

Summary of SC90583, *State of Missouri v. Ryan Seeler*

Appeal from the St. Louis County circuit court, Judge John A. Ross
Argued and submitted April 14, 2010; opinion issued July 16, 2010

Attorneys: Seeler was represented by Richard H. Sindel of Sindel, Sindel & Noble PC in Clayton, (314) 721-6040, and the state was represented by Terrence M. Messonnier, Shaun T. Mackelprang and Jayne T. Woods of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man appeals his conviction for first-degree involuntary manslaughter after the state amended the charges against him. In a 4-3 decision written by Judge Michael A. Wolff, the Supreme Court of Missouri reverses the judgment and remands (sends back) the case for further proceedings. The statute under which the man was charged is confusing but is not void for vagueness. Once the state selected a factual theory under which to prosecute the man, however, it could not change that factual theory in a way that caused substantial prejudice to the man's right to present a defense to the offense as charged. The trial court erred in permitting the state to change the factual theory under which it was charging the man after it presented its evidence. In a dissenting opinion, Judge Mary R. Russell would hold that the man was not prejudiced because the right-of-way issue was an immaterial fact and not an element of the crime, and the state's amendment of the charge was permissible under Rule 23.08.

Facts: Ryan Seeler attended a St. Louis Cardinals home game in July 2007. Around 11 p.m., he left for a downtown restaurant that serves liquor. According to Seeler, he drank four beers between 6 p.m. and 1:45 a.m., when he left to go home. He encountered road work as he was driving west on Interstate 64 (U.S. Highway 40). At one point, the left two lanes of I-64 closed off, leaving only the far right lane open. Construction cones intruded into the open right lane, forcing motorists onto the shoulder and rumble strips. Farther along, Seeler followed a dump truck from the right lane into the middle lane and then back into the right lane. Because he was driving on the shoulder and rumble strips, Seeler re-entered the middle lane, where he struck and killed Gavin Donohue, a 22-year-old worker who was striping the newly paved road. Police arrested Seeler and took him to a nearby hospital, where his blood was drawn to test for the presence of alcohol. The average of three tests indicated a blood-alcohol content of 0.16 percent, which a toxicologist testified indicated Seeler's blood-alcohol content at the time of the accident was about 0.24 percent, or three times the legal limit. In August 2007, Seeler was charged by indictment with the B felony of first-degree involuntary manslaughter. Specifically, the indictment charged that Seeler committed the crime in part by "leaving said highway's right-of-way." At the close of the state's evidence, Seeler moved to dismiss the indictment or to enter a judgment of acquittal, arguing the state had produced no evidence that he ever left the "right-of-way." The state requested leave to amend the charges to clarify that Seeler was being charged with leaving the open part of the highway, which the court granted over Seeler's objection. The jury found Seeler guilty of first-degree manslaughter and, in accordance with the jury's recommendation, the trial court sentenced him to seven years in prison. Seeler appeals.

REVERSED AND REMANDED.

Court en banc holds: (1) The statute under which Seeler was convicted is not unconstitutionally void for vagueness. Seeler was convicted under section 565.024.1(3)(a), RSMo Supp. 2007, which sets forth the class B felony of causing the death of a person not a passenger in the defendant's vehicle who may be the driver or passenger in another vehicle, a person standing in the highway, or a person struck by the defendant when the defendant's car leaves the highway. Although the distinctions between and among the various shades of involuntary manslaughter are confusing, the law's proscriptions are understandable. As such, it is not vague. Nonetheless, in charging a defendant under this law, the prosecution must pick and stick with one factual theory.

(2) The trial court erred in allowing the state to amend the indictment by substituting an information in lieu of the indictment because the defenses Seeler prepared for trial – which were relevant to the original specification in the indictment – were no longer relevant under the new specification. The state has the burden of proving every element of the crime beyond a reasonable doubt. Here, the factual specification of the manner in which Seeler was criminally negligent – that he drove in a lane closed to traffic – came after the state had presented its evidence on its factual theory, as specified in the indictment, that Seeler was “driving in a close[d] construction zone, thereby leaving said highway's right-of-way” Seeler came to trial prepared to defend by showing that he did not leave the highway's right-of-way and that, if he did leave the right-of-way, doing so was not negligent. The test for determining whether a defendant's substantial rights are prejudiced is whether the planned defense to the original charge still would be available after the amendment and whether the defendant's evidence would apply before and after the amendment. Here, the amendment rendered Seeler's defenses inapplicable. His defense that he did not actually leave the “right-of-way” was not a technical defense (that is immaterial or does not affect substantial rights) because the indictment treated the allegation as to the highway or its right-of-way as a necessary part of the case. As such, the change in the factual basis of the charge, after the state had presented its evidence, prejudiced Seeler's opportunity to defend himself against the offense as charged.

Dissenting opinion by Judge Russell: The author would affirm the trial court's judgment because she would find the state's amendment in the language of the charge against Seeler did not prejudice him. The trial court did not abuse its discretion in allowing the state to file the amended charge because, consistent with the allowances of Rule 23.08, nothing in the information altered the crime with which Seeler was charged. Section 565.024.1(3)(a), RSMo Supp. 2007, contains no element of leaving the highway or right-of-way. In fact, the statute does not require that the state prove a given location of the incident beyond its being “in this State.” To convict Seeler, the jury was tasked only with determining whether the state proved that Seeler was driving drunk; that, while driving drunk, he acted with criminal negligence by entering the construction zone and driving in a lane closed to traffic; and that this criminal negligence caused the non-passenger victim's death. Because the right-of-way allegation was not a necessary part of the case, Seeler's defense that he did not leave the right-of-way was a technical defense. The state's amendment had no impact on the elements the state was required to prove, and Seeler was not prejudiced by the inability to argue an unnecessary fact to the jury. His defenses that he was not intoxicated and did not act with criminal negligence still were available to him after the charge was amended.