



**In the
Missouri Court of Appeals
Western District**

GLASGOW SCHOOL DISTRICT,

Respondent,

v.

HOWARD COUNTY CORONER,

Appellant.

WD83990

OPINION FILED:

SEPTEMBER 21, 2021

**Appeal from the Circuit Court of Howard County, Missouri
The Honorable Scott Hayes, Judge**

**Before Division One: Lisa White Hardwick, Presiding Judge, Alok Ahuja, Judge,
Anthony Rex Gabbert, Judge**

The Howard County Coroner (“Coroner’s Office”) appeals the judgment of the Howard County Circuit Court finding that Coroner’s Office violated the Sunshine Law and awarding a civil fine and attorney’s fees to the plaintiff Glasgow School District (“School District”). In four points on appeal, Coroner’s Office claims the trial court erred in finding a violation of the Sunshine Law, finding that the violation was purposeful, and in awarding attorney’s fees. The judgment is affirmed in part, reversed in part, and remanded.

Facts

On December 21, 2016, seventeen year-old K.S. committed suicide. On January 31, 2017, Coroner’s Office held a coroner’s inquest regarding the death of K.S. Coroner’s Office held the inquest into K.S.’s death even though it had already determined the physical cause of death for

K.S. and submitted a death certificate for K.S. The purpose of the inquest was to amend K.S.'s death certificate with the inquest jury's findings.

Coroner's Office heard that K.S. had been bullied at school. The coroner ("Coroner") chose to hold the inquest into K.S.'s suicide because he did not want to be responsible for letting another child die. Coroner hoped that holding the inquest might prevent another child's death. In an interview with the television network HBO in 2017, Coroner stated, "this is bullying that's so bad that a kind, 17 year old boy, took his life. We need to do something to prevent that from happening again."

The inquest was announced through a news release published in the Fayette Newspaper on January 10, 2017. Coroner's Office empaneled six jurors and conducted the inquest in an open manner before the general public. Numerous members of the community and local media attended the inquest.

The inquest was at the sole discretion of Coroner's Office. Coroner's Office was involved with determining which exhibits to present to the jury and the members of the public in attendance. Coroner's Office also determined what witnesses to call at the public hearing.

Coroner's Office presented all of the information and testimony at the inquest in front of the viewing public. There was no limiting instruction by anyone as to the use or dissemination of the evidence or testimony presented at the public inquest. It was transcribed in its entirety. The inquest concluded that K.S. died from a felony and identified an individual as the perpetrator. It also concluded School District was negligent. The person identified in the inquest as the responsible party was charged criminally, and those charges were pending from January 31, 2017 through July 12, 2019.

On February 2, 2017, School District requested a copy of the inquest transcript from Coroner's Office. It hoped to clear its name with respect to the bullying that occurred at school. On February 17, 2017, Sherry Shives requested a copy of the inquest transcript from Coroner's Office. Shives' son had been identified as one of K.S.'s bullies, and Shives wanted to clear his name.

On February 17, 2017, Coroner's Office called the Attorney General's Office and inquired whether the transcript was an open record under the Sunshine Law. Coroner's Office was advised it may be an open record and to contact local counsel. On February 21, 2017, Coroner's Office spoke with April Wilson, the special prosecuting attorney assigned to K.S.'s case, about whether the transcript was an open record. Wilson advised she believed it was closed as an investigative report but would confirm that and let School District know.

On February 23, 2017, Coroner's Office provided Shives a copy of the inquest transcript, free of charge. On February 23, 2017, Coroner's Office provided K.S.'s family a copy of the inquest transcript, free of charge.¹ Coroner's Office did not provide a copy of the inquest transcript to School District on that date.

On February 24, 2017, School District made another request for the inquest transcript and exhibits. School District was informed it would have to pay for a copy of the inquest transcript. Coroner's Office did not provide a copy of the transcript to School District.

On February 25, 2017, Wilson told Coroner's son² via text message that she believed that, if Coroner's Office sent her a copy of the inquest transcript, that it would become investigative

¹ Section 610.100.4 provides that K.S.'s family may obtain any closed record for purposes of investigation of any civil claim or defense.

² Wilson testified that she knew Coroner's son, an attorney, because she had previously worked with him.

and could not be released. On March 2, 2017, Wilson advised School District she believed the inquest transcript and exhibits were closed. Also on March 2, 2017, Coroner's Office advised School District that the inquest transcript and exhibits were closed as investigative records and would not be provided to School District.

On March 2, 2017, School District made another request to Coroner's Office for the inquest transcript and exhibits. On March 3, 2017, Coroner had his son email a copy of the inquest transcript to Wilson. Coroner's Office did not provide the transcript and exhibits to School District. On March 9, 2017, School District sent correspondence to Coroner's Officer following up on the March 2, 2017 request. It attached an Attorney General Opinion Letter³ from 1979 that stated in relevant part:

It is our view that the exception specified in §610.025 are not applicable, and that the coroner's jury, constitutes a "public governmental body," that the coroner's records, unless specifically designated otherwise, are public records and that the inquest conducted by the coroner pursuant to Chapter 58 is a "public meeting" within the provision of the Sunshine Law. ... It is likewise our view that the county coroner does not have the authority the refuse to grant access to materials which may be presented at an inquest.

After reviewing this letter, Coroner's Office still chose not to provide a copy of the inquest transcript or exhibits to School District.

On March 13, 2017, Coroner's Office sent a letter to School District's counsel advising that the requested records were a part of Wilson's criminal investigation, were not open records, and could not be released until Wilson released them. On March 23, 2017, School District filed the underlying lawsuit requesting access to the inquest transcript and exhibits.

³ "An Attorney General's Opinion is not binding on this court." *Smith v. Sheriff*, 982 S.W.2d 775, 779 (Mo. App. E.D. 1998). The 1979 letter predated section 610.100 and relied on a version of section 610.025 which has since been repealed.

On June 7, 2017, the television network HBO published a video interview with Coroner. In the interview, Coroner discussed the inquest matter. Video footage from the inquest was aired. The contents of the suicide notes⁴ K.S. left were divulged. Some of the typed pages of the transcript of the inquest testimony were also shown on screen. Coroner knew his interview would be published when he gave it.⁵

On October 9, 2017, the circuit court entered an order finding that Coroner's Office had wrongfully denied access to the inquest transcript and exhibits.⁶ Coroner's Office did not provide a copy of the inquest transcript to School District until November 1, 2017.

At a November 1, 2017 hearing regarding this matter, the circuit court judge told the Coroner that he was to exercise good faith to get with the sheriff's department to get School District the remaining inquest exhibits. Coroner did not reach out to the sheriff's department but instead directed his attorney to write a letter to the sheriff's department. In the letter dated November 2, 2017, Coroner wrote to School District that the exhibits were documents generated by the sheriff's department and are the property of the sheriff's department. The letter ended: "The Howard County Coroner's office is willing to provide copies of these exhibits to the Glasgow School District only if the Sheriff's department consents to their release, and provides copies of these documents to the Coroner's office." The letter did not mention the court's directive.

⁴ K.S. left multiple suicide notes.

⁵ Coroner testified that he did not provide HBO with the transcript or access to K.S.'s suicide notes.

⁶ Coroner's Office appealed the interlocutory order to this court on October 11, 2017. Coroner's Office filed a writ of prohibition with this court on October 25, 2017. That writ was denied on October 27, 2017. We later dismissed the appeal for lack of an appealable judgment. *Glasgow Sch. Dist. v. Howard County Coroner*, 572 S.W.3d 543 (Mo. App. W.D. 2019).

School District's counsel advised Coroner's Office that the letter sent to the sheriff's department did not comply with the court's directive that Coroner's Office exercise good faith to help School District get the inquest exhibits. Coroner's Office advised School District that if it wished to obtain the inquest exhibits then it should subpoena them. School District subsequently subpoenaed the exhibits.

A bench trial was held in January 2020. The court held that Coroner's Office is not a "law enforcement agency" under section 610.100.1(5). Coroner's Office is a Missouri public governmental body under the Sunshine Law, Chapter 610. The court determined that Coroner's Office wrongfully and repeatedly denied access to open public records requested by School District in violation of the Sunshine Law. The violations were purposeful, occurred on multiple occasions, and were a serious offense. The court ordered Coroner's Office to pay a civil penalty of \$500.

The court also awarded School District its attorney's fees. The court found that School District incurred a total of \$73,259.50 in attorney and paralegal fees to obtain the inquest transcript and exhibits. The court further found that the \$73,259.50 did not encompass all of School District's fees but only those incurred as a direct result of Coroner's Office refusing to provide the transcript and exhibits.

This appeal follows.

Standard of Review

"We review a bench-trying case under the standard provided by *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976)." *Cox v. City of Chillicothe*, 575 S.W.3d 253, 256 (Mo. App. W.D. 2019). "This Court will affirm the judgment of the trial court unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies

the law.” *Id.* (internal quotation marks omitted). We accept “all evidence and inferences therefrom in the light most favorable to the prevailing party and disregarding all contrary evidence.” *Id.* (internal quotation marks omitted). We defer “to the trial court on factual issues because it is in a better position not only to judge the credibility of witnesses and the persons directly, but also their sincerity and character and other trial intangibles which may not be completely revealed by the record.” *Id.* (internal quotation marks omitted).

The Sunshine Law, found in Chapter 610,⁷ establishes Missouri’s public policy that meetings and records of public governmental bodies are open to the public unless otherwise provided by law. §610.011.1. “The scope of the application of section 610.010 to section 610.200 shall be liberally construed and their exceptions strictly construed to promote the public policy of open records.” *Cox*, 575 S.W.3d at 256 (internal quotation marks omitted). “[W]here ... the issue is whether a penalty and attorney’s fees should be imposed, the portions of the Sunshine Law that allow for imposition of a civil penalty and an award of attorney fees and costs are penal in nature and must be strictly construed.” *Id.* (internal quotation marks omitted). “Whether the conduct of the [defendant] brings it within the scope of the statutory definitions of knowing or purposeful conduct is a question of fact.” *Id.* (internal quotation marks omitted). “Under that standard, it [is] up to the trial court, as fact finder, to determine whether the ... conduct was knowing or purposeful as those terms are used in section 610.027....” *Id.* at 256-57 (internal quotation marks omitted).

Point I

⁷ All statutory references are to RSMo 2016 as supplemented through 2017 unless otherwise indicated.

In its first point on appeal, Coroner's Office claims the trial court erred as a matter of law in granting judgment in favor of School District. It argues the requested reports are closed documents under the Sunshine Law. Coroner's Office states that it is a law enforcement agency, and the documents are investigative reports pursuant to section 610.100.2.

Pursuant to section 610.100.2(2), "investigative reports of all law enforcement agencies are closed records until the investigation becomes inactive." An "investigative report" is defined as "a record, other than an arrest or incident report, prepared by personnel of a law enforcement agency, inquiring into a crime or suspected crime, either in response to an incident report or in response to evidence developed by law enforcement officers in the course of their duties." §610.100.1(5). Section 610.010.1(1) provides that a "closed meeting," "closed record," or "closed vote" is defined as "any meeting, record or vote closed to the public."

In *News-Press and Gaz. Co. v. Cathcart*, 974 S.W.2d 576 (Mo. App. W.D. 1998), a newspaper sought an autopsy report from the county medical examiner. *Id.* at 577. The trial court ordered the medical examiner to make the autopsy report available under the Sunshine Law. *Id.* at 577-78. This court reversed the trial court's judgment. *Id.* at 578.

This court found that the medical examiner is a governmental entity created by statute. *Id.* at 578-79 (citing §610.010(4)). As such, the medical examiner must make its public records available unless the records are protected from disclosure by law. *Id.* at 579 (citing §§610.010(6) and 610.021(14)). This court held that the autopsy report was an investigative report that was a closed record until the investigation is inactive. *Id.* (citing §610.100.2 and *Althaus v. Evansville Courier Co.*, 615 N.E.2d 441 (Ind. App. 1993) (where coroner may deny the public access to an autopsy report under the Investigatory Records exception to the Indiana Sunshine Law)). "Given [its] duties, a medical examiner is a law enforcement agency for purposes of the investigative

reports exception of the Sunshine Law.” *Id.* at 580. Those duties include taking charge of dead bodies, fully investigating essential facts concerning medical causes of death, performing autopsies, receiving cooperation from law enforcement officers, and delivering records to the prosecuting attorney. *Id.* at 579.

This court went on to analyze the nature of the autopsy report at issue. The medical examiner took charge of the body of the victim who died as a result of an apparent homicide. *Id.* at 580. The victim’s death was the basis for a criminal prosecution against a defendant charged with second degree murder. *Id.* “The autopsy report prepared by [the medical examiner] in accordance with his investigation into the cause of death was a record of a medical or scientific investigative procedure of a crime or suspected crime.” *Id.* “The medical investigative process was an essential procedure to the criminal investigation to determine such essential facts to the investigation as the cause and time of death, and other pertinent evidence.” *Id.* “The report, therefore, was an investigative report prepared by a law enforcement agency.” *Id.* As such, the autopsy report would be closed and not subject to public disclosure until the investigation became inactive. *Id.*

The current case involves a coroner and a coroner’s inquest instead of a medical examiner and an autopsy report. A coroner is a governmental entity created by statute. The statutes pertaining to coroners are found in Title VI of the Revised Statutes of Missouri which is titled “County, Township and Political Subdivision Government.” A coroner is a “conservator of the peace throughout his county.” §58.180. Sheriffs are also conservators of the peace. §57.110.⁸ Unlike a sheriff, however, a coroner is not required to have a valid peace officer license. §57.010.

⁸ Other conservators of the peace include municipal judges and the governor of the State of Missouri. §479.070; Mo. Const. art. IV, §2.

The coroner performs the duties of the sheriff when the sheriff cannot do so. §§58.190; 58.200.

If the coroner is absent for any reason, the sheriff performs the coroner's duties. §58.205.

Section 58.451.1 provides:

When any person, in any county in which a coroner is required by section 58.010, dies and there is reasonable ground to believe that such person died as a result of:

(1) Violence by homicide, suicide, or accident;

...

the police, sheriff, law enforcement officer or official, or any person having knowledge of such a death shall immediately notify the coroner of the known facts concerning the time, place, manner and circumstances of the death. Immediately upon receipt of notification, the coroner or deputy coroner shall take charge of the dead body and fully investigate the essential facts concerning the medical causes of death, including whether by the act of man, and the manner of death. The coroner or deputy coroner may take the names and addresses of witnesses to the death and shall file this information in the coroner's office. The coroner or deputy coroner shall take possession of all property of value found on the body, making exact inventory of such property on the report and shall direct the return of such property to the person entitled to its custody or possession. The coroner or deputy coroner shall take possession of any object or article which, in the coroner's or the deputy coroner's opinion, may be useful in establishing the cause of death, and deliver it to the prosecuting attorney of the county.

The coroner is not required to have a medical license. §58.030. The coroner may make or cause an autopsy to be performed, and the corner may employ the services of a pathologist or other expert to aid in the examination of the body. §58.451.7.

From the above statutory framework, like the medical examiner at issue in *Cathcart*, a coroner's office may at times function as a law enforcement agency. We need not, however, resolve this question because, even assuming that a coroner's office functions as a law enforcement agency when it conducts an inquest, the transcript of a public inquest is not an "investigative report" within the meaning of §610.100.2. Section 58.260 states:

Every coroner, having been notified of the dead body of any person, supposed to have come to his or her death by violence or casualty, being found within his county, may make out his or her warrant, directed to the sheriff of the county where the dead body is found, requiring him or her forthwith to summon a jury of six good

and lawful citizens of the county, to appear before such coroner, at the time and place in his or her warrant expressed, and to inquire how and by whom he or she came to his or her death.

The coroner administers an oath or affirmation to the jurors and the witnesses. §§58.300; 58.340.

As soon as the jury shall be sworn, the coroner shall give them a charge, upon their oaths, to declare of the death of the person, whether he or she died by felony or accident; and if of felony, who were the principals and who were accessories, and if the act was justified, and all the material circumstances relating thereto; and if by accident, whether by the act of man, and the manner thereof, and who was present, and who was the finder of the body, and whether he or she was killed in the same place where the body was found, and, if elsewhere, by whom, and how the body was brought there, and all other circumstances relating to the death; and if he or she died of his or her own act, then the manner and means thereof, and the circumstances relating thereto.

§58.310. “Every coroner shall be empowered to issue his or her summons for witnesses, and such evidence, documents, and materials of substance, commanding them to come before him or her to be examined, and to declare their knowledge concerning the matter in question.” §58.330. “The evidence of such witnesses shall be taken down in writing and subscribed by them...” §58.350. The jury draws up and delivers to the coroner their verdict which is signed by the coroner. §58.360. If the inquest determines the death is by the felony of another, the coroner must inform the judge or justice of the proper county. §58.370.

In the context of a coroner’s inquest, the coroner is acting in an almost judicial capacity. *See, e.g., Patrick v. Employers Mut. Liab. Ins. Co.*, 118 S.W.2d 116, 123 (Mo. App. 1938) (“In this state a coroner acts judicially in respect to determining whether an inquest shall be held.”). The coroner coordinates the presentation of relevant evidence so that a jury can make determinations regarding cause of death and possible culpability.

Our conclusion that the inquest transcript is not an “investigative report” is consistent with the purpose behind the investigative report exception. “The rationale for the investigative report exception to the Sunshine Law is evident.” *News-Press and Gaz. Co.*, 974 S.W.2d at 579 n.3.

To compel investigators to reveal contents of their investigative reports before the culmination of the investigation and, when appropriate, the prosecution, could result in compromising the investigation and prosecution by disclosing the status of the investigation, jeopardizing witnesses, aid the guilty in the destruction of yet undiscovered evidence, promote fabricated evidence by a guilty party, and foster other inhibiting consequences.

Id.

In the current case, Coroner advertised the inquest in the newspaper. *See* §610.020 (discussing the notice requirement for open meetings). The inquest was open to the public, including members of the press. Coroner spoke about the inquest to a television network. A copy of the transcript was given to a party who, like School District, wanted to use it to clear the name of an implicated party. The inquest itself was open and not closed. *Compare Smith v. Sheriff*, 982 S.W.2d 775, 780 (Mo. App. E.D. 1998) (finding that minutes of a closed meeting are also closed). A determination that the transcript of this public event is also public does not jeopardize any potential investigation and prosecution. *Contrast News-Press and Gaz. Co.*, 974 S.W.2d at 579 n.3. (“The rationale for nondisclosure before completion of the investigation and prosecution is applicable to [an] autopsy report” which was not otherwise available to the public).

There were several exhibits presented at the inquest. Those exhibits included pictures of the deceased, a police report, K.S.’s suicide notes, phone records, and a Facebook page. The record indicates that Coroner was the custodian of the pictures of K.S. after his death. School District initially requested all exhibits from the coroner’s inquest. It later clarified that it was not seeking to obtain the pictures of K.S. after his death. Instead, School District sought to obtain the exhibits

that were generated by or obtained by the sheriff's department. Those exhibits were brought to the inquest by the sheriff's department and then retained by the sheriff's department after the inquest ended.⁹

When the parties appeared in court on November 1, 2017, Coroner indicated he was willing to give the transcript of the inquest to School District in an effort to end the litigation. Coroner's counsel informed the court that Coroner could not disclose the requested exhibits because Coroner did not have possession of them and was not the custodian of them. Coroner's counsel stated that Coroner asked the sheriff's department for a copy of the exhibits, and the sheriff's department refused to turn the exhibits over to Coroner. The sheriff was present in court and stated the following:

Okay. Well, if the Court orders me, I'll give them anything you want me to give to them. But the problem that we're having is because there is an active, ongoing criminal case at this moment. And the way it's always been, that if we have an active ongoing criminal case, it's an active case, we give that information to the prosecutor's office. And whoever the prosecutor may be, whether it's our permanent prosecutor, or whether is a special prosecutor, whoever, they maintain control and allow me to not give out official records unless it goes through them. And that's according to the 210 statute.

Coroner's counsel stated that the sheriff's department should have been brought into the case because School District was seeking records from the sheriff's department. The court stated:

You, [School District's counsel], as well as trying to get with the Sheriff's Department to get the remaining exhibits, I know that you say that the Coroner has to give them. The Coroner with assist you in getting them, in cooperation through whomever. These were exhibits you used to affect a lot of people's lives, and to say all of a sudden now you can't help them get these. I think you can. These were done in open court, in this courtroom in open proceedings. And everybody's entitled to the knowledge. ... Somebody will probably need to subpoena - I'm not going to tell you who to subpoena, I'm sorry, but subpoena those involved, that would maybe indicate whether this is purposefully or not, and obstructive.

⁹ Nothing in the record suggests, and no party argues, that Coroner allowed the sheriff's department to retain the exhibits after the inquest in an effort to keep the exhibits from School District.

Coroner's Office subsequently advised School District that if it wished to obtain the inquest exhibits then it should subpoena them. School District subpoenaed the exhibits.

Coroner's Office does not argue on appeal that any of the exhibits are individually closed under the Sunshine Law. Instead, Coroner argues that the sheriff's department is the custodian of a number of the exhibits, and Coroner cannot disclose them. "[A] public agency's custodian of records is *responsible* for a request for *that agency's* records." *State ex rel. Daly v. Info. Tech. Services Agency of City of St. Louis*, 417 S.W.3d 804, 809 (Mo. App. E.D. 2013) (emphasis in original). Section 610.027 "demonstrates the legislature's clear intent that the custodian of records *for the agency whose records are sought* has the responsibility of the dissemination or non-dissemination of those records." *Id.* (emphasis in original). "We recognize that ... a government agency may transmit its record to another governmental entity and a Sunshine Law request may be properly addressed to the governmental entity that received the record." *Id.* at 810. "Governmental agencies often communicate with each other and we acknowledge that a document could be held as a record of more than one governmental agency." *Id.* "But in those circumstances, the agency that transmitted the record surrendered its sole custody of the record and the receiving entity retained it." *Id.*

It is undisputed in this case that the exhibits at issue were generated by or obtained by the sheriff's department. They were also retained by the sheriff's department. While Coroner organized the inquest and determined what evidence would be presented, nothing suggests that the sheriff's department surrendered custody of the exhibits to Coroner. The trial court appears to have also recognized this. Instead of ordering Coroner to disclose those exhibits, the trial court

ordered Coroner to work with the sheriff's department to get the exhibits in the sheriff's department's custody disclosed.

The issue before us is not whether the exhibits are closed under the Sunshine Law. Nor is the issue whether the sheriff's department should have disclosed them. Instead, this court is tasked with determining whether Coroner's Office violated the Sunshine Law when it did not disclose the records not in its custody. We find that it did not.

The bulk of the trial court's judgment addresses the transcript of the coroner's inquest. Coroner's point relied on arguing that the trial court erred in finding the transcript was an open record is denied. The judgment states that Coroner's Office repeatedly and wrongfully denied School District access to "open public records." To the extent that the trial court's judgment found that Coroner's Office wrongfully denied access to the exhibits in the possession of the sheriff's department, the judgment is reversed.

Point II

In its second point on appeal, Coroner's Office claims the trial court erred in finding that it purposefully violated the Sunshine Law and, accordingly, imposing a civil fine and awarding School District attorney's fees. It argues that substantial evidence did not support a finding of a purposeful violation. Coroner's Office states the evidence did not show it violated the Sunshine Law with a conscious design, intent, or plan to violate the law. It also maintains it did not violate the Sunshine Law with an awareness of the probable consequences.

"A trial court's judgment is not supported by substantial evidence when there is no evidence in the record tending to prove a fact that is necessary to sustain the circuit court's judgment as a matter of law." *Laut v. City of Arnold*, 491 S.W.3d 191, 197 (Mo. banc 2016) (internal quotation marks omitted). "When reviewing whether the circuit court's judgment is

supported by substantial evidence, appellate courts view the evidence in the light most favorable to the circuit court's judgment and defer to the circuit court's credibility determinations.” *Id.* (internal quotation marks omitted). “[N]o contrary evidence need be considered on a substantial-evidence challenge ... [and] [c]ircuit courts are free to believe any, all, or none of the evidence presented at trial.” *Id.* (internal quotation marks omitted). “When the evidence supports two reasonable but different inferences, this Court is obligated to defer to the circuit court's assessment of the evidence.” *Id.* at 202 (internal quotation marks omitted).

Section 610.027.4 provides in relevant part, “If the court finds that there was a purposeful violation of sections 610.010 to 610.026, then the court shall order the payment by such body or member of all costs and reasonable attorney fees to any party successfully establishing such a violation.” “[A] purposeful violation occurs when the party acts with a conscious design, intent, or plan to violate the law and [did] so with awareness of the probable consequences.” *Laut*, 491 S.W.3d at 198. (internal quotation marks omitted). “[T]his is a far greater burden than required to prove a knowing violation, for to prove a purposeful violation the plaintiff must prove more than mere intent to engage in the conduct resulting in the violation[.]” *Id.* at 199 (internal quotation marks omitted). “Plaintiff must show that the conscious plan or scheme, the purpose of the conduct, was to violate the law.” *Id.* “A purposeful violation involves proof of intent to defy the law or achieve further some purpose by violating the law.” *Id.* at 200.

As an initial matter, Coroner knew the penalties for violating the Sunshine Law. Coroner had served as the coroner for over 28 years. He received training on the Sunshine Law and its obligations. Coroner retained reference materials from that training. He testified that, when trying to determine whether the requested records were open or closed, he did not review those reference materials.

We note that Coroner had determined K.S.'s cause of death and submitted a death certificate prior to calling for a coroner's inquest. He heard about bullying and held the inquest to investigate those rumors. Coroner determined and presented evidence to the effect that School District along with others was a negligent party with respect to K.S.'s death.

The timing of events is important in this case. On February 2, 2017, School District requested a copy of the inquest transcript. On February 17, 2017, Shives requested a copy of the inquest transcript. On February 17, 2017, Coroner's Office called the Attorney General's office regarding whether the inquest transcript was an open record that required disclosure under the Sunshine Law and was advised it may be an open record and to contact local counsel. On February 21, 2017, Coroner's Office spoke with appointed special prosecutor Wilson regarding whether the transcript was an open record and she advised she believed it might be closed as an investigative report and would confirm and get back to him. On February 23, 2017, Coroner's Office provided a transcript to Shives free of charge. On February 24, 2017, School District made another request for the transcript and exhibits. It was informed it would have to pay for the records. On March 2, 2017, Wilson advised Coroner she considered the records to be closed. At the time Coroner was maintaining the inquest transcript was a closed record, an interview with Coroner was aired on a major television network. During that interview, Coroner spoke about the inquest. On October 9, 2017, the trial court entered an order finding School District violated the Sunshine Law and ordering Coroner to disclose the records. Coroner appealed the order and sought a writ of prohibition. On November 1, 2017, after the writ was denied but before the appeal was adjudicated, Coroner's Office provided School District with the inquest transcript.

Both Shives' son and School District were identified during the inquest as parties who contributed to K.S.'s suicide. Both Shives and School District sought the inquest records to clear

their reputations. Both Shives and School District requested the transcript prior to February 23, 2017. Yet only Shives received the transcript on February 23, 2017. While Shives received a free transcript, School District was later informed it would have to pay for the transcript after its second request. Before School District could pay for a transcript, it was informed the records were closed and unavailable.

Text messages between Coroner's son and Wilson indicate Coroner was seeking a way to prevent School District from receiving the transcript. Coroner's son texted the following to Wilson:

I meant to tell you. Dad told me today that Mickus¹⁰ called and demanded a copy of the transcript and copies of the suicide notes.

...

I think Dad's plan was to tell him that under Sunshine Law, he requires payment in advance for transcript, and if he does pay, it takes 10 days to clear bank before copies are released... Of course, transcript only; no letters. Those are definitely not public records.

Wilson replied on Saturday, February 25, 2017:

I have never gotten my copy I requested or disclosed it to Jeff¹¹ ... I think if he wld send to me it becomes investigative & cannot be released. I have been saying

That for a couple weeks:)

(Spelling and spacing as in original).

On March 9, 2017, School District provided Coroner with a 1979 Attorney General Opinion Letter opining that the inquest is an open meeting. Coroner testified that he did not share that letter with Wilson. He testified that he disregarded the letter because "[t]he attorney for the

¹⁰ Thomas Mickes was counsel for School District.

¹¹ Jeff Hilbrenner was the defense attorney representing the person charged in connection with K.S.'s death.

other side would tell me whatever they want.” This occurred before School District filed a lawsuit against Coroner’s Office.

Section 610.027.6 provides a public governmental body with a safe harbor when it is “in doubt about the legality of closing a particular ... record,” and among other things, authorizes the public governmental body to “seek a formal opinion of the attorney general or an attorney for the governmental body.” Coroner did not seek a formal opinion.

All of this supports the finding that Coroner’s Office acted with a conscious design, intent, or plan to violate the law. The finding that Coroner’s Office purposefully violated the Sunshine Law is supported by substantial evidence. *See also Spradlin v. City of Fulton*, 982 S.W.2d 255, 263 (Mo. banc 1998) (“Hereafter, however, members of governmental bodies are on notice that the provisions of the open meetings law will be strictly enforced and that our trial courts will have less latitude to avoid a finding of a purposeful violation.”).

The point is denied.

Point III

In its third point on appeal, Coroner’s Office claims the trial court erred in finding that it purposefully violated the Sunshine Law and, accordingly, imposing a civil fine and awarding School District attorney’s fees. It argues that the judgment finding that Coroner’s Office purposefully violated the Sunshine Law was against the weight of the evidence. Coroner’s Office maintains that, when viewed in its entirety, the evidence did not show that it violated the Sunshine Law with a conscious design, intent, or plan to violate the law or that it violated the Sunshine Law with an awareness of the probable consequences.

“A claim that the judgment is against the weight of the evidence presupposes that there is sufficient evidence to support the judgment.” *Laut*, 491 S.W.3d at 197 (internal quotation marks

omitted). “[A] trial court’s judgment is against the weight of the evidence only if the circuit court could not have reasonably found, from the record at trial, the existence of a fact that is necessary to sustain the judgment.” *Id.* (internal quotation marks omitted). “The power to set aside a trial court’s judgment on the ground that it is against the weight of the evidence should be exercised with caution and with a firm belief that the decree or judgment is wrong.” *Spradlin*, 982 S.W.2d at 263 (internal quotation marks omitted). “While we may have weighed the evidence differently and arrived at a different conclusion than the trial court, we must adhere to our standard of review and are not free to substitute our own judgment for that of the trial court.” *Id.*

Coroner argues he examined the Sunshine Law, discussed the matter with the special prosecutor Wilson, and contacted the Attorney General’s Office. Coroner states that Shives received a transcript because she appeared in person and received a quarter page¹² version of the transcript. In contrast, School District requested the transcript be mailed to a specific address. Coroner also assumed that School District would want a full page version of the transcript. Coroner claims he did not have an improper motive in calling the inquest. He also states that he uniformly treated the records as closed after being told by Wilson that they should not be disclosed. Coroner further notes he relied on Wilson’s opinion that the records were closed. Finally, Coroner claims he always thought Coroner’s Office was a law enforcement agency and, thus, could close the records as investigative reports independent of emailing the transcript to Wilson.

As discussed in Point II, a finding that Coroner’s Office purposefully violated the Sunshine Law is supported by sufficient evidence. The evidence and arguments made by Coroner in this point do not render that finding against the weight of the evidence.

¹² This refers to four pages of the transcript appearing on one full page, each taking up a quarter of the page.

The point is denied.

Point IV

In its fourth point on appeal, Coroner's Office claims the trial court erred in awarding \$75,259.50 in attorney's fees to School District. It argues that substantial evidence did not support the award. Coroner's Office maintains that the affidavit submitted by School District includes amounts of no value for School District. It also states that these amounts were used in obtaining records of which Coroner's Office was not the custodian, and should not have been included.

Section 610.027 provides that the court may award costs and reasonable attorney's fees to a party who establishes a knowing or purposeful violation of the Sunshine Law. "We will not disturb a trial court's decision to award attorneys' fees absent an abuse of discretion." *Wyrick v. Henry*, 592 S.W.3d 47, 65 (Mo. App. W. Dist. 2019). "A court abuses its discretion when it awards an amount so arbitrarily arrived at, or so unreasonable, as to indicate indifference and a lack of proper consideration." *Id.* (internal quotation marks omitted).

School District's counsel submitted sets of itemized bills for its services. The first set totaled \$73,259.50 while the second set totaled \$53,294.50. The \$73,259.50 represented the cost of obtaining the inquest transcript and exhibits from Coroner's Office while the \$53,294.50 represented the cost of obtaining the inquest transcript alone from Coroner's Office.

On appeal, Coroner's Officer argues that it was not the custodian for the exhibits and did not maintain them. It states that the exhibits were in the possession of Wilson and the sheriff's department. Coroner's Office claims that the additional \$20,000 includes the cost to subpoena and obtain the exhibits from Wilson and the sheriff's department. It concludes that the matter should be remanded for a determination of attorney's fees with respect to exhibits Coroner's Office was the custodian of or maintained.

We agree. According to the billing statements, the \$73,259.50 included amounts to subpoena records from Wilson and the sheriff's department. It also included amounts to prepare notices of deposition duces tecum for Wilson and the sheriff's department. That amount further includes costs relating to service on the custodian of records for Wilson and the sheriff's department. It is an abuse of discretion for the trial court to order Coroner's Office to pay attorney's fees incurred from School District's attempts to obtain documents from other governmental entities.

The point is granted. The matter is remanded for the trial court to award attorney's fees for the time School District spent obtaining records from Coroner's Office only.¹³

Conclusion

The judgment is affirmed in part, reversed in part, and remanded. The judgment is affirmed with respect to Point I except to the extent it found Coroner's Office violated the Sunshine Law in not disclosing exhibits not in its custody. The judgment is also affirmed with respect to Points II, and III. The issue of attorney's fees as raised in Point IV and the motion filed with this court, is remanded for a determination of the fees consistent with this opinion.



Anthony Rex Gabbert, Judge

All concur.

¹³ School District filed a motion with this court for appellate attorney's fees. Section 610.027.4 authorizes a court to award, "all costs and reasonable attorney fees to any party successfully establishing" a purposeful violation of the Sunshine Law. We grant that motion because School District successfully defended the judgment finding that the inquest transcript, and the exhibits in Coroner's possession, are open records, and that Coroner's Office purposefully withheld them. "Although appellate courts have authority to allow and fix the amount of attorney's fees on appeal, we exercise this power with caution, believing in most cases that the trial court is better equipped to hear evidence and argument on this issue and determine the reasonableness of the fee requested." *Turner v. Kansas City Pub. Sch.*, 488 S.W.3d 719, 726 (Mo. App. W.D. 2016) (internal quotation marks omitted). Accordingly, we remand to the trial court to determine the reasonableness of School District's attorney fees on appeal and enter an appropriate award.