

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

**Janet Sutton, Presiding Judge
Mark D. Pfeiffer, Judge
Gary D. Witt, Judge**

**March 17, 2025
Columbia College
Columbia, Missouri**

WD86367

State of Missouri, Respondent,

v.

Vontez G. Howard, Appellant.

Appellant Vontez Howard appeals the judgment of the Circuit Court of Jackson County finding him guilty of two counts of second-degree murder, unlawful use of a weapon, first-degree robbery, and four counts of armed criminal action. As alleged at trial, on March 1, 2021, K.L.B. and K.G. were driving a Lincoln Town Car that was being pursued by two men in a red Outlander SUV. Based on witnesses and surveillance footage, it appeared that the Lincoln initially crashed into a tree at the intersection of Thompson and Monroe Avenue. After the Lincoln crashed, two men from the Outlander approached the Lincoln and tried to open the doors. The Lincoln then began moving again, the two men returned to the Outlander, and the Outlander resumed following the Lincoln. Shortly thereafter, one of the men in the Outlander fired twelve shots into the Lincoln, hitting and killing both K.L.B. and K.G. The Lincoln then rolled down the street, collided with another tree, and caught fire. Neighbors attempted to put the fire out until emergency personnel arrived. Based on descriptions and video of the Outlander, police determined it belonged to R.F. Howard, who was dating R.F., had been previously known to drive the Outlander and was seen by police driving the Outlander after the shooting. R.F. confirmed that she owned the Outlander and, that, at times, it was driven by her boyfriend, Howard. Cell phone records also showed Howard to be in the vicinity of the events above. Through their investigation police identified E.D. as the other occupant of the Outlander. A jury found Howard guilty of two counts of second-degree murder, unlawful use of a weapon, first-degree robbery, and four counts of armed criminal action. The circuit court sentenced Howard to a total of sixty years' imprisonment. This appeal followed.

Appellant's points on appeal:

1. The trial court erred, in violation of Howard's rights to due process, a fair trial, and a jury 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 found there was sufficient evidence to sustain Howard's conviction on Count I, second-degree murder, and entered a judgment of conviction, because to find a defendant guilty of a crime there must be sufficient evidence to support his involvement in the crime, in that there was insufficient evidence to establish Howard either was the person who shot and killed K.L.B. or purposely aided E.D. in doing so.

2. The trial court erred, in violation of Howard's rights to due process, a fair trial, and a jury 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 found there was sufficient evidence to sustain Howard's conviction on Count II, armed criminal action, and entered a judgment of conviction, because to find a defendant guilty of armed criminal action, there must be sufficient evidence the defendant committed the underlying felony, in that there was insufficient evidence to find Howard committed the underlying felony (as raised in Point I), there is insufficient evidence to support Howard's armed criminal action conviction.
3. The trial court erred, in violation of Howard's rights to due process, a fair trial, and a jury 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 found there was sufficient evidence to sustain Howard's conviction on Count III, second-degree murder, and entered a judgment of conviction, because to find a defendant guilty of a crime there must be sufficient evidence to support his involvement in the crime, in that there was insufficient evidence to establish Howard either was the person who shot and killed K.G. or purposely aided E.D. in doing so.
4. The trial court erred, in violation of Howard's rights to due process, a fair trial, and a jury 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 found there was sufficient evidence to sustain Howard's conviction on Count VI, armed criminal action, and entered a judgment of conviction, because to find a defendant guilty of armed criminal action, there must be sufficient evidence the defendant committed the underlying felony, in that there was insufficient evidence to find Howard committed the underlying felony (as raised in Point III), there is insufficient evidence to support Howard's armed criminal action conviction.
5. The trial court erred, in violation of Howard's rights to due process, a fair trial, and a jury 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 found there was sufficient evidence to sustain Howard's

conviction on Count V, unlawful use of a weapon, and entered a judgment of conviction, because to find a defendant guilty of a crime there must be sufficient evidence to support his involvement in the crime, in that there was insufficient evidence to establish Howard either was the person who shot at a motor vehicle or purposely aided E.D. in doing so.

6. The trial court erred, in violation of Howard's rights to due process, a fair trial, and a jury 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 found there was sufficient evidence to sustain Howard's conviction on Count VI, armed criminal action, and entered a judgment of conviction, because to find a defendant guilty of armed criminal action, there must be sufficient evidence the defendant committed the underlying felony, in that there was insufficient evidence to find Howard committed the underlying felony (as raised in Point V), there is insufficient evidence to support Howard's armed criminal action conviction.
7. The trial court erred, in violation of Howard's rights to due process, a fair trial, and a jury 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 found there was sufficient evidence to sustain Howard's conviction on Count VII, first-degree robbery, and entered a judgment of conviction, because to find a defendant guilty of a crime there must be sufficient evidence to support his involvement in the crime, in that there was insufficient evidence to establish Howard either was the person who took K.G.'s phone or purposely aided E.D. in doing so.
8. The trial court erred, in violation of Howard's rights to due process, a fair trial, and a jury 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 found there was sufficient evidence to sustain Howard's conviction on Count VIII, armed criminal action, and entered a judgment of conviction, because to find a defendant guilty of armed criminal action, there must be sufficient evidence the defendant committed the underlying felony, in that there was insufficient evidence to find Howard committed the underlying felony (as raised in Point VII), there is insufficient evidence to support Howard's armed criminal action conviction.
9. The trial court erred, in violation of Howard's rights to due process, a fair trial, and a jury 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 found there was sufficient evidence to sustain Howard's conviction on Count VII, first-degree robbery, and entered a judgment of conviction, because to find a defendant guilty of first-degree robbery there

must be sufficient evidence to prove the item alleged to have been taken was actually taken, in that there was insufficient evidence to establish K.G.'s phone was taken during the course of the shooting.

10. The trial court erred, in violation of Howard's rights to due process, a fair trial, and a jury 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 found there was sufficient evidence to sustain Howard's conviction on Count VIII, armed criminal action, and entered a judgment of conviction, because to find a defendant guilty of armed criminal action, there must be sufficient evidence the defendant committed the underlying felony, in that there was insufficient evidence to support the first-degree robbery conviction (as raised in Point IX), there is insufficient evidence to support Howard's armed criminal action conviction.
11. The trial court plainly erred, in violation of Howard's rights to due process and to be free from double jeopardy, under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, §§ 10 and 19, of the Missouri Constitution, when it entered convictions for second-degree murder and unlawful use of a weapon, because Missouri has a general-specific double jeopardy prohibition, in that convictions for both second-degree murder and unlawful use of a weapon for the same acts, and as charged, violates the general-specific double jeopardy prohibition.
12. The trial court erred, in violation of Howard's rights to due process under the Fourteenth Amendment to the United States Constitution and Article I, §§ 10 and 18(a) of the Missouri Constitution, when it pronounced an ambiguous sentence, in that sentences must be clear on how offenses are supposed to run in relation to one another, in that the oral pronouncement was that "Counts I and III run consecutive to each other and concurrent with Counts V and VII. The Court further finds that Counts II, IV, VI and VIII are to run concurrent with each other and consecutive with their predate [sic] felonies in Counts I, II, V and VII", and the record does not clear up the ambiguity.

WD87443

Christopher R. Ellis, Appellant,

v.

Tort Victim's Compensation Fund, Respondent.

Appellant Christopher Ellis appeals from the decision of the Labor and Industrial Relations Commission denying him compensation from the Tort Victims' Compensation Fund. As established below, Ellis was an employee of JK Concrete. On July 21, 2017, Ellis was setting walls for a storm shelter in a ditch when he suffered heat stroke. He was

transported by ambulance for medical care. It was ultimately determined that Ellis suffered 2% Permanent Partial Disability to the body as a whole as a result of an injury he sustained during his employment. An Administrative Law Judge awarded Ellis a total of \$9,040.39 as part of his worker's compensation claim. JK Concrete did not have workers' compensation insurance. Ellis filed his award in the Benton County Circuit Court, which entered a judgment for the award, but Ellis alleged his employer made no payment. Ellis then filed a claim with the Tort Victims' Compensation Fund ("Fund") to recover the uncollected judgment. An Administrative Law Judge determined that Ellis did not meet the definition of a tort victim under Missouri Revised Statute section 537.615, and the Fund was not intended for claimants to recover workers' compensation benefits from an uninsured employer. This decision was affirmed by the Labor and Industrial Commission. This appeal followed.

Appellant's point on appeal:

1. The Missouri Labor and Industrial Relations Commission erred in denying Christopher R. Ellis Tort Victims' Compensations Fund claim because Christopher R. Ellis is an uncompensated tort victim under §537.681 RSMo, in that a workers' compensation claim for heat stroke is a personal injury lawsuit as defined in §537.675 RSMo.

WD87426

**In Re the Marriage of: Holly Christine Hyde and Michael James Hyde;
Holly Christine Hyde, Appellant,
v.
Michael James Hyde, Respondent.**

Appellant Holly Hyde ("Wife") appeals the judgment entered by the Circuit Court of Boone County, dissolving her marriage to Respondent Michael Hyde ("Husband"). On January 12, 2021, the trial court entered its judgment which adopted in whole a separation and property settlement agreement signed by both parties. As part of the settlement, Husband was to pay Wife maintenance in certain amounts for a total of 96 months. But, the agreement also stated that the maintenance obligations would terminate "upon death or remarriage of either party." In 2023, Husband informed Wife that he intended to remarry and, under the terms of their settlement, his maintenance obligation would terminate. Wife filed a motion to set aside the agreement or, in the alternative, a motion for a nunc pro tunc to fix a clerical mistake. Wife asserted that the settlement was intended to state that Husband's obligation for maintenance would cease upon the death of either party or the remarriage of the party receiving maintenance. Wife further alleged that the language was manifestly unjust in that Husband had the ability to cease his maintenance obligations at any point. Husband asserted that a nunc pro tunc could not be used to amend the prior judgment entered by the court. The circuit court granted Husband's motion to dismiss. This appeal followed.

Appellant's point on appeal:

1. The trial court erred in granting Respondent's Motion to Dismiss Appellant's Motion for Nunc Pro Tunc Relief and thereby denying Appellant's Motion because Appellant stated a claim for Nunc Pro Tunc relief under Rule 74.06, in that Appellant sufficiently alleged that the language at issue in the Judgment and Decree of Dissolution of Marriage was the result of a clerical mistake arising from oversight or omission.

WD87279

Thomas Hasselbring, Appellant,

v.

Macon County Nursing Home District and Treasurer of Missouri as Custodian of Second Injury Fund, Respondents.

Appellant Thomas Hasselbring appeals from the decision of the Labor and Industrial Relations Commission ("Commission") denying him worker's compensation benefits. As determined below, Hasselbring was an employee of Macon County Nursing Home District ("District") and was responsible for transporting residents to and from nursing facilities. On November 3, 2021, Hasselbring was unloading a resident in an electric wheelchair from the transportation van. When traveling down a ramp from the van, the resident's wheelchair rolled over Hasselbring's foot. Hasselbring alleged that he was in severe pain and could not control his foot after the accident. He immediately went home. His wife removed his sock and noted that his left foot was white from lack of circulation. After going to his local emergency room, Hasselbring was transported by helicopter to Boone Hospital where an emergency surgery was performed on his left foot. The following day, his left leg was amputated above the knee due to lack of circulation to the leg. The parties stipulated to the workplace injury but the District challenged whether the resulting amputation was caused by the workplace injury, or a preexisting aneurysm in his left leg that has been previously diagnosed but not treated. An administrative law judge initially found that the workplace injury was the prevailing factor in causing the amputation of Hasselbring's leg and awarded medical bills and disability accordingly. The District appealed to the Commission. The Commission found that the November 3, 2021 accident was "merely a triggering or precipitating factor" in causing Hasselbring's medical condition and disability. As such, the Commission reversed the previous award and denied Hasselbring's claim for compensation. This appeal followed.

Appellant's points on appeal:

1. The Commission erred in its Final Award Denying Compensation, because under section 287.495 RSMo, there was not sufficient competent evidence and the Commission found against the weight of the evidence, in that the uncontradicted

medical evidence proved that Appellant suffered a crush injury to his left foot in which the workplace accident was the prevailing factor.

2. The Commission erred in its Final Award Denying Compensation because, under section 287.495 RSMo, it acted in excess of its powers, in that it applied the prevailing factor test to the treatment for the foot injury, in contravention to the holding of *Tillotson*, when it should have determined that Appellant's treatment flowed from the initial compensable foot injury.
3. The Commission erred in its Final Award Denying Compensation because, under section 287.495 RSMo, it acted in excess of its powers, in that it adopted Dr. R's causation opinion in contravention of RSMo 287.120, as Dr. R's considered the Employee's perceived negligence in reaching his opinion regarding prevailing factor.
4. The Commission erred in its Final Award Denying Compensation, because under section 287.495 RSMo, there was not sufficient competent evidence and the Commission found against the weight of the evidence, in that the Commission adopted the opinion of Dr. R's, who used an incorrect standard of causation when he considered the perceived negligence of the Appellant in forming his causation opinion.
5. The Commission erred in its Final Award Denying Compensation, because under section 287.495 RSMo, there was not sufficient competent evidence and the Commission found against the weight of the evidence, in that the Commission substituted its medical opinion that Appellant suffered from "cold foot" for the expert medical testimony that he did not suffer from that condition.