Case Law Update

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Prepared by:

Greg Mermelstein
Deputy Director / General Counsel
Woodrail Centre
Building 7, Suite 100
1000 West Nifong
Columbia, MO 65203
Telephone: (573) 777-9977 x 314
E-mail:Greg.Mermelstein@mspd.mo.gov

Editor's Note

March 31, 2025

Dear Readers:

This edition of *Case Law Update* contains all Missouri appellate opinions from January 1 through March 31, 2025, which resulted in reversals, or, in my opinion, were otherwise noteworthy. It also contains all criminal-law related U.S. Supreme Court opinions during that time, and selected federal and foreign-state cases from West's *Criminal Law News*.

I do not know subsequent history on all cases. Before citing a case, be sure to Instacite it to be sure it remains good law.

Sincerely,

Greg Mermelstein
Deputy Director / General Counsel

Abandonment (Rule 24.035 and 29.15)

Davis v. State, 2025 WL 516934 (Mo. App. E.D. Feb. 18, 2025):
Holding: (1) Even though the State didn't object in the motion court to the Public Defender's motion to find abandonment because the amended 29.15 motion was filed late, the abandonment doctrine doesn't apply where the Public Defender entered an appearance, rather than be appointed; but Eastern District suggests that the motion court could have appointed counsel – even at the abandonment hearing – to cure this; and (2) a court's "notification" to the Public Defender of the filing of a postconviction case is not an "appointment."
Discussion: It is the motion court's obligation to ensure counsel is appointed. Regrettably, that didn't occur in this case, leading to the unfortunate result that the amended motion is untimely, and the abandonment doctrine doesn't apply to allow it to be deemed timely. We note that the Public Defender filed a motion to appoint counsel, but it was never ruled on. The motion court could have appointed postconviction counsel before the abandonment hearing, either *sua sponte* or on the Public Defender's motion. But the court here did not take any action to ensure counsel was appointed.

Burge v. State, 2025 WL 559959 (Mo. App. S.D. Feb. 20, 2025):
Holding: Under the version of Rule 29.15 in effect in 2020, two 30-day extensions of time to file an amended motion were authorized, but the extensions had to be granted before the time for filing expired; here, motion court did not grant the second extension until after the time for filing under the first extension had expired, so amended motion was untimely, and case must be remanded for abandonment hearing.

Spradling v. State, 2025 WL 617697 (Mo. App. S.D. Feb. 26, 2025):
Holding: Southern District recognizes split for which version of 29.15(g) is applicable to case in 2021-22 for purposes of timeliness of amended motion, with Eastern District ruling version in effect at time of sentencing applies, *Smith*, 697 S.W.3d 617, 619-20 (Mo. App. E.D. 2024), while Western District believes version in effect during 2021-22 applies, *Scott*, 2024 WL 4887460, *5 n. 5 (Mo. App. W.D. Nov. 26, 2024); here, Southern District need not decide which version of 29.15(g) applied because even if amended motion was untimely, motion court made alternative finding that counsel abandoned Movant, so untimeliness is excused.

Woods v. State, 2025 WL 84284 (Mo. App. W.D. Jan. 14, 2025):
Holding: Where Movant (1) filed his timely *pro se* 24.035 motion on October 29, 2021; (2) Rule 24.035(g) was amended effective November 4, 2021, to provide 120 days in which to file an amended motion; (3) counsel was appointed on November 4, 2021; and (4) the guilty plea and sentencing transcript was filed on December 16, 2021, Movant's amended motion was due within 120 days of December 16, 2021, and was timely, even though 24.035(m) was later amended to make the version of 24.035 in effect at time of sentencing apply.
Discussion: Laws and rules that are procedural generally apply to pending proceedings upon the date of such laws. As relevant here, the 24.035(m) schedule in effect on November 4, 2021, provided that "this Rule 24.035 shall apply to all proceedings wherein

sentence is pronounced on or after January 1, 2018." Although (m) was later amended, effective July 1, 2023, to require all postconviction proceedings be governed by the version of the Rule in effect on the date of the movant's *sentencing*, that amendment could not have controlled the filing of the amended motion during the time period relevant to Movant's motion, since there was no indication at the time his motion was due that any version of Rule 24.035(g) applied to his case other than the version then in effect.

Wright v. State, 2025 WL 250704 (Mo. App. W.D. Jan. 21, 2025):
Holding: Where 29.15 Movant filed his *pro se* motion after November 17, 2021 and counsel was appointed in February 2022, the version of Rule 29.15 in effect from November 4, 2021, through June 30, 2023 applied to his case, making his amended motion due 120 days from the appointment of counsel; Western District disagrees with Eastern District's holding in *Smith v. State*, 697 S.W.3d 617 (Mo. App. E.D. 2024) that the version of the Rule in effect at time of sentencing governed during this time period.

Ward v. State, 2025 WL 309529 (Mo. App. W.D. Jan. 28, 2025):
Holding: Where (1) in August 2020, the motion court appointed counsel but the Circuit Clerk did not notify the Public Defender; (2) in March 2021, the Circuit Clerk contacted the Public Defender and asked why no one had entered an appearance; (3) in April 2021 the Public Defender entered an appearance but didn't file an amended motion; (4) in February 2022, the Public Defender filed a motion to declare "abandonment", which the motion court granted; but (5) the Public Defender didn't file an amend motion until March 2023, the March 2023 amended motion was untimely and an abandonment hearing must be held; further, appellate court rejects State's argument that the August 2020 appointment "lapsed" or "became ineffective" because the Clerk didn't notify the Public Defender of it for a year so rejects State's argument that abandonment doctrine doesn't apply under theory that counsel wasn't "appointed."
Discussion: When the motion court found abandonment in February 2022, it could only grant counsel the time provided in 29.15(g) to file an amended motion (which would have been 120 days), but counsel untimely filed in March 2023. The State argues the abandonment doctrine doesn't apply because the August 2020 appointment had "lapsed" or "became ineffective" so this is not a case of "appointed" counsel, and that the abandonment doctrine doesn't apply to counsel who enter an appearance instead of being appointed. However, there is no authority supporting the State's argument that an appointment lapses or expires due to delay in notifying the Public Defender. The court's appointment of the Public Defender became effective in March 2021 when the Clerk notified the Public Defender of it. Thus, this case involves "appointed" – not retained – counsel and the abandonment doctrine is fully applicable.

Ward v. State, 2025 WL 309529 (Mo. App. W.D. Jan. 28, 2025):
Holding: (1) Where the 29.15 motion court did not address all of the claims in either the *pro se* or amended motions, there is not a final judgment and appeal must be dismissed; and (2) further, where the amended motion was untimely filed, motion court must conduct an abandonment hearing, which will determine whether the *pro se* or amended motion must be considered.

Appellate Procedure

Schultz v. Great Plains Trucking, Inc., 2025 WL 463328 (Mo. banc Feb. 11, 2025):
Holding: Even though Defendant presented at a pretrial hearing the morning of trial the Expert evidence the defense wanted to introduce at trial (but which the trial court had granted a motion in limine to exclude), this did not preserve the issue for appeal because Defendant did not attempt to present the Expert during the trial itself.
Discussion: While this Court is sympathetic to the time constraints of trial and the necessity of making a record outside the jury's presence, a record made the morning of trial is not evidence offered *at trial*. This is because an in limine ruling is a preliminary expression of the court's opinion as to the admissibility of evidence and is subject to change during the course of trial. Requiring an offer of proof *at trial* serves the dual purposes of allowing the court to reconsider the pretrial preliminary ruling in light of evidence actually presented at trial and preserving the claim of error for appeal by making a clear record of the questions that would be asked at trial and the proposed answers. Here, Defendant preserved nothing for appeal when they did not attempt to call Expert to testify at trial, did not make a specific offer of proof at trial, and did not renew at trial their objection to the excluded testimony.

State v. Beeson, 2025 WL 678404 (Mo. App. E.D. March 4, 2025):
Holding: Even though Defendant objected to admission of drugs when they were formally offered by the State for admission as an exhibit, where an Officer (without objection) had already testified about finding the drugs in Defendant's car and the State (without objection) had already admitted photographs of the drugs in the car, Defendant failed to preserve for appeal his claim that the trial court erred in admitting the drugs, because Defendant did not object at the "earliest opportunity" when the drugs were first testified to by the Officer and when the photographs were admitted.

State v. Byington, 2025 WL 601732 (Mo. App. S.D. Feb. 25, 2025):
Holding: Even though Defendant offered a voluntary manslaughter instruction (which was refused), where Defendant did not request a second-degree murder instruction which included as a third paragraph a finding that "the defendant did not kill under the influence of sudden passion arising from adequate cause," and defendant did not object to the State's second-degree instruction (which didn't include this element), the issue of failure to give voluntary manslaughter was not preserved for appeal.

Ward v. State, 2025 WL 309529 (Mo. App. W.D. Jan. 28, 2025):
Holding: (1) Where the 29.15 motion court did not address all of the claims in either the *pro se* or amended motions, there is not a final judgment and appeal must be dismissed; and (2) further, where the amended motion was untimely filed, motion court must conduct an abandonment hearing, which will determine whether the *pro se* or amended motion must be considered.

Bail – Pretrial Release Issues

Nunez-Dosangos v. Superior Court of City of San Francisco, 2024 WL 5064324 (Cal. App. 2024):
Holding: Pretrial detention in excess of maximum potential sentence on charge violated due process, even though Defendant did not challenge validity of initial no-bail determination.

Brady Issues

*** Glossip v. Oklahoma, 2025 WL 594736, ___ U.S. ___ (U.S. Feb. 25, 2025):**
Holding: Conviction and sentence reversed in successive capital postconviction case because prosecutors failed to correct false trial testimony by key witness in violation of *Napue*, and failed to disclose other evidence which case doubt on guilt.

Civil Procedure

Kline v. Div. of Emp. Sec., 2025 WL 248394 (Mo. App. E.D. Jan. 21, 2025):
Holding: Division of Employment Security's adverse decision regarding benefits is reversed because, even though Appellant personally received notice of her benefits hearing and appeared by herself, there was nothing in the record indicating that her Attorney had received mailed notice of the hearing, and her Attorney did not appear, so Appellate was denied her statutory right to counsel at her hearing.
Discussion: The applicable Code of State regulation requires that hearing notices must be mailed to the address of record to each attorney who has entered an appearance. The presence of a letter in a legal file addressed to Attorney isn't sufficient to prove notice absent copies of an envelope or certified mail receipt. The applicable Code of State regulation requires that the Division clerk "complete a certification that the Notice of Hearing was mailed" to each Attorney, but no such certification is in the record here.

State ex rel. ArchCity Defenders v. Whyte, 2025 WL 248428 (Mo. App. E.D. Jan. 21, 2025):
Holding: Where (1) Plaintiff filed suit against Defendant-ArchCity in Jefferson County; (2) Defendant filed a motion to transfer venue to St. Louis City; (3) the trial court didn't rule on the motion so it was considered granted under Sec. 508.010.10 after 90 days; (4) after the case was transferred to St. Louis City, Plaintiff filed a motion to transfer back to Jefferson County; and (5) after another 90 days elapsed, the City trial judge concluded the motion was deemed granted under 508.010.10, and transferred the case back to Jefferson County, Eastern District issues writ of mandamus transferring case back to St. Louis City because Plaintiff's transfer of venue motion in City was untimely, since the transfer of venue Rule 51.045 presupposes that only *defendants* and *third parties* can file for transfer of venue, since Plaintiffs pick the initial venue by filing in the county of their choice.

Discussion: Rule 51.045 provides that any motion to transfer venue alleging improper venue shall be filed within 60 days of service on the party seeking transfer. While the Rule does not specify which parties may move to transfer venue, the rule presupposes that defendants and third parties are the only parties able to file because a Plaintiff can choose the venue in which to file their lawsuit. This is further supported by the Rule's language that the 60-day time period runs from the time a party is "served" with the petition. Here, Plaintiff wasn't served with a petition; thus, the 60-day time period was never triggered and Plaintiff's motion filed in the City cannot be considered under the Rule. If Plaintiff disagreed with the original ruling transferring case to the City, he could have filed a writ to have that matter reviewed by the Court of Appeals, but Plaintiff didn't. Instead, Plaintiff waited until the case was transferred to the City, then filed his own motion to transfer to Jefferson County. Writ granted transferring venue to City.

Confrontation & Hearsay

State v. Al Muthafar, 2024 WL 4997111 (Idaho 2024):
Holding: Victim's statements to nurse during dual medical and forensic exam were not "made for" purposes of receiving medical diagnosis or treatment, and thus were not admissible through nurse's testimony under exception for statements made for medical diagnosis or treatment.

State v. Hogues, 2024 WL 5134872 (Mont. 2024):
Holding: Defendant's right to face-to-face confrontation was violated where Witness was allowed to testify via two-way video, even though counsel had originally stipulated to use of video, where Defendant later proceeded *pro se* at trial and objected to use of video, and State made no case-specific showing why video testimony was required.

State v. Warren, 2025 WL 258842 (N.H. 2025):
Holding: Permitting child victim to testify outside courtroom via one-way video feed violated Defendant's state constitutional right to "face to face" confrontation, even though defense counsel was able to cross-examine victim and even though trial court found that if victim saw Defendant she would be traumatized and unable to communicate; since victim testified outside presence of Defendant and could not see Defendant while testifying, no face-to-face meeting occurred.

State v. Bowman, 2025 WL 341133 (Or. 2025):
Holding: In DWI case, Officer's testimony about horizontal gaze nystagmus (HGN) test based on what he had learned from an ophthalmologist during his training (i.e., that "babies have limited peripheral vision and a person impaired by alcohol could be said to be seeing like a baby") was hearsay, because it was being offered as substantive evidence for truth and was beyond scope of Officer's personal knowledge.

State v. Clark, 2024 WL 5151080 (S.C. 2024):
Holding: Defendant's 6th Amendment right to confrontation was violated where trial court precluded Defendant from cross-examining forensic interviewer about techniques she used in interviewing child sex victim.

Ruffin v. State, 2024 WL 5177901 (Ala. Crim. App. 2024):
Holding: Probation violation hearing did not comport with due process protections where court did not hear from any witnesses and instead learned of allegations through unsworn assertions of the State and police officers.

Counsel – Right To – Conflict of Interest

Kline v. Div. of Emp. Sec., 2025 WL 248394 (Mo. App. E.D. Jan. 21, 2025):
Holding: Division of Employment Security's adverse decision regarding benefits is reversed because, even though Appellant personally received notice of her benefits hearing and appeared by herself, there was nothing in the record indicating that her Attorney had received mailed notice of the hearing, and her Attorney did not appear, so Appellate was denied her statutory right to counsel at her hearing.
Discussion: The applicable Code of State regulation requires that hearing notices must be mailed to the address of record to each attorney who has entered an appearance. The presence of a letter in a legal file addressed to Attorney isn't sufficient to prove notice absent copies of an envelope or certified mail receipt. The applicable Code of State regulation requires that the Division clerk "complete a certification that the Notice of Hearing was mailed" to each Attorney, but no such certification is in the record here.

In the Matter of Kinard v. Summit, 2025 WL 84275 (Mo. App. W.D. Jan. 14, 2025):
Holding: Even though a prior case had held that an incompetent person was not competent to "hire" private counsel because incompetent people can't enter contracts to expend funds, trial court abused its discretion in disqualifying Ward-Kinard's private counsel (who had filed action to change Kinard's guardian from the Public Administrator to a family member) on this ground, because the prior case does not preclude a Ward from requesting representation by private counsel, nor does it prevent a private attorney from undertaking such representation; private counsel may be hired by family members or friends of the Ward, or provide their services *pro bono*.

Death Penalty

* **Hamm v. Smith, ___ U.S. ___, 145 S.Ct. 9 (U.S. Nov. 4, 2024):**
Holding: Where (1) Petitioner-Defendant in death penalty case claimed he had intellectual disability, and (2) he had multiple IQ scores with one in the intellectual disability range but others not, Supreme Court vacates 11th Circuit opinion finding intellectual disability and remands for further consideration, because was unclear if 11th Circuit applied a per se rule that one IQ score in a multiple IQ score case always proves intellectual disability, or whether 11th Circuit applied "more holistic approach" to multiple IQ scores by considering all evidence, including expert testimony; Supreme Court itself has never specified how courts are to evaluate cases with multiple IQ scores, and clarification of 11th Circuit opinion is needed.

* **Andrew v. White, ___ U.S. ___, 145 S.Ct. 75 (U.S. Jan. 21, 2025):**
Holding: 10th Circuit erred in denying habeas relief on grounds that the Supreme Court had never held that admission of irrelevant, highly prejudicial evidence in a death penalty case violated due process, because Court had made such a holding in *Payne*; in Wife's trial for alleged murder of her husband, State introduced irrelevant evidence about Wife's sexual partners reaching back two decades; about provocative clothing she wore; about how often she had sex in her car; and asked trial witnesses if a good mother would behave that way.

*** Glossip v. Oklahoma, 2025 WL 594736, ___ U.S. ___ (U.S. Feb. 25, 2025):**
Holding: Conviction and sentence reversed in successive capital postconviction case because prosecutors failed to correct false trial testimony by key witness in violation of *Napue*, and failed to disclose other evidence which case doubt on guilt.

Detainer Law & Speedy Trial

U.S. v. Cummins, 2025 WL 90252 (N.D. Ind. 2025):
Holding: Defendant's speedy trial rights were violated by delay of Defendant's trial on federal charges, where the federal charge had decreased the quality of Defendant's life in state custody (resulting in prejudice), because the federal charge prevented Defendant from qualifying for a lesser security level while in state custody.

Discovery

Ralls v. Soo Line Railroad, 2025 WL 898698 (Mo. App. W.D. March 25, 2025):
Even though Doctor originally was a "treating physician" whose opinions did not have to be disclosed, where Doctor did research into issues in case and then formed opinions based on that research, Doctor became an Expert whose opinions did have to be disclosed, and failure to do so subjected Plaintiff to unfair surprise at trial.

Facts: Plaintiff sued Defendant-Employer for subjecting Plaintiff to carcinogens at work which allegedly caused Plaintiff's cancer. Doctor was treating Plaintiff for cancer. Originally, Doctor had no opinion as to the cause of Plaintiff's cancer, but when Doctor learned what the issue at trial was, Doctor conducted his own research and testified at trial that Defendant-Employer was not the cause of Plaintiff's cancer. After a defense verdict, Plaintiff appealed.
Discussion: Discovery rules distinguish between facts and opinions held by non-retained experts from those held by experts retained in anticipation of litigation. A "treating physician" has knowledge of facts, but isn't retained solely for litigation. A "treating physician" is really a fact witness. A treating physician's testimony is limited to opinions based on information gained "during" treatment, as well as general medical knowledge. But when a treating physician bases their opinion on materials that were not generated "during" the course of treatment, the treating physician becomes subject to greater disclosure requirements. Rule 56.01(b)(7) requires only that the name and area of expertise of non-retained experts be disclosed. Even though Plaintiff had done a discovery deposition of Doctor, Doctor there had no opinion on causation. Discovery rules require that when an expert has been deposed and later changes his opinion before trial or bases that opinion upon new or different facts, then that information must be disclosed before trial. Surprise exists when an expert suddenly has a substantially different opinion than revealed in discovery. This principle is not applicable solely to retained experts. Here, Plaintiff was surprised by and prejudiced by Doctor's change in opinion. The Doctor here testified to more matters than those of merely a "treating physician." Trial court erred in allowing Doctor to testify as to causation because that opinion hadn't been previously disclosed. Reversed for new trial.

Double Jeopardy

State v. Heathcock, 2025 WL 843661 (Mo. banc March 18, 2025):
Holding: (1) Even though Defendant had been convicted of tampering with a car in Montgomery County, where he stole the car in Montgomery County and then drove to Warren County where he parked at a Wal-Mart and then drove again, his subsequent conviction for tampering in Warren County did not violate Double Jeopardy, because his convictions were predicated on two distinct acts of tampering; and (2) to the extent that prior cases such as *State v. Tipton*, 314 S.W.3d 378 (Mo. App. 2010) and *State v. Shinkle*, 340 S.W.3d 327 (Mo. App. 2011), suggest the State must put on evidence to disprove a Double Jeopardy violation when the defendant injects the issue, these cases are incorrect and should no longer be followed.
Discussion: Double Jeopardy is an affirmative defense which defendant has the burden to prove applies. Multiple convictions are permissible if defendant has committed separate crimes, such as where different acts or separate *mens rea* is newly formed, punishments is focused on whether cumulative punishments were intended by the legislature, which focuses first on the unit of prosecution. Here, each distinct operation of a car can be charged as a discrete crime and does not violate Double Jeopardy. Defendant operated the car in Montgomery County, then paused at Wal-Mart, then operated it again in Warren County. This was not a continuous course of uninterrupted conduct.

DWI

State v. Bowman, 2025 WL 341133 (Or. 2025):
Holding: In DWI case, Officer's testimony about horizontal gaze nystagmus (HGN) test based on what he had learned from an ophthalmologist during his training (i.e., that "babies have limited peripheral vision and a person impaired by alcohol could be said to be seeing like a baby") was hearsay, because it was being offered as substantive evidence for truth and was beyond scope of Officer's personal knowledge.

Escape Rule

Anderson v. Comm., 2024 WL 5172358 (Ky. 2024):
Holding: Defendant's surrender to custody before panel issued a decision rendered "escape rule" inapplicable.

Evidence

Chandler v. Brown, 2025 WL 289349 (6th Cir. 2025):
Holding: In child sex case, Defendant was denied right to present complete defense by trial court's exclusion of evidence about Victim's prior false allegations against others, including fact that her accounts changed with each re-telling.

Experts

Ralls v. Soo Line Railroad, 2025 WL 898698 (Mo. App. W.D. March 25, 2025):
Even though Doctor originally was a "treating physician" whose opinions did not have to be disclosed, where Doctor did research into issues in case and then formed opinions based on that research, Doctor became an Expert whose opinions did have to be disclosed, and failure to do so subjected Plaintiff to unfair surprise at trial.
Facts: Plaintiff sued Defendant-Employer for subjecting Plaintiff to carcinogens at work which allegedly caused Plaintiff's cancer. Doctor was treating Plaintiff for cancer. Originally, Doctor had no opinion as to the cause of Plaintiff's cancer, but when Doctor learned what the issue at trial was, Doctor conducted his own research and testified at trial that Defendant-Employer was not the cause of Plaintiff's cancer. After a defense verdict, Plaintiff appealed.
Discussion: Discovery rules distinguish between facts and opinions held by non-retained experts from those held by experts retained in anticipation of litigation. A "treating physician" has knowledge of facts, but isn't retained solely for litigation. A "treating physician" is really a fact witness. A treating physician's testimony is limited to opinions based on information gained "during" treatment, as well as general medical knowledge. But when a treating physician bases their opinion on materials that were not generated "during" the course of treatment, the treating physician becomes subject to greater disclosure requirements. Rule 56.01(b)(7) requires only that the name and area of

expertise of non-retained experts be disclosed. Even though Plaintiff had done a discovery deposition of Doctor, Doctor there had no opinion on causation. Discovery rules require that when an expert has been deposed and later changes his opinion before trial or bases that opinion upon new or different facts, then that information must be disclosed before trial. Surprise exists when an expert suddenly has a substantially different opinion than revealed in discovery. This principle is not applicable solely to retained experts. Here, Plaintiff was surprised by and prejudiced by Doctor's change in opinion. The Doctor here testified to more matters than those of merely a "treating physician." Trial court erred in allowing Doctor to testify as to causation because that opinion hadn't been previously disclosed. Reversed for new trial.

U.S. v. Graham, 2024 WL 4929254 (11th Cir. 2024):
Holding: Trial court erred in racketeering conspiracy case in excluding proffered "gang expert" who would have explained why Defendant's gang was not a criminal enterprise.

Welsh v. Comm., 2025 WL 864762 (Va. 2025):
Holding: Where the State had called a ballistics Expert who testified that various cartridges "matched" a certain gun, trial court abused discretion in later excluding Defendant's ballistics Expert on grounds that a witness cannot testify as to the credibility of another witness, because an Expert is permitted to criticize the findings and methodology used by another Expert; there is a distinction between an Expert impermissibly opining on the veracity of a witness directly, and providing testimony not directed to the personal characteristics of the witness that could cause a factfinder to disbelieve that witness.

Expungement

J.J.J. v. Mo. State Hwy. Patrol Crim. Records Repository, 2025 WL 248315 (Mo. App. E.D. Jan. 21, 2025):
Holding: Even though Petitioner had been granted an exemption from having to register as a sex offender under SORA for his misdemeanor offense of furnishing pornography to minors, Petitioner was not eligible to have the offense expunged, because Sec. 610.140.2(3) states that offenses which require registration are ineligible for expungement.
Discussion: Sec. 589.400.3(3) provides that SORA's registration requirements do not apply to persons who have been removed or exempted from the registry. Sec. 589.400.9(2)(c) provides a procedure to allow people who are on the registry for furnishing pornographic material to minors to petition for exemption. Petitioner had been exempted. Sec. 610.140.2(3) provides that all offenses that carry a sex registration requirement are ineligible for expungement – without regard to whether a person is exempt from registering at the time they apply for expungement. This is not illogical because the exemption statute and the expungement statute serve different purposes. An exemption from SORA relieves a person of one consequence of a sex offense – the duty to register. But an expungement renders the offense as if it never happened. By deeming offenses that require registration ineligible for expungement under 610.140.2(3), the

legislature has rejected the notion that such offenses should be treated as if they never occurred. There is nothing illogical about providing a person relief from registration under SORA, but disallowing them from having their conviction expunged

Guilty Plea

State v. Rippey, 2024 WL 5230691 (Utah 2024):
Holding: Statute which required Defendant's wishing to withdraw their guilty plea to do so before sentence was announced was a procedural rule that violated separation of powers since infringed on judicial power.

State v. Huffman, 2024 WL 4665498 (Ohio App. 2024):
Holding: No showing of prejudice was required where trial court, in accepting misdemeanor plea, failed to comply with Rule which required court to inform Defendant of consequences of plea.

Immigration

* **Bouarfa v. Mayorkas, 604 U.S. 6 (U.S. Dec. 10, 2024):**
Holding: Statute which provides that the Secretary of Homeland Security "may, at any time" revoke prior approval of a visa petition "for what he deems to be good and sufficient cause" means federal courts do not have authority to review that discretionary decision, due to a separate jurisdiction stripping statute regarding discretionary immigration decisions.

U.S. v. Iowa, 2025 WL 287401 (8th Cir. 2025):
Holding: Iowa statute which criminalized being present in Iowa after unlawfully re-entering U.S. was likely pre-empted by federal immigration law.

Ineffective Assistance of Counsel

Spradling v. State, 2025 WL 617697 (Mo. App. S.D. Feb. 26, 2025):
Holding: Trial counsel's performance was not reasonable and counsel's strategy was not "informed" when counsel failed to object to Prosecutor's questions to Defendant and other witnesses whether State's witnesses were "lying", because witnesses should not be asked to comment on the credibility of other witnesses; however, no prejudice here because evidence of guilt was substantial.

Washington v. State, 2025 WL 97707 (S.C. Ct. App. 2025):
Holding: Trial counsel ineffective in child sex case in failing to object to State arguing that children were incapable of lying, because this was improper vouching for credibility of witnesses.

Interrogation – Miranda – Self-Incrimination – Suppress Statements

State v. Mire, 2025 WL 79983 (Mo. App. S.D. Jan. 13, 2025):
Holding: Trial court erred in granting Motion to Suppress statements on grounds that Defendant did not voluntarily waive her *Miranda* rights since she was administered Versed (a heavy narcotic) by medical personnel shortly before her waiver and statements, because such a ruling required expert testimony about the effects of drugs, and no expert testimony was presented; the argument of defense counsel about the effect of Versed was not "evidence."
Discussion: The trial court relied on defense counsel's argument that Defendant was involuntarily intoxicated because she had been administered Versed by medical personnel before her *Miranda* waiver and statements. However, it is well settled that whether or not a drug can cause intoxication is a matter for expert testimony, and here, there was none. There is nothing in the record to show if Versed can cause intoxication, and if so, in what amounts. There is nothing in the record to show the amount of Versed Defendant was given, and the effect on her cognition. Arguments of counsel aren't evidence. There was simply no evidence in the record for the trial court to infer that Defendant was involuntarily impaired by Versed. Without expert evidence, the Officer's testimony that Defendant was given *Miranda* warnings, and said she understood them, establishes that she made a knowing and intelligent waiver. Trial court order granting Motion to Suppress is reversed.

U.S. v. Brown, 2025 WL 223881 (D.C. Cir. 2025):
Holding: Compelled opening of cell phone with biometric thumb print was testimonial under the Fifth Amendment; Government's compelled requirement that Defendant open the phone using his thumb revealed his ownership or control over the phone and the messages it contained.

State v. McDonald, 2024 WL 4982138 (Tex. App. 2024):
Holding: Defendant's 6th Amendment right to counsel was violated where police interrogated Defendant 10 years after previous charges about the incident had been dismissed, and where when charges were originally filed 10 years ago, Defendant had retained counsel and asserted right to counsel, and police knew Defendant was still represented by counsel.

Judges – Recusal – Improper Conduct – Effect on Counsel – Powers

Dep't of Mental Health v. Heffernon, 2025 WL 837568 (Mo. App. W.D. March 18, 2025):
Holding: Municipal Court Judge lacks authority under Sec. 552.020 to order DMH to perform competency exams on municipal court defendants, because the language of the statute only applies to persons charged with of an "offense" – which Sec. 556.061(35) defines as a felony or misdemeanor – or "criminal" charges, and municipal ordinance violations are not "criminal" in nature.

Jury Instructions

State v. Cole, 2025 WL 309656 (Mo. App. E.D. Jan. 28, 2025):
Holding: In case where Defendant possessed methamphetamine in the presence of a child, trial court did not err in failing to give Defendant's requested lesser instruction for misdemeanor endangering welfare of a child in second degree, Sec. 568.050.1(1), which instructed that Defendant acted with criminal negligence that created a substantial risk to the child's health, since this proffered lesser did not allege the same criminal conduct as the charged greater offense; the greater offense alleged only that Defendant possessed meth in the Child's presence.
Discussion: Sec. 568.045.1(4) makes endangering the welfare of a child a felony if a defendant possesses meth in the presence of a child. Sec. 568.045.1(1) makes it a misdemeanor endangering if a defendant "[w]ith criminal negligence acts in a manner that creates a substantial risk to the life, body or health of a child…." Here, Defendant proffered an instruction submitting endangering as this lesser. However, a proffered lesser must allege that defendant engaged in the same criminal conduct as alleged in the greater. Defendant's instruction required the State to prove a substantial risk to Child's health. But the greater only required the State prove that Defendant possessed meth in the Child's presence. Defendant's instruction was improper because it impermissibly deviated from the greater charged offense. 568.045.1(4) is akin to a strict liability offense, because it criminalizes possessing a specific drug in the presence of a child, and does not require proof that possession created a risk of harm to the child.

State v. Jones, 2025 WL 898890 (Mo. App. E.D. March 25, 2025):
Holding: Where Defendant's indictment charged the Class B felony of shooting "AT" a motor vehicle, Sec. 571.030(9), but the Jury Instruction submitted the offense as shooting "INTO" a vehicle, trial court plainly erred in sentencing Defendant for a Class B felony because shooting "INTO" a vehicle is only a Class E felony, Sec. 571.030(3).
Discussion: Sec. 571.030(9) makes shooting "AT" a vehicle a Class B felony. Sec. 571.030(3) makes shooting "INTO" a vehicle a Class E felony. Defendant first argues the variance between the charge and jury instruction prejudiced her, but it didn't because her defense was that she didn't fire a weapon at all, which was an available defense to either offense. But she was prejudiced by the trial court sentencing her to a higher range of punishment than the charged offense. Appellate court notes the irony that shooting "AT" a vehicle carries a higher punishment than shooting "INTO" a vehicle, but the court is bound by the statutory language. Here, Defendant was sentenced to 15 years, which is above the range for a Class E felony. Being sentenced to a punishment greater than the maximum authorized sentence constitutes plain error resulting in manifest injustice. Case remanded for resentencing as an E felony and entry of conviction as Class E felony.

State v. Burkett, 2025 WL 830553 (Mo. App. S.D. March 17, 2025):
Holding: Even though (1) three Witnesses testified that Defendant pulled a gun on Victim and tried to shoot at his head, and (2) the evidence of guilt was strong, trial court plainly erred in failing to give a self-defense instruction, *sua sponte*, where Defendant had testified that he pulled the gun only after Victim had aimed a gun at him, that

Defendant feared for his life and felt threatened, and Defendant denied being the initial aggressor.

Discussion: A self-defense instruction must be given if there is substantial evidence (viewed in the light most favorable to defendant) to give it, even if defendant does not request it, and even if defendant objects to it. Here, the State submitted a verdict director for first-degree assault. Defendant did not object to any instructions, and did not offer his own instructions. The jury found Defendant guilty of first-degree assault. But Defendant's testimony supported giving a self-defense instruction. The failure to give the instruction relieved the State of its burden to prove beyond a reasonable doubt that Defendant was not justified in using force. The State argues the issue is waived because he invited error by failing to object. While it is true that, in certain contexts, counsel's statement of "no objection" waives plain-error review, this is not true for instructional error; an exception to this is where the record clearly indicates counsel failed to object because of trial strategy, but the record here does not reflect that counsel's failure to request a self-defense instruction was trial strategy. Reversed for new trial.

State v. Byington, 2025 WL 601732 (Mo. App. S.D. Feb. 25, 2025):

Holding: Even though Defendant offered a voluntary manslaughter instruction (which was refused), where Defendant did not request a second-degree murder instruction which included as a third paragraph a finding that "the defendant did not kill under the influence of sudden passion arising from adequate cause," and defendant did not object to the State's second-degree instruction (which didn't include this element), the issue of failure to give voluntary manslaughter was not preserved for appeal.

U.S. v. Daniels, 2025 WL 33402 (5th Cir. 2025):

Holding: Federal statute prohibiting possession of firearm by user of controlled substances violated 2nd Amendment as applied to Defendant; even though Defendant admitted using marijuana each month, the jury didn't specifically find that Defendant was intoxicated at time of the traffic stop in which marijuana and firearm were found, and jury was instructed to find Defendant guilty even if Defendant had not used marijuana in several weeks.

Comm. v. Cruz, 2024 WL 5099072 (Mass. 2024):

Holding: Even though Defendant sent text messages to victim which called her derogatory name and said he would punch her in face, the jury instruction on the *mens rea* for the offense of threatening to commit a crime failed to require a finding that Defendant was aware that others could regard his statements as threatening violence and delivered messages anyway, such that he acted at least recklessly, and thus conviction for such offense violated First Amendment.

Barnett v. State, 2025 WL 240968 (Miss. 2025):

Holding: Jury instruction which told jurors that it was permissible for a technical reviewer to testify in place of a primary analyst even if reviewer did not perform the tests himself was improper comment on the weight of the evidence, since it left impression that witness' testimony, in judgment of court, should be given much consideration, and

instruction essentially rehabilitated and bolstered witness' testimony after witness had been attached on cross-examination.

Jury Issues – Batson – Striking of Jurors – Juror Misconduct

Comm. v. Vasquez, 2025 WL 309846 (Mass. 2025):
Holding: Trial court's pre-verdict inquiry into whether a juror made racist remarks was inadequate to protect right to fair trial by impartial jury, where court made limited voir dire inquiry that didn't reveal the nature of the racist comments, and whether other jurors heard the comments.

Mental Disease or Defect – Competency – Chapter 552

Dep't of Mental Health v. Heffernon, 2025 WL 837568 (Mo. App. W.D. March 18, 2025):
Holding: Municipal Court Judge lacks authority under Sec. 552.020 to order DMH to perform competency exams on municipal court defendants, because the language of the statute only applies to persons charged with of an "offense" – which Sec. 556.061(35) defines as a felony or misdemeanor – or "criminal" charges, and municipal ordinance violations are not "criminal" in nature.

State v. N.K.B., 2024 WL 4360597 (Wis. App. 2024):
Holding: Trial court lacked authority to order involuntary medication of Defendant even though court believed she was dangerous, without an application of the factors in *Sell v. U.S.*, 539 U.S. 166 (2003).

Order of Protection

C.M.M. v. A.M.C., 2025 WL 596385 (Mo. App. E.D. Feb. 25, 2025):
Holding: (1) Even though Order of Protection expired during pendency of appeal, the appeal was not moot because Sec. 455.007 provides that the public interest exception to mootness shall apply in Order of Protection cases so that an appeal will not be deemed moot; (2) even though Husband (against whom Order of Protection was sought) pushed Wife down, where there was no testimony from Wife that she was physically harmed – which means a physical injury involving a slight impairment of any bodily function or temporary loss or use of a body part – evidence was insufficient to support Order of Protection for battery; (3) even though Husband followed Wife in car, and continued to show up at martial home which scared Daughter, where Wife did not testify she feared for her safety and Daughter did not testify, evidence was insufficient to support Order for assault; (4) even though Wife claimed Husband engaged in harassing behavior, where Wife did not testify she was emotionally distressed by Husband's conduct, but only testified that Daughter was distressed yet Daughter did not testify, evidence was insufficient to support Order for harassment; and (5) even though Wife claimed Husband

engaged in stalking, there was no evidence in record that Wife feared or experienced physical harm that would rise to the level of alarm necessary for stalking. Full Order of Protection reversed.

C.K.U. v. Hurt, 2025 WL 879833 (Mo. App. S.D. March 21, 2025):
Holding: Even though Petitioner sought Order of Protection against Defendant-Neighbor with whom she had had an angry argument one time, (2) Neighbor subsequently continued to drive on a shared driveway over which Neighbor claimed an easement and occasionally trespassed onto Petitioner's property, (3) Neighbor refused to leave Petitioner's property one time, and (4) Neighbor occasionally called Petitioner derogatory names, evidence was insufficient to support Order of Protection for stalking since there was no evidence that any of the conduct after the first incident would have caused a reasonable person to fear physical harm; even assuming Neighbor has trespassed onto Petitioner's property, that does not constituted stalking as defined in Sec. 455.010(15).
Discussion: Sec. 455.010(15) requires that to obtain an Order of Protection for stalking, Petitioner must show (1) Defendant engaged in a pattern of conduct of at least two or more acts, (2) which served no legitimate purpose, (3) causing Petitioner to fear danger of physical harm, and (4) that Petitioner's fear was reasonable. Here, Petitioner didn't present substantial evidence of (3) and (4).

Presence at Trial

Nipper v. State, 2024 WL 5151599 (Fla. App. 2024):
Holding: Absent evidence that Defendant intended to disrupt his trial, Defendant did not forfeit his right to be personally present at trial, even though he suffered a drug overdose while out on bail and was in hospital.

Privileges

U.S. v. Brown, 2025 WL 223881 (D.C. Cir. 2025):
Holding: Compelled opening of cell phone with biometric thumb print was testimonial under the Fifth Amendment; Government's compelled requirement that Defendant open the phone using his thumb revealed his ownership or control over the phone and the messages it contained.

In Re Grand Jury Subpoena, 2025 WL 313218 (9th Cir. 2025):
Holding: Law firm could not be compelled to provide government with privilege log of documents provided by client and allegedly protected from disclosure by Fifth Amendment right against self-incrimination, because a privilege log would reveal the existence and authenticity of the documents.

Probable Cause To Arrest

Comm. v. Easter, 2025 WL 16361 (Pa. Super. 2025):
Holding: Probable cause to arrest Defendant for failing to respond to citation wasn't proven by State, so motion to suppress should have been granted, where State failed to produce the actual arrest warrant, Officer didn't have first-hand knowledge of the warrant and testified only that he "believed" a warrant was outstanding, and Officer hadn't seen warrant but believes a second Officer had seen it on a computer database.

Prosecutorial Misconduct

*** Glossip v. Oklahoma, 2025 WL 594736, ___ U.S. ___ (U.S. Feb. 25, 2025):**
Holding: Conviction and sentence reversed in successive capital postconviction case because prosecutors failed to correct false trial testimony by key witness in violation of *Napue*, and failed to disclose other evidence which case doubt on guilt.

Rule 24.035/29.15 & Habeas Postconviction Procedural Issues

Ward v. State, 2025 WL 309529 (Mo. App. W.D. Jan. 28, 2025):
Holding: (1) Where the 29.15 motion court did not address all of the claims in either the *pro se* or amended motions, there is not a final judgment and appeal must be dismissed; and (2) further, where the amended motion was untimely filed, motion court must conduct an abandonment hearing, which will determine whether the *pro se* or amended motion must be considered.

U.S. v. Muhammad, 2025 WL 18529 (5th Cir. 2025):
Holding: Recall of mandate on direct appeal, after initial postconviction motion was not adjudicated on the merits, meant later postconviction motion was not a prohibited second or successive motion.

Sanctions

Tierney v. Tierney, 2025 WL 757046 (Mo. App. E.D. March 11, 2025):
Holding: Where a judgment of contempt failed to recite any facts or circumstances constituting Appellant's alleged contempt but merely stated in conclusory fashion that she was in contempt of a prior judgment of the court, the judgment is reversed, because a contempt judgment must recite specific facts and circumstances constituting contempt.

Search & Seizure – Suppression of Physical Evidence

U.S. v. Brown, 2025 WL 223881 (D.C. Cir. 2025):
Holding: Compelled opening of cell phone with biometric thumb print was testimonial under the Fifth Amendment; Government's compelled requirement that Defendant open the phone using his thumb revealed his ownership or control over the phone and the messages it contained.

People v. Pham, 2025 WL 366663 (Colo. 2025):
Holding: Drug-dog search of Defendant's car following traffic stop for wrong lane change wasn't supported by probable cause after Defendant allegedly left high-crime area, where police had no indication Defendant had been involved in criminal activity, weren't aware of any facts suggesting contraband was in car, and dog didn't alert until dog had already entered the interior of the car.

Comm. v. Master, 2024 WL 5174296 (Ky. 2024):
Holding: Even though Defendant had purchased a then-legal child sex doll over the internet and officer-search warrant-affiant said child pornography was readily available on such websites, this did not provide probable cause for search of Defendant's home where search warrant affidavit didn't contain any facts about whether Defendant used a specific website or by virtue of using the website would access pornography.

People v. Clymer, 2024 WL 4983030 (Cal. App. 2024):
Holding: Parents who urged police to search deceased Son's cell phone after he was found dead were "authorized possessors" of the phone under California Electronic Privacy Act so could authorize search; Son's privacy interests were extinguished upon his death.

Ford v. State, 2025 WL 39829 (Fla. App. 2025):
Holding: Police could not rely solely on drug-dog's alert to provide probable cause for warrantless search of car where, at time drug-dog alerted to a target substance in car, police had no way of knowing whether the dog had detected illegal THC or legal THC, such as hemp or medical marijuana.

State v. Leos-Garcia, 2024 WL 5219006 (Or. App. 2024):
Holding: Officer's conduct at 3:00 a.m. in deviating from path leading to Defendant's front door, and instead circling around to driveway to inspect Defendant's vehicle, exceeded scope of Defendant's implied consent to Officer's warrantless entry onto his residential curtilage, thus violating Defendant's state constitutional right against unreasonable search and seizure, even though Officer believed Defendant might be sleeping in vehicle.

Comm. v. Easter, 2025 WL 16361 (Pa. Super. 2025):
Holding: Probable cause to arrest Defendant for failing to respond to citation wasn't proven by State, so motion to suppress should have been granted, where State failed to produce the actual arrest warrant, Officer didn't have first-hand knowledge of the warrant

and testified only that he "believed" a warrant was outstanding, and Officer hadn't seen warrant but believes a second Officer had seen it on a computer database.

Self-Defense

State v. Burkett, 2025 WL 830553 (Mo. App. S.D. March 17, 2025):
Holding: Even though (1) three Witnesses testified that Defendant pulled a gun on Victim and tried to shoot at his head, and (2) the evidence of guilt was strong, trial court plainly erred in failing to give a self-defense instruction, *sua sponte*, where Defendant had testified that he pulled the gun only after Victim had aimed a gun at him, that Defendant feared for his life and felt threatened, and Defendant denied being the initial aggressor.
Discussion: A self-defense instruction must be given if there is substantial evidence (viewed in the light most favorable to defendant) to give it, even if defendant does not request it, and even if defendant objects to it. Here, the State submitted a verdict director for first-degree assault. Defendant did not object to any instructions, and did not offer his own instructions. The jury found Defendant guilty of first-degree assault. But Defendant's testimony supported giving a self-defense instruction. The failure to give the instruction relieved the State of its burden to prove beyond a reasonable doubt that Defendant was not justified in using force. The State argues the issue is waived because he invited error by failing to object. While it is true that, in certain contexts, counsel's statement of "no objection" waives plain-error review, this is not true for instructional error; an exception to this is where the record clearly indicates counsel failed to object because of trial strategy, but the record here does not reflect that counsel's failure to request a self-defense instruction was trial strategy. Reversed for new trial.

Sentencing Issues

State v. Jones, 2025 WL 898890 (Mo. App. E.D. March 25, 2025):
Holding: Where Defendant's indictment charged the Class B felony of shooting "AT" a motor vehicle, Sec. 571.030(9), but the Jury Instruction submitted the offense as shooting "INTO" a vehicle, trial court plainly erred in sentencing Defendant for a Class B felony because shooting "INTO" a vehicle is only a Class E felony, Sec. 571.030(3).
Discussion: Sec. 571.030(9) makes shooting "AT" a vehicle a Class B felony. Sec. 571.030(3) makes shooting "INTO" a vehicle a Class E felony. Defendant first argues the variance between the charge and jury instruction prejudiced her, but it didn't because her defense was that she didn't fire a weapon at all, which was an available defense to either offense. But she was prejudiced by the trial court sentencing her to a higher range of punishment than the charged offense. Appellate court notes the irony that shooting "AT" a vehicle carries a higher punishment than shooting "INTO" a vehicle, but the court is bound by the statutory language. Here, Defendant was sentenced to 15 years, which is above the range for a Class E felony. Being sentenced to a punishment greater than the

maximum authorized sentence constitutes plain error resulting in manifest injustice. Case remanded for resentencing as an E felony and entry of conviction as Class E felony.

State ex rel. Buggey v. Crane, 2025 WL 783172 (Mo. App. S.D. March 12, 2025):
Where the DOC Report to the trial court recommended against release for Defendant who was in a 120-day program, Sec. 559.115.3 did not require that the trial court hold a hearing in order to deny release; a hearing is required only if the DOC Report recommends release and the trial court wishes to deny it.
Facts: Defendant pleaded guilty to a sex offense and was sentenced to a 120-day program in DOC's Sex Offender Assessment Unit, whereby he would be eligible for probation if he successfully completed the program. The DOC Report to the trial court ultimately did not recommend releasing Defendant on probation. The trial court did not release Defendant. Defendant sought a Writ of Mandamus, claiming he was entitled to a hearing before release could be denied.
Holding: Sec. 559.115.3 provides two different procedures when a defendant is placed in a 120-day program. One applies if defendant has successfully completed the program. The other if defendant has not successfully completed the program. Where the defendant has successfully completed the program, the court may order execution of defendant's sentence only after conducting a hearing on the matter within 90 to 120 days from the date the defendant was delivered to DOC. But where the defendant did not successfully complete the program, the statute does not require a hearing. The statute still allows a court to grant probation or order execution of sentence, but a hearing is not required. Here, the parties dispute whether the DOC report indicates successful completion of the program or not. Although there was some positive information about Defendant in the report, the report concluded that DOC "respectfully recommend[s] that *probation be denied*." In the situation here, where the DOC recommended against release, the scenario where a court must hold a hearing within 90 to 120 days was never triggered. Writ denied.

State v. Fielder, 2025 WL 376216 (Mo. App. W.D. Feb. 4, 2025):
Holding: Where the oral pronouncement of sentence was for "life" but the written sentence and judgment stated "999 years," this is a clerical error that can be corrected *nunc pro tunc*.

Rowell v. Mo. Dep't of Corr., 2025 WL 541973 (Mo. App. W.D. Feb. 19, 2025):
Holding: Even though Petitioner had been released on bond in "Case 1", (1) where he was arrested on "Case 2" and "Case 3" and jailed pending trial, (2) "Case 2" and "Case 3" had inter-related facts to "Case 1", (3) Petitioner pleaded guilty in "Case 1" under a new, different case number (1-01), and (4), Cases 2 and 3 were dismissed, Petitioner is entitled to jail time credit on Case 1-01 under Sec. 558.031.1 in effect at the time of his offense, which provided that a defendant was entitled to credit for time in custody prior to sentence when the time is "related to" the offense of conviction; trial court erred in granting summary judgment for DOC.
Discussion: Petitioner is not seeking credit for time spent on bond. He is seeking credit for time in custody before sentencing on Cases 2 and 3, which he alleges are directly related to the offense to which he pleaded guilty in Case 1-01. Regarding the DOC's

argument that Petitioner's presentence confinement was not "related to" to the offense for which he was sentenced, the DOC appears to take the position that case numbers are controlling for purposes of determining if a period of confinement is "related to." But 558.031.1 does not operate in terms of case numbers but in terms of whether the period of confinement was "related to" a particular offense for which a defendant was sentenced. We reject the notion that the clear intent of the General Assembly regarding credit for presentence confinement may be contravened through alteration of case numbers.

* **Delligatti v. U.S., ___ U.S. ___, 145 S.Ct. 797 (U.S. March 21, 2025):**
Holding: The knowing or intentional causation of injury or death, whether by act or omission, necessarily involves the "use" of "physical force' against another person within the meaning of 18 U.S.C. Sec. 924(c)(3)(A), the "crime of violence" statute which creates mandatory minimums; thus, New York's second-degree murder statute qualified as a "crime of violence" even though it allows second-degree murder to be committed by omission in failing to perform a legal duty.

U.S. v. Vega-Santos, 2024 WL 4999180 (5th Cir. 2024):
Holding: District court's imposition of special condition of probation in non-sex case that Defendant participate in sex offender treatment if recommended by a psychiatric provider constituted a impermissible delegation of judicial authority because the condition vested discretion in the psych provider, not the District Court.

U.S. v. Johnson, 2025 WL 209246 (10th Cir. 2025):
Holding: Victim wasn't entitled to restitution under Victim and Witness Protection Act for "lost income" for victim's unpaid household contributions of cooking, cleaning, working in yard, and caring for pets.

State v. Vasquez, 2024 WL 5161428 (Wash. 2024):
Holding: Trial court erred in limiting the argument it would hear at re-sentencing of Defendant; court was required to hear argument regardless of whether it was a re-sentencing.

Ruffin v. State, 2024 WL 5177901 (Ala. Crim. App. 2024):
Holding: Probation violation hearing did not comport with due process protections where court did not hear from any witnesses and instead learned of allegations through unsworn assertions of the State and police officers.

Nunez-Dosangos v. Superior Court of City of San Francisco, 2024 WL 5064324 (Cal. App. 2024):
Holding: Pretrial detention in excess of maximum potential sentence on charge violated due process, even though Defendant did not challenge validity of initial no-bail determination.

Sex Offender Issues – Registration

F.S. v. Mo. Dep't of Corr. Div. of Prob. and Parole, 2025 WL 463192 (Mo. banc Feb. 11, 2025):
Holding: Even though Petitioner, who had been convicted of a child sex offense, completed her sentence in 2020 and had not re-offended, Petitioner failed to show that Sec. 217.735's requirement of lifetime electronic monitoring was unconstitutional as applied to her.

J.J.J. v. Mo. State Hwy. Patrol Crim. Records Repository, 2025 WL 248315 (Mo. App. E.D. Jan. 21, 2025):
Holding: Even though Petitioner had been granted an exemption from having to register as a sex offender under SORA for his misdemeanor offense of furnishing pornography to minors, Petitioner was not eligible to have the offense expunged, because Sec. 610.140.2(3) states that offenses which require registration are ineligible for expungement.
Discussion: Sec. 589.400.3(3) provides that SORA's registration requirements do not apply to persons who have been removed or exempted from the registry. Sec. 589.400.9(2)(c) provides a procedure to allow people who are on the registry for furnishing pornographic material to minors to petition for exemption. Petitioner had been exempted. Sec. 610.140.2(3) provides that all offenses that carry a sex registration requirement are ineligible for expungement – without regard to whether a person is exempt from registering at the time they apply for expungement. This is not illogical because the exemption statute and the expungement statute serve different purposes. An exemption from SORA relieves a person of one consequence of a sex offense – the duty to register. But an expungement renders the offense as if it never happened. By deeming offenses that require registration ineligible for expungement under 610.140.2(3), the legislature has rejected the notion that such offenses should be treated as if they never occurred. There is nothing illogical about providing a person relief from registration under SORA, but disallowing them from having their conviction expunged.

Statutes – Constitutionality – Interpretation – Vagueness

F.S. v. Mo. Dep't of Corr. Div. of Prob. and Parole, 2025 WL 463192 (Mo. banc Feb. 11, 2025):
Holding: Even though Petitioner, who had been convicted of a child sex offense, completed her sentence in 2020 and had not re-offended, Petitioner failed to show that Sec. 217.735's requirement of lifetime electronic monitoring was unconstitutional as applied to her.

State v. St. Louis County, Mo., 2025 WL 17162 (Mo. App. E.D. Jan. 2, 2025):
Holding: Because the County Prosecutor performs essential state functions, the Governor – not the County Executive – has the constitutional and statutory authority to make the appointment of County Prosecutor to fill vacancy.

State v. Robinson, 2025 WL 542040 (Mo. App. W.D. Feb. 19, 2025):
Holding: The felon-in-possession statute, 570.070, does not violate right to bear arms under 2nd Amendment or Mo.Const. Art. I, Sec. 23, because restricting a felon's possession of a firearm is consistent or analogous with the Nation's historical tradition of firearms regulations, and various state and federal statutes prohibiting felons from possessing firearms have been upheld since *Bruen*, 597 U.S. 1 (2022) and *Rahimi*, 602 U.S. 680 (2024).

*** Bondi v. Vanderstok, 2025 WL 906503, ___ U.S. ___ (U.S. March 26, 2025):**
Holding: Federal Gun Control Act's mandates for licensing, records, and background checks applies to "weapons parts kits."

U.S. v. Daniels, 2025 WL 33402 (5th Cir. 2025):
Holding: Federal statute prohibiting possession of firearm by user of controlled substances violated 2nd Amendment as applied to Defendant; even though Defendant admitted using marijuana each month, the jury didn't specifically find that Defendant was intoxicated at time of the traffic stop in which marijuana and firearm were found, and jury was instructed to find Defendant guilty even if Defendant had not used marijuana in several weeks.

State v. Rippey, 2024 WL 5230691 (Utah 2024):
Holding: Statute which required Defendant's wishing to withdraw their guilty plea to do so before sentence was announced was a procedural rule that violated separation of powers since infringed on judicial power.

State v. Thacker, 2024 WL 5103821 (Ohio App. 2024):
Holding: Unlawful possession of weapon statute violated 2nd Amendment as applied to Defendant whose disability was based on an adjudication for juvenile delinquency for sale of marijuana, which was not an inherently violent offense, and statute imposed a lifetime presumption of dangerousness.

Sufficiency of Evidence

State v. Milazzo, 2025 WL 843662 (Mo. banc March 18, 2025):
Holding: Where (1) Defendant-Driver was stopped at a police checkpoint, (2) Officer wanted to arrest Passenger, (3) Officer ordered Defendant to unlock the passenger-side automatic locks so Officer could arrest Passenger, but (4) Defendant refused and Officer had to break window to arrest Passenger, evidence was sufficient to convict Defendant of interfering with arrest by means of physical interference.
Discussion: Defendant argues that his failure to unlock the passenger door does not constitute "physical interference" with an arrest. Sec. 575.150 makes it unlawful to interfere with an arrest of another person by "physical interference." No court has previously interpreted this phrase. Using dictionary definitions, physical means using a material thing. Interference means hampering the process. The statute does not require an affirmative act to effectuate physical interference. Here, Defendant physically

interfered because he carried out the purpose to hamper Officer's ability to arrest Passenger by not unlocking the passenger-side door and removing this material barrier between Officer and Passenger.

State v. Baum, 2025 WL 678413 (Mo. App. W.D. March 4, 2025):
Holding: (1) Where Defendant told Victim how to position her body to masturbate while Defendant was in the room and they engaged in masturbation together, this was sufficient to convict of second-degree sexual trafficking of a child, Sec. 566.211, because Defendant was enticing Victim to engage in a "sexual performance"; and (2) where Defendant purchased a vibrator for Victim, told her how to use it when she masturbated in private, and they would have "conversations about her masturbation" in private, this was sufficient to convict of promoting a sexual performance by a child, Sec. 573.205, because Defendant had directed the performance and by having conversations about Victim's masturbation, Defendant was an audience.
Discussion: (1) Defendant argues the evidence is insufficient to constitute second-degree sexual trafficking because there was no "sexual performance." Sec. 577.211.1(1) provides that a person commits second-degree sexual trafficking if he knowingly entices a child to engage in a "sexual performance." Sec. 566.200(15) defines sexual performance as an exhibition which includes sexual conduct performed before an audience of one or more. The performance need not be public. Requiring a child to perform while the defendant watches establishes sufficient evidence of "sexual performance." Here, Defendant told Victim how to position her body while they were in the same room engaging in masturbation. This made him an audience. (2) Sec. 573.205.1 provides that a person commits offense of promoting a sexual performance if they direct any performance that includes sexual conduct by a child. Defendant argues that Victim's private masturbation alone did not constitute promoting a sexual performance. However, prior case law has held that if a defendant "directs" a child to perform sex acts later when the defendant is not present, this is sufficient to convict. A defendant need not visually observe the child for there to be a sexual performance, and does not have to be physically present during it. Here, Defendant bought a vibrator for Victim, told her how to use it, and Victim testified that she and Defendant had conversations about her private use of it. This made Defendant an audience for her private sexual performance.

Editor's note: There is a lengthy dissent that argues that prior case law on which the majority relied is no longer valid since the legislature has since enacted new definitions of sexual performance, and notes that other states have held that an adult's participation in a sexual act with a child, standing alone, is not sufficient to turn the sexual act into a "sexual performance." Dissent notes that the majority's opinion would allow any child sex case to also be charged as sexual trafficking and promoting a sexual performance.

* **Thompson v. U.S., ___ U.S. ___, 145 S.Ct. 821 (U.S. March 21, 2025):**
Holding: 18 U.S.C. Sec. 1014 which criminalizes making "false statements" to the FDIC does not criminalize making misleading statements, since the statute uses only the word "false" statements; thus, even though Defendant told FDIC only about one loan he had (when he actually had more than one), that did not violate statute

People v. Rodriguez-Morelos, 2025 WL 249068 (Colo. 2025):
Holding: Defendant's use of non-profit's name and tax exempt documents without permission did not constitute use of "personal identifying information" under identity theft statute.

Antle v. Comm., 2025 WL 375061 (Va. Ct. App. 2025):
Holding: Where statute prohibited only the "taking, transportation, possession, sale, or offer for sale" of exotic animals, Defendant's purchase of lion cub was not criminalized because statute didn't ban purchase or offer to purchase.

Sunshine Law

Weeks v. City of St. Louis, 2025 WL 309657 (Mo. App. E.D. Jan. 28, 2025):
Holding: Where Sunshine Law Plaintiff had requested that City produce certain police records in an "Excel worksheet" or "Excel format," City's response that it had no such records was proper under the Sunshine Law, even though City had such records in a different computer format (".csv"); Plaintiff's request for files in a specific format (Excel) does not allow a reasonable Records Custodian to identify files in a different format.
Dissenting Opinion: Notes that Sec. 610.023.3 only requires an agency to "provide the records in the requested format [Excel], *if such format is available*", but it doesn't alleviate the agency's obligation to produce the information in the different format in which the computer records are kept.

Gross v. Schmitt, 2025 WL 309659 (Mo. App. W.D. Jan. 28, 2025):
Holding: (1) Agency response that it would be delayed in providing records "due to the dates and the volume of records to be searched" was reasonable and a sufficiently detailed explanation of delay in producing records under Sunshine Law; (2) where Plaintiff had stated on X that the Attorney General's Office might be violating Sunshine Law, and then requested various records from the AGO about how the AGO had searched for Plaintiff's prior original Sunshine Law requests, AGO properly deemed such records closed under Sec. 610.021(1) regarding litigation, because records can be closed if there exists a "substantial likelihood" of litigation when the document is created, and the document is created in whole or in part "because of" the potential litigation.
Discussion: It is not enough that the agency simply fears that litigation will be brought; the agency has a heavy burden to establish that there exists a "substantial likelihood" that litigation will commence. If that burden is satisfied, the agency must next show that the inherent nature of the record at issue has a clear nexus to that litigation. Here, the records were created after the AGO had received Plaintiff's original request for records, and reveal how AGO acted to avoid litigation after Plaintiff threated litigation on X.

Trial Procedure

Schultz v. Great Plains Trucking, Inc., 2025 WL 463328 (Mo. banc Feb. 11, 2025):
Holding: Even though Defendant presented at a pretrial hearing the morning of trial the Expert evidence the defense wanted to introduce at trial (but which the trial court had granted a motion in limine to exclude), this did not preserve the issue for appeal because Defendant did not attempt to present the Expert during the trial itself.
Discussion: While this Court is sympathetic to the time constraints of trial and the necessity of making a record outside the jury's presence, a record made the morning of trial is not evidence offered *at trial*. This is because an in limine ruling is a preliminary expression of the court's opinion as to the admissibility of evidence and is subject to change during the course of trial. Requiring an offer of proof *at trial* serves the dual purposes of allowing the court to reconsider the pretrial preliminary ruling in light of evidence actually presented at trial and preserving the claim of error for appeal by making a clear record of the questions that would be asked at trial and the proposed answers. Here, Defendant preserved nothing for appeal when they did not attempt to call Expert to testify at trial, did not make a specific offer of proof at trial, and did not renew at trial their objection to the excluded testimony.

State v. Beeson, 2025 WL 678404 (Mo. App. E.D. March 4, 2025):
Holding: Even though Defendant objected to admission of drugs when they were formally offered by the State for admission as an exhibit, where an Officer (without objection) had already testified about finding the drugs in Defendant's car and the State (without objection) had already admitted photographs of the drugs in the car, Defendant failed to preserve for appeal his claim that the trial court erred in admitting the drugs, because Defendant did not object at the "earliest opportunity" when the drugs were first testified to by the Officer and when the photographs were admitted.

Venue

State ex rel. ArchCity Defenders v. Whyte, 2025 WL 248428 (Mo. App. E.D. Jan. 21, 2025):
Holding: Where (1) Plaintiff filed suit against Defendant-ArchCity in Jefferson County; (2) Defendant filed a motion to transfer venue to St. Louis City; (3) the trial court didn't rule on the motion so it was considered granted under Sec. 508.010.10 after 90 days; (4) after the case was transferred to St. Louis City, Plaintiff filed a motion to transfer back to Jefferson County; and (5) after another 90 days elapsed, the City trial judge concluded the motion was deemed granted under 508.010.10, and transferred the case back to Jefferson County, Eastern District issues writ of mandamus transferring case back to St. Louis City because Plaintiff's transfer of venue motion in City was untimely, since the transfer of venue Rule 51.045 presupposes that only *defendants* and *third parties* can file for transfer of venue, since Plaintiffs pick the initial venue by filing in the county of their choice.

Discussion: Rule 51.045 provides that any motion to transfer venue alleging improper venue shall be filed within 60 days of service on the party seeking transfer. While the Rule does not specify which parties may move to transfer venue, the rule presupposes that defendants and third parties are the only parties able to file because a Plaintiff can choose the venue in which to file their lawsuit. This is further supported by the Rule's language that the 60-day time period runs from the time a party is "served" with the petition. Here, Plaintiff wasn't served with a petition; thus, the 60-day time period was never triggered and Plaintiff's motion filed in the City cannot be considered under the Rule. If Plaintiff disagreed with the original ruling transferring case to the City, he could have filed a writ to have that matter reviewed by the Court of Appeals, but Plaintiff didn't. Instead, Plaintiff waited until the case was transferred to the City, then filed his own motion to transfer to Jefferson County. Writ granted transferring venue to City.