

FILED: December 26, 2013

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

ARCHIE D. WILLS,
Defendant-Appellant.

Clackamas County Circuit Court
CR1101987

A151713

Douglas V. Van Dyk, Judge.

Submitted on November 07, 2013.

Emily Elison and Castleberry & Elison, PC, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Anna M. Joyce, Solicitor General, and Douglas F. Zier, Senior Assistant Attorney General, filed the brief for respondent.

Before Ortega, Presiding Judge, and Sercombe, Judge, and Hadlock, Judge.

PER CURIAM

Conviction on Count 3 reversed and remanded; remanded for resentencing; otherwise affirmed.

1 PER CURIAM

2 Defendant was convicted of attempting to elude a police officer, ORS
3 811.540, driving under the influence of intoxicants, ORS 813.010, and interfering with a
4 peace officer, ORS 162.247. On appeal, he raises four assignments of error. In his first
5 assignment of error, defendant contends that the trial court erred in denying his motion
6 for judgment of acquittal on the charge of interfering with a peace officer (Count 3). We
7 reject that assignment of error without discussion. In his second and third assignments of
8 error, defendant asserts that the trial court erred when it refused to instruct the jury that
9 "'resisting arrest' does not constitute interference with a peace officer," and when it
10 prohibited him from "arguing a resisting-arrest defense." The state concedes that the
11 court "should have allowed defendant to argue to the jury that his conduct would
12 constitute resisting arrest" and not interfering with a peace officer. *See* ORS 162.247(3)
13 (crime of interfering with a peace officer does not apply in situations in which a person is
14 engaging in "[a]ctivity that would constitute resisting arrest under ORS 162.315"). We
15 agree, and accept the state's concession and, for that reason, reverse defendant's
16 conviction on Count 3 and remand for a new trial on that charge. Accordingly, we need
17 not address whether the court should have given the jury instruction in question.

18 Finally, in his fourth assignment of error, defendant argues that the trial
19 court erred in imposing unitary assessments on each of his convictions because the statute
20 that provided for those assessments was repealed before he was sentenced. *See former*
21 ORS 137.290(2)(b) (2009), *repealed by* Or Laws 2011, ch 597, § 118. The state agrees

1 that the trial court erred in imposing the unitary assessments because the statute providing
2 for those assessments was no longer in effect when the sentence was imposed. We agree
3 and accept the state's concession.

4 Conviction on Count 3 reversed and remanded; remanded for resentencing;
5 otherwise affirmed.