

**Missouri Court of Appeals, Western District  
Division Three**

Thomas N. Chapman, Presiding Judge  
Mark D. Pfeiffer, Judge  
Cynthia Martin, Judge

February 22, 2023  
University of Missouri-Kansas City School of Law

---

**WD84797**

**Ramon Boyd, Appellant,**

**v.**

**State of Missouri, Respondent.**

Appellant Ramon Boyd appeals from the judgment of the Circuit Court of Jackson County denying his Rule 29.15 motion for post-conviction relief. Boyd was previously found guilty of voluntary manslaughter, second-degree assault, two counts of armed criminal action, and leaving the scene of a shooting. The court sentenced him to a total of 28 years' imprisonment. The evidence at trial showed that friends, Destynie Wright and Kierra Ramsey, went to a New Year's Eve party together. At around 1 a.m., Ramsey's ex-boyfriend, Sedrick Jones, arrived. Jones tried to convince Ramsey to leave with him and followed Wright and Ramsey to Wright's car. All three got into Wright's car. Jones pleaded with Ramsey for an hour or more to leave with him. At some point during that time, Wright began to text her boyfriend, Boyd. The texts noted that Jones had a gun and asked Boyd to come. Ramsey eventually agreed to go with Jones. Ramsey then left Wright's car and got into Jones' car. At that point, Ramsey saw a man walk up to the car and gunshots were fired. Ramsey was struck twice and passed out. Jones was struck five times and died from his injuries. Police recovered a handgun on the ground underneath Jones' body. The gun had not been fired, but there was a round in the chamber. The defense did not dispute that Boyd fired the shots but maintained that Boyd acted in self-defense and in defense of Wright. Relevant to this appeal, Boyd's post-conviction motion raised multiple claims that his trial counsel was ineffective. The motion court denied Boyd's claims. This appeal followed.

Appellant's points on appeal:

1. The motion court clearly erred in denying claim 8/9(a) of Ramon Boyd's 29.15 amended motion, in violation of his rights to due process, a fair trial, and effective assistance of counsel, under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article I, §§ 10 and 18(a) of the Missouri Constitution, when it found trial counsel was not ineffective when she failed to argue imperfect self-defense to the jury, because trial strategy must be reasonable and imperfect self-defense is not recognizable to a reasonable jury, in that trial counsel did not understand imperfect self-defense, the defense requested an instruction on involuntary manslaughter, it is unreasonable to request an involuntary manslaughter instruction and not inform the jury how imperfect self-defense works under the facts of Mr. Boyd's case, and Mr. Boyd was prejudiced.

2. The motion court clearly erred in denying claim 8/9(b) of Ramon Boyd's 29.15 amended motion, in violation of his rights to due process, remain silent, against self-incrimination, and effective assistance of counsel, under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article I, §§ 10 and 18(a) of the Missouri Constitution, when it found trial counsel was not ineffective when she failed to move in limine and object to the elicitation of evidence that Mr. Boyd did not provide police with the passcode to his phone, because a phone passcode is protected by the rights to remain silent and against self-incrimination, and prejudice results where improper evidence goes directly to the heart of a case, in that the indirect comment on Mr. Boyd not providing police with the passcode for his phone was objectionable and prejudice resulted because Mr. Boyd's failure to cooperate with police went directly to his credibility, and his credibility was paramount to his self-defense claim.
3. The motion court clearly erred in denying claim 8/9(f) of Ramon Boyd's 29.15 amended motion, in violation of his rights to due process, a fair trial, and effective assistance of counsel, under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article I, §§ 10 and 18(a) of the Missouri Constitution, when it found trial counsel was not ineffective when she failed to cross-examine the medical examiner about the effect of the injuries on Mr. Jones' ability to draw his weapon, because a fear of highlighting an issue only makes sense if the issue is not already highlighted for the jury, and fear that the State can also use evidence only makes sense if the evidence can actually be used by the State, in that the extent of Mr. Jones' injuries was already before the jury in great detail, and evidence related to Mr. Jones' ability to draw his gun could not be used by the State to further its case.
4. The motion court clearly erred in denying claim 8/9(h) of Ramon Boyd's 29.15 amended motion, in violation of his rights to due process, remain silent, against self-incrimination, and effective assistance of counsel, under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article I, §§ 10, 18(a), and 19 of the Missouri Constitution, when it found trial counsel was not ineffective when she failed to object at sentencing, because a court cannot punish a defendant for exercising his constitutional rights, in that the court's explanation for running all the sentences consecutively included that Mr. Boyd exercised his rights to remain silent and against self-incrimination.

**WD85405**

**Dane Templeton, Appellant,**

**v.**

**Charles Orth, D.O. and Orthopedic Surgeons, Inc., Respondents.**

Appellant Dane Templeton appeals the judgment of the Circuit Court of Clay County granting summary judgment in favor of Respondents Charles Orth, D.O. and Orthopedic Surgeons, Inc. On September 16, 2012, Templeton was involved in a serious golf cart accident. The golf cart rolled, and Templeton was thrown into a barbed wire fence and a dead tree. Small pieces of the tree lodged in Templeton's leg. Dr. Orth, a surgeon employed by Orthopedic Surgeons, Inc.,

operated on Templeton's leg two days after the accident. In December 2015, Templeton returned to Dr. Orth because his thigh was badly swollen. Ultimately, Dr. Orth operated on Templeton three more times between March and June 2016. Templeton alleges that, although he informed Dr. Orth that the pain was in his thigh, Dr. Orth treated only his knee and failed to surgically explore Templeton's thigh. On August 29, 2016, Dr. Orth examined Templeton and prescribed him Bactrim, an antibiotic. Dr. Orth's notes reflected that he would see Templeton "in a month at least." On September 7, 2016, Templeton was seen by a new physician, Dr. Tilley, who ordered him to stop taking the Bactrim so that he could see how the leg responded. On October 10, 2016, Dr. Tilley determined another operation was warranted and, the next day, Dr. Tilly operated on Templeton's leg. Dr. Tilly removed two pieces of wood from Templeton's leg. On October 9, 2018, Templeton filed a petition for damages against the Respondents. Summary judgment was granted in favor of the Respondents because the court found that Templeton did not file his action within the applicable two-year statute of limitations. This appeal followed.

Appellant's point on appeal:

1. The trial court erred in granting Respondents' motion for summary judgment on the basis of the statute of limitations because a *de novo* review of the pleadings and record facts show that the date on which Respondents' continuing duty of care terminated is in material dispute, in that, Appellant demonstrated record evidence that the physician-patient relationship terminated within a reasonable time after September 29, 2016—i.e., October 10, 2016, when he received Dr. Tilley's second opinion and agreed to surgery, thus disputing Respondents' contention that it ended on precisely September 29, 2016.

**WD84844**

**State of Missouri, Respondent,**

**v.**

**Cortavia Emon Smith, Appellant.**

Appellant Cortavia Smith appeals the judgment of the Circuit Court of Boone County finding him guilty of abuse of a child resulting in death. Cortavia Rogers ("Baby Cortavia") was born on September 28, 2017, to Ayesha Rogers and Smith. She was born premature at 32 weeks and spent time in the intensive care unit after her birth. On March 12, 2017, Rogers was working overnight at Break Time. According to the evidence presented at trial, Smith reported that he put Baby Cortavia in bed with him after she was crying. She was asleep by his leg with her head by his feet. Smith believed that he might have kicked Baby Cortavia in his sleep. When he awoke, the baby was breathing but unresponsive. He contacted Rogers who told him to call an ambulance. Instead, Smith drove Baby Cortavia to Break Time because Rogers knew CPR. Once at Break Time, Smith called 911, and Rogers administered CPR. The baby was transported to the hospital where she was pronounced dead. At trial, the State presented the evidence of two experts who testified Baby Cortavia sustained injuries consistent with abuse. Smith presented the testimony of a doctor who testified that Baby Cortavia suffered from sepsis, likely brought on by a diabetic crisis. A jury found Smith guilty, and the court sentenced him to a total of fifteen years' imprisonment. This appeal followed.

Appellant's points on appeal:

1. The trial court plainly erred in failing to grant a new trial because a private criminal defense attorney who was not appointed by the court served as a special prosecutor on Mr. Smith's case, in violation of Section 56.110 and his right to due process of law, guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 10, of the Missouri Constitution, in that Jessica Caldera was allowed to handle Mr. Smith's case as a special prosecutor without a showing of disqualification of the elected prosecutor or any assistant prosecutor, without appointment by the court, and while she was handling at least one criminal defense case as a private attorney, which amounts to structural error, a manifest injustice, and a miscarriage of justice, requiring reversal of Mr. Smith's conviction.
2. The trial court plainly erred in failing to grant a new trial because the special prosecutor had access to Mr. Smith's privileged mental health information, which violated his right to due process of law, guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 10, of the Missouri Constitution, in that special prosecutor Jessica Caldera attended mental health meetings in the jail while Mr. Smith was incarcerated there, at which meetings Mr. Smith's mental health was discussed, which created an appearance of impropriety, a manifest injustice, and a miscarriage of justice, requiring reversal of Mr. Smith's conviction.
3. The trial court abused its discretion in overruling defense counsel's objection to 911 operator Tara Sills' testimony that Mr. Smith was calm during the 911 call, because this ruling violated Mr. Smith's due process right to a fair trial, guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 18(a) of the Missouri Constitution, in that the testimony was more prejudicial than probative since it implied that a parent would be hysterical about a child's unresponsiveness unless he was guilty of harming the child.
4. The trial court plainly erred in permitting the State to introduce into evidence State's Exhibits 1.1 and 1.6 – pictures of Baby Cortavia from Ayesha Rogers' phone – because the admission of these photographs violated Mr. Smith's due process right to a fair trial, guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution, in that the prejudicial impact from these photographs outweighed any possible probative value they may have had, since they would merely inflame the passions and prejudices of the jurors as victim impact evidence, resulting in a manifest injustice.
5. The trial court erred and abused its discretion in limiting defense counsel's pretrial deposition of Dr. Miller to one hour, because this violated Mr. Smith's due process rights to prepare a complete defense and a fair trial, guaranteed by the Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 18(a) of the Missouri Constitution, in that Dr. Miller had set aside two hours for the deposition, so limiting defense counsel to one hour was both arbitrary and unauthorized, since the State failed to support its motion for a protective order with an evidentiary showing of good cause.

**WD85012**

**Amina Alhalabi, Respondent,**

**v.**

**Missouri Department of Corrections, Appellant.**

Appellant Missouri Department of Corrections appeals the judgment of the Circuit Court of Callaway County, following a jury verdict, finding that the Department of Corrections had discriminated against Respondent Amina Alhalabi based on her national origin and her religion. Alhalabi began working as a corrections officer at the Cremer Therapeutic Community Center in Fulton, Missouri, in 2012. She resigned from the position in early 2015. Alhalabi later filed a petition against the Department of Corrections claiming she was discriminated against and that she was constructively discharged from her job by a hostile work environment. Specifically, Alhalabi alleged that a supervisor mocked her accent, routinely made disparaging comments about Muslims, and refused to respect or accommodate her religious beliefs. During the trial, Alhalabi presented the testimony of another former corrections officer, Stephen Bergeron, who alleged he also faced discrimination as a Muslim. Bergeron, unlike Alhalabi, worked at the Southeast Correctional Center in Charleston, Missouri. The jury found in favor of the Department of Corrections on Alhalabi's constructive discharge claim and request for punitive damages. But, the jury found in favor of Alhalabi on her claim of discrimination and awarded \$140,000 in damages. The court also granted her request for attorney's fees. This appeal followed.

Appellant's points on appeal:

1. The circuit court erred in giving instruction no. 7, because the instruction erroneously conflates different claims, in that a hostile work environment based on a protected classification is different than retaliation based on a complaint of discrimination.
2. The circuit court erred in admitting certain "me too" evidence, because the evidence must be similar given the facts, context, and theory of the case, in that evidence involving entirely different facilities and employees is not sufficiently similar.
3. The circuit court erred in awarding \$672,979.50 in attorney fees and a multiplier because plaintiff had limited success, in that plaintiff prevailed on only one claim, was not awarded punitive damages, and was awarded only a fraction of the damages sought.

**WD84629**

**State of Missouri, Respondent,**

**v.**

**Curtis V. Lee, Appellant.**

Appellant Curtis Lee appeals from the judgment of the Circuit Court of Jackson County finding him guilty of murder in the first degree and armed criminal action. Following a jury trial, the court sentenced Lee to one-term of life imprisonment without the possibility of parole. The evidence at trial showed that, in April 2018, Lee had been in an apartment with his father, Charles Burton, and his uncle, Clyde Burton. Clyde Burton was stabbed eight times and died

from his injuries. Charles Burton was stabbed five times and also died from his injuries. Lee called 911 and was arrested at the scene. Lee testified that he, Clyde, and Charles all smoked PCP in Clyde's room. Lee then went into the living room to sleep. He awoke to Clyde and Charles arguing. Lee alleged that he saw Charles stab Clyde. Lee was then afraid that Charles would attack him, so he grabbed the knife from Charles and started swinging. Lee admitted to stabbing Charles. The State charged Appellant with two counts of murder in the first degree and two counts of armed criminal action. The jury acquitted Appellant of the murder and corresponding armed criminal action charge for the death of Clyde Burton. But, the jury convicted Appellant of the murder and armed criminal action charges associated with the death of Charles Burton. The court sentenced Appellant to a total of one-term of life imprisonment without the possibility of parole. This appeal followed.

Appellant's points on appeal:

1. The trial court abused its discretion in overruling Mr. Lee's objection to State's Exhibit 2, which violated Mr. Lee's rights to a fair trial and due process of law, as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 18(a) of the Missouri Constitution, in that an incomplete recording of a comment Mr. Lee made in an empty interrogation room was admitted without proper foundation, neither by testimony from personal observation nor through the "silent witness" theory of authentication, and Mr. Lee was prejudiced because he was forced to respond by testifying at trial.
2. The trial court abused its discretion in prohibiting admission of Defense Exhibit 206, because this ruling violated Mr. Lee's rights to due process of law, to present a defense, and to a fair trial as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution as well as Article I, Sections 10 and 18(a) of the Missouri Constitution, in that the State introduced into evidence a one-minute portion of Mr. Lee's custodial police interview where Mr. Lee made an exasperated comment to himself after officers stepped out of the interrogation room for 7-minutes and 15-seconds, for a "water break." Not permitting relevant portions of the same custodial interrogation was prejudicial because Mr. Lee's out-of-context comment was played during the State's opening, during the State's case-in-chief, during the State's closing, was opined on by the prosecutor during closing, was requested during deliberation, and a follow-up question was asked during deliberations because of the poor quality of the audio in the recording. This ruling further prejudiced Mr. Lee because it forced him to testify at trial, which then allowed the State to question Mr. Lee about a prior investigation when Mr. Lee stabbed a different uncle in self-defense.