

**MISSOURI COURT OF APPEALS--WESTERN DISTRICT**  
**DIVISION ONE**  
**W. DOUGLAS THOMSON, PRESIDING JUDGE**  
**LISA WHITE HARDWICK, JUDGE**  
**KAREN KING MITCHELL, JUDGE**  
**APRIL 11, 2023**  
**NORTHWEST MISSOURI STATE UNIVERSITY**  
**MARYVILLE, MISSOURI**

**WD85142**

**In the Interest of: D.J.T.S., Appellant,**  
**v.**  
**Juvenile Officer, Respondent.**

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Appellant D.J.T.S., a juvenile, appeals the judgment of the Circuit Court of Buchanan County which found that D.J.T.S. committed the delinquency offense of making a terroristic threat in the second degree and placing D.J.T.S. on probation. The evidence presented at D.J.T.S.'s adjudication hearing was that D.J.T.S. told a number of people not to come to school because D.J.T.S. intended to bring a gun to school and kill people. D.J.T.S. also told a middle school classmate, V.B., that he would kill 180 people at a school basketball game later that evening. D.J.T.S. allegedly showed V.B. a picture purporting to be the gun he intended to use. V.B. told a teacher, and later the vice principle, about D.J.T.S.'s statements. Another classmate, D.C., also testified that D.J.T.S. told her about "shooting up" the basketball game. A third classmate, P.K., told the vice principal that D.J.T.S. told him about a gun his father owned and that he was going to "shoot up" the basketball game. However, P.K.'s statement to the vice principal was that D.J.T.S. was "joking the entire time" he made the alleged threats. When interviewed by the principal, D.J.T.S. told her that he had been joking when he talked about shooting people at the basketball game. At his adjudication hearing, D.J.T.S. argued that the juvenile officer failed to establish that D.J.T.S., as a fourteen-year-old, had the requisite *mens rea*, or mental intent, required for the offense of making a terroristic threat. In the alternative, he alleged that his statements were protected by the First Amendment because he did not intend them to be a threat, but rather a joke. Finally, he argued that at most he was guilty of making a terroristic threat in the third degree. The court found D.J.T.S. guilty of the crime as alleged and, after a dispositional hearing, placed D.J.T.S. on probation. This appeal followed.

Appellant's point on appeal:

1. The trial court erred in finding that Appellant committed the delinquency offense of Making a Terroristic Threat in the Second Degree, because the trial court erroneously applied the law to the facts—violating Appellant's rights to free speech and due process of law, guaranteed by the First and Fourteenth Amendments to the United States Constitution—in that: Appellant did not communicate a "true threat;" instead, Appellant joked about shooting up a basketball game at his middle school; but regardless of how offensive those jokes were, they were not serious enough to render Appellant's speech unprotected.

**WD85179**  
**State of Missouri, Respondent,**  
**v.**  
**Joseph C. Griest, Appellant.**

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Appellant Joseph Griest appeals the judgment of the Circuit Court of Jackson County, finding him guilty of one count of rape in the second degree and sentencing him to eight years' imprisonment. Before evidence was presented at trial, a stipulation was read to the jury stating that the parties did not dispute Griest and D.C. engaged in sexual intercourse. The parties only disputed whether the sexual intercourse was consensual. The facts as alleged at trial were that on the evening of September 3, 2018, the victim, D.C., and Griest both stayed at the home of a mutual friend. D.C. testified that the next morning her friend left for work, leaving her alone in the house with Griest. D.C. alleged that Griest asked her to help him look for a carjack and directed her to look in a bag in her friend's bedroom. While she was in the bedroom, Griest began rubbing her shoulders and touching her arms. D.C. told him several reasons why she did not want to, or could not, have sex at that time. D.C. testified that Griest then pushed her onto the bed and began having sex with her while she continued to tell him no. After the sexual intercourse, D.C. went to the kitchen. Griest offered her food and asked if she would like to go somewhere with him. Eventually Griest left the house. D.C. called her grandmother and asked for a ride. After D.C.'s grandmother arrived at the house, D.C. called the police and reported that Griest had raped her. She went the hospital shortly thereafter, where she was examined and a rape kit was collected. According to the examination report, D.C.'s back was "scratched," but no genital injuries were observed. A photo of D.C.'s back was admitted at trial as State's Exhibit 15, over the objection of the defense. Griest testified in his own defense at trial. He alleged that, immediately prior to the sexual intercourse, D.C. and he had been flirting. They began to kiss, and D.C. laid down on the bed. He alleged that D.C. never stated she did not want to have sex or told him to stop. Although charged with rape in the first degree, a jury found Griest guilty of the lesser-included offense of rape in the second degree. Following a sentencing hearing, the court sentenced Griest to eight years' imprisonment. This appeal followed.

Appellant's points on appeal:

1. The trial court erred in finding that Mr. Griest withdrew his request to proceed to trial *pro se* pursuant to the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 18(a) of the Missouri Constitution, because it made improper statements following Mr. Griest's valid assertion of his right to self-representation, in that Mr. Griest made a timely, unequivocal, knowing, and intelligent assertion of his right to self-representation; and the trial court continued to question and coerce Mr. Griest after the valid assertion had already been made.
2. The trial court erred and abused its discretion in overruling Mr. Griest's request to exclude State's Exhibit 15 from evidence, because the late disclosure of Exhibit 15 violated Missouri Supreme Court Rule 25.03 and Mr. Griest's rights to due process, a fair trial, and to present a defense 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 the Exhibit was the only piece of physical evidence corroborating the complaining witness' claims; a continuance would not have been an

appropriate remedy; and Mr. Griest had no time to formulate a meaningful response to the crucial evidence.

3. The trial court erred and abused its discretion when it admitted, over Mr. Griest's objection, State's Exhibit 15, because admission of the exhibit violated Mr. Griest's right to a fair trial and due process 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 the evidence was neither logically nor legally relevant and its admission prejudiced Mr. Griest because it was the only independent evidence corroborating the testimony of the complaining witness that the sexual encounter between herself and Mr. Griest was not consensual.

**WD85682**

**Carl Hanes, Appellant,**

**v.**

**Department of Corrections and Treasurer of the State of Missouri-Custodian of the Second Injury Fund, Respondents.**

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Appellant Carl Hanes appeals the decision of the Labor and Industrial Relations Commission in finding that he failed to meet his burden of establishing that he sustained an accident or occupational disease pursuant to Missouri Revised Statutes 287.020.2 or 287.067.1. Hanes was an employee of the Missouri Department of Corrections from July 1989 to December 2018. The Department employed him at various levels as a correctional officer. Between 1991 to 2008, Hanes was responsible for taking inmates to obtain x-rays and other radiographic imaging procedures. Hanes alleged that he was exposed to radiation at least once a workday from 1991 to his 1998 promotion. He stated that he was not always afforded protection from a barrier because his responsibility was to remain between the technician and the inmate. He was typically provided a vest that covered his shoulders to his thighs, but he never received protection for his neck area during the procedures. In 2013, Hanes underwent heart surgery, and a post-surgery scan revealed a thyroid issue. A biopsy revealed cancer, and he had his thyroid removed. Hanes alleged that, following his surgeries, he began suffering fatigue and brain fog requiring significant time off work. These complications eventually led him to retire early. Hanes sought workers' compensation benefits from the Department and the Treasurer of Missouri as the Custodian of the Second Injury Fund. The Labor and Industrial Relations Commission denied him benefits, finding that he failed his burden to show that he sustained a compensable occupational disease. This appeal followed.

Appellant's points on appeal:

1. The Labor and Industrial Relations Commission erred in finding that Appellant failed to provide timely notice of an occupational disease to the employer because it misapplied Section 287.420, RSMo, and the holding in *Allcorn v. Tap Enterprises* in that the employee gave notice to his employer within the statutory timeframe once he became aware of the causal connection between his exposure to radiation and his disease, and the employer provided no evidence it was prejudiced by any failure to give written notice of the disease.

2. The Labor and Industrial Relations Commission erred in finding that Appellant did not suffer an occupational disease that arose out of and in the course of employment because there was not sufficient competent evidence in the record to warrant the Commission's finding on medical causation in that the commission misstated and misinterpreted expert testimony and misapplied this Court's holding in *Cheney v. City of Gladstone*.
3. The Labor and Industrial Relations Commission erred in failing to award medical expenses, future medical treatment, permanent partial disability, and permanent total disability from the Second Injury Fund because it failed to adequately address these issues in that the Commission failed to make findings of fact and conclusions of law and concurrently found the issues were moot.