

**Missouri Court of Appeals, Western District
Division 1**

**Janet Sutton, Presiding Judge
Gary D. Witt, Judge
W. Douglas Thomson, Judge**

**October 14, 2025
Missouri Western State University
St. Joseph, Missouri**

WD86568

State of Missouri, Respondent,

v.

Ian James McCarthy, Appellant.

Appellant Ian McCarthy appeals from the judgment of the Circuit Court of Jackson County which, following a jury trial, found him guilty of first-degree murder and sentenced him to life in prison, without the possibility of parole. The parties agreed that, on the night of August 6, 2014, McCarthy stopped at a gas station where he turned off his headlights. A police officer witnessed McCarthy then leave the gas station without turning back on his headlights. As a result, the officer initiated a traffic stop. After stopping his vehicle, McCarthy got out holding an AR-15. The officer drew his gun in response, and the two exchanged gun fire. McCarthy shot the officer in the chest, killing him. At trial, McCarthy did not dispute that he shot the officer. Instead, McCarthy argued that he could not be guilty of murder in the first-degree because he did not have the requisite deliberation required. The jury found McCarthy guilty of first-degree murder but could not arrive at a verdict on the death penalty. The circuit court declined the death penalty and imposed a sentence of life without the possibility of parole. This appeal followed.

Appellant's points on appeal:

1. The trial court abused its discretion, in violation of Mr. McCarthy's rights to due process, a fair trial, and to not testify, 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 failed to declare a mistrial, because it is improper for a prosecutor to directly comment on a defendant's exercise of his right to not testify, under certain circumstances, a mistrial is the only appropriate remedy, in that the prosecutor made an improper comment on Mr. McCarthy's failure to testify, and while the court instructed the jury to disregard it, such an instruction was insufficient

because it directly impacted the central issue of deliberation which was solely known by Mr. McCarthy, the argument tapped into the jurors' natural instincts, this was not a case in which overwhelming evidence precludes prejudice, and other errors impacted the jury's consideration of deliberation as well; thus, it cannot be said the error was harmless beyond a reasonable doubt, making a mistrial the appropriate remedy.

2. The trial court abused its discretion, in violation of Mr. McCarthy's rights to due process and a fair trial, 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 failed to issue a corrective instruction, because repeated incorrect assertions and questions by a prosecutor on the same issue require an admonishment before the jury, in that the prosecutor repeatedly and erroneously referred to Mr. McCarthy as [Psychiatrist's] client, which misled the jury, and while the court eventually stopped the State's cross and recross after repeated violations, the court never issued an admonishment of the prosecutor in front of the jury.
3. The trial court plainly erred, in violation of Mr. McCarthy's rights to due process and a fair trial, 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 failed to stop the prosecutor's improper argument, because it is improper for a prosecutor to argue the jury should base its decision on irrelevant information that does not align with the elements of an offense, in that the prosecutor made a comparative trauma argument in close that encouraged the jury to pit Mr. McCarthy's relevant life trauma against the irrelevant trauma caused by his offense, and manifest injustice resulted.
4. The prosecution plainly erred when it engaged in misconduct, in violation of Mr. McCarthy's rights to due process and a fair trial, under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, §§ 10 and 18(a), of the Missouri Constitution, because it is improper for a prosecutor to argue the jury should base its decision on irrelevant information that does not align with the elements of an offense, in that the prosecutor made a comparative trauma argument in close that encouraged the jury to consider Mr. McCarthy's relevant life trauma against the irrelevant trauma caused by his offense, and manifest injustice resulted.

WD87857

**In the Interest of: B.D.W., Juvenile; Juvenile Officer, Respondent,
v.
N.W., Appellant.**

Appellant N.W. (“Mother”) appeals the judgment of the Circuit Court of Jackson County terminating her parental rights as to B.D.W. (“Child”). Child was put into the care and custody of the Children’s Division in July 2021, when the child was close to two years old. It was alleged that Mother had a history of suicidal and homicidal ideations and, that, in June of 2021, Mother had intended to drive herself, her pets, and her child off a cliff. The Petition to Terminate Parental Rights alleged, and the circuit court found, that Mother had a mental condition that was permanent or that there was no reasonable likelihood that the condition would be reversed. The circuit court also found that Mother had failed to provide Child with adequate food, clothing, shelter, education, or other care necessary. The court terminated Mother’s parental rights, and this appeal followed.

Appellant’s points on appeal:

1. The trial court erred in terminating Mother’s parental rights because the Juvenile Officer failed to meet the burden of proof, in that no clear, cogent and convincing evidence was presented showing the minor child was abused or neglected by Mother.
2. The trial court erred in terminating Mother’s parental rights because the Juvenile Officer failed to meet the burden of proof, in that no clear, cogent and convincing evidence was presented showing that the conditions which led to the assumption of jurisdiction still persist or conditions of a potentially harmful nature continue to exist.
3. The trial court erred in terminating Mother’s parental rights because the Juvenile Officer failed to meet the burden of proof in that no substantial evidence was presented showing the termination of parental rights was in the child’s best interests.

WD87306

Floella McLarney, Appellant,

v.

Sarah Clark et al., Respondents.

Appellant Floella McLarney appeals from the judgment of the Circuit Court of Andrew County regarding the ownership and transfer of certain property. As alleged by the parties, McLarney owned and lived on farm in Andrew County with her husband for over sixty years. After her husband's death, McLarney sold the family home on the farm to a neighbor but retained ownership of the remaining 23 acres of land. McLarney financially supported her adult son T.M. McLarney paid for T.M. to build a place to live on her property and allowed him to live with her while he did so. In 2021, McLarney began to have financial difficulties and moved in with her granddaughter and her granddaughter's husband, Respondents Sarah and Roger Clark. The Clarks and McLarney entered into an agreement in which McLarney would deed her property to Sarah Clark and the Clarks would build McLarney a house on the property where she could live for the rest of her life. McLarney executed a warrantee deed for the property to Sarah Clark on January 27, 2022. At trial, no written contract memorializing the transaction was offered into evidence, and the parties disputed whether a contract ever existed. In March 2022, the parties had a "falling out" over T.M. The Clarks alleged that T.M. threatened them because he was upset that McLarney had deeded them the property. T.M. allegedly wanted written assurances that he could stay on the land after McLarney's death. McLarney was allegedly upset because the Clarks indicated T.M. would not be allowed to stay on the property. In July 2022, the Clarks sought to evict T.M. from the property. McLarney demanded the Clarks unwind the transaction. In April 2023, McLarney filed suit seeking to formally rescind the oral contract, to set aside the deed transferring the property, and for damages. Following a bench trial, the court denied McLarney's claims but ordered that the Clarks fulfill their obligation to build McLarney a home on the property. This appeal followed.

Appellant's points on appeal:

1. The court erred in denying McLarney's claim for breach of contract even while ordering Defendants to specifically perform their obligations under the oral agreement because Defendants' material breaches of the agreement entitle McLarney to the recession and damages remedies she sought under Missouri law in that (1) Defendants admitted at trial that their promise to allow McLarney's son to remain on the property for the rest of his life was a very important part of the deal to McLarney; (2) Defendants admitted that they evicted McLarney's son off the farm; (3) that Defendants admit that by the time this case was filed, they had not built the home for McLarney as promised, and (4) there is no evidence that

Defendants' failures to perform were due to an act of God, the law, or some act of McLarney.

2. The trial court erred in denying McLarney's claim to set aside the deed as void under Missouri's Statute of Frauds because there is no applicable exception to the statute's requirement that the parties put in writing their oral agreement for McLarney to transfer the farm to Sarah Clark in that the record evidences no contract or memoranda setting forth the essential terms of the parties' agreement and Defendants' alleged partial performance cannot satisfy Missouri's narrowly drawn equitable exception to those requirements.

WD87598

Kathleen Louise Hicks, Respondent,

v.

Commercial Metals Company, et al., Appellants.

Appellants Commercial Metals Company and CMC Steel Fabricators, Inc. ("CMC") appeal the judgment of the Circuit Court of Caldwell County finding in favor of Respondent Kathleen Hicks on her claims for employment retaliation in response to her exercising her rights under the Missouri Worker's Compensation Act. Hicks worked at CMC's Polo plant from January 2017 until August 2018. As alleged in the petition, Hicks was injured while operating a machine at the Polo plant. Hicks had been on medical leave from the plant for more than six months when CMC terminated her. Hicks filed suit alleging that CMC unlawfully discharged her in retaliation for her worker's compensation claim. Hicks also brought a claim for common law wrongful termination but that claim was dismissed by the circuit court. Following a jury trial, in accordance with the verdict, the court awarded Hicks \$90,000 in back pay damages and \$300,000 in non-economic damages. Following trial, CMC filed a juror misconduct motion alleging that the father of Hicks' attorney impermissibly spoke with the jurors for at least five minutes outside of the courthouse while the trial was in recess. Hicks opposed the motion and alleged that security footage from the courthouse did not support CMC's claims. Hicks then sought sanctions, alleging that CMC engaged in bad faith misconduct by filing the motion. The circuit court awarded Hicks \$312,450 in attorneys' fees, which the court asserted represented the reasonable fee for the total number of hours her attorneys billed for the case following the juror misconduct motion. This appeal followed.

Appellants' points on appeal:

1. The circuit court erred in denying CMC's motions for directed verdict and judgment notwithstanding the verdict because plaintiff failed to present

substantial evidence that her workers' compensation claim was the motivating factor in her discharge in that plaintiff did not offer proof of actionable conduct demonstrating that her workers' compensation claim had a determinative influence on CMC's decision to terminate her employment.

2. The circuit court erred in sanctioning CMC because its attorneys' fee award was excessive and not limited to fees caused by the alleged misconduct in that the circuit court ordered CMC to pay plaintiff's attorneys' fees for the entire case based on a withdrawn, post-trial motion.
3. The circuit court erred in denying CMC's motion for new trial or remittitur because plaintiff's termination did not cause her lost wages in that plaintiff admitted that she was physically unable to return to work and she did not mitigate her damages.
4. The circuit court erred in denying CMC's motion for new trial or remittitur because her alleged non-economic damages were not directly caused by her termination in that her garden variety emotional distress was caused by her injury.