

MISSOURI COURT OF APPEALS-WESTERN DISTRICT
DIVISION 2
LISA WHITE HARDWICK, PRESIDING JUDGE
THOMAS N. CHAPMAN, JUDGE
JANET SUTTON, JUDGE
OCTOBER 19, 2022
MISSOURI WESTERN STATE UNIVERSITY
ST. JOSEPH, MISSOURI

WD84962

Romie Dawn Wright, Appellant,

v.

State of Missouri, Respondent.

Appellant Romie Dawn Wright appeals from the judgment of the Ray County Circuit Court denying his Rule 24.035 motion for post-conviction relief. In January 2021, Wright was charged as a persistent offender with one count of felony driving while intoxicated and one count of trespass in the first degree. The information alleged that Wright was a persistent offender because she had two prior driving while intoxicated convictions from November 2007 and February 2011. Wright pled guilty pursuant to an agreement with the State. Following her guilty plea, Wright filed a Rule 24.035 motion for post-conviction relief arguing that the State used constitutionally defective prior convictions to enhance her felony charge of driving while intoxicated. The motion alleged that her 2007 conviction was itself improperly enhanced from a misdemeanor to a felony, because it was based on two prior misdemeanors in which the punishment was a suspended imposition of sentence. The circuit court denied the motion without an evidentiary hearing. This appeal followed.

Appellant's points on appeal:

1. The circuit court erred in denying movant's motion under Rule 24.035 that the circuit court action violated equal protection and due process in that the court did not have felony jurisdiction over Appellant's case because the enhancement paragraphs were void, in that they were misdemeanor priors from municipal court in which the punishment was a suspended imposition of sentence and the court disregarded the rule of lenity.
2. The circuit court denied due process to Romie Wright in its judgment because the circuit court in denying her a hearing on the dismissal of her motion under Rule 24.035 to vacate and set aside the judgment in her case because there were contested facts that were clearly erroneous. The State further should not have dismissed the motion under Rule 24.035 without notice and an opportunity to be heard.

WD85031

Donald Brooks, Appellant,

v.

William J. Laurie and Crown Center Farms, Inc., Respondents.

Appellant Donald Brooks appeals the judgment of the Randolph County Circuit Court granting summary judgment in favor of Respondents William J. Laurie and Crown Center Farm, Inc. Brooks brought claims for negligence and premises liability against Laurie and Crown Center Farms. He also brought a claim for respondeat superior liability against Crown Center Farms. Brooks was injured on August 31, 2015, when a tree cut by Laurie fell onto Brooks. At the time of the accident, Brooks was employed by Little Dixie Construction, which was owned by John States. The injury occurred on land owned by Big Buck Resort, Inc. States and Laurie were two of the four owners of Big Buck Resort. According to Brooks, Laurie had standing permission from Little Dixie for Brooks to perform tasks for Laurie including minor construction and maintenance at properties owned by Crown Center Farms and Laurie. Brooks alleged that, at the time of the accident, Brooks was assisting Laurie in cutting down trees on the Big Buck property. Laurie employed unsafe cutting techniques and negligently cut a tree causing it to strike Brooks on the head. The circuit court found that Crown Center Farms was Brooks' statutory employer on the date of his injury, Crown Center Farms is shielded from civil liability, and Brooks' sole remedy is under the provision of Missouri's Workers' Compensation Law. The Court further found that Laurie was shielded from liability as executive and co-employee of Crown Center Farms. This appeal followed.

Appellant's points on appeal:

1. The trial court erred in granting summary judgment in favor of Defendant Crown Center Farms, because genuine issues of material fact exist regarding whether Plaintiff was injured on or about the premises of Crown Center Farms such that it was Plaintiff's statutory employer, in that evidence was presented that the premises belonged to a separate corporation, Big Buck, there is no evidence that Crown Center Farms owned or leased the premises, Defendant Laurie was one of the owners of Big Buck and the portion of the Big Buck premises on which work was being done was designated for Defendant Laurie to personally use for hunting, and the evidence regarding control did not differentiate between Crown Center Farms, Defendant Laurie, and Big Buck.
2. The trial court erred in granting summary judgment in favor of Defendant Crown Center Farms, because genuine issues of material fact exist regarding whether Plaintiff was injured while doing work in the usual course of Crown Center Farms' business, in that evidence was presented that Plaintiff worked at the Big Buck property at most annually, cutting trees was not done annually, Plaintiff and Eddie Brooks had not previously seen Defendant Laurie cut down trees, and Big Buck now employs a professional logger to clear the entire property.

3. The trial court erred in granting summary judgment in favor of Defendant William Laurie, because genuine issues of material fact exist regarding whether Crown Center Farms was Plaintiff's statutory employer such that Defendant Laurie was Plaintiff's co-employee, in that Defendant Laurie is entitled to the protections of the Workers' Compensation Law only if Crown Center Farms was Plaintiff's statutory employer, and evidence was presented that the premises belonged to Big Buck, there is no evidence that Crown Center Farms owned or leased the premises, Defendant Laurie was one of the owners of Big Buck and the portion of the Big Buck premises on which work was being done was designated for Defendant Laurie to personally use for hunting, and the evidence regarding control did not differentiate between Crown Center Farms, Defendant Laurie, and Big Buck, and Plaintiff worked at the Big Buck property at most annually, cutting trees was not done annually, Plaintiff and Eddie Brooks had not previously seen Defendant Laurie cut down trees, and Big Buck now employs a professional logger to clear the entire property.
4. The trial court erred in granting summary judgment in favor of Defendant William Laurie, because Defendant Laurie did not establish that he was entitled to judgment as a matter of law based on the corporate existence of Big Buck or Crown Center Farms, in that the Joint Motion for Summary Judgment did not assert the corporate existence of Big Buck or Crown Center Farms alone as a basis for summary judgment, Plaintiff's Petition asserts that Defendant Laurie's negligence caused a tree Defendant Laurie cut to fall on Plaintiff Brooks and that Plaintiff's injuries were caused by Defendant Laurie employing unsafe cutting techniques and causing a tree to fall on Plaintiff, and Defendant Laurie is liable for his own negligence.

WD84582

Charles L. Coats, Appellant,

v.

State of Missouri, Respondent.

Appellant Charles Coats appeals from the judgment of the Buchanan County Circuit Court denying his Rule 29.15 motion for post-conviction relief. Following a jury trial, Coats was convicted of first-degree murder and armed criminal action. The evidence at trial showed that Jason Ginn, the victim, and Coats were neighbors. They lived down the block and catty-corner to one another. They knew each other since childhood and never got along. On the day of the shooting, Ginn was on his front porch when Coats walked toward him and yelled. Ginn told Coats to "hold on" and went into his house. Coats walked back to his house and, on the way, got a handgun out of his car. When Ginn came out of his house, he walked across and down the street to Coats' house. The two argued and threatened one another. Ginn then turned and began to walk away. Coats then shot Ginn. Although Coats admitted that he shot Ginn, he argued that he did so in self-defense, believing that Ginn had a gun and was turning to shoot. The jury found

Coats guilty of murder in the first degree and armed criminal action. The trial court, having previously found Coats to be a prior and persistent offender, sentenced him to life imprisonment without the possibility of parole for first-degree murder and to twenty years' imprisonment for armed criminal action. Coats' conviction was affirmed on direct appeal. Coats filed a motion to vacate, set aside or correct the judgment and sentence pursuant to Rule 29.15. His amended motion claimed that his trial counsel was ineffective for failing to investigate and present the testimony of Orlando Kirby, who had been with Ginn prior to the shooting and saw the shooting. He also alleged his counsel was ineffective for failing to request various self-defense instructions. The court held an evidentiary hearing. Following the hearing, the court denied Coats' motion. This appeal followed.

Appellant's points on appeal:

1. The motion court clearly erred in denying claim 8/9(a) of Charles Coats' 29.15 amended motion, in violation of his rights to due process of law, a fair trial, and effective assistance of counsel, under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 10 and 18(a) of the Missouri Constitution, when it found trial counsel was not ineffective when he failed to investigate and present testimony from Orlando Kirby, because evidence provides a viable defense when it supports the defense at trial and evidence is not cumulative when it goes to the heart of the matter in the case, in that Mr. Kirby's testimony fully supported Mr. Coats acted in-defense and insofar as self-defense was the only issue, his testimony went to the heart of the matter in the case.
2. The motion court clearly erred in denying claim 8/9(c) of Charles Coats' 29.15 amended motion, in violation of his rights to due process of law, a fair trial, and effective assistance of counsel, under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 10 and 18(a) of the Missouri Constitution, when it found trial counsel was not ineffective when he failed to request and submit an initial aggressor withdrawal instruction, because a court must assess all evidence in the light most favorable to an instruction, no reasonable defense attorney would forego a withdrawal instruction, and prejudice results when a deficient instruction precludes the jury from considering a defense, in that the motion court failed to consider the evidence in the light most favorable to giving the withdrawal instruction, no reasonable strategy could support the failure to request and submit a withdrawal instruction in a case solely about self-defense, and prejudice resulted because the lack of a withdrawal instruction prevented the jury from reaching self-defense even if they believed Mr. Coats' testimony.
3. The motion court clearly erred in denying claim 8/9(d) of Charles Coats' 29.15 amended motion, in violation of his rights to due process of law, a fair trial, and effective assistance of counsel, under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 10 and 18(a) of the Missouri Constitution, when it found trial counsel

was not ineffective when he failed to request and submit an escalation instruction, because a court must assess all evidence in the light most favorable to an instruction, no reasonable defense attorney would forego an escalation instruction, and prejudice results when a deficient instruction precludes the jury from considering a defense, in that the motion court failed to consider the evidence in the light most favorable to giving the escalation instruction, no reasonable strategy could support the failure to request and submit a escalation instruction in a case solely about self-defense, and prejudice resulted because the lack of an escalation instruction prevented the jury from reaching self-defense even if they believed Mr. Coats' testimony.

4. The motion court clearly erred in denying claim 8/9(e) of Charles Coats' 29.15 amended motion, in violation of his rights to due process of law, a fair trial, and effective assistance of counsel, under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 10 and 18(a) of the Missouri Constitution, when it found trial counsel was not ineffective when he failed to argue imperfect self-defense to the jury, because trial strategy must be reasonable and imperfect self-defense is not recognizable to a reasonable jury, in that although trial counsel made a strategic decision what to argue in close, that decision must still be reasonable, the failure to argue imperfect self-defense was unreasonable, and, without an explanation by counsel, a jury would not understand and apply the concept of imperfect self-defense.

WD84232

In the Interest of: K.D.D., Appellant,

v.

Juvenile Officer, Respondent.

Appellant K.D.D. appeals the judgment of the Jackson County Circuit Court dismissing the juvenile cause of action and certifying K.D.D. to be prosecuted as an adult. As alleged in the petition, K.D.D. was sixteen-years old when he was operating a vehicle that collided with another vehicle, causing the death of one person and injuries to another. The Juvenile Officer filed a petition alleging that K.D.D. committed the delinquency offenses of involuntary murder in the first degree, assault in the second degree, and resisting arrest. At the time the petition was filed, K.D.D. was eighteen-years old. On March 2, 2020, the Juvenile Officer filed a motion seeking dismissal of the juvenile cause of action and certification of K.D.D. to be prosecuted as an adult. A hearing was held on the motion on September 2, 2020. K.D.D. appeared by video from the Jackson County Detention Center where he was being held on an unrelated charge. K.D.D.'s attorney appeared by video at a separate location from K.D.D. K.D.D.'s attorney objected to the proceedings being held without K.D.D. being present at the same location as his attorney so that they could confer during the proceedings. The Court overruled the objection and the hearing proceeded. The court entered judgment dismissing the juvenile action and finding that K.D.D. should be prosecuted as an adult under the general laws. This appeal followed.

Appellant's points on appeal:

1. The hearing court erred in overruling Appellant's objection to the certification proceedings under Section 211.071 being held remotely via two-way video, because the hearing court's ruling deprived Appellant of his right to be physically present at his certification hearing, violating his constitutional right to due process of law and his statutory right to be present—guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, Article I, Section 10 of the Missouri Constitution, and Section 211.071—in that, a certification hearing is a critical stage of a prosecution, Appellant had the right to be physically present with counsel at this critical stage, and the Supreme Court's Operation Directives did not authorize the hearing court to hold a certification hearing remotely via two-way video.
2. The hearing court erred in overruling Appellant's objection to the certification proceedings under Section 211.071 being held remotely via two-way video, because the hearing court's ruling deprived Appellant of his right to counsel at his certification hearing, violating his constitutional right to due process of law and his statutory right to counsel—guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, Article I, Section 10 of the Missouri Constitution, and Section 211.211—in that, Appellant had a constitutional and statutory right to counsel, the right to counsel includes the right to consult with counsel, and requiring Appellant to appear remotely via two-way video from a location separate from his counsel and the hearing court prevented Appellant from consulting with counsel.
3. The hearing court abused its discretion in overruling Appellant's motion for a continuance of the certification hearing, because absent a continuance, Appellant was deprived of his right to counsel, his right to be physically present, and his right to due process of law—guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, Article I, Section 10 of the Missouri Constitution, and Section 211.211—in that, a continuance was necessary for Appellant to appear in person and to consult with counsel before and during the hearing, and by overruling Appellant's motion for continuance, the hearing court forced Appellant to appear remotely via two-way video and separate from his counsel.
4. The hearing court abused its discretion in dismissing the juvenile cause of action and certifying Appellant to be prosecuted as an adult under the general laws, because the totality of the circumstances showed that Appellant was a proper subject to be treated under the juvenile code, violating Appellant's rights to due process of law and a meaningful certification hearing—guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, Article I, Section 10 of the Missouri Constitution, and Section 211.071—in that, the allegations against Appellant were not serious enough to merit certifying him,

there was no evidence that Appellant was alleged to have knowingly acted violently, Appellant did not have a serious history of misconduct, and a substantial reason Appellant was certified had to do with his age at the time of the hearing; the Juvenile Officer's substantial delay in filing the petition caused Appellant to be too old to receive many of the services available to children.