

MISSOURI COURT OF APPEALS-WESTERN DISTRICT
DIVISION 4
CYNTHIA MARTIN, CHIEF JUDGE-PRESIDING
THOMAS N. CHAPMAN, JUDGE
W. DOUGLAS THOMSON, JUDGE
MARCH 16, 2022
TRUMAN STATE UNIVERSITY
KIRKSVILLE, MISSOURI

WD84236

State of Missouri, Respondent,

v.

Tanner L. Propst, Appellant.

Tanner Propst appeals the circuit court's judgment finding him guilty of first-degree assault, first-degree robbery, first-degree burglary, and armed criminal action. The facts as alleged at trial were that Propst was involved in a home invasion and shooting. On June 16, 2019, Johnathan Bylica was in his bedroom. Bylica's girlfriend and friend were also in the home. Two armed, masked, men kicked in Bylica's bedroom door. Bylica reached for a baseball bat, and the intruders shot him three times. Bylica and his girlfriend then hid in the bedroom closet. The men ransacked the house. A couple minutes later, believing the men were gone, Bylica sat on the living room couch while his girlfriend stayed in the bedroom calling 911. Suddenly, the two men returned and broke through the front door with an ax. After breaking through the door, the men began yelling at Bylica, asking him, "where is the stuff at" and ordering him to leave the house. After hearing the men speak and seeing parts of their faces through the masks, Bylica believed the two men to be Nick Patterson and Gavin Syring. The two men shot Bylica another three to four times and continued their search of the house. Eventually, the two men left. Although Bylica did not see the men take anything, he later discovered that his backpack, jewelry, cell phone, birth certificate, and social security card were missing. Bylica identified Patterson and Syring as his attackers to responding officers. The cellphone Bylica's girlfriend used to call 911 was taken by the attackers and remained connected to 911 for at least two minutes after it was in the attackers' possession. On the recording, the names "Gavin" and "Tanner" can be heard. In the last few minutes of the audio, which was played at trial, a voice says, "Go, Tanner, go." The State alleged that Propst drove the car used by Patterson and Syring to arrive at and leave Bylica's house. A surveillance video from a gas station the night of the shooting shows both Patterson and Propst. Patterson's vehicle was located and searched. The police found multiple items stolen from Bylica's home and an ax in the car's rear compartment. Propst admitted to police that he drove Patterson and Syring to a house and that they all had their faces covered. Propst, however, stated that he never knew that Patterson and Syring intended to hurt or shoot anyone. Propst claimed he never saw a gun and did not know what happened in the house, although he heard the gunshots. The jury convicted him of all four counts charged on the theory of accomplice liability. The court sentenced Propst to a total of 21 years' imprisonment. This appeal followed.

Appellant's points on appeal:

- (1) The trial court erred in denying Propst's motion for judgment of acquittal and entering a judgment and sentence finding Propst guilty of first-degree assault because the State failed to present sufficient evidence showing beyond a reasonable doubt that Propst was an accomplice to the first-degree assault committed by Syring and Patterson in that there was insufficient evidence Propst knew Syring or Patterson would shoot Mr. Bylica when they went into the home, insufficient evidence that Propst saw the shooting, insufficient evidence Propst knew Syring and Patterson had a firearm at the time they went into the home, and insufficient evidence Propst intended to aid Syring and Patterson in committing the first-degree assault.
- (2) The trial court erred in denying Propst's motion for judgment of acquittal and entering a judgment and sentence finding Propst guilty of first-degree robbery because the State failed to present sufficient evidence showing beyond a reasonable doubt that Propst was an accomplice to the first-degree robbery committed by Syring and Patterson in that Propst did not know Syring and Patterson were armed with a deadly weapon, did not know Syring and Patterson entered the home with the purpose of taking property and did not intend to aid Syring and Patterson in committing first-degree robbery.
- (3) The trial court erred in denying Propst's motion for judgment of acquittal and entering a judgment and sentence finding Propst guilty of first-degree burglary because the State failed to present sufficient evidence showing beyond a reasonable doubt that Propst was an accomplice to the first-degree burglary committed by Syring and Patterson in that Propst did not intend to aid Syring and Patterson in committing first-degree burglary as Propst did not know Syring and Patterson were entering a home unlawfully and did not know Syring and Patterson intended to steal anything in the home.
- (4) The trial court erred in denying Propst's motion for judgment of acquittal and entering a judgment and sentence finding Propst guilty of armed criminal action because the State failed to present sufficient evidence showing beyond a reasonable doubt that Propst was an accomplice to the armed criminal action committed by Syring and Patterson in that Propst did not know Syring and Patterson intended to commit a felony when they entered the home, Propst did not know Syring and Patterson had a gun, and Propst did not act with the purpose of furthering the commission of the armed criminal action committed by Syring and Patterson.

WD84765

Robert Schebaum, Appellant,

v.

Treasurer of the State of Missouri-Custodian of the Second Injury Fund, Respondent.

Robert Schebaum appeals the final award issued by the Labor and Industrial Relations Commission (the “Commission”), adopting the award of the Administrative Law Judge (“ALJ”) denying Schebaum’s claim against the Second Injury Fund. The ALJ found that Schebaum was permanently and totally disabled but that he failed to prove that it was the result of his primary injury in combination with a single preexisting disability that met the requirements of Missouri Revised Statute 287.220.3(2). Schebaum has been deaf in both ears from the age of four. After graduating the Missouri School for the Deaf, he attended Central College for some time but was unable to complete his degree because of the limited availability of a sign language interpreter. Schebaum is able to read lips. Schebaum previously worked as a framer, a dorm supervisor for the Missouri School for the Deaf, and as a machinist. Schebaum began working for ABB in 2006 on an assembly line making transformers. On August 2, 2007, Schebaum was working on an elevated platform when the platform collapsed. Schebaum fell thirty feet to the floor. Schebaum injured his knee, requiring surgery. Schebaum returned to work at ABB on September 30, 2007, with restrictions. The pain in his knee continued. ABB laid off Schebaum in June 2008. AZZ hired Schebaum to perform factory work, but, due to knee pain, he was not able to continue his work and AZZ terminated him in December 2008. Schebaum was unemployed until February 2011, when ABB rehired him. On January 14, 2014, Schebaum fell on concrete steps at ABB, injuring both his knees. Schebaum’s left knee required surgery. Schebaum has not been employed since November 2014. At the time of the hearing with the ALJ, Schebaum was sixty years old. The ALJ found that Schebaum did not qualify for benefits from the Second Injury Fund because he did not meet his burden of proof that he was permanently disabled due to his left knee injury and a single preexisting disability. The ALJ did not make a finding as to whether Schebaum’s hearing loss constituted a disability. The Commission adopted the ALJ’s finding with additional discussion. The Commission found that Schebaum’s hearing loss did not qualify as a preexisting disability. This appeal followed.

Appellants’ points on appeal:

- (1) The Labor and Industrial Relations Commission erred in denying Appellant compensation from the Second Injury Fund for permanent total disability benefits because the facts found by the Commission do not support the award, in that the Commission affirmed the ALJ decision and the ALJ found that Appellant’s 2014 left knee injury and the 2007 right knee injury, in conjunction with his total deafness, combined to render him permanently and totally disabled, thereby meeting the requirement of § 287.220.3(2)(a)a, RSMo.
- (2) The Labor and Industrial Relations Commission erred in denying Appellant compensation from the Second Injury Fund for permanent total disability benefits because it misinterpreted § 287.220.3, RSMo (2014) when it held that Appellant’s burden was to demonstrate he is permanently and totally disabled

without consideration of any other non-qualifying factors relevant to employability, and it was undisputed that Appellant was permanently and totally disabled, considering his work-related injuries, age, education, work experience and, if it is not a qualified disability, his total deafness.

WD84675

Sexton Road Properties, LLC, Appellant,

v.

Craig Faust, Respondent.

Sexton Road Properties, LLC (“Sexton”) appeals the circuit court’s judgment dismissing Sexton’s petition against Craig Faust. Sexton filed a petition against Faust seeking damages for trespass and waste upon property owned by Sexton and leased to a company whose sole member was Faust. As alleged in the petition, Faust used the leased property as a location to manufacture and sell methamphetamine and other illegal drugs. Sexton alleged that Faust’s actions resulted in Sexton having to incur the cost of specialized hazardous cleanup of the materials left on the property. Additionally, Sexton alleged that Faust’s use of the location to manufacture and sell drugs resulted in a “taint” on the property, making it difficult to release the premises. Faust filed an answer and motion to dismiss. Sexton filed a motion for summary judgment. Faust filed a second motion to dismiss arguing that Sexton’s claims were barred by *res judicata* because Sexton had already been granted judgment against Car-New, LLC—the company owned by Faust—that operated at the leased location. The Court heard argument on Faust’s motion to dismiss and took the motion under advisement. Sexton argues that the Court failed to hear argument on Sexton’s Motion for Summary Judgment before rendering its judgment. The court entered judgment sustaining Faust’s motion to dismiss and dismissing Sexton’s petition with prejudice. This appeal followed.

Appellant’s points on appeal:

- (1) The trial court erred when it entered a judgment on July 27, 2021, sustaining Craig A. Faust’s Motion to Dismiss Sexton Road Properties, LLC v. Craig A. Faust, Case No. 21BA-CV00063, in the Circuit of Boone County, Missouri (“Case 2”) with prejudice because the claims made in Case 2 were not barred and/or precluded by the proceedings in Sexton Road Properties, LLC v. Car-New, LLC, Case No. 21BA-CV00062, in the Circuit Court of Boone County, Missouri (“Case 1”), in that Case 1 involved claims for the possession of leased premises, back rent, statutory damages for unlawful detainer, the costs associated with the removal of a shipping container, automobile tires and other car parts, and attorney’s fees against Car-New, LLC while Case 2 involved claims for trespass and waste against Craig A. Faust individually such that Sexton Road Properties, LLC did not split any causes of action, nor did *res judicata* apply as between Case 1 and Case 2.

- (2) The trial court erred when it entered a judgment on July 27, 2021, sustaining Craig A. Faust’s June 28, 2021, Motion to Dismiss Sexton Road Properties, LLC v. Craig A. Faust, Case No. 21BA-CV00063, in the Circuit of Boone County, Missouri, because res judicata is an affirmative defense that was waived by Mr. Faust in that he did not raise it in his responsive or at any other time before the filing of his “Motion to Dismiss” on June 28, 2020.

WD84561

Show Me Institute, et al., Appellants,

v.

Office of Administration, Brandi Caruthers, American Federation of State, County & Municipal Employees Council 61, and Danny Homan, Respondents.

Show Me Institute and Patrick Ishmael (“Appellants”) appeal the judgment of the circuit court. The Appellants brought an action against the Missouri Office of Administration (“OA”) and the designated Custodian of Records for the Office’s Division of Personnel, Brandi Caruthers (collectively, the “Government”), seeking the production of document’s pursuant to Chapter 610 of the Missouri Revised Statutes, known as Missouri’s Sunshine Law. OA, along with several other government agencies, signed a Master Labor Contract with AFSCME, a private entity. The contract required that once a quarter, OA would provide AFSCME a current list of active bargaining unit employees. Each list was required to include, among other things, each employee’s name, employment status, salary information, work address, home address, and mailing address. OA provided the required information, without redactions, to AFSCME, except that OA only provided the home addresses for employees that opted into sharing that information. On 2019, Ishmael, acting on behalf of the Show Me Institute, emailed OA a public records request seeking the electronic copies of each list of active bargaining unit employees sent to AFSCME in 2016, 2017, and 2018. OA sent documents to Ishmael but redacted “certain individually identifiable personnel information” from the records pursuant to Missouri Revised Statute 610.021(13) and OA policy. Appellants filed suit seeking declaratory judgment that the Government violated the Sunshine Law by refusing to produce unredacted copies of the records and an order requiring the production of the unredacted documents. The trial court entered summary judgment in favor of the Government, finding that the Government had not violated Missouri Revised Statute 610.023.2. This appeal followed.

Appellant’s points on appeal:

- (1) The trial court erred in granting summary judgment to the Government because the judgment misapplied the Sunshine Law in that it allowed the Government to withhold from the public unredacted copies of public records the Government had previously treated as open by providing them to another private entity.
- (2) The trial court erred in granting summary judgment to the Government because the judgment misapplied § 610.023.2, RSMo, in that the Trial Court’s ruling allows the Government to grant AFSCME—and only AFSCME—a right to access and disseminate certain public records.