

MISSOURI COURT OF APPEALS-WESTERN DISTRICT
DIVISION 2
ALOK AHUJA, PRESIDING JUDGE
EDWARD R. ARDINI, JR., JUDGE
THOMAS N. CHAPMAN, JUDGE
APRIL 5, 2022
UNIVERSITY OF MISSOURI SCHOOL OF LAW
COLUMBIA, MISSOURI

WD84316

State of Missouri, Respondent,

v.

Steven Lamar Dennis, Appellant.

Appellant Steven Dennis appeals from the circuit court judgment's convicting him of one count of delivery of a controlled substance and one count of tampering with physical evidence. The facts as alleged at trial established that Mark Leary died of a suspected overdose. During the investigation into Leary's death, police reviewed text messages on Leary's phone and found several messages discussing the purchase, sale, and use of narcotics. These included texts to a person identified as "Puller." The police learned from the Drug Enforcement Agency ("DEA") that, according to the DEA database, Dennis had been known by the alias "Puller." Eventually, the police got a "ping warrant" which allowed them to trace the location of the phone associated with the number for "Puller." Officers initiated surveillance of Dennis to determine if Dennis possessed the phone. It was determined that Dennis's movements appeared to mirror the GPS coordinates provided by the ping warrant. On October 24, 2019, officers followed a vehicle in which Dennis was a passenger and determined that the data provided by the ping warrant was consistent with the phone being in the vehicle. Officers initiated a traffic stop and arrested Dennis based solely on the ping warrant information. Dennis was taken into custody and transported to the police station. When an officer removed Dennis from the squad car, he noticed what appeared to be flakes of marijuana on Dennis's lap. The officer also observed a baggie stuffed into the seat liner of the prisoner compartment that had not been present prior to Dennis being transported. Footage from the patrol car showed Dennis digging in the front of his pants and placing something in his mouth, then begin chewing. Dennis admitted that he had eaten some marijuana. The baggie recovered from the patrol car contained several smaller baggies of marijuana, as well as baggies of cocaine. Dennis was charged and tried for the delivery of heroin to Mark Leary and one count of tampering with physical evidence for the events of October 24, 2019. At trial, the State exercised a peremptory challenge of Juror 22. Dennis raised a *Batson* challenge, alleging that the State struck the juror on the basis of race. The State responded that the juror had been struck because she was part of recent demonstrations related to the criminal justice system. Dennis argued that the juror should not have been struck for arguing her First Amendment rights. The trial court denied Dennis's *Batson* challenge. Ultimately, the jury convicted Dennis on both counts. The court sentenced Dennis to 20 years' imprisonment for delivery of a controlled substance and seven years' imprisonment for tampering with physical evidence. This appeal followed.

Appellant's points on appeal:

- (1) The trial court erred in denying Appellant’s challenge to the peremptory strike of Juror 22, because peremptorily striking a juror because the juror engaged in activity protected by the First Amendment violates the equal protection clause of the United States Constitution, Fourteenth Amendment, and the Missouri Constitution, Article I, Section 2.
- (2) The trial court erred in denying Appellant’s Motion to Suppress, because Appellant’s arrest was without a warrant and not justified by probable cause. The arrest therefore violated Appellant’s rights to be free from unreasonable search and seizure, due process, and a fair trial, U.S. Const. Amend IV, V and XIV and Mo. Const. Art. I, Sec. 2, 10, 15 and 18(a). All evidence that followed from that stop was “fruit of the poisonous tree,” and was seized in violation of the Fourth Amendment and should not have been admitted at trial.

WD84492

Sarcoxie Nursery Cultivation Center, LLC, et al., Appellants,

v.

Randall Williams, et al., Respondents.

Appellants Sarcoxie Nursery Cultivation Center, LLC, Sarcoxie Nursery Infusions Center, LLC, Missouri Medical Products, LLC, Missouri Medical Manufacturing, LLC, and GVMS, Inc. (collectively “Appellants”) appeal the judgment of the circuit court denying Appellants’ petition challenging the constitutionality of the rules promulgated by the Missouri Department of Health and Senior Services (“Department”) in conjunction with licensing of medical marijuana manufacturing and dispensaries. In 2018, Missouri voters approved amending Missouri’s Constitution to permit state-licensed physicians to prescribe marijuana to patients with certain illnesses and medical conditions. The Department was responsible for creating the rules necessary for the regulation and control of cultivation, manufacture, dispensing, and sale of marijuana for medical use. The Department determined that it would limit the number of licenses to 60 licenses for cultivation facilities, 86 licenses for manufacturing facilities, and 192 licenses for dispensary facilities. Each Appellant applied for licenses in each category. Each Appellant was denied a license due to the limitations on the number of licenses that the Department placed on each category. In addition, Sarcoxie Cultivation was also denied licensure for submitting proof of its authority to operate as a business in Missouri in a form different than that required by the regulation. The Appellants brought suit challenging the constitutionality of the Department’s ability to create rules limiting the total number of licenses and giving preference to applicants based on geographic location. The circuit court found that the limits were justified because if each licensed facility used the available space to grow as much marijuana as possible, there could be an oversupply which would create an incentive to divert marijuana to the black market. This appeal followed.

Appellants’ points on appeal:

- (1) The trial court erred in ruling as to Count I that facility license limitations in 19 CSR 30-95.050(1)(a), 19 CSR 30-95.060(1)(a), and 19-30-95.080(1)(a) are consistent with the plain language of Article XIV of the Missouri Constitution because the trial court erroneously applied the law, in that the trial court found Article XIV, §1.3(15), Article XIV, §1.3(16), Article XIV, §1.3(17), “authorizes the department to implement such limits, if it so chooses”, and failed to view the authority of the department to promulgate rules restricting the aggregate number of facility licenses in harmony with the entirety of Article XIV, including but not limited to the department’s duty to create patient access to medical marijuana, as well as Article XIV’s conditional delegation of authority to promulgate rules so long as patient access is not restricted unreasonably and such rules are reasonably necessary for patient safety or to restrict access to only licensees and qualifying patients.
- (2) The trial court erred in ruling as to Count II that Article I, §35, of the constitution does not apply to 19 CSR 30-95.050(1)(a), 19 CSR 30-95.060(1)(a), and 19 CSR 30-95.080(1)(a) because the trial court erroneously declared and applied the law, in that the trial court failed to view Article XIV, §§1.3(15)-(17), in harmony with the entirety of Article XIV, in declaring the department could promulgate a rule if it so chooses and not in harmony with the conditional authority to promulgate rules only so long as patient access is not restricted unreasonably and such rules are reasonably necessary for patient safety or to restrict access to only licensees and qualifying patients, and not in harmony with the obligation of the department to create patient access to medical marijuana, and in erroneously applying *State v. Shanklin*, 534 S.W.3d 240 (Mo. Banc 2017), as the licensed cultivation, manufacturing and dispensing of marijuana for medical purposes is now legal in Missouri.
- (3) The court erred in ruling as to Count III that 19 CSR 30-95.050(1)(a), 19 CSR 30-95.060(1)(a), and 19-30-95.080(1)(a) each have a rational basis to a legitimate governmental interest and are not arbitrary and capricious because the trial court erroneously declared and applied the law, in that when the trial court declared the department could promulgate a rule restricting licenses if it so chooses, it failed to view Article XIV, §§1.3(15)-(17), in harmony with the entirety of Article XIV, including, but not limited to, the conditional authority to promulgate rules only so long as patient access is not restricted unreasonably and such rules are reasonably necessary for patient safety or to restrict access to only licensees and qualifying patients, and in harmony with the department’s obligation to create patient access to medical marijuana, and in erroneously applying *State v. Shanklin*, 534 S.W.3d 240 (Mo. Banc 2017), as the licensed cultivation, manufacturing and dispensing of marijuana for medical purposes is now legal in Missouri.
- (4) The trial court erred in ruling as to Count III that 19 CSR 30-95.050(1)(a), 19 CSR 30-95.060(1)(a), and 19-30-95.080(1)(a) each have a rational basis to a legitimate governmental interest and are not arbitrary and capricious because such a ruling is against the weight of the evidence in that the ruling is contrary to the evidence: that defendant’s authority to promulgate rules was limited, to the defendants admission

that the negative impact of such rules on price to the patient was not considered; of defendants' lack of consideration of geographic proximity; of defendant Fraker's admission that the rules prevented patient access to their medicine; and that the department could offer no explanation or basis for limitation of licenses of manufacturing facilities other than constitutional restriction placed on the department, and is contrary to the evidence that at the time of the promulgation of the restrictions the department failed to put any evidence on the record demonstrating the basis for the rule nor a finding as to the necessity of such restrictions.

WD84811

In the Interest of: B.D., Respondent,

v.

Missouri Department of Social Services, Children's Division, Appellant.

The Missouri Department of Social Services, Children's Division, ("Children's Division") appeals the judgment of the circuit court ruling that B.D., a 22-year-old woman who was formerly a foster child under the care and assistance of the Children's Division, could re-enter foster care under the Missouri Revised Statute 211.036 and the Federal COVID relief bill, Public Law 116-260. On April 6, 2021, prior to her 22nd birthday, B.D. filed a petition to return to Children's Division custody stating that, without the maintenance payments she received while in the custody of the Children's Division, it was difficult for her to pay her expenses and provide for her two children. On April 20, 2021, the circuit court denied B.D.'s petition finding that the court was without jurisdiction. At the time of the dismissal, Children's Division had not yet been served. B.D. filed a motion for rehearing, and Children's Division entered a limited appearance solely for the purpose of responding to the motion for rehearing. The Children's Division was served with the petition on May 25, 2021. The circuit court held a hearing on June 1, 2021. The parties disagree as to whether the hearing was held only on the motion for rehearing or whether it was also a hearing on the petition. The parties do agree that the court heard arguments as to the merits of the underlying petition. On August 13, 2021, the circuit court issued a judgment in favor of B.D. and her underlying petition, returning her to the care of the Children's Division. This appeal followed.

Appellant's points on appeal:

- (1) The Circuit Court erred in entering a judgment under § 211.036 ordering the Children's Division to facilitate B.D.'s re-entry into foster care, because it lacked authority and violated the Division's due process rights by holding a hearing on the merits of the Petition and entering a judgment at the times it did, in that the Division had not yet answered the Petition before the hearing on the merits, the Circuit Court informed the parties it would hear only B.D.'s motion for hearing, and the Division had entered only a limited appearance for the purpose of responding to the motion.
- (2) The Circuit Court erred in conducting a hearing on the merits of the case and issuing a judgment after failing to issue a ruling on Petitioner's Motion for Rehearing Pursuant to

Rule 130.13, because the Court failed to discharge its duty under Rule 130.13(b) to rule on the motion for rehearing promptly, in that the Court did not rule on the motion within 45 days of its filing and instead allowing it to be overruled “for all purposes” by the passage of 45 days following the filing of the motion without making a ruling.

- (3) The Circuit Court erred in asserting jurisdiction and authority to enter an order and judgment under § 211.036 ordering the Children’s Division to facilitate B.D.’s re-entry into foster care because B.D. was a 22-year-old adult who is ineligible for re-entry into foster care as a result of her age, and § 211.036 does not authorize B.D. to petition under that Section, in that the only parties permitted to bring such a petition are “a youth under the age of twenty-one...the juvenile officer, [and the] children’s division,” and B.D. is not any such party.
- (4) The Circuit Court erred in ordering the Children’s Division to facilitate B.D.’s re-entry to foster care, because federal Public Law 116-260 does not conflict with Missouri’s re-entry laws, in that it does not grant a private right of action for individuals to enforce, does not mandate state agencies to implement a specific option for the provision of foster care services for adults over 18, and differentiates between remaining in foster care and re-entering foster care.

WD84589

Lorie S. Winslow, Appellant,

v.

The Board of Education of the Osage County R-II School District, Respondent.

Appellant Lorie Winslow appeals the judgment of the circuit court affirming the termination of her employment contracts as a non-tenured principal and administrator with the Osage County R-II School District. The facts as alleged established that, prior to her termination, Winslow was employed by the Osage County R-II School District for seven years. For the 2019-2020 school year, Winslow worked pursuant to an Elementary Principal’s Contract. In January 2020, Winslow was informed by Superintendent, Dena Smith, that Winslow would be reassigned to a different administrative position. On February 24, 2020, Winslow signed an Administrator Contract for the 2020-2021 school year. As part of her duties as principal, Winslow was required to complete teacher evaluations. Smith requested that evaluations be turned in “prior” to March 23, 2020. Winslow alleged that she misread the e-mail and believed the evaluations were due on March 23, 2020, and submitted them that date. Smith alleged to the School Board that Winslow breached her two employment contracts by willfully and persistently violating school board policy in failing to timely complete the evaluations and in misrepresenting that she had met with one of the teachers prior to turning in the evaluation. Smith also alleged that Winslow had breached her contracts by willfully and persistently violating Board Policy by disclosing the identity of a teacher whose fiancé had tested positive for COVID-19. The School Board held a hearing on Smith’s allegations. The Board found that Winslow’s two contracts

were subject to termination for willfully and repeatedly violating Smith's directive to turn in the evaluations “prior to” March 23, 2020, and for allegedly falsely stating that she had met “virtually” with a teacher when they had merely exchanged e-mails and set up a time to review the evaluation after the evaluation had already been submitted. The Board also found that Winslow had willfully and persistently disobeyed Smith by disclosing the identity of the teacher whose fiancé had COVID-19. Winslow requested administrative review of the decision in the circuit court of Cole County. The circuit court found that Winslow had willfully violated Board policy, and the court affirmed the Board’s decision terminating Winslow’s contracts. This appeal followed.

Appellant’s points on appeal:

- (1) The Board erred in terminating Appellant Winslow’s employment contracts for her alleged breach of contract based on its finding that Winslow willfully and persistently violated Board Policy 4630 in failing to timely turn in a completed summative evaluation and for lying in the evaluation, because there was no substantial and competent evidence to support the Board’s finding as required by § 536.140.2(3) RSMo, in that there was no indication that turning in the Brodin summative evaluation on March 23, 2020, was a material breach of contract, nor was there evidence of lying, or any willful and persistent violation of Board Policy 4630.
- (2) The Board erred in terminating Appellant Winslow’s employment contracts based on the Statement of Charges brought by the Superintendent, because the Board’s decision was not authorized by law as required by § 536.140.2(4) RSMo, in that the Statement of Charges alleged that Winslow was subject to disciplinary action for disclosure of information she reasonably believed constituted a substantial and specific danger to public health or safety, and § 105.055 RSMo and Board Policy 4865 forbid the Superintendent and the District from warning of dismissal, or actually dismissing an employee for making disclosures that are protected.
- (3) The Board erred in terminating Winslow’s employment contracts for the immaterial late summative evaluation, and the ambiguous text message to Ms. Wolfe, because the reason for termination was arbitrary, capricious and unreasonable, in violation of § 536.140.2(6) RSMo, in that the Board irrationally based its decision on insignificant charges, but the Board utterly disregarded significant undisputed evidence showing that Winslow disclosed to Board members and the public a substantial and specific danger to public health, and the Board’s contradictory decision is irreconcilable.
- (4) The Board erred in terminating Appellant Winslow’s employment contracts for breach of contract based on its finding that she willfully and persistently violated Board Policy 4820, because the decision of the Board was made upon unlawful procedure and without a fair trial as required by § 536.140.2(5) RSMo, in that Board Policy 4820 was not one of the charges the Superintendent brought against

Appellant Winslow as cause for termination of her employment contracts, therefore there was not proper notice of this charge prior to the hearing.

- (5) The Board erred in terminating Ms. Winslow's employment contracts for breach of contract based on its finding that she willfully and repeatedly disobeyed the Superintendent's directive not to discuss A.M. with anyone, because the Board's decision was not authorized by § 536.140.2(1) RSMo, in that the Superintendent's restriction on speech was overbroad, and the Board's decision to terminate Winslow for her disclosure is in violation of the First Amendment of the U.S. Constitution, where Winslow's disclosure of A.M.'s identity was a matter of public concern and did not disrupt the workplace, and she engaged in speech protected by law.
- (6) The Board erred in finding that Winslow breached her 2020-2021 employment contract, because § 536.140.2(3) RSMo requires that the Board base its decision on competent and substantial evidence, in that the Superintendent presented no evidence, made no argument, nor did the Board make any finding showing that Winslow had either breached, abandoned, or repudiated the 2020-2021 contract.