MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE:

STATE OF MISSOURI

Respondent

v.

DEION D'WAYNE CRUM

Appellant

DOCKET NUMBER WD82980

DATE: February 2, 2021

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Bryan Round, Judge

Appellate Judges:

Division Two
Lisa White Hardwick, P.J., Thomas H. Newton and Karen King Mitchell, JJ.

Attorneys:

Kathryn Merwald, Kansas City, MO — Counsel for Appellant

Attorneys:

Julia Rives, Jefferson City, MO — Counsel for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI, Respondent,
v.
DEION D'WAYNE CRUM, Appellant.

WD82980 **Jackson County**

Before Division Two Judges: Hardwick, P.J., Newton and Mitchell, JJ.

Mr. Deion D'Wayne Crum filed a motion to suppress evidence seized by police during the search of his apartment, including oxycodone, as well as any forensic testing, and the statements Mr. Crum made about those items. He was charged with one count of possession of a controlled substance. The trial court held a hearing on the motion to suppress, and the following testimony was adduced. Officers Chabot and Pifer contacted the homicide unit and obtained the address of Mr. Crum's girlfriend's (Ms. Taelor Moore) apartment. Later that evening, at 6:15 p.m., the officers went to Ms. Taelor Moore's residence with the intent to arrest Mr. Crum. Officer Bax testified that Officers Chabot and Pifer let him and Officer Richardson in the back door and he did not hear anyone verbally consent to enter the home. Officer Chabot testified that the officers had their guns drawn when they entered the apartment and while they searched for Mr. Crum. Officer Pifer testified that Ms. Moore gave verbal consent on the first request to search the apartment for Mr. Crum. However, he was impeached on cross-examination and testified that he did not hear the conversation where Ms. Moore gave verbal permission to search the apartment for Mr. Crum. The trial court denied Mr. Crum's motion to suppress and the motion to reconsider on the same day, within hours of each other. As to the motion to suppress and to reconsider, the court stated the following: The Defendant cross-examined these witnesses but presented no evidence of his own; Defendant's Motion does not persuade the court that Ms. Moore failed to give consent to search the premises or that the consent was not voluntarily given; the Defendant does not establish that the consent given by Ms. Moore was involuntary.

REVERSED AND REMANDED.

Division Two holds:

Mr. Crum contends that the trial court erred in overruling his motion to suppress and subsequently admitting evidence recovered in the search of his home because, in overruling the motion, the court improperly placed the burden of proof on Mr. Crum, rather than the State. We agree. The orders denying the suppression motion and the motion for reconsideration, were made on the same day and only hours apart from each other. Under section 542.296.1, RSMo, "[a] person aggrieved by an unlawful seizure made by an officer ... may file a motion to suppress the use in evidence of the property or matter seized." § 542.296.1. Beyond "the initial burden of proving that he is a person who is 'aggrieved' by an unlawful search and seizure," a defendant does not have to produce any evidence, because the State "has the ultimate burden." *State v.*

Williams, 485 S.W.3d 797, 800-01 (Mo. App. W.D. 2016) (citing *State v. Ramires*, 152 S.W.3d 385, 395 (Mo. App. W.D. 2004). "The burden of persuasion is defined as "a party's duty to convince the fact-finder to view the facts in a way that favors that party." *Ramires*, 152 S.W.3d 395 (citations omitted).

Reading the two orders together, the trial court clearly erred in imposing the burden of proof on Mr. Crum. The testimony of Officers Chabot and Pifer was substantially different regarding how and whether consent was given to search for Mr. Crum. The trial court did not find one way or the other, whether it believed Officer Chabot's testimony or Officer Pifer's testimony. The trial court expressly stated, "Finally, as Ms. Moore did not testify, any finding that her consent was somehow coerced or otherwise involuntarily given would be mere speculation in that such a finding must, at least as a preliminary matter and in large part, be based on Ms. Moore's personal belief." The trial court basically declined to determine whether the officers were credible.

The trial court has a duty to make factual determinations as to whether consent was voluntary or involuntary and, thus, would have had to make credibility determinations of the officers' testimony. And the burdens of proof and persuasion do not shift from the State to Mr. Crum because the trial court declined to resolve credibility and factual issues. The trial court viewed the absence of Ms. Moore's testimony as a failure of proof by Mr. Crum and declared that a finding on voluntariness of her consent would be "mere speculation." Therefore, the judgment is reversed and the matter remanded for the trial court to reconsider the evidence with the burden of proof on the State to establish by a preponderance of the evidence that Ms. Moore voluntarily consented to the search of the apartment.

Opinion by: Thomas H. Newton, Judge February 2, 2021

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