

State need not prove underlying offense

People v. Carswell, 2026 IL App (1st) 231884 (2/4/26)

Holdings: Under the plain language of the resisting statute, to sustain a conviction for resisting arrest, the State does not have the burden to prove that a defendant was subject to a predicate offense, despite legislative history indicating an intent to require a predicate offense to charge someone with resisting arrest.

Subsection (d) of the resisting statute, 720 ILCS 5/31-1(d), states, “A person shall not be subject to arrest for resisting arrest under this Section unless there is an underlying offense for which the person was initially subject to arrest.” That subsection was added to the resisting statute in 2023 as part of the SAFE-T Act, and defendant argued that the statutory amendment either added an element to the offense of resisting which the State must prove beyond a reasonable doubt or it created an exception which the State must negate.

The appellate court disagreed.

Subsection (d) neither describes the offense of resisting arrest, nor provides an exception or affirmative defense. Instead of an additional element, exception, or defense, subsection (d) merely makes an arrest for resisting arrest without a predicate offense unlawful. This does not give rise to an exception or defense, however, because the law does not permit a person to resist an unlawful arrest.

Our supreme court has held that 720 ILCS 5/31-1 must be read in conjunction with section 7-7 which provides:

“A person is not authorized to use force to resist an arrest which he knows is being made either by a peace officer or by a private person summoned and directed by a peace officer to make the arrest, even if he believes that the arrest is unlawful and the arrest in fact is unlawful.” 720 ILCS 5/7-7 (West 2022).

When the legislature amended the resisting statute to include subsection (d), it is presumed to have been aware of judicial decisions requiring section 31-1 to be read in conjunction with section 7-7. Because the legislature did not also amend section 7-7 as part of the SAFE-T Act, resisting an unlawful arrest remains a violation of section 31-1.