Missouri Court of Appeals, Western District

Mark D. Pfeiffer, Presiding Judge
Cynthia L. Martin, Judge
W. Douglas Thomson, Judge
Division 2

October 20, 2026
University of Central Missouri
Warrensburg, Missouri

WD87996
State of Missouri, Respondent,
v.
Deion D. Crum, Appellant.

Appellant Deion Crum appeals the judgment of the Circuit Court of Jackson County finding him guilty of unlawful use of a weapon and armed criminal action. As alleged at trial, on the night of February 11, 2024, Crum walked into a hospital with two gunshot wounds to his lower back. Crum declined to speak with police about how he was shot. The police investigated and believed Crum was involved in a shooting that occurred earlier that night in a local bar district, Westport. Victim and his two friends visited a bar in Westport after the Superbowl. Victim tried to deescalate a conflict outside of the bar when he heard someone say "gun." According to Victim, he made eye contact with the person who shot him but did not actually see the person shoot him. In the hospital, Victim was shown a lineup containing a photo of Crum, but Victim identified a different individual as the shooter. During trial, the defense attempted to enter into evidence that a detective investigating the shooting received information from the National Integrated Ballistic Information Network (NIBIN) that the firearm associated with the casings found at the scene of the shooting was linked to a different individual who shared similar physical characteristics to Crum. The State objected to the evidence, and the court sustained the objections. A jury found Crum guilty of unlawful use of a weapon and armed criminal action. The court sentenced Crum to a total of 23 years' imprisonment. This appeal followed.

Appellant's points on appeal:

1. The trial court abused its discretion, in violation of Mr. Crum's rights to due process, a fair trial, confrontation, and to present a complete defense, under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, sections 10, 18(a), and 22(a) of the Missouri Constitution, when it sustained the State's objection to hearsay during the defense's direct examination

of Detective to elicit testimony of a NIBIN hit and excluded this evidence from being presented to the jury, because a trial court abuses its discretion when the decision to exclude the challenged evidence is clearly against the logic of the circumstances and is so unreasonable as to indicate a lack of careful consideration and the erroneous exclusion of evidence creates a presumption of prejudice, in that testimony of the NIBIN hit was admissible under the subsequent police conduct exception to hearsay and its exclusion prejudiced Mr. Crum and prevented him from putting on a complete defense.

2. The trial court abused its discretion, in violation of Mr. Crum's rights to due process, a fair trial, confrontation, and to present a complete defense, under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, sections 10, 18(a), and 22(a) of the Missouri Constitution, when it sustained the State's objection during the defense's direct examination of Detective to eliciting testimony of a NIBIN hit on the basis that there was no proof directly connecting the other person (Fry) to the corpus delicti and excluded this evidence, because it is reversible error to exclude direct connection evidence, in that evidence of the firearm that was connected to the present offense and was found in the possession of someone unconnected to Mr. Crum is direct connection evidence and the exclusion of this evidence prejudiced Mr. Crum and prevented him from putting on a complete defense.

3. The trial court abused its discretion, in violation of Mr. Crum's rights to due process, a fair trial, confrontation, and to present a complete defense, under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, sections 10, 18(a), and 22(a) of the Missouri Constitution, when it sustained the State's objection to hearsay during the defense's direct examination of Detective to testimony that a firearm used in the offense was located and linked to someone who was not Mr. Crum and excluded this evidence, because a trial court abuses its discretion when the decision to exclude the challenged evidence is clearly against the logic of the circumstances and is so unreasonable as to indicate a lack of careful consideration and the erroneous exclusion of evidence creates a presumption of prejudice, in that evidence of the location and connection of the found firearm was admissible under the subsequent police conduct exception to hearsay and its exclusion prejudiced Mr. Crum and prevented him from putting on a complete defense.

4. The trial court abused its discretion, in violation of Mr. Crum's rights to due process, a fair trial, confrontation, and to present a complete defense, under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, sections 10, 18(a), and 22(a) of the Missouri Constitution, when it sustained the State's objection during the defense's direct examination of Detective to testimony that a firearm used in the offense was located and linked to

someone who was not Mr. Crum and excluded this evidence, because it is reversible error to exclude direct connection evidence, in that evidence of a firearm that was connected to the present offense and was found in the possession of someone unconnected to Mr. Crum is direct connection evidence and the exclusion of this evidence prejudiced Mr. Crum and prevented him from putting on a complete defense.

5. The trial court abused its discretion, in violation of Mr. Crum's rights to due process, a fair trial, confrontation, and to present a complete defense, under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, sections 10, 18(a), and 22(a) of the Missouri Constitution, when it sustained the State's objection during the defense's direct examination of Detective to testimony that a firearm used in the offense was located and linked to someone who was not Mr. Crum on the basis that the undue prejudice of the evidence outweighed its probative value and excluded this evidence, because it is reversible error to exclude legally and logically relevant evidence, in that evidence of a firearm that was connected to the present offense and was found in the possession of someone unconnected to Mr. Crum is direct connection evidence, it was relevant and not more prejudicial than probative, and the exclusion of this evidence prejudiced Mr. Crum and prevented him from putting on a complete defense.

WD87961
Joseph Foster, Appellant,
v.
State of Missouri, Respondent.

Appellant Joseph Foster appeals the judgment of the Circuit Court of Clay County denying his motion for post-conviction relief under Rule 29.15. In his underlying criminal case, Foster was found guilty of one count of statutory rape and sentenced to seven years' imprisonment. Foster filed a post-conviction motion alleging that his trial counsel was ineffective in failing to impeach the Victim's credibility at trial, in failing to effectively litigate his motion for a new trial, and for an improper fee arrangement for charging a flat fee and not properly informing him he could terminate the agreement and obtain a partial refund. The circuit court held a hearing on Foster's motion. The circuit court found that the failure to impeach the Victim was a reasonable trial strategy. The court further found that his counsel's actions did not fall outside professional norms or cause such prejudice as to affect the outcome of the case. Finally, the court found that the claim as to fees had been previously rejected by the Missouri Supreme Court. This appeal followed.

Appellant's point on appeal:

1. The motion court clearly erred in denying Mr. Foster's third ground for Rule 29.15 relief *because* its holding misapplied the law, as it is an actual conflict of interest that constitutes ineffective assistance of counsel and violates U.S. Const. Amends. VI and XIV and Mo. Const. art. I, sections 10 and 18(a), when trial counsel has a conflict of interest with his own personal interests, which does not require showing *Strickland* prejudice, and which includes charging a small flat fee for a case that will take many more hours than the equivalent hourly fees, failing to provide the client with the terms of that representation, failing to inform the client that the representation is refundable, failing to engage in an accounting so counsel could provide a refund if need be, representing the client at a trial under that arrangement, and cutting corners in doing so, and the Supreme Court of Missouri has never held otherwise in that trial counsel represented Mr. Foster for a $12,000 flat fee for the whole case when they admitted it would take far more time than the equivalent hourly rate, they never provided Mr. Foster the written terms of that representation, and they never informed him he would be entitled to a refund if he fired them, which resulted in their doing the least work they could including failing to research the admissibility of certain impeachment evidence or how to properly litigate his motion for a new trial.

WD88662
Kevin Rhodes, Respondent,
v.
Missouri Highways and Transportation Commission, Appellant.

Appellant Missouri Highways and Transportation Commission ("Commission") appeals the judgment of the Circuit Court of Jackson County finding in favor of Respondent Kevin Rhodes on Rhodes's claims for retaliation and hostile work environment. Rhodes was employed by the Missouri Department of Transportation ("MoDOT") until he was terminated for allegedly using a racial slur and making misogynistic comments to subordinates. Rhodes filed two internal grievances with MoDOT based on its handling of the investigation into his alleged misconduct. Following his suspension, Rhodes filed an additional internal complaint and a charge of discrimination with the Missouri Commission on Human Rights. Following a jury trial, judgment was entered in favor of Rhodes on his claims for retaliation and hostile work environment, awarding him $500,000 in actual and punitive damages and ordering the Commission to pay his costs and attorneys' fees. This appeal followed.

Appellant's points on appeal:

1. The circuit court erred in overruling the Commission's motion for judgment notwithstanding the verdict on Rhodes's retaliation claim, because Rhodes did

not make a submissible case for such claim, in that he did not present substantial evidence on causation.

2. The circuit court erred in overruling the Commission's motion for judgment notwithstanding the verdict on Rhodes's hostile work environment claim, because Rhodes did not make a submissible case for such claim, in that he did not present substantial evidence on the third element.

3. The circuit court erred in overruling the Commission's motion for judgment notwithstanding the verdict on Rhodes's hostile work environment claim, because Rhodes did not make a submissible case for such claim, in that he did not present substantial evidence on the fourth element.

4. The circuit court erred in overruling the Commission's motion for judgment notwithstanding the verdict on Rhodes's punitive damages claim, because the Commission is entitled to judgment on such claim, in that Rhodes failed to make a submissible case for both his retaliation claim and his hostile work environment claim.

5. The circuit court erred in overruling the Commission's motion for new trial, because the Commission is entitled to a new trial on punitive damages, in that Rhodes failed to make a submissible case for one of his two underlying claims.

6. The circuit court erred in overruling the Commission's motion for judgment notwithstanding the verdict on Rhodes's punitive damages claim, because Rhodes did not make a submissible case for such claim, in that he did not present clear and convincing evidence that the Commission's conduct was outrageous because of evil motive or reckless indifference.

7. The circuit court erred in overruling the Commission's motion for new trial, because the Commission is entitled to a new trial on punitive damages, in that Rhodes failed to present clear and convincing evidence supporting punitive damages in connection with one of his two underlying claims.

8. The circuit court erred in denying the Commission's motion for new trial, because the giving of Instruction Number 8 amounted to evident, obvious, and clear error that misdirected the jury so as to affect its verdict on Rhodes's retaliation claim, in that Instruction Number 8 contained disjunctive alternatives in paragraph first that could not possibly serve as the requisite "adverse action."

9. The circuit court erred in overruling the Commission's motion to amend the judgment, because Rhodes is not "the prevailing party," in that the Commission is entitled to judgment notwithstanding the verdict on Rhodes's claims for retaliation and hostile work environment.

10. The circuit court erred in overruling the Commission's motion to amend the judgment, because an award of attorney fees is unauthorized, in that Rhodes's request for attorney fees was premature and ineffective under Rule 74.16.

11. The circuit court erred in overruling the Commission's motion to amend the judgment, because Rhodes's request for attorney fees must be addressed in a separate and independent judgment, in that a request for attorney fees is deemed "an independent action" under Rule 74.16.

WD88445
Jeremiah Johnson, Appellant,
v.
Director of Revenue, Respondent.

Appellant Jeremiah Johnson appeals the judgment of the Circuit Court of Lafayette County affirming the Respondent Director of Revenue's decision to revoke Johnson's operator's license. As alleged at trial, on the evening of January 8, 2025, a couple contacted the Odessa Police Department to report a driver whose vehicle was swerving across the road and then driven into a ditch. The police responded and observed Johnson standing next to the vehicle. The officers believed that he showed signs of intoxication, and they could smell the odor of intoxicants coming from his person. Johnson was arrested due to his noncooperation. He was transported to the Odessa Police Department where an officer read him Missouri's Implied Consent Law. Johnson refused to submit to a breathalyzer and the Missouri Department of Revenue sanctioned Johnson by suspending his operator's license. Johnson filed a petition for review of the revocation in the circuit court. The circuit court upheld the revocation, and this appeal followed.

Appellant's points on appeal:

1. The trial court erroneously applied the law when affirming the Respondent Director's refusal revocation sanction because Appellant Johnson's refusal to submit to a chemical test of his breath was not knowing and consensual in that Appellant was not given twenty-minutes within which to contact counsel after having been read Missouri's implied consent warning and did not abandon his desire to contact counsel by not making a specific and explicit request to confer with counsel after having been read the implied consent warning.

2. The trial court erred in affirming the suspension of Appellant Johnson's driving privilege in that the Director failed to sustain his burden of proof as to the reasonableness of the arresting officer's belief that Appellant was under the influence of alcohol prior to his arrest because Appellant was not seen driving nor questioned as to if he was driving, and further, he was not administered any field sobriety test: the one leg stand test, the walk and turn test, the horizontal gaze

nystagmus test or given a preliminary breath test, but based solely on the officers' brief observations, smell of intoxicants and vague noncooperation.