

NOT DESIGNATED FOR PUBLICATION

No. 125,452

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

SHANE ANTHONY SHAFFER,
Appellant.

MEMORANDUM OPINION

Appeal from Leavenworth District Court; GERALD R. KUCKELMAN, judge. Opinion filed August 11, 2023. Affirmed.

Peter Maharry, of Kansas Appellate Defender Office, for appellant.

Natalie Chalmers, assistant solicitor general, and *Kris W. Kobach*, attorney general, for appellee.

Before COBLE, P.J., GARDNER and CLINE, JJ.

PER CURIAM: Shane Anthony Shaffer appeals from his sentence after being convicted of attempted aggravated robbery, criminal possession of a firearm, and interference with a law enforcement officer. He argues that in determining his criminal history, the district court improperly scored his prior Missouri conviction for resisting arrest as a person felony rather than as a nonperson felony. Finding no error, we affirm.

Factual and Procedural Background

Pursuant to a plea agreement, Shaffer pleaded no contest to one count each of attempted aggravated robbery, criminal possession of a firearm, and interference with a law enforcement officer for his acts in October 2021. The district court accepted his pleas, found a factual basis for the charges, and convicted Shaffer. At that time, the parties believed Shaffer's criminal history category was B and planned to ask for a total controlling sentence of 144 months' imprisonment at sentencing.

A later presentence investigation (PSI) report reflected that Shaffer had been convicted in Missouri for robbery and resisting arrest in 2018. Before sentencing, Shaffer filed a written objection to the classification of those two Missouri convictions as person felonies, arguing that they were nonperson felonies. The State responded that under the 2019 amendments to K.S.A. 21-6811(e), both convictions were properly classified as person felonies.

At sentencing, the district court agreed with the State's response and determined Shaffer's criminal history category was B. Accordingly, the district court sentenced Shaffer to a total controlling term of 144 months' imprisonment with 24 months' postrelease supervision.

Shaffer timely appeals, arguing solely that the district court erred in scoring his Missouri conviction for resisting arrest as a person felony. He does not argue, as he did before the district court, that his Missouri conviction for robbery was also incorrectly scored as a person felony. We thus find that claim abandoned. *State v. Davis*, 313 Kan. 244, 248, 485 P.3d 174 (2021).

Standard of Review

The determination of an offender's criminal history score is governed by the revised Kansas Sentencing Guidelines Act (KSGA), K.S.A. 2022 Supp. 21-6801 et seq. Whether a sentencing court has correctly interpreted and applied the provisions of the KSGA is a question of law subject to our de novo review. *State v. Keel*, 302 Kan. 560, 571, 357 P.3d 251 (2015). Likewise, whether a prior conviction was properly classified as a person or nonperson crime for criminal history purposes is a question of law subject to our unlimited review. *State v. Dickey*, 301 Kan. 1018, 1034, 350 P.3d 1054 (2015).

Discussion

Because this issue requires us to interpret and apply various provisions of the KSGA, our analysis must be guided by well-established principles of statutory interpretation. The most fundamental rule of statutory interpretation is that the intent of the Legislature governs if that intent can be determined. *State v. LaPointe*, 309 Kan. 299, 314, 434 P.3d 850 (2019). An appellate court must first try to ascertain legislative intent through the statutory language enacted, giving common words their ordinary meanings. When, as here, a statute is plain and unambiguous, an appellate court should not speculate about the legislative intent behind that clear language, and it should refrain from reading something into the statute that is not readily found in its words. *State v. Ayers*, 309 Kan. 162, 163-64, 432 P.3d 663 (2019).

K.S.A. 2022 Supp. 21-6811(e)(3)(B)(i)(d) governs the designation of a felony as a person or nonperson crime:

"(i) An out-of-state conviction or adjudication for the commission of a felony offense . . . shall be classified as a person felony if one or more of the following

circumstances is present as defined by the convicting jurisdiction in the elements of the out-of-state offense:

. . . .

(d) the presence of a person, other than the defendant, a charged accomplice or another person with whom the defendant is engaged in the sale, distribution or transfer of a controlled substance or non-controlled substance."

The Missouri statute under which Shaffer was convicted of resisting arrest provides:

"1. A person commits the offense of resisting or interfering with arrest, detention, or stop if he or she knows or reasonably should know that a law enforcement officer is making an arrest or attempting to lawfully detain or stop an individual or vehicle, and for the purpose of preventing the officer from effecting the arrest, stop or detention, he or she:

(1) Resists the arrest, stop or detention of such person by using or threatening the use of violence or physical force or by fleeing from such officer." Mo. Rev. Stat. § 575.150 (2017).

In *State v. Baker*, 58 Kan. App. 2d 735, 745-46, 475 P.3d 24 (2020), another panel of this court held that this Missouri statute constitutes a person felony under K.S.A. 2019 Supp. 21-6811(e)(3)(B)(i)(d) because it necessarily requires the presence of a person other than the defendant—a law enforcement officer—who is not an accomplice or someone with whom the defendant is engaged in a drug transaction. 58 Kan. App. 2d at 745-46. Shaffer contends that *Baker* is wrong and raises two hypothetical scenarios under which he claims a person might be convicted of resisting arrest in Missouri without meeting the definition of a person crime under K.S.A. 2022 Supp. 21-6811(e)(3)(B)(i)(d).

First, Shaffer argues a person could hear through the grapevine that officers were on their way to make an arrest and flee before the officers arrived. But he fails to show that such acts would violate the plain language of Mo. Rev. Stat. § 575.150. The

overarching requirement of that crime is that the defendant "knows or reasonably should know" that they were fleeing from a law enforcement officer. What someone "hears through the grapevine" is akin to rumor, innuendo, and speculation, not actual knowledge. See *State v. Edwards*, 250 Kan. 320, 324, 826 P.2d 1355 (1992) ("Knowledge means actual information Speculation, opinion, or constructive notice . . . is not sufficient."). More importantly, the statute requires resistance or interference with an officer who "*is making an arrest* or attempting to lawfully detain or stop an individual." (Emphasis added.) Mo. Rev. Stat. § 575.150(1). Officers cannot do so without first locating that person.

Second, Shaffer argues that *Baker* violated *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), by making a factual finding that the arresting officer was not engaged in an undercover drug deal with the defendant. See K.S.A. 2022 Supp. 21-6811(e)(3)(B)(i)(d) (requiring the presence of a person, "other than the defendant, a charged accomplice or another person with whom the defendant is engaged in the sale" of substances). He claims *Baker* erred by holding that this Missouri statute necessarily requires the presence of a person other than the defendant because finding that the person was not an undercover officer would violate *Apprendi's* prohibition on making factual findings.

K.S.A. 2022 Supp. 21-6811(e)(3)(B)(i) requires the sentencing court to look at the elements of the out-of-state conviction: "An out-of-state conviction or adjudication for the commission of a felony offense . . . shall be classified as a person felony if one or more of the following circumstances is present *as defined by the convicting jurisdiction in the elements of the out-of-state offense.*" (Emphasis added.) The elements of the Missouri offense here require the defendant "know[] or reasonably should know that a law enforcement officer is making an arrest or attempting to lawfully detain or stop an individual or vehicle," among other elements. Mo. Rev. Stat. § 575.150(1). Those elements are unrelated to a drug transaction or a conspiracy. And nothing in the elements

of Missouri's resisting arrest statute requires the presence of an accomplice or another party to a drug transaction—it requires instead that a law enforcement officer is making an arrest or attempting to lawfully detain or stop an individual or vehicle.

Under K.S.A. 2022 Supp. 21-6811(e)(3)(B)(i)(d), a Missouri conviction would not be a person felony in Kansas if the elements of its crime required the presence of another person with whom the defendant was engaged in a drug-related transaction or an accomplice or coconspirator. So an out-of-state conviction for unlawful distribution of narcotics would not be a person offense even though the elements of the crime would require the presence of another person—the other party to the transaction. Similarly, the elements of an out-of-state conviction for a conspiracy offense would require the presence of one or more coconspirators/accomplices but would not make the crime a person felony under K.S.A. 2022 Supp. 21-6811(e)(3)(B)(i)(d).

Shaffer's hypothetical flouts the requirements that courts must construe the statute as a whole and reconcile various provisions into a workable harmony consistent with the Legislature's intent and must presume the Legislature does not intend to enact meaningless legislation. K.S.A. 2022 Supp. 21-6811(e)(3)(B)(i)(d), read as a whole, limits us to examining the elements of the Missouri statute to determine whether that crime involved the presence of another person other than a coconspirator/accomplice or another party to a drug transaction. To construe K.S.A. 2022 Supp. 21-6811(e)(3)(B)(i)(d) as going beyond that would violate *Apprendi* any time the out-of-state offense involved the presence of another person but the elements did not define that person as being a party to a drug transaction or a coconspirator.

Shaffer's proposed construction of K.S.A. 2022 Supp. 21-6811(e)(3)(B)(i)(d) renders the provision meaningless, as almost any crime could be committed against a person with whom the defendant had previously been involved in a drug transaction. The legislative intent of K.S.A. 2022 Supp. 21-6811(e)(3)(B)(i)(d) appears to treat out-of-state convictions similarly to Kansas convictions, as K.S.A. 2022 Supp. 21-6811(h) provides Kansas drug crime

convictions are nonperson offenses and K.S.A. 2022 Supp. 21-6811(e)(3)(B)(i)(d) applies this same classification to out-of-state drug offenses. This same legislative intent to treat out-of-state convictions similarly to Kansas offenses is reflected by K.S.A. 2022 Supp. 21-6811(e)(3)(B)(ii), which provides an out-of-state conspiracy offense is a person crime if the elements require proof the crime involved another person other than accomplices/coconspirators. This operates similarly to K.S.A. 2022 Supp. 21-6811(g), which designates conspiracy offenses as person or nonperson depending on the classification of the underlying crime.

Simply put, K.S.A. 2022 Supp. 21-6811(e)(3)(B)(i)(d) applies to actual drug crimes, not nondrug crimes committed right after, such as resisting arrest. Shaffer's hypothetical posits an undercover officer trying to make the arrest *after* completing a controlled buy. K.S.A. 2022 Supp. 21-6811(e)(3)(B)(i)(d) refers to "another person with whom the defendant *is engaged in* the sale, distribution or transfer of a controlled substance or non-controlled substance." (Emphasis added.) But that hypothetical defendant would no longer be *engaged in* a drug transaction with the officer.

The defendant's subsequent flight from the undercover officer is a separate offense. Had the defendant been convicted of unlawful distribution of a controlled substance *and* resisting arrest, the distribution charge would not be a person crime despite the elements of the offense involving another person—the undercover officer. But a defendant's subsequent flight after the drug transaction had already been completed would be a person felony. The elements of Missouri's resisting arrest statute do not require the presence of an accomplice/coconspirator or another party to a drug transaction. The elements do, however, require the presence of another person—the arresting officer—therefore, under K.S.A. 2022 Supp. 21-6811(e)(3)(B)(i)(d), the Missouri conviction for resisting arrest is a person felony despite any additional illegal conduct that may have preceded it.

Affirmed.