

**MISSOURI COURT OF APPEALS--WESTERN DISTRICT**  
**DIVISION IV**  
**GARY D. WITT, CHIEF JUDGE, PRESIDING**  
**MARK D. PFEIFFER, JUDGE,**  
**THOMAS NICHOLS CHAPMAN, JUDGE**  
**NOVEMBER 3, 2022**  
**COLUMBIA COLLEGE**  
**COLUMBIA, MISSOURI**

**WD85107**

**Diana Barros, Appellant,**

**v.**

**Maria Barros, Mark Alexander Barros, and Jennifer Ann de Barros, Respondents.**

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Appellant Diana Barros appeals the judgment of the Johnson County Circuit Court dismissing her petition to determine heirship relating to the estate of Arnaldo Soares Barros, due to lack of subject matter jurisdiction. According to the petition, Arnaldo Barros was a resident of Broward County, Florida and passed away on December 8, 2018. At the time of his death, Arnaldo Barros was the owner of certain real estate located in Johnson County, Missouri, and was also the holder of a promissory note in the principal sum of \$1,350,000, which was secured by real estate, also located in Johnson County, Missouri. On September 10, 2021, Diana Barros filed her Petition for Determination of Heirship in the circuit court. She named Maria Barros, the surviving spouse of Arnaldo Barros, as well as Mark Alexander Barros and Jennifer Ann de Barros, lineal descendants of Arnaldo Barros, as respondents. On November 1, 2021, Maria Barros filed a motion to dismiss alleging that the circuit court lacked subject matter jurisdiction because, in part, Arnaldo was domiciled in Florida, his will was filed in Florida in 2019, and a “curatorship” was being opened Florida in anticipation of a full probate administration. The motion argued that the petition was precluded by the legal doctrines of abatement, full faith and credit, and comity. The circuit court entered judgment finding that it lacked subject matter jurisdiction and sustaining Maria’s motion to dismiss. This appeal followed.

Appellant’s points on appeal:

1. The trial court erred in dismissing Diana Barros’ “Petition to Determine Heirship” for lack of subject-matter jurisdiction *because* this misapplied the law of Missouri that under section 473.668, RSMo, a court of this state has authority to administer assets of a nonresident decedent within Missouri, and this does not implicate a court’s subject-matter jurisdiction, as this was within the Circuit Court’s original jurisdiction under Mo. Const. Art. V, Section 14 *in that* at the time of his death, the decedent was the owner of real estate and personal property within Missouri, more than one year had elapsed since the decedent’s death, no administration had been brought in any Missouri court, and no domiciliary foreign personal representative had filed with any Missouri court copies of his appointment or of any official bond

**WD84796**  
**State of Missouri, Respondent,**  
**v.**  
**Andrew Head, Appellant.**

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Appellant Andrew Head appeals the judgment of the Adair County Circuit Court sentencing him to twenty years' imprisonment for murder in the second degree and seven years' imprisonment for armed criminal action. The facts at trial showed that on February 6, 2019, Head and his friend Drake went to the apartment of Zoey Babcock. Head had been staying at the apartment. The victim, Izaiha "Zai" McFarland, had previously dated Drake's sister, Maddie. Zoey and Maddie picked up Zai and brought him to Zoey's apartment. When Head and Drake learned of this, they became upset and went to Zoey's apartment so that they could tell Zai to leave. A verbal altercation occurred in Zoey's apartment. Eventually, Drake, Head, Zai, and others left the apartment, and the fight became physical in the hall outside the apartment. According to a witness, Head told Drake to shoot Zai. Drake shot Zai in the chest, and Zai died from his injury. Head told police that he had told Drake to "bust him"—referring to Zai—because he believed that Zai had a gun and Drake was acting in self-defense. Due to Covid-19 protocols, voir dire for the trial occurred in the Moose Lodge instead of the Adair County Courthouse. Some members of the jury pool noted that they had difficulty hearing in the Moose Lodge and did not know whether they would be able to hear in the courthouse once the trial began. One of those persons was chosen for the jury. The jury found Head guilty of murder in the second degree and armed criminal action. The circuit court sentenced Head to a total of twenty years' imprisonment. This appeal followed.

Appellant's points on appeal:

1. The trial court erred by refusing to submit Defense Instructions E, F, G, H, and I, Andrew Head's proposed self-defense instructions, in violation of his right to a fair trial and the right to due process guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 18(a) of the Missouri Constitution, in that, in the light most favorable to giving the instruction, there was substantial evidence Drake Zamboni was not the initial aggressor, that Drake had attempted to retreat from Zai two times, and reasonably believed that Zai was going to imminently cause him serious physical injury as he was running toward him. Thus, the trial court's refusal to submit Defense Instructions E, F, G, H, and I prejudiced Andrew.
2. The trial court abused its discretion in refusing to strike Juror 37 for cause after the juror expressed he had a hearing impairment, in that this action violated Andrew Head's right to a fair trial and the right to due process guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 10, 18(a), and 22(a) of the Missouri Constitution, in that Juror No. 37 served on the jury and, therefore, Andrew did not have a jury of twelve qualified jurors able to deliberate on his guilt, thus prejudicing him.

**WD84750**  
**State of Missouri, Respondent,**  
**v.**  
**Ludwig J. Renner, Appellant.**

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Appellant Ludwig Renner appeals the judgment of the Mercer County Circuit Court finding him guilty of resisting a lawful stop, felony driving while intoxicated, and misdemeanor improper operation of a utility vehicle. Following a jury trial, the court sentenced Renner to four years' imprisonment, suspended execution of sentence, and a fine of \$60.50. The evidence at his trial showed that just after 8 p.m. on August 18, 2018, Missouri State Highway Patrol Corporal Benjamin Hilliard was patrolling in Mercer County when he observed a utility vehicle with a driver and passenger run a stop sign at a high rate of speed. Corporal Hilliard attempted to pull over the utility vehicle, but the driver did not stop. After some pursuit, Corporal Hilliard observed the vehicle nearly hit a propane tank. The driver and passenger got off the utility vehicle, and Corporal Hilliard pursued them on foot, ordering them to stop. Renner was identified as the driver. When Corporal Hilliard approached him, he was carrying a beer bottle. Corporal Hilliard testified that he could smell the odor of alcohol on Renner. Renner was also swaying, his speech was slurred, and his eyes were bloodshot. Corporal Hilliard informed Renner that he was under arrest and asked Renner to place his hands behind his back. Renner refused, and it took Corporal Hilliard several attempts to place Renner in handcuffs. Renner's blood was drawn just after midnight, approximately four hours and 20 minutes after his arrest. The parties stipulated at trial that his blood alcohol content at the time it was drawn was .128%. A jury found Renner guilty as charged, and the court sentenced Renner to a total of four years' imprisonment but suspended the execution of sentence. Renner was placed on probation after 60-day shock incarceration and fined. This appeal followed.

Appellant's points on appeal:

The trial court erred in failing to sustain Appellant's motion for acquittal and motion for new trial because Respondent's expert lacked proper foundation in that her testimony was speculative in nature and the chemical analysis was unreliable as evidence.

**WD85177**  
**Kathryn Crowley, Appellant,**  
**v.**  
**Clarcor/General Electric and Treasurer of the State of Missouri, Custodian of the Second Injury Fund, Respondents.**

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Appellant Kathryn Crowley appeals the award of the Labor and Industrial Relations Commission which found that she was entitled to permanent partial disability benefits but also found that her employer, Clarcor/General Electric, was entitled to a credit due to Crowley's post-injury misconduct. Crowley worked in several different manufacturing positions at an air filtration product manufacturing plant in Slater, Missouri for 31 years. During that time, the

plant was owned by either General Electric or Clarcor. Crawley had some issues with her hands at various times prior to 2014. In July 2014, she sought treatment from her family nurse practitioner for treatment of bilateral hand numbness to her elbows, pain, swelling and tingling. Crawley was scheduled for carpal tunnel surgery. There was a dispute between Crawley and her employer as to whether the issue was covered under worker's compensation. On November 19, 2014, Crawley injured her wrist at work. On November 20, 2014, Clarcor informed Crawley that she needed to take a drug test following the accident. On December 22, 2014, Clarcor terminated Crawley because her drug test results were positive. On January 20, 2015, Crawley filed a claim for worker's compensation for injuries to her wrists due to repetitive motion and trauma during the course of her employment. An administrative law judge ("ALJ") issued an award on April 2, 2021, finding Crawley to have a permanent partial disability but also finding that she had also committed post-injury misconduct. The misconduct credit negated all disability payments. The Industrial Relations Commission adopted and supplemented the award with one dissenting opinion. This appeal followed.

Appellant's point on appeal:

1. The Labor and Industrial Relations Commission erred as a matter of law and acted without and in excess of its powers because the Commission found the provisions of RSMo 287.170 (2014) (post-injury misconduct) to be applicable to an "occupational disease" (bilateral carpal tunnel syndrome) in that, pursuant to RSMo 287.020.3(5) (2014), the term "injury" "shall in no case except as specifically provided in this chapter be construed to include occupational disease in any form", RSMo 287.170 (2014) does not specifically provide that the "injury" of "post-injury misconduct" to include "occupational disease" and, thus, RSMo 287.170.4 (2014) does not apply to "occupational disease."
2. The Labor and Industrial Relations Commission erred as a matter of law and acted without and in excess of its powers because the Commission found employee was terminated from post-injury employment based upon the employee's post-injury misconduct in that such finding is against the overwhelming weight of the evidence and not supported by competent or substantial evidence whereas the overwhelming weight of the evidence and substantial evidence support a finding that employee's actions did not constitute "misconduct."
3. The Labor and Industrial Relations Commission erred as a matter of law and acted without and in excess of its powers because the Commission found for a Section 287.170.4 "post-injury misconduct" credit in favor of employer/insurer for temporary total disability benefits that were previously paid in that section 287.170.4 only applies to temporary total disability benefits that are "payable", meaning benefits "that may, can, or must be paid."
4. The Labor and Industrial Relations Commission erred as a matter of law and acted without and in excess of its powers because the Commission adopted an ALJ finding that employee "was able to compete in the open labor market as of September 9, 2016, and as of October 7, 2016" based upon the absence of restrictions by Concannon on said dates,

and thus, ALJ found employee is not entitled to additional temporary total disability benefits in that the ALJ finding made no analysis of whether employee was “engaged in the rehabilitative process,” such ALJ finding is against the overwhelming weight of the evidence and not supported by competent or substantial evidence where employee was “engaged in the rehabilitative process” from October 7, 2016, through April 27, 2017, and that position is supported by the May 7, 2017, testimony of Concannon who noted that due to employee’s unusually prolonged recovery process, he wanted to give her through April to allow for time for the nerves to thoroughly “wake up” after surgery and to allow for any edema to largely resolve and Concannon placed employee at maximum medical improvement on April 27, 2017, and in addition, the temporary total disability rate found by the Commission reflects an underpayment of temporary total disability in the amount of \$1534.49 for the previously paid temporary total disability time period that employee is owed.

5. The Labor and Industrial Relations Commission erred as a matter of law and acted without and in excess of its powers because the Commission found for permanent partial disability benefits rather than permanent total disability benefits in that the Commission used dates September 9, 2016, SNF October 7, 2017, for the “able to compete in the open labor market” test, which is a test for permanent total disability, not temporary total disability, as employee was still in the “rehabilitative process” and did not use the only and uncontested medical opinion of maximum medical improvement date, being that of Concannon for MMI on April 28, 2016, and substituting their opinion for same would be based upon mere conjecture and speculation as well as against the overwhelming weight of the evidence and not supported by competent or substantial evidence where the overwhelming weight of the evidence competent or substantial evidence support an MMI date of April 28, 2017, and a finding of permanent total disability.