

**MISSOURI COURT OF APPEALS--WESTERN DISTRICT**  
**DIVISION IV**  
**GARY D. WITT, CHIEF JUDGE, PRESIDING**  
**ALOK AHUJA, JUDGE**  
**MARK D. PFEIFFER, JUDGE**  
**THOMAS NICHOLS CHAPMAN, JUDGE**  
**NOVEMBER 2, 2022**  
**UNIVERSITY OF MISSOURI LAW SCHOOL**  
**COLUMBIA, MISSOURI**

**WD84895**

**State of Missouri, Respondent,**

**v.**

**Kerry Lane McBroom, Appellant.**

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Appellant Kerry Lane McBroom appeals the judgment of the Daviess County Circuit Court sentencing him to a total of 19 years' imprisonment for felony driving while intoxicated, felony driving while revoked, and misdemeanor possession of marijuana. The evidence at trial showed that Missouri State Highway Patrol Trooper Michael Cline was parked on Otter Road at Route DD in Daviess County on May 25, 2022. He was observing traffic when he noticed McBroom's vehicle. Trooper Cline testified that he was concerned due to the "time of night and the route of travel [the vehicle] was taking." He began to follow the vehicle. Trooper Cline testified that he entered the license plate into his in-car computer. The registered owner came back as McBroom, and Trooper Cline observed McBroom to be driving. Trooper Cline testified that, according to his computer, McBroom's driving license was revoked. At this point, Trooper Cline initiated a traffic stop. During the stop, Trooper Cline observed McBroom's eyes to be bloodshot and his speech slurred. He also noticed a partially smoked hand-rolled cigarette on the floorboard of the vehicle and smelled the odor of marijuana coming from the vehicle. Trooper Cline instructed McBroom to exit his vehicle and conducted field sobriety tests. According to Trooper Cline's testimony, McBroom showed multiple signs of impairment throughout multiple tests. McBroom was given a portable breathalyzer test at the scene of the stop which did not show the presence of alcohol. Based on McBroom's failures in the field sobriety tests, Trooper Cline arrested McBroom. A jury found McBroom guilty of driving while intoxicated, driving while revoked, and possession of marijuana, and the court sentenced McBroom to a total of 19 years' imprisonment. This appeal followed.

Appellant's points on appeal:

1. The trial court erred in denying the Appellant's Motions for Judgment of Acquittal at the Close of the State's Case and at the Close of All Evidence and by entering judgment and sentence against the Appellant for driving while intoxicated, under the influence of marijuana, because by doing so the trial court violated the Appellant's rights to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and by Article I, Section 10 of the Missouri Constitution, in that the prosecution failed to prove the elements of driving while intoxicated by marijuana, by not

producing sufficient evidence to convince a reasonable trier of fact that Appellant was impaired to the extent that it affected his driving ability.

2. The trial court erred in overruling the Appellant's Motions for Judgment of Acquittal at the Close of the State's Evidence and at the Close of All Evidence and entering judgment and sentence against the Appellant for possession of marijuana because there was insufficient evidence as a matter of law to convict the Defendant of knowing possession of marijuana. The Defendant was thereby denied his right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Missouri Constitution.
3. The trial court erred in failing to sustain the Defendant's Second Amended Motion to Suppress Evidence which was taken with the case at trial. The prolonged detention of the Defendant without reasonable suspicion of driving while intoxicated and beyond the time reasonably required to complete a traffic ticket was unlawful and violated the Defendant's rights as guaranteed by the Fourth, Fifth and Fourteenth Amendments to the United States Constitution and Article I, Sections 10, 15 and 19 of the Missouri Constitution in that the officer gave the Defendant no choice but to submit to his orders when there was no reasonable suspicion to believe that the Defendant was driving while impaired.
4. The trial court erred in failing to sustain the Defendant's Second Amended Motion to Suppress Evidence which was taken with the case at trial. The Defendant was arrested without probable cause to believe that he had committed the crime of driving while intoxicated or impaired by marijuana. Therefore, the Defendant's constitutional rights against unreasonable searches and seizures and to due process of law as guaranteed by the Fourth, Fifth and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 15 of the Missouri Constitution were violated.
5. The trial court erred in refusing to instruct the jury according to the Appellant's proffered verdict director, Instruction "A", which was a modified version of MAI 4th Instruction No. 431.02, because this Court recognized that the term "intoxicated condition" needed further explanation to make it unambiguous. The ambiguous instruction that was given denied the Appellant his right to due process of law, a fair trial and impartial jury as guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 10 and 18(a) of the Missouri Constitution, and the Appellant was prejudiced thereby.

**WD84630**  
**Ryan Lee Berning, Appellant,**  
**v.**  
**State of Missouri, Respondent.**

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Appellant Ryan Berning appeals the judgment of the Buchanan County Circuit Court denying his Rule 24.035 amended motion for post-conviction relief. Berning pleaded guilty to child molestation in the second degree and was sentenced to fifteen years' imprisonment. Berning's motion alleged that he has severe mental disabilities and his plea counsel was ineffective in failing to: (1) move for a competency evaluation; (2) allowing Berning to plead guilty when he was not competent; and (3) failing to call an expert to testify regarding Berning's intellectual disabilities at sentencing. The motion court held an evidentiary hearing. Following the hearing, the court entered judgment denying Berning's motion. The motion court held that Berning failed to demonstrate that he was incompetent to enter a plea of guilty. The court also affirmatively found that Berning was competent to enter a plea and, as a result, plea counsel was not ineffective for failing to request a mental evaluation of Berning in order to determine his competency. This appeal followed.

Appellant's points on appeal:

The motion court clearly erred in denying Mr. Berning's claim that his attorney provided ineffective assistance of counsel when he failed to file a motion for mental evaluation pursuant to Section 552.020, RSMo. In doing so, the motion court violated Mr. Berning's rights to due process of law, and effective assistance of counsel under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 & 18(a) of the Missouri Constitution, because the correct standard is that there is a factual basis indicating a questionable mental status and there is a reasonable probability that the Movant was not competent at the time in question in that the motion court found that Movant failed to prove that Movant was actually incompetent at the time in question when reaching its decision.

**WD84917**  
**Missouri Corrections Officers Association, Inc., et al., Respondents,**  
**v.**  
**Missouri Office of Administration, et al., Appellants.**

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Appellants, Missouri Office of Administration ("OA"), OA's Commissioner, and OA's Director of the Division of Accounting, appeal the judgment of the Cole County Circuit Court entered in favor of the Missouri Corrections Officers Association, Inc. ("MOCO"), Terry Engberg, and Tina Courtway. MOCO began in April 2000 to benefit its members who were officers of the Missouri Department of Corrections. Beginning sometime around July 2000, MOCO requested that the State of Missouri permit its members to deduct MOCO dues from their paychecks. At the time, MOCO was not the exclusive bargaining representative of the

Department of Corrections officers. OA granted MOCOIA payroll-deduction authority on July 28, 2000, as an “employee association.” In 2004, MOCOIA became the exclusive bargaining representative of Department of Corrections Officers I and II. Around 2010, MOCOIA began admitting retirees as auxiliary members of its organization. In December 2019, OA stopped deducting dues from State-employee MOCOIA members’ paychecks because OA believed MOCOIA to be a labor union, not an employee association. In January 2020, OA’s attorney informed MOCOIA’s attorney that MOCOIA did not qualify as an employee association because it admitted non-State employees as auxiliary members. In February 2020, OA filed Emergency Amendment and Proposed Rules, amending the definition of “employee association” to clarify that labor unions could not be employee associations. Also, in February 2020, MOCOIA amended its Articles of Incorporation to remove provisions allowing auxiliary membership. On February 21, 2020, the emergency rule became effective and, separately, the State accepted MOCOIA’s amended Articles of Incorporation and Bylaws. Thereafter, MOCOIA again requested OA to resume payroll deductions. On March 17, 2020, OA informed MOCOIA that it could not resume payroll deductions because (1) the emergency rule was effective before OA received MOCOIA’s request and (2) MOCOIA failed to submit at least 100 State-employee-signed applications, signed within the 90-day period after MOCOIA requested dues deductions as required by the rules. On March 24, 2020, the Respondents filed suit against Appellants challenging, among other things, the emergency rule and OA’s decision to revoke MOCOIA’s payroll-deduction authority. The circuit court entered judgment finding that OA unlawfully, arbitrarily, and capriciously stopped deducting MOCOIA’s dues in December 2019, that the emergency rule and final rules violated the Missouri Constitution, and that OA unlawfully, arbitrarily, and capriciously refused to deduct MOCOIA dues in March 2020. The court ordered OA to resume payroll-deductions for employees who were having dues deducted in December 2019 and to accept future MOCOIA dues-deduction authorizations. This appeal followed.

Appellants’ points on appeal:

1. The trial court erred in holding that OA’s December 2019 decision discontinuing MOCOIA’s dues deductions was unlawful under section 536.150, because MOCOIA did not meet the regulatory requirements for dues deduction, in that (a) it could not deduct dues as a labor union because it had no existing labor agreement; (b) it could not deduct dues as an employee association because it was not a “group of state employees”; and (c) it could not deduct dues as an employee association because 1 CSR 10-3.010 does not permit labor unions to be employee associations.
2. The trial court erred in holding that OA’s December 2019 decision discontinuing MOCOIA’s dues deductions was arbitrary, capricious, and unreasonable under section 536.150, because the circuit court’s factual findings establish arbitrary-and-capricious conduct, in that 1 CSR 10-3.010 (2019) required OA to deny dues deductions.
3. The trial court erred in holding that the Emergency and Final Rules (“Rules”) violate Article I, section 29 of the Missouri Constitution, because the Rules did not violate the right to “bargain collectively,” in that (a) whether MOCOIA may deduct dues does not impinge on its employees’ rights to bargain collectively and therefore the Rules are not subject to any scrutiny; (b) in the alternative, the Rules are subject to rational-basis

scrutiny because article I, section 29 is not a fundamental right or the Rules do not severely restrict or heavily burden that right; (c) the Rules survive rational-basis scrutiny because they are rationally related to a legitimate government interest; (d) in the alternative, if strict scrutiny applies, the Rules survive because the State has compelling interests in them and narrowly tailored its Rules to further those state interests.

4. The trial court erred in holding that the Emergency and Final Rules violate Article I, section 8 of the Missouri Constitution, because the Rules did not violate union-members' free-speech constitutional right, in that (a) treating unions with collective bargaining agreements differently from those without affects conduct, not speech, and therefore rational-basis review applies; (b) there is no free-speech right requiring labor unions to receive dues deductions, and therefore rational-basis review applies; (c) the Rules do not severely restrict or heavily burden speech, and therefore rational-basis review applies; (d) the Rules survive rational-basis review because they are rationally related to a legitimate State interest; and (e) in the alternative, if strict scrutiny applies, the Rules survive because they are narrowly tailored to achieve a compelling State interest.
5. The trial court erred in holding that the Emergency and Final Rules violate Article I, section 9 of the Missouri Constitution, because the Rules did not violate union-members' associational rights, in that (a) State employees who have joined unions are not treated differently than State employees who have joined employee associations; (b) because the Rules do not heavily burden or severely restrict union-members' associational rights, rational-basis scrutiny applies; (c) the Rules survive rational-basis review because they are rationally related to a legitimate State interest; and (d) in the alternative, if strict scrutiny applies, the Rules survive because they are narrowly tailored to achieve a compelling State interest.
6. The trial court erred in holding that the Emergency and Final Rules violate Article I, section 2 of the Missouri Constitution, because the Rules did not violate union members' equal-protection rights, in that (a) the equal protection clause does not apply because the comparators are not similarly situated; (b) in the alternative, the Rules neither implicate a suspect class nor a fundamental right implicitly protected by the Constitution, and so are subject to only rational-basis review; (c) the Rules survive rational-basis review because they are rationally related to a legitimate government interest; (d) in the alternative, the Rules survive strict scrutiny because they are narrowly tailored to achieve a compelling government interest.
7. The trial court erred in holding that OA's March 2020 decision denying MOCOAs dues deduction was unlawful under section 536.150, because OA's decision was lawful under the Emergency Rule and under 1 CSR 10-3.010 (2019), in that (a) the Emergency Rule constitutionally prevented labor unions from deducting dues as employee associations; (b) MOCOAs were unable to deduct dues as an employee association because 1 CSR 10-3.010 (2019) and its prior rules treat labor unions and employee associations as mutually exclusive; and (c) to deduct dues as an employee association under 1 CSR 10-3.010 (2019), MOCOAs were required to, but did not, obtain either 100 employee signatures or 100 signed employee applications, within the requisite 90-day window.

8. The trial court erred in holding that OA's March 2020 decision denying MOCO A dues deduction was arbitrary, capricious, and unreasonable under section 536.150, because the circuit court's factual findings do not satisfy the arbitrary-and-capricious standard, in that (a) the Emergency Rule constitutionally required OA to deny dues to labor unions like MOCO A without a collective bargaining agreement; (b) the Emergency Rule prevented a labor union like MOCO A from deducting dues as an employee association; (c) the 2019 Rule required, but MOCO A did not, obtain 100 employee signatures or signed employee applications, within a certain 90-day window; and (d) in the alternative, OA's decision to do so was not arbitrary and capricious because the facts the circuit court relied on were either inapposite, incorrect, or from too long ago to constitute arbitrary-and-capricious action.
9. The trial court erred in awarding MOCO A injunctive relief, because the requirements for equitable injunctive relief have not been met, in that (a) defendants did not act improperly, (b) MOCO A failed to show irreparable harm, and (c) the injunction was against the public interest.