

Summary of SC94081, *State of Missouri v. Christopher Eric Hunt*

Appeal from the Montgomery County circuit court, Judge Keith Sutherland
Argued and submitted September 3, 2014; opinion issued December 23, 2014

Attorneys: Hunt was represented by Edward D. Robertson Jr., Anthony L. DeWitt and Mary D. Winter of Bartimus Frickleton Robertson & Goza PC in Jefferson City, (573) 659-4454; and William Ray Price Jr. of Armstrong Teasdale LLP in St. Louis, (314) 621-5070. The state was represented by Shaun J. Mackelprang of the attorney general's office in Jefferson City, (573) 751-3321. The Missouri Fraternal Order of Police, which submitted a brief as a friend of the Court, was represented by James P. Towey Jr., general counsel of the order in Jefferson City, (314) 392-5200, and Michael Gross of the Michael Gross Law Office in St. Louis, (314) 863-5887.

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 law enforcement officer appeals his convictions for first-degree burglary, second-degree property damage and third-degree assault for actions occurring during his entry into a trailer to arrest a suspect on outstanding felony warrants. In a unanimous per curiam decision that cannot be attributed to any particular judge, the Supreme Court of Missouri reverses the convictions for burglary and property damage and, as to the assault conviction, reverses the conviction and remands (sends back) the case for a new trial or other further proceedings. The trial court erred in submitting the burglary charge to the jury and in failing to sustain the officer's motion for acquittal of that charge. The evidence in the case could not establish both a knowingly unlawful entry and an intent to commit assault – both of which are required elements of burglary – because if the officer did not believe the suspect was inside, the officer could not form the intent to commit assault. As a matter of law, the property damage charge could not be submitted to the jury because a state statute gives law enforcement officers a privilege to damage another's property to make an arrest when police announce their presence and purpose but are refused admittance. The trial court plainly erred in submitting the instructions for the assault charge. The instructions asked the jury to make a factual determination of a matter already decided by law – whether the officer was a law enforcement officer authorized to make an arrest – and failed to conform to the state statute governing the force an officer is allowed to use in making an arrest. As such, this conviction must be reversed, and the case is sent back for a new trial or other further proceedings.

Facts: The sheriff departments of two counties and two regional drug task forces were attempting to locate a known drug manufacturer and dealer and arrest him for two outstanding felony warrants for manufacturing methamphetamine and child endangerment. Ultimately, the suspect's former girlfriend agreed to reveal the suspect's location, but she asked that Deputy Christopher Eric Hunt – a member of one of the drug task forces – not be involved in the arrest because of past encounters when Hunt had arrested the suspect. Detectives told the informant Hunt would not be part of the operation, but there is no evidence indicating Hunt was informed of this. The day of the operation, 10 officers from various law enforcement agencies met at a staging location near the trailer where the informant told officers the suspect was hiding. The

officers had arrest warrants for the suspect but no search warrant for the trailer. They banged on the door to the trailer's exterior porch door and announced "sheriff's department, answer the door," hoping someone would answer and allow them entry. Although the informant was inside, no one answered, and the officers dropped back to a perimeter about 20 yards away. At this point, Hunt arrived – although he was not part of the operation, another officer had told him about the pending arrest. He put on a tactical vest, approached the trailer and kicked in its exterior porch door. He said he saw items on the porch that were signs of a mobile methamphetamine lab; once on the porch, several officers who followed Hunt noticed items consistent with a methamphetamine lab. Eventually, Hunt opened the interior door to the trailer, and the other officers entered. Officers on the perimeter entered when they heard yelling from inside. Hunt took the suspect to the floor in a hallway outside the bathroom where he had been hiding, and Hunt and four other officers held the suspect down, striking the suspect as "control tactics." They stopped the strikes after the suspect was handcuffed. The suspect was taken to the hospital but released immediately, receiving no stitches. Substantial evidence of a mobile methamphetamine manufacturing lab was seized from the trailer. Hunt ultimately was charged in Montgomery County with first-degree burglary for unlawful entry into the trailer with intent to commit assault; second-degree property damage for breaking down the door to enter the trailer; and third-degree assault for striking the suspect during the arrest. A jury convicted him of all three counts, and the court sentenced him to five years in prison. Hunt appeals.

REVERSED IN PART AND REVERSED AND REMANDED IN PART.

Court en banc holds: (1) The burglary conviction is reversed because there was insufficient evidence from which the jury could find each element of the offense beyond a reasonable doubt. Two elements of the crime of burglary are at issue here: whether Hunt entered the trailer knowingly unlawfully; and whether Hunt intended to commit assault once inside. A person enters knowingly unlawfully when he is aware he has no privilege or license to enter. To satisfy this element, the state had to present sufficient evidence that Hunt actually knew he had no authority to enter the trailer. The lawfulness of his entry centers on whether Hunt had a reasonable belief that the suspect was inside the trailer when Hunt entered it. But even if the jury accepted the state's position that Hunt did not actually believe the suspect was inside the trailer, the state still had to present sufficient evidence that, at the time of the entry, Hunt had the intent to assault the suspect rather than arrest him. The evidence in the case, however, cannot establish both a knowingly unlawful entry and an intent to commit assault. If Hunt did not believe the suspect was inside, he could not form the intent to commit assault. In light of the record and viewing the evidence in the light most favorable to the verdict, the trial court erred in submitting the first-degree burglary charge to the jury and in failing to sustain Hunt's motion for acquittal.

(2) The property damage conviction is reversed because the evidence was insufficient to support the charge. The damage to the trailer occurred during Hunt's forced entry to arrest the suspect. There is little doubt that Hunt acted knowingly when he kicked in the porch door to enter the trailer, but under section 544.200, RSMo, law enforcement officers are afforded a privilege to damage another's property to effectuate an arrest when police first announce their presence and purpose but are refused admittance. The evidence is sufficient for the jury to find that officers knocked and announced their presence but were denied admittance. The informant heard the officers announce their presence, and she clearly understood their purpose was to arrest the

suspect because she was the one who directed them to the trailer for that exact purpose. Under these circumstances, the officers complied with section 544.200, and Hunt cannot be convicted of conduct that is privileged under the law. He was a member of a multidistrict enforcement group and had power of arrest. He kicked in the door with the purpose of arresting the suspect on two felony warrants, and that arrest occurred. As a matter of law, this charge could not be submitted to the jury.

(3) Because the trial court committed plain error in submitting the jury instructions on the assault charge, the assault conviction is reversed, and the case is remanded for a new trial or other further proceedings. For this charge, the court submitted two instructions – one regarding assault and one regarding reasonable force – that were not patterned instructions from the Missouri approved instructions. These instructions misled the jury by requiring it to make a factual finding about a legal issue – whether Hunt was a law enforcement officer. Hunt’s authority as a law enforcement officer derived from section 195.505, as he was a member of a multijurisdictional enforcement group with the power of arrest anywhere in the state. The question for the jury was whether Hunt exceeded his authority. Although the state concedes on appeal that Hunt was a law enforcement officer with legal authority to arrest the suspect, at trial it argued that Hunt was acting outside his authority. If the jury believed this argument – which it never should have been asked to consider – the jury never would have considered the question of reasonable force. Further, the reasonable force instruction failed to instruct the jury that it could convict Hunt only if he exceeded the force permitted by law. This instruction misstated the substantive law governing the assault charge against Hunt because it did not conform to section 563.046.1, which provides that a law enforcement officer is justified in using such physical force as he reasonably believes is immediately necessary to make an arrest. Because the jury found Hunt guilty of this charge without being required to find all the essential elements of the offense, the instructional errors affected the verdict, resulting in manifest injustice or miscarriage of justice.

(4) Hunt failed to preserve his claim that the trial court should have allowed the testimony of a law enforcement instructor about whether the instructor believed, based only on photographs of the suspect’s injuries, whether Hunt struck the suspect only where officers are trained to strike those resisting arrest. The offer of proof Hunt made was indefinite and lacked sufficient specificity as to what the instructor’s testimony would be, leaving nothing in the record for review. This Court declines to exercise plain error review on this claim because, if there was error at all, it was not evident, obvious and clear.