controlled substance in violation of sections 195.005 to 195.425.

2. A person who violates this section is guilty of a class A misdemeanor[.]

At the hearing, Outhouse admitted to having possessed marijuana and marijuana paraphernalia. Furthermore, Outhouse's answers to the Director's request for admissions give unqualified affirmations that he knowingly possessed marijuana in violation of § 195.202 and possessed a brass marijuana pipe in violation of § 195.233 on February 12, 2005. The responses to the admission requests were properly admitted into evidence without objection from Outhouse's counsel. Therefore, pursuant to Supreme Court Rule 59.01(c), it has been conclusively established that Outhouse committed these offenses, and Outhouse is bound on this issue. The Director needs no other proof regarding Outhouse's commission of these offenses. *Killian Const. Co. v. Tri-City Const. Co.*, 693 S.W.2d 819, 827 (Mo. App. 1985).

#### Peace Disturbance

The Director also argues that Outhouse committed the crime of peace disturbance under § 574.010, and that we must also treat Outhouse's commission of that offense as conclusively proven by operation of Outhouse's own admissions.

Section 574.010.1 states in relevant part:

A person commits the crime of peace disturbance if:

1. He unreasonably and knowingly disturbs or alarms another person or persons by:

\* \* \*

(b) Offensive language addressed in a face-to-face manner to a specific individual and uttered under circumstances which are likely to produce an immediate violent response from a reasonable recipient[.]

Section 574.010.2 provides:

Peace disturbance is a class B misdemeanor upon the first conviction.

In his answers to the Director's request for admissions, Outhouse affirmed that he directed offensive language, face to face, at the Reeds Spring Police Chief, thereby unreasonably and knowingly disturbing him, in a situation that would likely produce an immediate violent response from a reasonable recipient. He admitted that by doing these things, he committed the crime of peace disturbance in violation of § 574.010.

But Outhouse was actually convicted of violating § 4.0409 of the City Ordinances of Reeds Spring, the elements of which are different from those of § 574.010.<sup>6</sup> Despite this

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<sup>6</sup> The ordinance provides:

A person shall be guilty of disorderly conduct if, with the purpose of causing public danger, alarm, disorder, nuisance, or if his/her conduct is likely to cause public danger, alarm, disorder, or nuisance, he/she willfully does any of the following acts in a "public place":

1. Commits an act in a violent and tumultuous manner toward another whereby that other is placed in danger of his/her life, injury to his/her limb or health; or
2. Commits and act in a violent and tumultuous manner toward another whereby the property of any person is placed in danger of being destroyed or damaged; or
3. Causes, provokes, or engages in any fight, brawl, or riotous conduct so as to endanger the life, limb, health or property of another; or
4. Interferes with another's pursuit of a lawful occupation by acts of violence; or
5. Obstructs, either singularly or together with other persons, the flow of vehicular or pedestrian traffic and refuses to clear such public way when ordered to do so by the City Police or other lawful authority known to be such; or

difference, Outhouse's responses to the Director's request for admissions were admitted without challenge. Thus, pursuant to Supreme Court Rule 59.01(c), it has been conclusively established that Outhouse committed the criminal offense of peace disturbance as set forth in § 574.010.

However, Outhouse did not admit to multiple violations of § 574.010. Despite the fact that he was convicted of two violations of Reeds Spring ordinance § 4.0409, we can conclude only that Outhouse committed one instance of the statutory criminal offense of peace disturbance on the basis of the admissions before us, as they do not support an independent determination that Outhouse committed a separate instance of peace disturbance by obstructing or refusing to obey a peace officer. And since the Reeds Spring municipal court records provide insufficient information for any reasonable conclusions about which sections of the city ordinance Outhouse was tried for violating, we cannot infer that he committed more than one act in violation of § 574.010.

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6. Is in a public place under the influence of an intoxicating liquor or drug in such a condition as to be unable to exercise care for his/her own safety or the safety of others; or
  7. Resists or obstructs the performance of duties by City Police or any other authorized official of the City, when known to be such an official; or
  8. Incites, attempts to incite, or is involved in attempting to incite a riot; or
  9. Addresses abusive language or threats to any member of the Police Department, any other authorized official of the City who is engaged in lawful performance of his/her duties, or any other person when such words have a tendency to cause acts of violence. (Words merely expressing or causing displeasure, annoyance, or resentment are not prohibited); or
  10. Damages, befouls, or disturbs public property or the property of another so as to create a hazardous, unhealthy, or physically offensive condition.
  11. Makes or causes to be made any loud, boisterous and unreasonable noise or disturbance to the annoyance of any other persons nearby, or near to any public highway, road, street, lane, alley, park, square, or common, whereby the public peace is broken or disturbed, or the traveling public annoyed; or
  12. Fails to obey the lawful order to disperse by a Police Officer when known to be such an official, where one (1) or more persons are committing acts of disorderly conduct in the immediate vicinity, and the public health and safety is imminently threatened; or
  13. Uses abusive or obscene language or makes an obscene gesture.

Director's Exhibit B, certified by the Reeds Spring City Clerk as current and unchanged since 2005.

### Resisting Arrest

In the request for admissions and in his hearing testimony, Outhouse denied that he committed the crime of resisting arrest. The Director asserts that he is entitled to a determination that Outhouse committed this crime by virtue of collateral estoppel. For purposes of our analysis, the essential elements of resisting arrest under § 575.150 are virtually identical to the elements in the ordinance of Reeds Spring under which Outhouse was found guilty and sentenced. The most significant difference is that the state statute identifies the offense as a Class A misdemeanor.

The offense for which Outhouse was found guilty in the municipal court was violating §4.0202, City Ordinances of Reeds Spring, which provides:

1. A person commits the offense of resisting or interfering with arrest, if knowing that a Law Enforcement Officer is making an arrest, for the purpose of preventing the officer from effecting the arrest, he:
  - a. Resists the arrest of himself by using or threatening the use of violence or physical force or by fleeing from such officer; or
  - b. Interferes with the arrest of another person by using or threatening the use of violence, physical force or physical interference.
2. This chapter applies to arrests with or without warrants and to arrests for any crime or ordinance violation.

Outhouse was found guilty of, and sentenced for, violating the ordinance.

The principle of non-mutual collateral estoppel, as adopted in Missouri, permits the use of a prior judgment to preclude relitigation of an issue, even though the party asserting collateral estoppel was not a party to the prior case. *James v. Paul*, 49 S.W.3d 678, 684 (Mo. banc 2001).

For an issue in the present action to be precluded by the doctrine of collateral estoppel: (1) it

must be identical to an issue decided in a prior adjudication; (2) the prior adjudication must have resulted in a judgment on the merits; (3) the party against whom the doctrine is being asserted must have been a party or was in privity with a party to the prior adjudication; and, (4) the party against whom the doctrine is asserted must have had a full and fair opportunity to litigate the issue in the prior adjudication. *In re Caranchini*, 956 S.W.2d 910, 912-13 (Mo. banc 1997) (citations omitted).

Based on our consideration of the evidence and application of the law to the facts at hand, we find that the issue of whether Outhouse resisted arrest on February 12, 2005, is the same for us as for the court that found him guilty and that there was a final judgment on the merits, as evidenced by the sentence he received and completed. But considering the testimony of the applicant and the former Reeds Spring police chief and what we have of the records of the municipal court, we do not find that Outhouse, appearing *pro se*, had a full and fair opportunity to litigate his criminal liability or to consider other alternatives like a plea bargain before submitting to the uncertainties of trial and the judgment of the court, with all of the attendant consequences for someone considering a career in law enforcement.

Finally, we note that Outhouse first complained to this Commission that the Director's action in denying him access to the training academy, thereby depriving him of the opportunity to better himself, was taken in violation of his constitutional rights under the Fifth and Fourteenth Amendments. Because this Commission is an executive branch agency, established by the legislature, it does not have the same authority as constitutional courts and therefore cannot consider and render judgment upon constitutional questions. *See State Tax Commission v. Administrative Hearing Commission*, 641 S.W.2d 69, 76 (Mo. banc 1982).

## Rehabilitation

Outhouse testified to the lawfulness of his conduct since the arrest in Reeds Spring and to his law enforcement heritage and desire to continue that legacy. However, in licensing cases under §§ 590.010 to 590.195, we do not have discretion to grant a license to a fully rehabilitated applicant. Under § 590.100.3, that discretion rests with the Director:

Any applicant aggrieved by a decision of the director pursuant to this section may appeal within thirty days to the [Commission], which shall conduct a hearing to determine whether the director has cause for denial, and which shall issue findings of fact and conclusions of law on the matter. The [Commission] shall not consider the relative severity of the cause for denial or any rehabilitation of the applicant or otherwise impinge upon the discretion of the director to determine whether to grant the applicant subject to probation or deny the license when cause exists pursuant to this section.

We understand Outhouse's appeal as challenging the exercise of the Director's discretion in denying him access to academy training on the Director's findings that he had committed criminal offenses, but we are bound by this record and by § 590.100.3, which bars us from any review of that discretion. Nor can we consider mitigating factors of past conduct or motivating factors involved in any rehabilitation of the applicant since 2005. When the Director asserts cause to deny the application on grounds that the applicant has committed a criminal offense, the statute allows us only to consider whether the applicant in fact committed the offense. We have no other authority in the other matters. However, § 590.100.4 provides:

Upon a finding by the administrative hearing commission that cause for denial exists, the director shall not be bound by any prior action on the matter and shall, within thirty days, hold a hearing to determine whether to grant the application subject to probation or deny the application.

Therefore, Outhouse will have another chance to plead his case for permission to enter a peace officer training academy at the Director's hearing.

### **Summary**

There is cause to deny Outhouse's application because he committed the criminal offenses of possession of marijuana (under 35 grams), possession of paraphernalia, and peace disturbance.

SO ORDERED on May 23, 2014.

*\s\ Karen A. Winn*

KAREN A. WINN

Commissioner