

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

Gary D. Witt, Chief Judge, Presiding  
Alok Ahuja, Judge  
Janet Sutton, Judge

March 16, 2023  
University of Missouri Law School  
Columbia, Missouri

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**WD85067**

**Joanthony D. Johnson, Appellant,**

**v.**

**State of Missouri, Respondent.**

Appellant Joanthony Johnson appeals the judgment of the Circuit Court of Boone County denying his 29.15 motion for post-conviction relief. Johnson was convicted of two counts of sodomy in the first degree, two counts of rape in the first degree, and one count of attempted sexual abuse in the first degree. The court sentenced Johnson to 100 years' imprisonment. This court affirmed his conviction on direct appeal. Johnson was initially charged with one count of rape in the first-degree for knowingly having intercourse with M.V., who was incapable of consent. M.V. had been drinking and using drugs at a bar with her friend when she met Johnson. She and her friend went with Johnson to his apartment after he offered to provide them with drugs. While at the apartment, M.V. testified that she felt as though something had been put in her drink. She alleged that Johnson had intercourse with her as she went in and out of consciousness. The next day, M.V. went to the hospital and reported the rape. Prior to filing charges, the police searched Johnson's apartment, pursuant to a warrant, and recovered an iPhone that was locked. After charges were filed, the defense entered into an agreement by which Johnson voluntarily unlocked his phone. The agreement allowed the defense to extract information from the phone prior to allowing the police access. Johnson's trial counsel testified at his motion hearing that Johnson had led her to believe that there would be exculpatory information on the phone showing that the sexual encounter was consensual. When the phone was unlocked, the police found videos of Johnson having sexual encounters with T.T. and C.N. Neither T.T. nor C.N. made any sounds in the video. The State filed a five-count amended indictment against Johnson alleging additional charges for his sexual encounters with T.T. and C.N. The State also charged Johnson with one count of attempted sexual abuse for an encounter that occurred with K.B., of which the police were previously aware, but had neglected to investigate as a criminal matter due to a clerical error. A jury found Johnson guilty of all charges. After his conviction was upheld on direct appeal, Johnson filed a motion for post-conviction relief contending that his trial counsel was ineffective in a number of ways related to the extraction of information from his cell phone prior to trial. Additionally, Johnson alleged his trial counsel was ineffective for failing to argue improper joinder of the charges. An evidentiary hearing was held by the motion court. The motion court denied Johnson's motion finding that Johnson understood and agreed to the terms of the cell phone extraction and that the State was within the scope of its warrant in what it found in the extraction. Finally, the court found that

Johnson was not prejudiced by his trial counsel's failure to make particular arguments against joinder of the charges. This appeal followed.

Appellant's points on appeal:

1. The motion court clearly erred in denying Mr. Johnson's Rule 29.15 motion because a review of the record leaves a definite and firm impression that he was denied effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, § 18(a) of the Missouri Constitution, in that trial counsel failed to act as a reasonably competent attorney under the same or similar circumstances by hastily arranging and proceeding with the October 28, 2016 cell phone extraction agreement. Mr. Johnson was prejudiced because the extraction caused the state to add more victims and charges before trial.
2. The motion court clearly erred in denying Mr. Johnson's Rule 29.15 motion because a review of the record leaves a definite and firm impression that he was denied effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, § 18(a) of the Missouri Constitution, in that trial counsel failed to act as a reasonably competent attorney under the same or similar circumstances by making the extraction agreement without Mr. Johnson's knowing and voluntary consent. Mr. Johnson was prejudiced because the extraction caused the state to add more victims and charges before trial, and had counsel fully advised Mr. Johnson about the parameters and consequences of the agreement, he never would have agreed to unlock the phone.
3. The motion court clearly erred in denying Mr. Johnson's Rule 29.15 motion because a review of the record leaves a definite and firm impression that he was denied effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, § 18(a) of the Missouri Constitution, in that trial counsel failed to act as a reasonably competent attorney under the same or similar circumstances by failing to intervene when the state's investigator watched as Mr. Johnson entered the passcode on his phone during the October 28, 2016 extraction. Mr. Johnson was prejudiced because the spying allowed the state to avoid suppression of the phone's contents because they had a backup legal theory to search it.
4. The motion court clearly erred in denying Mr. Johnson's Rule 29.15 motion because a review of the record leaves a definite and firm impression that he was denied effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, § 18(a) of the Missouri Constitution, in that trial counsel failed to act as a reasonably competent attorney under the same or similar circumstances by limiting her suppression motion to the validity of the search warrant and the court's order compelling Mr. Johnson to enter his passcode a second time, and thereby waiving the issue that the execution of the search violated Mr. Johnson's rights against unlawful search and seizure because the entire-phone Cellebrite extraction and subsequent search of videos unrelated to the crimes specified in the search warrant exceeded the scope of the warrant. Mr. Johnson

was prejudiced because had counsel preserved this argument, the fruits of the cell phone extraction that exceeded the scope of the warrant would have been suppressed.

5. The motion court clearly erred in denying Mr. Johnson's Rule 29.15 motion because a review of the record leaves a definite and firm impression that he was denied effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, § 18(a) of the Missouri Constitution, in that trial counsel failed to act as a reasonably competent attorney under the same or similar circumstances by failing to argue in her motion for improper joinder and severance that joinder prejudiced Mr. Johnson because it made him ineligible for concurrent sentences. The ineffective assistance of counsel prejudiced Mr. Johnson because there is a reasonable probability the overall sentence would have been less than 100 years, and there is a reasonable probability a severance would have been granted.

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**WD84804**

**State of Missouri, Respondent,**

**v.**

**David A. Harris, Appellant.**

Appellant David Harris appeals the judgment of the Circuit Court of Jackson County finding him guilty of one count of murder in the second degree, two counts of armed criminal action, and one count of assault in the first degree. The court sentenced Harris to a total of 35 years' imprisonment. The facts as alleged at trial established that Harris and one of the victims, James, had known each other for three years, since they were in high school. But, in July or August of 2018, they fought over a girl and exchanged threatening text messages. On the night of September 17, 2018, James was at his girlfriend's apartment with her roommate and two other people. The five people staying in the apartment that night were all going to bed by approximately 3:00 a.m. Approximately twenty minutes later, the two people in the bedroom heard what sounded like two guns firing. They hid in the closet and, at 3:48 a.m., called 911. The two in the closet were later joined by a third friend present in the apartment. When the 911 operator said that it was safe to leave the closet, the three people that had been in hiding came out to discover James crawling towards them with multiple wounds. In the living room, the lights were on. James' girlfriend, Mary, was shot and unresponsive. The dog had been shot and killed. The back door was open. James told police that the shooter was a black male wearing black but could not identify him. At 4:20 a.m., someone called 911 to report a male matching the description of the shooter walking two to three miles from the apartment. An officer drove to the area and found Harris. Harris was wearing a black t-shirt, black shorts, and black shoes. Harris eventually admitted to being one of two shooters at the apartment. He told detectives that he hit James, and as they fought, James grabbed for the gun and pulled his girlfriend in front of him as Harris was shooting. James gave three additional statements to police. In the last statement, James stated there were two shooters. He knew both shooters, one was Michael and the other was either Darius or Darius's friend, Chris. James had exchanged threatening texts

with Darius on the evening of the shooting. A jury found Harris guilty of all charges. This appeal followed.

Appellant's points on appeal:

1. The trial court plainly erred—and in doing so violated David's rights to due process and conflict-free counsel, 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—by neglecting its affirmative duty to conduct an inquiry when Michael Feeback re-entered as David's attorney thirteen months after he was forced to withdraw due to an actual conflict of interest, i.e., his representation of David while also being employed as a Ray County Assistant Prosecuting Attorney in violation of section 56.360 and Rule 4-1.7, because the court knew or reasonably should have known that Mr. Feeback still had a conflict of interest and thus the court had the duty to conduct an inquiry, in that the taint caused by Mr. Feeback's conflict of interest was still present when he re-entered the case, and the proper result of such an inquiry would have been to bar Mr. Feeback from re-entering the case.
  2. The trial court erred in overruling David's motion for judgment of acquittal at the close of all evidence and in entering judgment and sentence for the for the Class A felony of murder in the second degree and the accompanying count of armed criminal action, in violation of David's right to due process, as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Missouri Constitution, because the State failed to prove that David acted alone or in concert with another in causing Mary's death, in that the only evidence that David was involved in the crimes came from David's statement to the police, which was the product of coercive, lengthy questioning of a scared eighteen-year-old and was contradicted by the physical evidence and the testimony of the only witness who saw the assailants; and because the evidence did not support conviction for murder in the second degree, it also failed to support a conviction for the accompanying count of armed criminal action.
  3. The trial court erred in overruling David's motion for judgment of acquittal at the close of all evidence and in entering judgment and sentence for the Class A felony of murder in the second degree and the accompanying count of armed criminal action, in violation of David's right to due process, as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Missouri Constitution, because the State failed to prove each element of murder in the second degree, in that the State charged that David, either alone or in concert with another, acted knowingly or with the purpose of causing serious physical injury to Mary, yet the State failed to show that David, either alone or in concert with another, acted knowingly or with the purpose of causing serious physical injury to Mary; and because the evidence did not support conviction for murder in the second degree, it also failed to support a conviction for the accompanying count of armed criminal action.
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**WD85329**

**Willa Hynes, Appellant-Respondent,**

**v.**

**Missouri Department of Corrections, Respondent-Appellant.**

The parties cross-appeal the judgment of the Circuit Court of Cole County granting partial summary judgment in favor of Appellant-Respondent Willa Hynes on her claim that Respondent-Appellant Missouri Department of Corrections knowingly and purposefully violated what is commonly known as Missouri's Sunshine Law. The facts as alleged in the pleadings are that Hynes' son died on April 4, 2021, while in the care and custody of the Missouri Department of Corrections. Hynes made a request under the Sunshine Law for documents relating to the investigation of her son's death. The Department of Corrections responded that the records were closed and provided Hynes with an explanation of that decision. The Department of Corrections later provided Hynes with a copy of the autopsy report. Hynes filed a Petition for Injunctive and Declaratory Relief pursuant to the Sunshine Law. The circuit court eventually entered summary judgment in favor of Ms. Hynes, finding that the Department of Corrections violated Missouri's Sunshine Law. But, the circuit court also found that the Department of Corrections did not act or function as a law enforcement agency for the purposes of complying with section 610.100 of the Sunshine Law. The Missouri Department of Corrections appealed the judgment raising various claims of error. Hynes cross-appealed to raise her own allegations of error. But, Hynes also filed both a motion to dismiss and a motion for damages for frivolous appeal contending that the judgment is not final for purposes of appeal. Those motions have been taken with the case. Because Hynes was the plaintiff in the underlying action, she serves as the Appellant-Respondent for purposes of this appeal.

Appellant-Respondent's points on appeal:

1. The circuit court erred in certifying its order granting partial summary judgment as final pursuant to Rule 74.01(b) because the court's order is not a judgment eligible for certification under Rule 74.01(b), in that the order does not resolve plaintiff Hynes' claim that the department knowingly and purposely violated the Sunshine Law.
2. The circuit court erred in finding that the department did not act or function as a law enforcement agency for purposes of complying with § 610.100 of the Missouri Sunshine Law because the court's finding subverts the legislature's intent in enacting § 610.100, and leads to an unreasonable and oppressive result, in that it allows the department to refuse access to reports and records pertaining to the department's internal investigation of an in-custody death based on its wholly unsupported claim that it is not a law enforcement agency for purposes of § 610.100.
3. The circuit court erred in finding that the department did not act in the capacity of, or function as, a law enforcement agency for purposes of compliance with § 610.100 of the Sunshine Law, because the court's finding is not supported by substantial evidence, in that there is no evidence in the record even tending to show that the department was not acting or functioning as a law enforcement agency when it conducted the only investigation of plaintiff's son's in-custody death.

4. The circuit court erred in finding that the department did not act or function as a law enforcement agency for purposes of compliance with § 610.100 because the court's finding is against the weight of the evidence, in that there was no evidence in the record from which the court could have reasonably determined that the department did not act in the capacity of, or function as, a law enforcement agency when it conducted the only investigation into plaintiff Hynes' son's death.
5. The circuit court erred in ordering that the department may seek a protective order prior to producing the documents as ordered because the court's order is in direct conflict with the legislature's intent in enacting the Sunshine Law, in that the records the court ordered the department to produce are open records under the Sunshine Law.

Respondent-Appellant's points on appeal:

1. The circuit court erred in finding that the Department of Corrections violated the Sunshine Law by denying Hynes access to "offender records" and the reports and records pertaining to the investigation of Jahi Hynes' death because Hynes is not entitled to summary judgment in that the uncontroverted material facts do not support this conclusion.
2. The circuit court erred in granting summary judgment finding that § 217.075.1 does not apply to the records that the Department of Corrections did not provide because those records relate to institutional security in that they contain internal information that could be used to disrupt a facility.
3. The circuit court erred granting summary judgment finding that the Department of Corrections violated the Sunshine Law by denying Hynes access to "offender records" and the reports and records pertaining to the investigation of Jahi Hynes' death because the Department of Corrections properly responded to Hynes' Sunshine Law request in that the Department of Corrections responded in a timely manner and provided open documents in the course of dialogue with Hynes' counsel.

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**WD85512**

**Charissa L. Mayes, Appellant,**

**v.**

**Cooper County Land Title, et al., Respondents.**

Appellant Charissa Mayes appeals the judgment of the Circuit Court of Cooper County dismissing certain claims and entering summary judgment for the defendants on other claims in Mayes action for violation of the Missouri Merchandising Practices Act. As alleged in the pleadings, Mayes was relocating from Jefferson City to Boonville after being hired as legal counsel for the City of Boonville. One of the council members for the city, Respondent Karen Evans, gave her the information of Respondent Sherry Broyles, a real estate agent. Broyles was employed by Respondent Quinlan Agency, Inc. Broyles showed Mayes a number of homes. One home was owned by, and rehabbed by, Evans. Mayes entered into a contract with Evans to purchase Evans' home. As alleged in the pleadings, Mayes asked Broyles who she could contact

for a building inspection. Broyles told Mayes that she knew of no local inspectors and that hiring an inspector from Columbia would unnecessarily delay the closing. Closing was scheduled for December 11, 2015, at Cooper County Land Title. Mayes applied for policy insurance through State Farm and provided the policy number to Cooper County Land Title prior to closing. According to the seller's disclosure statement, the roof never leaked while Evans owned the home and Evans had never been informed that a policy of insurance would not be renewed, nor had any application been denied, because some part of the house was deemed uninsurable. It was alleged, however, that Evans had been given notice in August 2014, by Clarks Fork Mutual Insurance Company, that the roof was excluded from coverage until it was replaced. The closing occurred December 11, 2015. On December 14, 2015, State Farm informed Mayes her roof needed to be replaced by January 20, 2016, or the policy would be canceled and her coverage would lapse. After attempting to obtain coverage from a different insurer, Mayes was forced to replace the roof so that her home could be insured. She brought suit against the respondents for violation of the Missouri Merchandising Practices Act due to the alleged fraudulent misrepresentations, suppression, or omissions that occurred surrounding the purchase of her home. The circuit court granted a motion to dismiss the claims against Quinlan Agency, Cooper County Land Title, and Broyles. The court later entered summary judgment in favor of Evans and awarded Evans \$9,350 in attorney's fees. This appeal followed.

Appellant's points on appeal:

1. The court erred in sustaining Quinlan Agency's, Cooper County Land Title's and Broyles' Motion to Dismiss for Failure to State a Claim, because the facts alleged in appellant's initial pleading are adequate to meet the elements of the claims stated against them therein and/or one or more other causes that might be adopted in the case against them, in that the motion to dismiss stated no other basis for dismissal and was accompanied by no other written or evidentiary material supporting dismissal on any other theory but failure to state a claim.
2. The court erred in granting the motion for summary judgment by respondent Evans, because Evans was not entitled to judgment in her favor as a matter of law, in that there were not sufficient uncontroverted material facts set out in the motion and appellant's timely response to it to entitle Evans to judgment as a matter of law.
3. The trial court erred in entering an attorney fee judgment in favor of Evans against the appellant, because it was an abuse of discretion to do so, in that the court acted so arbitrarily and unreasonably as to shock the sense of justice and indicate an intent to punish the plaintiff/appellant for seeking relief for damages caused by Evans' unlawful conduct.