

BEFORE THE MISSOURI COURT OF APPEALS

SOUTHERN DISTRICT

Ronald Malam,)	
)	
Appellant,)	
)	
v.)	Appellate Case No. SD33620
)	
Department of Corrections)	
)	
Respondent.)	
)	

APPELLANT RONALD MALAM'S

BRIEF TO THE COURT OF APPEALS

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STATEMENT OF JURISDICTION

This is an appeal by an employee of a final award from the Missouri Labor and Industrial Relations Commission denying a workers' compensation claim. Jurisdiction is proper before the Missouri Southern District Court of Appeals pursuant to R.S.Mo. Sec. 287.495 (1993).

STATEMENT OF FACTS

Ronald Malam testified on his own behalf at the hearing. He was 53 years of age at the time of the hearing, having graduated from High School in 1979 in Kansas City, Missouri. Malam is married with two children. (Tr. Pg. 8-9 Ln. 20-2). He is currently living in Pomona, Missouri, where he has resided for the past 10 years. (Tr. Pg. 763 Pg. 7 Ln. 14-19). He worked during high school at Montgomery Ward, then at a lumber yard and then upon graduation held several different jobs such as a laborer at Houston Walnut, as a dispatcher for Cabool Police Department, and then in several production, sales and general labor type jobs. (Tr. Pg.9 Ln. 17-20; 764-765 Pg. 11-15 Ln. 10-2).

In 2008, Malam started working for Missouri Department of Corrections at the South Central Correctional Facility in Licking, Missouri as a Correctional Officer. (Tr. Pg. 9 Ln. 8-16). During his employment, there was an incident involving an offender on August 12, 2011. The offender, a younger man about 5'8 and 160 pounds, was refusing to follow Malam's orders and turned towards him with his fists clinched. Malam was required to forcefully take the inmate down to the ground on the paved walk area outside of the dining hall. (Tr. Pg. 10 Ln. 9-11). "He put his left hand up, but kept turning around from his right side wanting to argue about it. One of the officers mentioned he clinched his fists and had his elbow cocked. After ignoring several directives from me, I grabbed him under his armpit and turned to my left and took him down." (Tr. Pg. 11 Ln. 15-19; 771 pg. 40 Ln. 20-25). Malam testified that, "*I know I had a nice bruise later. . . Yes, just below my ribcage.*" (Tr. Pg. 772 pg. 42 Ln. 21-

23).

Malam then gained control over the offender by tackling him from behind and wrestling him to the cement with a bear hug, so that the inmate fell flat with Malam on top of him, Malam's chest to the inmate's back. (Tr. Pg. 11 Ln. 9-11). Malam had been trained to perform the maneuver, but had never actually used it before. (Tr. Pg. 11). He didn't remember feeling anything unusual physically, but he did feel an adrenaline rush, "you don't know what he is going to do and you don't know what the 200 people in the dining hall are going to do". (Tr. Pg. 11 Ln. 9-17). With the help of officer Thompson, the two took control of the inmate and then placed restraints on the offender. Malam having control of the offenders right arm and Thompson with control of the left arm, they brought the offender to his feet and escorted him to the Housing Unit #2. (Tr. Pg. 12 Ln. 6-8). After walking the inmate across the yard, Officer Woolfork relieved Malam by taking the offender to the D-Wing holding cage.

Within a "couple of minutes of the incident", Malam felt shortness of breath and noticed that he was spitting blood when he got a drink of water. (Tr. Pg. 14 Ln. 1-5). The nurses from the correctional facility attended to him and immediately called for an ambulance. (Tr. Pg. 14 Ln 5-8). After the ambulance arrived, he was sent to Texas County Memorial Hospital in Houston Texas. (Tr. Pg. 14 Ln. 18-24). He remembers the ambulance trip to the first hospital and his brief stay there before being air-flighted out to Cox Hospital in

Springfield, Missouri. After that, he remembers nothing until waking up in he hospital bed several days later: (Tr. Pg. 15 Ln. 16-24). He recounted what he could remember:

Q. What else do you remember? You said you remember getting the cuffs on him and getting him up and walking him, but what else do you recall?

A. Difficulty breathing. It's like I couldn't catch my breath.

Q. Was this while you were walking the inmate?

A. Yes. (Tr. Pg. 772 Pg. 43 Ln. 2-8).

Q. And then what else do you recall?

A. I motioned for CO-1 Woolfork to take over in escorting him and we were just about to the housing unit then. I went on in and went to the back area, which is reserved for staff, and I was coughing up blood and luckily --

Q. Do you recall that? (Tr. Pg. 772 Pg. 43 Ln. 9-15).

A. Yes. And there was a couple of nurses in the housing unit at the time, so they came and checked on me and one of them recommended I be taken out with a -- by an ambulance.

Q. So they ended up calling the ambulance?

A. Yes.

Q. Is that where your recollection ends?

A. I can remember getting to the hospital in Houston.

Q. Okay. (Tr. Pg. 772 Pg. 43 Ln. 16-25).

A. And they were having problems getting one of their scan machines working and they were talking about taking me out on the helicopter, and I don't remember anything for over a week.

Q. So the last thing you really recall is people around you talking about needing to get a helicopter to get you somewhere else?

A. Yes. (Tr. Pg. 772 Pg. 44 Ln. 18).

Q. And then you say it's really probably another week before you remember anything?

A. When I came to, I asked if I could use the phone. I called my wife to let her know I was in the hospital, and she said, "You've been there for a week." So, yes. (Tr. Pg. 772 Pg. 44 Ln. 9-14).

Malam testified that at the time of the incident he felt physically fit and was not having any trouble breathing or performing his job. (Tr. Pg. 16 Ln. 10-16). Years previously, he had been hospitalized at the Ozark Medical Center from roughly March 6, 2005 until March 10, 2005 for a diagnosis of congestive heart failure, hypertension, primary cardiomyopathy, pulmonary hypertension, left ventricular dysfunction, and biventricular failure and obesity. (Tr. Pg. 20-21 Ln. 15-21). After his discharge, he felt that he did well and did not remember taking any ongoing medications for his heart. He didn't receive any active care for his condition and he went back to work without issues. He had to pass a physical exam to be hired by the Department of Corrections, which included running and lifting, which he did without difficulty. (Tr. Pg. 767, pg. 21, ln/ 14-23).

Malam was also briefly hospitalized in September of 2009, when he had gallstone pancreatitis. (Tr. Pg. 22 Ln. 12-21). He missed about two weeks of work. (Tr. Pg. 23 Ln. 14-16). He returned to work without difficulty, was never short of breath or unable to fulfill his job duties. (Tr. pg. 16 ln. 4-9). In March of 2010 he was also hospitalized for pancreatitis, but again returned to work after about a month, without difficulty, doing the same job. (Tr. Pg. 23-24 Ln. 24-1). He never had, *nor does he currently experience*, shortness of breath or difficulty physically performing his job. At the time of the incident he was only taking medication for hypertension and diabetes. He felt that both were well controlled. After the incident, Malam was able to return to work on October 1, 2011 at full duty. *He has continued to work at full duty ever since returning to work*, without any physical problems.

Lawerence Thompson, Mr. Malam's fellow correctional officer, was an eye witness to the incident on August 12, 2011. (Tr. Pg. 797-852). He gave his deposition two years later on July 9, 2013. His relevant testimony follows:

Q. Okay. Can you tell us a little bit about where that event occurred. (Tr. Pg. 805 Ln. 23-24).

A. Well, I was working out front of B-side dining room at the time, doing pat searches. And the offender was brought out. Officer Malam instructed him to go against the wall, and -- for a pat search. And -- (Tr. Pg. 805-806 Ln. 25-4).

Q. I'm going to stop you for a second. Mr. Malam brought the offender out of the dining room? Is that what you mean?

A. Yes, ma'am. (Tr. Pg. 806 Ln. 5-8).

Q. Okay. So when you first observed Mr. Malam, he already had the offender with him?

A. Yes, ma'am.

Q. Okay. And you said he asked him to step against the wall to do a pat search?

A. Yes, ma'am. (Tr. Pg. 806 Ln. 9-14).

Q. What does that mean?

A. That's where you search the offender from the back of the neck all the way down to his shoes or boots, whatever he has on. That consists of his arms, his upper torso, the waist, both legs. And like I said, the ankles.

Q. Okay. Is that something that the offenders routinely have to do when they're leaving like the dining room?

A. Yes, ma'am. (Tr. Pg. 806 Ln. 21-24).

Q. Okay. That's fine. What do you recall, as far as after Mr. Malam asked the offender -- I think you left off with asking him to face the wall and he was going to do the pat-down. What happened then?

A. The next thing I observed was the offender bringing his right arm -- looked like his right elbow -- toward the back, toward Officer Malam's head. (Tr. Pg. 807 Ln. 3-9).

Q. Okay. So Mr. Malam was standing behind the offender?

A. Yes, ma'am.

Q. And was the offender facing the wall?

A. Yes, ma'am.

Q. Okay. So he pulled his arm back -- elbow back towards Mr. Malam?

A. Yes, ma'am. (Tr. Pg. 807 Ln. 10-17).

Q. Okay. What did you observe after that?

A. Mr. Malam grabbed the offender, turned to the right -- which I was on the right side -- and took him down to the ground. And then at that point, I grabbed the offender's head so his head wouldn't hit the concrete.

Q. Okay.

A. And I knelt down as I went down. (Tr. Pg. 807 Ln. 18-25).

Q. Okay. The other officer that was there, Mr. Wofford --

A. Yes, ma'am.

Q. Okay. What did he do, and how was he involved in the take-down?

A. It was probably two or three seconds later after we had the offender down that he came out the dining room door. And I told him to grab the offender's legs. (tr. Pg. 808 Ln. 1-11).

Q. Okay. So initially, it was just you and Mr. Malam who were involved in the take-down?

A. Yes, ma'am.

Q. Okay. You -- did you observe the entirety of -- I'm going call to call it the take-down, when Officer Malam took the offender down to the ground and then you assisted?

A. Yes, ma'am. (Tr. Pg. 808 Ln. 12-19).

Q. Okay. In -- in your estimation -- well, let me ask a couple other questions, first of all. On the ground, how -- how were they situated on the ground? Who was on the bottom, who was on the top, that type of thing?

A. The offender was on the bottom. (Tr. Pg. 808 Ln. 20-25).

Q. Okay. Was he face-down on the ground?

A. Yes, ma'am.

Q. Okay. Go ahead.

A. And Officer Malam had landed squarely on top of him. (Tr. Pg. 809 Ln. 1-5).

Q. Okay. So is he laying on top of the offender?

A. Yes, ma'am.

Q. Okay. Did he -- did Officer Malam go to the ground, or did he land on top of the offender?

A. He landed on top of the offender. (Tr. Pg. 809 Ln. 6-11).

Q. Okay. I don't know. Is that -- was that the intended purpose on what the person who was doing a take-down of that sort should have done? Should he have landed on the offender?

A. On or near the offender. (Tr. Pg. 809 Ln. 12-16).

Q. Okay.

A. Depending on the take-down.

Q. Okay. So it wasn't -- it wasn't necessarily by accident, how he landed on the offender?

A. Yes, ma'am. (Tr. Pg. 809 Ln. 17-21).

Q. Okay. All right. In the observation of -- of the take-down, do you have an opinion as to the amount of exertion that Mr. Malam had to use in the take-down? Was it forceful? Was it not very much? My first question is do you have an opinion. So that's a yes or no.

A. Yes. (Tr. Pg. 809-810 Ln. 22-3).

Q. Okay. If we were to say on a scale of 1 to 10, where 0 is really nothing, no exertion at all, and 10 is you're working really hard, where would you think that fell?

A. Probably about a 6. . . (Tr. Pg. 810 Ln. 4-8).

Q. Did -- what did Mr. Malam do next?

A. He started to get up so we could restrain him -- put restraints on him.

Q. Okay. Did -- was he able to get up?

A. Yes, ma'am.

Q. Okay. Who actually -- I'm assuming this. Did you end up restraining him, like with his arms behind his back?

A. Yes, ma'am. (Tr. Pg. 810 Ln. 17-25).

Q. Okay. Who ended up doing that?

A. It would be Officer Malam.

Q. Okay. And Mr. -- Officer Malam then -- was he able to get to his feet on his own?

A. Yes, ma'am. (Tr. Pg. 811 Ln. 1-5).

Q. Okay. Did you have to assist Officer Malam at all in -- in either getting up or anything like that?

A. Do you mean the officer, or --

Q. Yes. The officer. I'm wondering did you have to assist the officer at all.

A. No, ma'am. . . (Tr. Pg. 811 Ln. 6-11).

Q. Okay. Did Officer Malam walk the offender all the way to Housing Unit Two?

A. All the way to the door. Yes, ma'am. (Tr. Pg. 813 Ln. 3-5).

Q. And did you work with Mr. Malam before this incident?

A. Yes, ma'am. Yes, sir.

Q. Do you know for how long you'd been working with him?

A. Probably on and off for a couple years. (Tr. Pg. 817 Ln. 12-17).

Q. Had you ever known him to have any problems physically performing his job?

A. No, sir. (Tr. Pg. 817 Ln. 18-20).

Q. The take-down itself of the offender, do you -- do you know how big the offender was?

A. I'd say he was probably about 5'8", maybe weighed 150, 155. (Tr. Pg. 818 Ln. 18-21).

Q. Did you take it to be an aggressive move on his part? Was he trying to strike him or somehow --

A. Yes, sir.

Q. -- hit him?

A. Looked to me like he was trying to strike him with his elbow. 9Tr. Pg. 819 Ln. 10-15).

Q. And so is that protocol for Mr. Malam to take him down at that point in time?

A. Yes, sir. . . (Tr. Pg. 819 Ln. 16-18).

Q. How much time elapsed between when Mr. Malam took down the offender and when he asked the other officer to take control of him and kind of handed him off?

A. Probably about five to ten minutes. . . (Tr. Pg. 821-822 Ln. 25-4).

Q. Did you see Mr. Malam again after he asked the other officer to -- to take over?

A. After we had secured the offender in the strip-out cage that they have in Housing Unit Two, I turned and he was still standing in the sally port, in Housing Unit Two. (Tr. Pg. 823 Ln. 16-21).

Q. Okay. And what happened next?

A. At that time, I believe we had a continuous use of force, so Officer Wofford and myself had to stay until we secured the offender in a cell. At that point, I didn't see Officer Malam until later. Probably 20 minutes later. He'd already left the house.

Q. Where did you see him?

A. I saw him back up toward the area where the incident happened, up on the boardwalk, toward the A-side dining area. (Tr. Pg. 823-824 Ln. 22-7).

Q. And how was Mr. Malam looking then? Did you talk to him? Did you observe anything?

A. I didn't talk with him. He -- he was very quiet. Just mostly standing there, sir.

Q. What do you mean by standing there?

A. Well, he had stopped by A-side dining room, standing by the dining room.

Q. Is that unusual?

A. I'd say yes. (Tr. Pg. 824-825 Ln. 20-3).

Q. I mean, he wasn't serving any purpose doing that; was he?

A. No, sir.

Q. Do you know why he was standing there?

A. No, sir.

Q. Did he say anything?

A. No. (Tr. Pg. 825 Ln. 4-10).

Q. Could you tell by looking at him if he was in any sort of distress?

A. Not right offhand, sir. No.

Q. Okay. At some point in time, did you come to learn that he was having some difficulties?

A. Yes, sir. (Tr. Pg. 825 Ln. 11-16).

Q. Tell me about that.

A. I'd say that was probably 45 minutes to an hour after I'd seen him on the walk.

Q. Okay.

A. And I was told by another officer -- I can't remember his name -- that there was something wrong with his heartbeat. I can't verify that, because, you know, I'm not medical, and I actually didn't ask him about it. (Tr. Pg. 825 Ln. 17-25).

Q. And is that 20 minutes after the take-down that you saw him just standing?

A. Yes, sir.

Q. And then you didn't see him again that day?

A. I saw him later that evening. Yes, sir. (Tr. Pg. 826 Ln. 16-22).

Q. See him at the hospital?

A. No, sir.

Q. Where did you see him?

A. Well, we was coming out of our medical facility. And he was with one of our sergeants. I can't recall who it was. And I'd say shortly after that, I didn't see him for the rest of the evening.

Q. And this was before he would have been taken by ambulance?

A. Yes, sir. (Tr. Pg. 826-827 Ln. 21-5).

Q. Did you find it unusual that he's standing there?

A. Yes, sir.

Q. And why is that?

A. Because normally after use of force, we have to report to either a lieutenant or a shift manager, and get set up to do our reports. And so I -- yes. I thought it was strange that he would be standing there, and not inside the complex where the lieutenant or the captain was. (Tr. Pg. 828 Ln. 7-16).

Malam testified at the hearing that he thought it was only a 10-20 minutes between the time that he took down the inmate and the time that the nurse called the ambulance. (Tr. Pg. 29-30 Ln. 19-10). The employer did not produce any records of the take-down at the hearing, nor did they produce the nurse to testify or any records that she may have taken. Malam testified at the hearing that it was within 2 minutes after the take-down that he began experiencing breathing difficulty and spitting up blood. (Tr. Pg. 29 Ln. 12-15). The employer's nurse called the ambulance for him and told him he needed to go to the hospital.

The ambulance arrived at an undocumented time and it was noted that Malam had been in an altercation with an inmate where the inmate landed on him and was "coughing up blood." (Tr. Pg. 589). His sputum was noted to be "pink and bloody". He had an abrasion on his left knee. He was in respiratory distress with chest pain. Medications were administered

at 6:15 p.m. At Texas County Memorial Hospital chest x-rays and a CT scan were done because Malam reported difficulty breathing and he was diagnosed by Dr. Thomas Stubbs, MD and consulting physician with pulmonary contusions, “my impression was that he had severe *pulmonary contusions*”.¹ (Tr. Pg. 576). At 7:25 p.m. he was found unconscious in his hospital bed. (Tr. Pg. 574). He was then incubated as a result of “pulmonary injury at South Central Corrections”. (Tr. Pf. 578). Shortly thereafter, he was transported by air to Springfield, Missouri, where he was diagnosed with a “hypertensive crisis” and a heart catheterization was done on August 22, 2011. (Tr. Pg. 71). Renal arteries were normal and he did not have obstructive coronary artery disease. (Tr. Pg. 71). After his release from the hospital, he did extremely well and returned to work 6 weeks later. He continued to work since the accident without difficulty and has not had any further hypertensive crisis, congestive heart failure or any other medical issue. (Tr. pg. 16 ln. 4-9). The incident at work is the one and only time Malam has suffered from or been diagnosed with “hypertensive crisis” or “pulmonary contusion”.

Dr. Koprivica saw Malam for an IME on September 18, 2012. (tr. Pg. 712-743). He took a history from Malam and noted that he fell to the ground and had to use “extreme exertion” (*in Dr. Koprivica’s words, not Malam’s*) in order to take the inmate to the ground.

¹

A person with a pulmonary contusion has a bruise to the lung, which results in bleeding into the lung tissue. The collection of blood can prevent oxygen from passing from the lung, into the bloodstream. <http://www.freemd.com/pulmonary-contusion/overview.htm>

(Tr. Pg. 718). Dr. Koprivica noted that Malam suffered bruising as a result. (Tr. Pg. 718). Dr. Koprivica reviewed all of Malam's medical records, performed a physical exam and concluded that the act of "taking down" the inmate was the direct and prevailing factor in precipitating the hypertensive crisis and need for medical treatment that followed the incident. (Tr. Pg. 721). The treatment was reasonable and necessary to cure and relieve the effects of the crisis. (Tr. Pg. 721). It was the "unexpected emotional and physical stresses associated with restraining the offender" that caused the hypertensive crisis and need for treatment of the condition. (Tr. Pg. 721). Had the event not occurred, it would have been impossible to predict the acute crisis and need for treatment. (Tr. Pg. 721). Malam was clearly exposed to a greater risk of the injury occurring than that of the general public. (Tr. Pg. 721). Dr. Koprivica did not feel that Malam had any permanent disability caused by the work incident, only preexisting disability caused by his preexisting hypertensive cardiomyopathy. (Tr. Pg. 721-22).

Malam testified that the history taken by Dr. Puricelli was incorrect. She saw him for an IME at the employer's request on September 22, 2011. (Tr. Pg. 16-17 Ln. 22-2). He never told Dr. Puricelli that "he did not fall to the floor" during the encounter with the inmate. (Tr. Pg. 787). Her statement that "He did not, admittedly, sustain any trauma" was completely false. Dr. Puricelli has not examined Malam since September 21, 2011, and did review any medical records or depositions taken since then. Based upon her expressed belief that "he did not, admittedly, sustain any trauma" she concluded that the August 12, 2011 work event was

not the prevailing factor “in causing Mr. Malam’s above mentioned past or current diagnosis. (Tr. Pg. 791). “It is my opinion that his current diagnosis are hypertension, nonischemic cardiomyopahty, and diabetes melliltus. . . His preexisting conditions included history of hypertension, history of diabetes, and history of nonischemic cardiomyopathy.” (Tr. Pg. 791). “These pre-existing conditions contributed to the current diagnosis and the need for treatment that occurred on August 12, 2011.” (Tr. Pg. 791). *Dr. Puricelli did not opine what, if any, injuries Malam did suffer in the incident and she did not opine anywhere as to whether the treatment Malam received was “necessary to cure and relieve the effects” of the August 12, 2011 incident.* She did feel that Malam’s excessive drinking of fluids before the incident “exacerbated” his hypertension. (Tr. Pg. 791). She felt that another hypertensive crisis “could occur at any time” *without adequate treatment.* (Tr. Pg. 791).

After the evidentiary hearing on November 18, 2013, an Award was issued by Administrative Judge Margaret Holden (“ALJ”) denying the claim on the basis that (1) Malam failed to prove an “accident” occurred under R.S.Mo. Sec. 287.020.2 (2005) because “his work was a triggering or precipitating factor” and (2) the employee failed to prove that the accident was the “prevailing factor” in causing Malam’s injuries, “based upon the opinion of Dr. Puricelli”.

The Labor & Industrial Relations Commission (“Commission”) reviewed and affirmed the Award, but reversed the ALJ’s conclusion that there was no accident and specifically reversed the ALJ’s credibility determinations regarding the physicians, finding Dr. Koprivica

more credible than Dr. Puricelli. “This is because Dr. Puricelli did not have the correct facts; she believed, for instance, that employee did not fall to the ground during the take down of the inmate. She also based her opinion, in part, on her determination that employee’s preexisting hypertension was inadequately treated before August 12, 2011, but we find no clear indication in the record that this was the case. . . Employee’s unimpeached and credible testimony suggests (and we so find) that he was taking medications for hypertension and was regularly seeing a physician for checkups regarding his high blood pressure before August 12, 2011.” (Appendix/Award p. 2).

The Commission concluded that Malam failed to meet his burden of proof with respect to the issue of “medical causation”. The Commission concluded that the incident August 12, 2011, was (1) unexpected, (2) traumatic, (3) identifiable by time and place of occurrence, and (4) produced at the time objective symptoms of an injury caused by a specific event during a single work shift...We conclude, therefore, that employee suffered an accident.” However, the Commission found that Dr. Koprivica’s opinions regarding causation were not sufficient to meet the burden of proof when he wrote in his report that “the takedown of the offender on August 12, 2011, is felt to represent the direct, proximate and prevailing factor in precipitating (employee’s) hypertensive crisis.” (Tr. 721, Commission Award p 2 quoting Dr. Koprivica). “Dr. Koprivica does not explain, in his report, what he meant by the foregoing phrasology, and he was not deposed, so we are left with a causation opinion that is, at best, equivocal with regard to whether the accident was the prevailing factor causing both the

resulting hypertensive crisis and disability. While we believe an accident may be both a precipitating and the prevailing factor causing a compensable injury, this does not appear to be Dr. Koprivica's opinion in this case. Rather, Dr. Koprivica says the accident was the prevailing factor that precipitated employee's hypertensive crisis."

The Commission concluded, "We affirm and adopt the award of the administrative law judge to the extent it is not inconsistent with our supplemental findings, analysis, and conclusions herein." (Appendix/Award p 2-4).

POINTS RELIED ON

- I. THE COMMISSION ERRED IN DENYING THE CLAIM FOR MEDICAL EXPENSES ON THE BASIS THAT DR. KOPRIVICA'S OPINIONS DID NOT MEET THE STATUTORY REQUISITE FOR PROVING THAT THE ACCIDENT WAS THE PREVAILING FACTOR UNDER R.S.MO. SEC 287.020.3(1) IN CAUSING MALAM'S HYPERTENSIVE CRISIS BECAUSE:
- (A) DR. KOPRIVICA'S REPORT UNAMBIGUOUSLY STATES THAT THE ACCIDENT WAS *BOTH* "THE PREVAILING" FACTOR AND "THE PRECIPITATING" FACTOR IN CAUSING THE HYPERTENSIVE CRISIS, IN THAT THE TWO TERMS ARE NOT MUTUALLY EXCLUSIVE AND "PRECIPITATING" AS USED BY DR. KOPRIVICA AND IN COMMON LANGUAGE MERELY MEANS "TO CAUSE"; AND
- (B) THE COMMISSION FAILED TO BASE ITS CONCLUSION "UPON CONSIDERATION OF ALL THE CIRCUMSTANCES" AS REQUIRED BY R.S.MO. SEC. 287.020.3(2)(a), IN THAT THE COMMISSION ONLY CONSIDERED THE MEDICAL OPINIONS AND IGNORED ITS OWN FINDING THAT THE EMPLOYEE'S

HYPERTENSION WAS ADEQUATELY TREATED BEFORE THE WORK INCIDENT, IGNORED THE FACT THAT THERE WAS NO HISTORY OF HYPERTENSIVE CRISIS EITHER BEFORE OR SINCE THE WORK INCIDENT AND IGNORED THE RARE AND EXTREME STRESSFUL NATURE OF THE ACCIDENT FROM BOTH AN EMOTIONAL AND PHYSICAL STANDPOINT.

McGrath v. Satellite Sprinkler Systems, 877 S.W.2d 704 (Mo. App. 1994)

Tillotson v. St. Joseph Med. Ctr., 347 S.W.3d 511 (Mo. App. 2011)

Haynes v. Emerson Elec. Co., 799 S.W.2d 939 (Mo. App. 1990)

II. THE COMMISSION ERRED IN DENYING THE CLAIM FOR MEDICAL EXPENSES ON THE BASIS THAT THE EMPLOYEE FAILED TO PROVE THAT THE WORK ACCIDENT WAS THE PREVAILING FACTOR IN CAUSING THE MALAM'S "*HYPERTENSIVE CRISIS*" BECAUSE THE COMMISSION FAILED TO FIRST DETERMINE WHETHER A COMPENSABLE INJURY *OF ANY KIND* OCCURRED, IN THAT A COMPENSABLE PHYSICAL AND EMOTIONAL INJURY DID RESULT FROM THE SUDDEN AND EXTREME STRESSES OF THE ACCIDENT THAT IN TURN CAUSED THE NEED TO TREAT THE HYPERTENSIVE CRISIS.

Downing v. Willamette Industries, Inc., 895 S.W.2d 650 (Mo. App. 1995)

Hornbeck v. Spectra Painting, Inc. 370 S.W.3d 624 (Mo. 2012)

Tillotson v. St. Joseph Med. Ctr., 347 S.W.3d 511 (Mo. App. 2011)

ARGUMENT

- I. THE COMMISSION ERRED IN DENYING THE CLAIM FOR MEDICAL EXPENSES ON THE BASIS THAT DR. KOPRIVICA’S OPINIONS DID NOT MEET THE STATUTORY REQUISITE FOR PROVING THAT THE ACCIDENT WAS THE PREVAILING FACTOR UNDER R.S.MO. SEC 287.020.3(1) IN CAUSING MALAM’S HYPERTENSIVE CRISIS BECAUSE:
 - (A) DR. KOPRIVICA’S REPORT UNAMBIGUOUSLY STATES THAT THE ACCIDENT WAS *BOTH* “THE PREVAILING” FACTOR AND “THE PRECIPITATING” FACTOR IN CAUSING THE HYPERTENSIVE CRISIS, IN THAT THE TWO TERMS ARE NOT MUTUALLY EXCLUSIVE AND “PRECIPITATING” AS USED BY DR. KOPRIVICA AND IN COMMON LANGUAGE MERELY MEANS “TO CAUSE”; AND
 - (B) THE COMMISSION FAILED TO BASE ITS CONCLUSION “UPON CONSIDERATION OF ALL THE CIRCUMSTANCES” AS REQUIRED BY R.S.MO. SEC. 287.020.3(2)(a), IN THAT THE COMMISSION ONLY CONSIDERED THE MEDICAL OPINIONS AND IGNORED ITS OWN FINDING THAT THE EMPLOYEE’S HYPERTENSION WAS ADEQUATELY TREATED BEFORE THE WORK INCIDENT, IGNORED THE FACT THAT THERE WAS NO

HISTORY OF HYPERTENSIVE CRISIS EITHER BEFORE OR SINCE THE WORK INCIDENT AND IGNORED THE RARE AND EXTREME STRESSFUL NATURE OF THE ACCIDENT FROM BOTH AN EMOTIONAL AND PHYSICAL STANDPOINT.

Under *Hampton v. Big Boy Steel Erection*, 131 S.W.3d 220, 222 (Mo. 2003), on review of an award from the Commission “A court must examine the whole record to determine if it contains sufficient competent and substantial evidence to support the award, i.e., whether the award is contrary to the overwhelming weight of the evidence. Whether the award is supported by competent and substantial evidence is judged by examining the evidence in the context of the whole record.” The Commission’s award will be affirmed unless (1) it acted outside the scope of its powers; (2) the award was procured by fraud; (3) the facts found by the commission do not support the award; or (4) the record lacks sufficient, competent evidence to support the award. R.S.Mo. Sec. 287.495.1. When the issue on appeal is one of fact or the credibility of a witness, the Commission’s decision will be affirmed unless against the overwhelming weight of the evidence, i.e. not supported by competent and sufficient evidence. *Cardwell v. Treasurer*, 249 S.W.3d 906 (Mo. App. 2008). However, on a question of law the appellate court examines issues and makes holdings as if it were the court of origin, without deference to the Commission. *Ransburg v. Great Plains Drilling*, 22 S.W.3d 726, 726 (Mo. App. 2000). “We defer to the Commission on issues concerning credibility and weight to be given conflicting evidence.” *Bailey v. Phelps Regional Medical Center*, 528

S.W.3d 770, 773 (Mo. S.D. 2010).

Under R.S.Mo. Sec. 287.808 (2005), the party asserting a claim or defense based upon a factual determination “must establish that such proposition is more likely to be true than not true.” Dr. Koprivica expressly wrote in his report that “Mr. Malam’s described work related incident with the takedown of the offender on August 12, 2011 is felt to represent the direct, proximate and prevailing factor in precipitating his hypertensive crisis”². (Tr. Pg. 721). His opinion could not be clearer or less ambiguous. Nevertheless, the Commission determined that “Even if we were to credit this opinion from Dr. Koprivica, absent further explanation as to what Dr. Koprivica meant by choosing those specific words, we simply are unable to conclude that employee has proven the requisite degree of causation to satisfy the requirements of the statute.” (Appendix/Award p I-3).

Contrary to the Commission’s holding that Dr. Koprivica’s report “fails to provide any further explanation or discussion regarding causation”, Dr. Koprivica succinctly explained that he meant the incident not only to include sudden physical exertion, but also psychological trauma, “the prevailing factor precipitating the specific event were the unexpected *emotional and physical* stresses associated with restraining the offender”. Moreover, Dr. Koprivica

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A hypertensive crisis is a severe increase in blood pressure that can lead to a stroke. As a result, the heart may not be able to pump blood effectively. <http://www.mayoclinic.org/diseases-conditions/high-blood-pressure/expert-answers/hypertensive-crisis/faq-20058491>

clearly understood in his report that Malam had preexisting cardiomyopathy dating back to 2005, going so far as to point out that Malam suffered no permanent disability attributable to the event, because Malam had “ongoing cardiovascular impairment based upon the history of underlying hypertensive cardiomyopathy.” He further explained his position, “I would like to point out that but for the work injury, it would be impossible to predict that Mr. Malam would have developed the hypertensive crisis that has necessitated the care and treatment that followed the event.” (Tr. 721-722).

The Merriam-Webster online dictionary defines precipitating as “to cause (something) to happen *quickly or suddenly*.” Dr. Koprivica clearly identified the sudden take down of the prisoner as “***the*** prevailing factor ***in*** precipitating the hypertensive crisis”. The Commission appears to have been confused by his usage of the word “precipitating” because the term is used in a different context in R.S.Mo. Sec. 287.020.2 (2005), where “accident” is defined; “An injury *is not* compensable because work was *a* triggering or *precipitating* factor.” But Dr. Koprivica never describes the work event as “*a*” precipitating factor, but rather always uses “*the*” to modify “precipitating factor”. The Commission’s error in understanding Dr. Koprivica’s opinions apparently comes from being unnerved by the usage of “precipitating” as it is used in the statute to deny claims. The Commission conflates the terms “*a*” as used by the statute and “*the*” as used by Dr. Koprivica, as they are used to modify the term “precipitating”. The Commission found ambiguity and uncertainty where none exists. “Precipitating” is just another word for “cause”, but the Commission’s reading of Dr.

Koprivica's report was apparently derailed by the fact that "a triggering or precipitating factor" is used in R.S.Mo. Sec. 287.020.2 (2005) as a way to distinguish noncompensable injuries from compensable injuries, where "the prevailing factor" is required under R.S.Mo. Sec. 287.020.3 (2005).

The fact that Dr. Koprivica, and Merriam-Webster's Dictionary, use the terms "cause" and "precipitate" interchangeably should not reasonably lead to confusion, especially since Dr. Koprivica clearly did explain, clarify and distinguish his opinions. The import is that Dr. Koprivica felt the work accident, *including the combined physical and emotional stresses*, to be the prevailing factor in causing and precipitating the injury, not merely a precipitating factor. The Commission was plainly wrong to confuse his opinions merely based upon his proper and appropriate usage of the word "precipitating", simply because the term is used in a different context in the workers' compensation statute.

Notably, this is not an instance where the Commission didn't find Dr. Koprivica credible, but rather a case where they didn't understand the meaning of his words, even though they were plain and direct. Dr. Koprivica opined that the treatment was reasonable and necessary to cure and relieve the effects of the crisis. It was the "unexpected emotional and physical stresses associated with restraining the offender" that was the prevailing factor in causing the hypertensive crisis and need for treatment of the condition. Dr. Koprivica opined that the act "of taking down the inmate" was the prevailing factor in causing the subsequent "hypertensive crisis". He also opined that there was a risk of injury associated

with the job that was greater than that faced by the general public. (Tr. Pg. 721-722). There is no confusion or ambiguity in his words or intent.

The “prevailing factor” test for arising out of and in the course and scope of employment is not strictly a medical standard, but rather a legal term defined by R.S.Mo. Sec. 287.020.3(2)(a) (2005) that takes into account all of the facts must be made “upon consideration of all of the circumstances”. Dr. Koprivica’s opinions cannot be considered in isolation, but must be understood “upon consideration of all the circumstances”, including the records and factual history he reviewed, as well as the testimonial evidence admitted at hearing. R.S.Mo. Sec. 287.020.3(2)(a) (2005). Malam was not under any doctor’s restrictions for hypertension when he took down the prisoner. In fact, *Malam had never suffered a hypertensive crisis before the work event and has not suffered a hypertensive crisis in the 3 years since the event*, circumstantial factors that the Commission didn’t note or consider, even though the Commission did note that Malam’s hypertension was adequately treated with medication and check-ups before the work event. When Malam grabbed the inmate and tackled him to the cement floor, with his chest and torso falling on top of the back of the inmate, there was “unexpected trauma” resulting in “pulmonary contusions” to Malam’s lungs, as well as bruising to his rib cage and knees. The Commission specifically found that objective symptoms of injury, “employee’s difficulty breathing and his spitting up blood”, were evidence of the work accident. (Appendix/Award p. i-2). Malam testified that he had bruising to the rib cage. (Tr. 772). Dr. Thomas Stubbs, the Texas County Memorial Hospital

physician who saw Malam first, diagnosed his medical condition, “my impression was that he had severe *pulmonary contusions*”, following his review of x-rays and a chest CT scan. (Tr. Pg. 576). In the context of all of these circumstances and in conjunction with Dr. Koprivica’s opinions, the violent takedown of a combative prisoner could in no way be determined merely a (mere) triggering or precipitating factor in causing Malam bruising, pulmonary contusion, difficulty breathing or spitting up blood, resulting in hypertensive crisis.

There was more to the take down of the prisoner than just sudden physical exertion. Even in the calmest of times, a prison cannot be considered a low anxiety environment. When a corrections officer has to use force to restrain an inmate, especially while surrounded by other inmates, they are required to do so swiftly and decisively without thinking about how difficult it might be. It is only afterwards that one can consider the physical danger involved. Dr. Koprivica truly recognized and acknowledged the emotional aspect to the injury as it contributed to his the overall understanding of the events. The Commission did not. Malam undoubtedly had an adrenaline rush when he took down the prisoner. He had never taken a prisoner down before and he wasn’t sure how that prisoner, or the other 200 prisoners in the lunch room, would react. (Tr. p. 12) Within a couple of minutes of the takedown of the prisoner he began experiencing difficulty breathing. (Tr. p. 12) He testified that afterwards he had bruising to his chest, rib cage and knee. (Tr. p. 42, 772) He remembers spitting up blood, as was also noted by the medics and recorded in the medical records. (Tr. p. 17) The prisoner takedown was extraordinary and unusual event from both a physical and emotional

standpoint, one that that Malam hasn't been required to perform either before or since August 12, 2011. Nor has he experienced even one other hypertensive crisis in all his days of living, before or after August 12, 2011. Coincidental evidence may not by itself be persuasive, but in this instance when considered in context it is too powerful to ignore.

The Commission may not substitute an ALJ's personal opinion on the question of medical causation of an injury for the uncontradicted testimony of a qualified medical expert."

Tillotson v. St. Joseph Med. Ctr., 347 S.W.3d 511, 522 (Mo. App. 2011). Dr. Purricelli history was found to be completely flawed and her opinions deemed not credible by the Commission. The Commission implicitly found credible the opinions of Dr. Koprivica, but still ignored them because "absent further explanation as to what Dr. Koprivica meant by choosing those specific words, we simply are unable to conclude that employee has proven the requisite degree of causation to satisfy the requirements of the statute".³ Nonetheless, Dr. Koprivica's opinions could not be more clear or less ambiguous, meeting or exceeding the statutory burden of proof - a "more likely than not" basis. R.S.Mo. Sec. 287.808 There is no rational manner in reading his opinion other than to conclude that Dr. Koprivica felt that the

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The Commission in a footnote states that Dr. Koprivica relied upon "incorrect facts" regarding the exertion level involved in taking down the inmate based upon Malam's testimony, but officer Thompson testified that he rated the effort a 6 out of 10 and Dr. Koprivica's comment referenced *objective physical and emotional stresses*.

work incident was the prevailing factor in causing the injury. This is not a case where the Commission didn't believe Dr. Koprivica, but rather a case where they did not understand either him or the statute.

In light of Dr. Koprivica's express and precise language, and "upon consideration of all the circumstances", the Commission has effectively imposed a higher burden of proof than required by law. Although medical causation not within common knowledge must be established through medical evidence, ultimately, "(the) importance of the expert testimony is to be determined from the testimony as a whole and less than direct statements of reasonable medical certainty will be sufficient." *McGrath v. Satellite Sprinkler Systems*, 877 S.W.2d 704, 708 (Mo. App. 1994). "Claimant did not have to absolutely establish the essential elements of her case; it is sufficient if she shows them by a reasonable probability. 'Probable' means that it appears to be founded in reason and experience which inclines the mind to believe, but leaves room for doubt." *Haynes v. Emerson Elec. Co.*, 799 S.W.2d 939, 949-950 (Mo. App. 1990). Malam has met the requisite burden of proof. *Under all off the facts and circumstances*, including medical, historical and circumstantial, it is apparent that the sudden and unexpected take down of the prisoner was *the* prevailing factor in causing the medical condition. This is clear not only as a matter of law, Dr. Koprivica's opinions are not subject to debate, but when considering the overwhelming weight of the evidence in light of all the evidence.

II. THE COMMISSION ERRED IN DENYING THE CLAIM FOR MEDICAL EXPENSES ON THE BASIS THAT THE EMPLOYEE FAILED TO PROVE THAT THE WORK ACCIDENT WAS THE PREVAILING FACTOR IN CAUSING THE MALAM'S "*HYPERTENSIVE CRISIS*" BECAUSE THE COMMISSION FAILED TO FIRST DETERMINE WHETHER A COMPENSABLE INJURY *OF ANY KIND* OCCURRED, IN THAT A COMPENSABLE PHYSICAL AND EMOTIONAL INJURY DID RESULT FROM THE SUDDEN AND EXTREME STRESSES OF THE ACCIDENT THAT IN TURN CAUSED THE NEED TO TREAT THE HYPERTENSIVE CRISIS.

The Commission failed to determine whether a compensable injury, any compensable injury, occurred. Instead, the Commission limited the focus of its inquiry into whether the accident was the prevailing factor in causing Malam's *hypertensive crisis*, when it should have first determined whether a compensable injury *of any kind occurred, including physical and/or emotional stress*. The Commission erred by focusing on the hypertensive crisis as the sole possible compensable injury, without considering whether spitting up blood, bruising to the chest and lungs, difficulty in breathing and/or physical/emotional stresses were in and of themselves compensable injuries, even though the Commission did conclude that an accident occurred with "objective evidence of injury":

We conclude that the incident of August 12, 2011, was (1) unexpected, (2) traumatic, (3) identifiable by time and place of occurrence, and (4) produced at the time *objective*

symptoms of an injury caused by a specific event during a single work shift -namely, employee's difficulty breathing and his spitting up blood. We conclude, therefore, that employee suffered an accident.

(Appendix/Award p I-2).

It should be noted that when determining whether a compensable injury occurs, objective medical findings must be weighed more heavily than subjective findings:

(2) Permanent partial disability or permanent total disability shall be demonstrated and certified by a physician. Medical opinions addressing compensability and disability shall be stated within a reasonable degree of medical certainty. *In determining compensability and disability, where inconsistent or conflicting medical opinions exist, objective medical findings shall prevail over subjective medical findings.* Objective medical findings are those findings demonstrable on physical examination or by appropriate tests or diagnostic procedures.

R.S.Mo. Sec. 287.190.6(2).

“First, it must be determined whether an employee suffered a compensable injury ‘by accident arising out of and in the course of employee’s employment.’ Second, if a compensable injury has been sustained by an employee, the appropriate compensation to be furnished must be determined.” *Tillotson at 517*. Herein, the Commission specifically found that there was objective evidence of difficulty breathing and spitting up blood, and both medical conditions were noted in the emergency response records. (Tr. p. 589, 596,

Appendix/Award p. 2). Malam testified that the incident caused an adrenalin rush and a bruise to his chest, “I know I had a nice bruise later. . . Yes, just below my ribcage.” (Tr. Pg. 772). Dr. Stubbs diagnosed “pulmonary contusions” at Texas County Memorial Hospital. (Tr. Pg. 576). Malam was not diagnosed with a hypertensive crisis until after he was transported to Cox Hospital in Springfield, MO. These objective findings can only be consistent with holding that a compensable injury occurred to the employee’s chest and lungs before the hypertensive crisis fully developed. The Commission erred because it didn’t first attempt to determine whether there was *any* compensable injury, physical and/or emotional, it merely determined that the hypertensive crisis was not a compensable injury in and of itself.

R.S.Mo. 287.140 (2005) requires the employer to provide such medical treatment as is reasonably necessary to cure and relieve the effects of the employee’s injury, there is no “prevailing factor” standard for medical care once a compensable injury is established. See *Tillotson* at 522-523. *Tillotson* dealt with an employee who was entitled to knee replacement surgery even though the compensable injury, a meniscus tear, was not the prevailing factor in causing the need for knee replacement surgery. *Tillotson* had preexisting arthritis that was the prevailing factor in causing the need for treatment, but because the meniscus injury was compensable and the need for the knee replacement flowed from the injury, the knee replacement was reasonably required to cure and relieve the effects of the compensable injury. *Tillotson* at 522-523.

Injury is defined under 287.020.3(5) to mean “violence to the physical structure of the

body.” “An injury by accident is compensable only if the accident was the prevailing factor in causing both the medical condition and disability.” *Tillotson* at 518. However “once it is determined that there has been a compensable accident, a claimant need only prove that the need for treatment and medication flow from the work injury”. *Tillotson* at 510. The Court in *Hornbeck v. Spectra Painting, Inc.* 370 S.W.3d 624, 633-634 (Mo. 2012) reaffirmed the principle that *there is no prevailing factor test* for proving that treatment is compensable. Once a compensable injury *of any kind* is established, then any treatment “necessary to cure and relieve the effects” of the compensable injury is itself compensable if the treatment “flows” from it:

Tillotson articulated that there is a “material distinction between determining whether a compensable injury has occurred and determining the medical treatment required to be provided to treat a compensable injury.” *Id.* It stated: That distinction is framed by section 287.120.1 which ... requires two independent inquiries. First, it must be determined whether an employee has suffered a compensable injury ‘by accident arising out of and in the course of employee's employment.’ Section 287.120.1. Second, *if* a compensable injury has been sustained by an employee, the appropriate compensation to be furnished must be determined. [Section 287.120.1]. The court found that when the “prevailing factor” test was met for determining that there was a compensable injury at issue in the case, there was no need for the Commission to additionally apply a “prevailing factor” assessment in determining the compensability

of the medical treatments for which the claimant sought compensation.

Notably, the medication or treatment may also benefit a non-compensable or preexisting condition is irrelevant and a workers' compensation claimant cannot be denied an award for future medication and treatment because he could not prove they would *only* benefit the work injury. *Hornbeck* at 636. Causation may be established by both direct and circumstantial evidence. *Downing v. Willamette Industries, Inc.*, 895 S.W.2d 650, 656 (Mo. App. 1995) citing *Griggs v. A.B. Chance, Co.*, 503 S.W.2d 697 (Mo. App. 1973). The court does not simply weigh the expert opinions in isolation, but in the context of the factual record. Herein, Malam testified credibly regarding the *physically and emotionally* traumatic nature of the prisoner take-down, his immediate onset of spitting up blood and difficulty breathing and these medical conditions were noted in the records. Dr. Koprivica opined that *both* the “unexpected *emotional and physical stresses* associated with restraining the offender” were “the prevailing factor precipitating the specific event”. (Tr. 721-722). There is clear, undisputed and overwhelming evidence of a compensable injury, *including not only psychological stresses but physical stresses, i.e. spitting up blood, shortness of breath and bruising to the chest*, that the Commission did not contemplate as a compensable injury and which subsequently led to the hypertensive crisis.

To “cure and relieve” has been construed to mean treatment that “give comfort even though restoration to soundness is beyond avail.” *Mathia v. Contract Freighters, Inc.*, 929 S.W.2d 271, 277 (Mo. App. 1996) (parenthesis omitted). Once the employee has admitted

evidence of the medical bills and records and presents proof that the treatment was for the work-related injury, then the burden shifts to the employer and insurer to prove that the medical bills were unreasonable and unfair. *Esquivel v. Day's Inn of Branson and Cox Medical Center*, 959 S.W.2d 486, 489 (Mo. App. 1998). The employee testified that the bills resulted from treatment for the work injury. (Tr. Pg. 19-20). His testimony was supported by Dr. Koprivica's opinion that the treatment was "reasonable and necessary to cure the effects of the work trauma." There was absolutely no evidence from Dr. Puricelli or anyone else that the medical treatment submitted was not "necessary to cure and relieve the effects" of a work injury. The \$138,010.15 in outstanding medical expenses must be awarded to Malam. (Tr. 682-712 *exhibits G, H, I*).

CONCLUSION

Not once prior to or since August 12, 2011 has Ronald Malam suffered a hypertensive crisis. On that date, for the one and only time in his 5 years of service as a correctional officer for the Missouri Department of Corrections, he had to forcibly take an inmate down to the ground, by himself, in a sudden and unexpected manner. He felt an adrenalin rush and suffered bruises to his chest, shortness of breath and started spitting up blood before ultimately going into a hypertensive crisis. Dr. Koprivica opined that the physical and emotional stresses of the sudden take down of the prisoner caused Malam to suffer a hypertensive crisis, which resulted in his need for medical treatment. Under all of the facts and circumstances, both as a matter of law and in consideration of the overwhelming weight of the evidence, Malam has met his burden of proof in establishing on a more likely than not that a compensable injury of some kind occurred and that the medical expenses were necessary to cure and relieve the effects of the injury.

WHEREFORE Appellant Malam prays that the Court of Appeals reverse the Commission's Award denying compensability and instruct the Commission to enter a new Award for reimbursement of \$138,010.15 in medical expenses and grant such further relief as the Court deems just and proper in the premises.

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CERTIFICATE OF SERVICE

A copy of the foregoing was electronically served via email on January 20, 2015, to Respondent Missouri Department of Corrections' attorney, Cara Harris, Attorney General Office, 149 Park Central Sq., Ste. 1017, Springfield, MO 65806 at cara.harris@ago.mo.gov.

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CERTIFICATE OF COMPLIANCE WITH RULE 84.06(b)& (c)

The undersigned hereby certifies that the foregoing brief has a 9,078 word count and is typed in font not smaller than 13 point Times New Roman and stored to a WordPerfect X6 file. The brief complies with the page length requirements of Rule 84.06(b). This brief contains the information required by Rule 55.03.

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