

SC92257, *State of Missouri v. Larry W. Wright*

Appeal from the Stoddard County circuit court, Judge William L Syler Jr.

Argued and submitted Sept. 6, 2012; opinion issued Oct. 16, 2012

Attorneys: Wright was represented by Kent Denzel of the public defender's office in Columbia, (573) 882-9855; and the state was represented by Dora A. Fichter 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 unlawful use of a weapon. In a 6-0 decision written by Judge Zel M. Fischer, the Supreme Court of Missouri affirms the circuit court's judgment. There was sufficient evidence to support the judgment that the man concealed a firearm. The applicable statute does not require the state to prove the firearm was functional to convict the man for unlawful use of a weapon. To the extent *State v. Purlee*, 839 S.W.2d 584 (Mo. banc 1992), contains language about the functionality of a weapon, such language was not relevant to the issue before the Court and, therefore, is dicta (parts of an opinion not necessary to decide the issues before the court that, therefore, do not become controlling precedent).

Facts: A jury found Larry Wright guilty of unlawful use of a weapon for an incident in January 2009 in Dunklin County in which he walked behind a woman and her companion and showed them a weapon, after which the companion left the woman with Wright. The officers who arrested Wright executed a pat down of Wright's person and found a loaded 9-millimeter handgun in the waistband of his pants. Wright sought a judgment of acquittal, which the circuit court denied. Wright appeals.

AFFIRMED.

Court en banc holds: (1) There was sufficient evidence to support the judgment that Wright concealed a firearm. Testimony was presented at trial that Williams had concealed the firearm in the waistband of his pants and that the firearm was not visible or discernible until he pulled it out or showed it to the woman and her companion to intimidate them. Further, the officers did not realize Wright had a weapon until they performed a pat down incident to his arrest.

(2) Section 571.030.1, RSMo 2000, does not require the state to introduce evidence that a firearm is "functional" to convict a defendant for unlawful use of a weapon. The statute provides that a person commits the crime of unlawful use of a weapon when he or she "[c]arries concealed upon or about his or her person a ... firearm ... or any other weapon readily capable of lethal use." The legislature has provided for a "special negative defense" (a category of defense that the defendant must raise as an issue but for which the defendant does not carry the burden of proof) to this crime. Relevant to the resolution of this case is the special negative defense of transporting a firearm that is "nonfunctioning." This special negative defense would be meaningless, however, if the state were required to prove the functionality of a firearm in its case-in-chief. Although some confusion has been caused by dicta (parts of an opinion that are not considered precedent because they were not necessary to resolve the case) in *State v. Purlee*, 839 S.W.2d 584 (Mo. banc 1992), the majority of cases consistently have held there is no requirement for a firearm to be loaded or functional for a defendant to be convicted under section 571.030.1.