

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

Gary D. Witt, Chief Judge, Presiding  
Alok Ahuja, Judge  
Janet Sutton, Judge

March 15, 2023  
Boone County Courthouse  
Columbia, Missouri

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**WD85234**

**Scott Evan Weyant, Appellant,**

**v.**

**State of Missouri, Respondent.**

Appellant Scott Weyant appeals from the judgment of the Circuit Court of Adair County denying his Rule 29.15 motion for post-conviction relief. Following a jury trial, Weyant was convicted of sodomy in the first degree. The evidence at trial established that on April 6, 2017, Weyant was divorced from but still living with his ex wife, C.W. C.W. found Weyant in her bedroom, laying on the bed, and asked him to leave. She testified that he was drinking and that there were beers in the bed. Weyant became angry and wanted her to get in bed with him. The two got into an argument. C.W. testified that Weyant started to throw beers at her. She then grabbed him by the shorts in an attempt to remove him from the bed. At that point, Weyant grabbed her by the neck and threw her down. He got on top of her and poured beer on her face. She was able to begin to crawl away, but Weyant then grabbed her, stuck his hands into her pants, and put two fingers inside her vagina. She told him to stop a number of times. Eventually, C.W. was able to get away from Weyant. She ran to the living room, and, after several attempts, she was able to leave the residence and drive to the police station where she reported the attack. Weyant was arrested and taken to the police station where the police took his finger prints using an ink pad. The jury heard testimony that, after Weyant was fingerprinted, he was given a Clorox wipe to remove the ink from his fingers. This took place prior to Weyant's hands being tested for DNA evidence. The jury found Weyant guilty of sodomy in the first degree, and the court sentenced Weyant to twelve years' imprisonment. This Court affirmed the conviction on direct appeal. Weyant's post-conviction motion alleged that his trial counsel was ineffective in: (1) failing to request instruction on a lesser-included offense; (2) failing to object to evidence regarding the presence of chemical inhibitors on Weyant's hands; and (3) failing to clarify that no inhibitors were found in the DNA swab. The motion court found that Weyant's claim regarding the lesser included offense could have been raised in the direct appeal and thus he was barred from raising in in his post-conviction motion. The motion court also found that trial counsel's failure to object or clarify evidence regarding the presence of inhibitors on the cleaning wipe or DNA swab was reasonable trial strategy. This appeal followed.

Appellant's points on appeal:

1. The motion court clearly erred in denying claim 8.a(1) of Scott Weyant's amended motion for post-conviction relief following an evidentiary hearing pursuant to Rule

- 29.15 in violation of his rights under the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 18(a) of the Missouri Constitution, in that trial counsel acknowledged she failed to reoffer the rejected lesser-included instruction during the jury instruction conference at trial, the trial court was mandated to give the lesser-included instruction because it was a denominated a lesser-included offense, and there is a reasonable probability of a different result had the instruction been given.
2. The motion court clearly erred in denying claim 8.a(2) of Scott Weyant's amended motion for post-conviction relief following an evidentiary hearing pursuant to Rule 29.15 in violation of his rights under the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 18(a) of the Missouri Constitution, in that trial counsel acknowledged she should have objected to legally irrelevant evidence about the presence of chemical inhibitors on Mr. Weyant's hand, counsel did not have a strategic reason for not so objecting, and there is a reasonable probability of a different result had counsel objected.
  3. The motion court clearly erred in denying claim 8.a(3) of Scott Weyant's amended motion for post-conviction relief following an evidentiary hearing pursuant to Rule 29.15 in violation of his rights under the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 18(a) of the Missouri Constitution, in that if counsel was going to permit the State to confuse jurors during the cross-examination of its expert witness on the subject of chemical inhibitors, a reasonably competent attorney would have clarified the confusion in redirect, which was not done here, and, had defense counsel acted reasonably and clarified on redirect no chemical inhibitors, including bleach, were found on Mr. Weyant's hands by police, there is a reasonable probability of a different outcome.

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**WD85343**

**Peter Loew and Kathy Loew, Appellants,**

**v.**

**Heartland Trophy Properties, Inc., Respondent.**

Appellant Peter and Kathy Loew appeal from the judgment of the Circuit Court of Putnam County granting Respondent Heartland Trophy Property's motion to transfer venue and denying the Loews' motion for sanctions. The Loews are real estate agents who entered into an agent agreement and a noncompete agreement with Heartland Trophy Properties. On September 4, 2020, the Loews filed an action for declaratory judgment in Putnam County seeking to declare the noncompete agreement void. On October 12, 2020, Heartland Trophy Properties filed an answer and counterclaims. On April 13, 2021, Heartland Trophy Properties filed a petition in Appanoose County, Iowa seeking the same relief requested by the counterclaims filed in Putnam County. Heartland then filed a motion in Putnam County seeking to transfer venue to Iowa. The circuit court granted the motion. This appeal followed.

Appellants' points on appeal:

1. On June 27, 2022, this court, through staff counsel, directed the parties to include in their briefing whether the April 6, 2022 trial court judgment was final and appealable. Staff counsel requested the parties address the matter in their briefs.
2. The trial court erred in transferring the appellants' petition on the basis of improper venue because respondent's motion was grossly untimely, the trial court had already ruled on the merits of certain counts of respondent's counterclaim meaning that respondent waived its venue claim, and the choice of law provision in the noncompete agreement was not a choice of forum provision, in that the trial court disregarding all those reasons in making its decision showcased an abuse of its discretion that harmed the appellants.
3. The trial court erred in failing to sanction respondent and/or its counsel because the respondent had unnecessarily created duplicative lawsuits in Iowa and Missouri in that the trial court abused its discretion by allowing the respondent to prop up separate lawsuits that were filed for the unethical purpose of raising the costs of litigation.

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**WD84927**

**State of Missouri, Respondent,**

**v.**

**Justin Andrew Marks, Appellant.**

Appellant Justin Marks appeals the judgment of the Circuit Court of Lafayette County finding him guilty of one count of domestic assault in the second degree and one count of domestic assault in the third degree. The facts as alleged at trial were that Marks was in a romantic relationship with T.H. On the evening of May 1, 2019, the two got into an argument. The argument quickly became physical. T.H. testified that she repeatedly tried to escape the residence but Marks continually dragged her back inside. He choked her multiple times, and, on one occasion, she lost consciousness. T.H. contends that she tried to leave the residence six or seven times that night but was not successful. The next morning, she again tried to leave. T.H. testified that Marks dragged her by the hair and bit her leg. T.H. was eventually able to leave in her truck. When she did so Marks threw a bat at the truck and broke a tail light. A friend took T.H. to the hospital and then to the police. Marks testified in his own defense at trial. He denied choking and biting T.H. He alleged that the two argued but he then fell asleep. Marks testified that he did hit her tail light with a baseball bat but it was because he was yelling for T.H. to leave. The jury found Marks guilty of one count of domestic assault in the second degree and one count of domestic assault in the third degree. The court sentenced him to nine years' imprisonment for assault in the second degree and six years' imprisonment for assault in the third degree, with the sentences to run consecutively. This appeal followed.

Appellant's points on appeal:

1. The trial court plainly erred in sentencing Justin to six years in prison for the class E felony of domestic assault in the third degree, because this violated Justin's right to due process under the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution, in that a person who recklessly causes physical injury to another with whom he is in a domestic relationship has committed the offense of domestic assault in the fourth degree, which is a misdemeanor offense. The error was obvious, evident and clear as trial judges are presumed to know the law and resulted in a manifest injustice since Justin could only be legally sentenced to a maximum period of one year in jail as a misdemeanor.
2. The trial court erred in overruling Justin's motion for judgment of acquittal at the close of all the evidence and in sentencing him for the offense of domestic assault in the third degree, because this violated Justin's right to due process guaranteed by the Fourteenth Amendment to the United States Constitution, and Article I, Section 10 of the Missouri Constitution, in that the State failed to provide sufficient evidence from which a rational trier of fact could have reached a "subjective state of near certitude" that Justin caused physical injury to T.H.
3. The trial court plainly erred in submitting Instruction No. 7, the verdict director to Count II, to the jury, because this violated Justin's 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 the instruction submitted to the jurors allowed them to return a verdict against Justin for which he was not charged because the amended information charged Justin with recklessly causing physical injury to T.H., which was a misdemeanor offense but Instruction 7 allowed the jury to convict Justin for knowingly causing physical pain to T.H., which was a felony. The error was evident, obvious, and clear because the trial court was aware of the crime with which Justin was charged and should have been aware of the variance. The error resulted in a manifest injustice because the variance allowed Justin to not only be convicted of a different crime than for which he had been charged, but also because it allowed him to be convicted of a felony when he was only charged with a misdemeanor.

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**WD85066**

**Greg Halderman, Respondent,**

**v.**

**City of Sturgeon, Missouri, and Tyler Patterson, Appellants.**

Appellants City of Sturgeon, Missouri, and Tyler Patterson appeal the judgment of the Circuit Court of Boone County finding in favor of Respondent Greg Halderman on certain counts of his petition challenging his termination as Sturgeon's police chief. On March 15, 2017, Sturgeon's mayor delivered to Halderman a "Section 106.273 Notice of Meeting" informing him that the Sturgeon Board of Alderman would be meeting to consider removing him as police chief. On March 27, 2017, the Board of Alderman voted 3-1 in favor of terminating Halderman's employment. On May 4, 2017, Halderman filed a petition for judicial review of the termination

decision asserting six counts. On March 11, 2019, the trial court granted Halderman partial summary judgment as to two of the six counts of his petition and ordered that Halderman be reinstated with back-pay. The court also ordered that any subsequent removal must be conducted as a contested case in accordance with section 106.273, RSMo, and section 536.010, RSMo. On April 30, 2019, Sturgeon's Board of Alderman again considered the removal of Halderman as police chief and again voted to terminate Halderman. Halderman did not seek judicial review of the 2019 decision. The 2017 petition for review, however, remained pending as to the remaining four counts. All defendants to the 2017 petition moved for summary judgment on all remaining counts. Summary judgment was granted to the defendants on all remaining counts except for one count of tortious inference. Halderman then sought, and was granted, leave to amend his petition. Halderman added a count against the City of Sturgeon for discharging him in violation of section 105.055, RSMo, as amended in 2018. The case proceeded to jury trial on these two counts. The jury returned a verdict for Halderman on both counts. This appeal followed.

Appellants' points on appeal:

1. The trial court erred in entering summary judgment for Halderman on his count I claim against Sturgeon for judicial review of a final administrative decision because the trial court misinterpreted the law in ruling that termination of a Missouri Police Chief, as authorized by section 106.273, RSMo, is a contested case as defined by section 536.101, RSMo, in that the procedures enumerated in section 106.273 do not include an evidentiary hearing on the record, and therefore, a police chief termination under section 106.273 is not a contested case and Sturgeon was not required to provide Halderman with a full evidentiary hearing on the record prior to terminating him as police chief in 2017.
2. The trial court erred in entering summary judgment for Halderman on his count III claim against Sturgeon under the due process clause of MO. Const. Art. I, § 10, because the trial court misinterpreted the law in that due process did not require Sturgeon to provide Halderman with all rights of a contested case, including a full evidentiary hearing on the record, prior to terminating him in 2017.
3. The trial court erred in overruling Patterson's motion for JNOV and entering judgment for Halderman on his count VI claim for tortious interference with employment because the trial court misapplied the law in that Halderman failed to make and could not make a submissible case for tortious interference because, as a matter of law, as a member of Sturgeon's Board of Alderman who voted on Halderman's termination in 2017, Patterson was not a third party to Halderman's employment relationship.
4. The trial court erred in overruling Patterson's motion for JNOV and entering judgment for Halderman on his count VI claim for tortious interference with employment as Sturgeon's Police Chief because the trial court misapplied the law in that collateral estoppel precluded Halderman from re-litigating the issue of whether Patterson had just cause to take part in and to vote for Halderman's 2017 termination when the issue of just cause was conclusively determined in an April 30, 2019 final administrative decision by the Sturgeon Board of Aldermen, after a full evidentiary hearing on the record that complied with all contested case requirements of chapter 536, RSMo.

5. The trial court erred in overruling Sturgeon's motion for JNOV and entering judgment on Halderman's count VII claim for discharge in violation of Section 105.055, RSMo, as amended in 2018, because the trial court misapplied the law in that entering judgment on Halderman's claim over his 2017 discharge, under a statute which did not go into effect as to Sturgeon until 2018, violated MO. Const. Art. I § 13 prohibiting a law retrospective in its operation.
6. The trial court erred in overruling the City of Sturgeon's motion for JNOV and entering judgment on Halderman's count VII claim for discharge in violation of Section 105.055, RSMo, as amended in 2018, because the trial court misinterpreted and misapplied the law in that Halderman's count VII claim is barred by the one year statute of limitation in Section 105.055.7, RSMo, which required Halderman's claim under that statute to have been brought within "one year after the occurrence of the alleged violation;" Halderman did not move for leave to assert a claim under Section 105.055, until January 14, 2020, more than two years after his discharge, and more than one year after the 2018 amendments to Section 105.055 first made that statute applicable to a municipality.
7. The trial court erred in refusing to admit Exhibit C into evidence and in denying the appellants' motion for new trial on that basis because in so ruling it abused its discretion to the appellants' prejudice in that Exhibit C showed and established that there was just cause for Halderman's firing in 2017, an issue Halderman challenged throughout trial.
8. The trial court erred in refusing to admit Exhibit M into evidence and in denying the appellants' motion for new trial on that basis because in so ruling abused its discretion to the appellants' prejudice in that Exhibit M showed that Halderman's racist and anti-islamic statements were in the public domain and media when Halderman contended he could not find law enforcement employment, thereby providing one more compelling reason why Halderman could not find work as a police officer, an issue he interjected in front of the jury.
9. The trial court erred in refusing to admit Halderman's testimony about getting fired and having his peace officer's license disciplined in 1996 for kissing a 16 year old girl in a vehicle while on duty, and in denying the appellants' motion for new trial on that basis because in so ruling the trial court abused its discretion to the appellants' prejudice in that this testimony went directly to counter the assertions of Halderman's counsel that he had learned his lessons about such behavior from 2014 discipline over a similar incident in Sturgeon, and this evidence provides one more compelling reason why Halderman could not find work as a police officer, an issue he also interjected in front of the jury.