

NOV 18 2022

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No. 22-6920

IN THE
SUPREME COURT OF THE UNITED STATES

OGERTA HARTWEIN — PETITIONER
(Your Name)

vs.

STATE OF MISSOURI — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

MISSOURI COURT OF APPEALS, EASTERN DISTRICT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

OGERTA HARTWEIN
(Your Name)

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(Address)

CHILLICOTHE, MO 64601-8502
(City, State, Zip Code)

(660)-646-4032
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

- (I) Hartwein was convicted (Count I) with violating the custody schedule stipulated on the 2019 order. The criminal act was not bringing her son to Father on June 14th, 2019, per the 2019 order. The Missouri Eastern District and Western District Appeal Courts conflict in their opinions; the prior rules order in the charge is merely a "surplusage", whereas the latter rules actual knowledge of the order is required.
- ⊖ Whereas when a defendant had not seen and is not proven to have ^{had} any actual knowledge of the order she was charged violating, she should be convicted of the crime of violation of that particular order and the custody schedule the order stipulated?
- (II) ⊖ Whether the court of Appeals, upon review on the merits for Count I, can change the timeframe of a charged crime from "on or about June 14, 2019" to "October 2018 to June 14, 2019"?
- (III) This is a matter of first impression because it applies Forfeiture by wrongdoing for the first time in a non-homicide, non-violent case (Count I & II convictions of interference with custody). The Trial Court allowed the admission of Hartwein's son prior out-of-court statements on the ground that Hartwein had forfeited her confrontational rights by "continuing to have contact with witness A.H. and withholding information as to A.H. whereabouts from law enforcement." The Appeal Court erroneously affirms. This conflicts with *Giles v. California* 554 U.S. 353 (June 2008).
- ⊖ Whereas unconfroⁿted testimony can be admitted without:
- (1) a showing that declarant A.H. is unavailable at Trial, and
 - (2) a showing that Hartwein committed any criminal acts to render the witness A.H. unavailable, and by intent,
 - (3) a showing that Hartwein did so to prevent A.H. from testifying?

QUESTION(S) PRESENTED

- (iv) ☐ whether specifying the manner an element of an offense is committed holds the state to proof of that manner?
- (v) The Father has a pattern of domestic abuse, alcohol usage, drug usage and child neglect.
 - ☐ whether when intent and criminal acts are evaluated, can the Court ignore domestic violence and block witnesses for child neglect?

LIST OF PARTIES

✓ All parties appear in the caption of the case on the cover page.

RELATED CASES

- Hartwein v. Missouri, No. 5:19-CV-465-FL, U.S. District Court for the Eastern District of North Carolina, Western Division. Judgement entered April 22, 2020.
- State v. Hartwein, No. ED 109444, Missouri Court of Appeals, Eastern District. Judgement entered May 31, 2022.
- State v. Hartwein, No. 1911-CR02489-01, Eleventh Judicial Circuit, State of Missouri, Judgement entered December 14, 2020 and Amended October 31, 2022.
- State v. Hartwein, No. SC 99707, Supreme Court of Missouri, Judgement entered August 30, 2022.
- Hartwein v. Hartwein, No. 0911-FC00896, Circuit Court of St. Charles County, Missouri, Family Court Division. Judgement entered February 14, 2011.
- Hartwein v. Hartwein, No. 1611-FC00579, Circuit Court of St. Charles County, Missouri, Family Court Division. Judgement entered January 25, 2017.
- Hartwein v. Hartwein, No. 0911-FC00896-03, Eleventh Judicial Circuit Court State of Missouri, Family Court Division. Judgement entered June 10, 2019.
- Hartwein v. Hartwein, No. ED 96543, Missouri Court of Appeals, Eastern District. Judgement entered March 20, 2012.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[✓] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[✓] reported at 648 S.W. 3d 834.

JURISDICTION

[✓] For cases from state courts:

The date on which the highest state court decided my case was August 30th, 2022. A copy of that decision appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- Amendment VI, U.S. Constitution.

Jury trials for crimes, and procedural rights.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

- Missouri Constitution Art. 1 § 18 (a)

Rights of accused in criminal prosecutions

That in criminal prosecutions the accused shall have the right to appear and defend, in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county.

- § 562.012 R.S.Mo

Attempt - guilt for an offense may be based on

1. Guilt for an offense may be based upon an attempt to commit an offense if, with the purpose of committing the offense, a person performs any act which is a substantial step towards the commission of the offense. A "substantial step" is conduct which is strongly corroborative of the firmness of the actor's purpose to complete the commission of the offense.
2. It is no defense to a prosecution that the offense attempted was, under the actual attendant circumstances, ~~been as~~ ~~the actor~~ factually or legally impossible of commission,

if such offense could have been committed had the attendant circumstances been as the actor believed them to be.

3. Unless otherwise set forth in the statute creating the offense, when guilt for a felony or misdemeanor is based upon an attempt to commit that offense, the felony or misdemeanor shall be classified one step lower than the class provided for the felony or misdemeanor in the statute creating the offense.

• § 565.150 R.S. Mo

Interference with custody -- penalty

1. A person commits the offense of interference with custody if, knowing that he or she has no legal right to do so, he or she takes or entices from legal custody any person entrusted by order of a court to the custody of another person or institution.

2. The offense of interference with custody is a class A misdemeanor unless the person taken or enticed away from legal custody is removed from this state, detained in another state or concealed, in which case it is a class E felony.

3. Upon a finding of guilt for an offense under this section, the court may, in addition to or in lieu of any sentence or fine imposed, assess a restitution against the defendant and in favor of the legal custodian or parent, any reasonable expenses incurred by the legal custodian or parent in searching for or returning the child.

• § 565.160 R.S. Mo

Defenses with interference ~~with~~ with custody, parental kidnapping, and child abduction.

It shall be an absolute defense to the offenses of interference with custody, parental kidnapping, and child abduction that:

- (1) The person had custody of the child pursuant to a valid court order granting legal custody or visitation rights which existed at the time of the alleged violation, except that this defense is not available to a person charged with child abduction under subdivision (5) of subsection 1 of section 565.156.
- (2) After expiration of a period of custody or visitation granted by court order, the person failed to return the child as a result of circumstances beyond such person's control, and the person notified or made a reasonable attempt to notify the other parent or legal custodian of the child of such circumstance within twenty-four hours after the expiration of the period of custody or visitation and returned the child as soon as possible.
- (3) The person was fleeing an incident or pattern of domestic violence.

STATEMENT OF THE CASE

This case brings forth a criminal conviction that came after ten years of domestic abuse and parental alienation claims in family court, in a highly contested divorce and custody battle.

Mother Ogerka Hartwein ("Hartwein") and Kirk Hartwein ("Father") had one child, son A.H., born November 2004. The February 2011 ("2011 order") marriage dissolution degree gave Father sole legal and sole physical custody. It gave Hartwein forty percent time as weekly visitation, including four consecutive weeks in A.H.'s summer break. Without any notifications or further restrictions, Hartwein could travel with her son within the territory of the U.S.A during her physical custody timeline.

On June 28, 2019, while exercising her physical custody visitation with her son in North Carolina, Hartwein was arrested for ~~a~~ parental kidnapping and as a fugitive from Missouri. After being released on bond, Hartwein was again arrested in July 2019 for the same charge, and paid a second bond.

In 2019, the State ^{indicted} ~~indicted~~ and charged Hartwein with interference with custody, and in 2020 she was convicted of two counts of interference with custody of her son, one a misdemeanor (Count II) for a February 21st, 2017 incident; one a felony (Count I) for taking her son A.H. from his father's custody in the summer of 2019, and sentenced to a total of four years in prison. This is the maximum allowed sentence for the charges and Hartwein has been incarcerated from December 14, 2020 to present.

STATEMENT OF THE CASE

prove only that Hartwein knew she had ~~no~~ no legal right to interfere with Father's lawful custody on June 14, 2019, and detained A.H. in another state --- and whether the evidence introduced at trial regarding Hartwein's intent to commit interference with custody was sufficient to withstand Hartwein's motion for acquittal." At trial, the State introduced into evidence the 2011 order, the 2017 order, and the 2019 order, all orders delineating custody arrangements. The 2017 order states in Bold Font as a title "Custody Schedule through July 12th, 2017." and in the order's last sentence states "All other orders are pursuant to the Judgement of Dissolution of Marriage." The 2017 order was a temporary order that expired on July 12th, 2017. After this date, the 2011 order, which gave Hartwein uninterrupted four weeks of summer break with son was in effect.

The Appeals court erroneously states that "Hartwein identifies nothing in the record suggesting that any of the numerous hearings following 2017 Judgement resulted in any family court orders altering the custody arrangement." Hartwein can merely point to the title of the 2017 order entered into evidence, which the Appeals court overlooks on the question of knowledge and intent. Simply put, on or about June 14, 2019 and on June 28th, 2019 (date of her arrest) she had physical custody of her son, legitimized by the 2011 order. She could detain A.H. in North Carolina at that date without any notifications or restrictions because the 2011 order states so. Hartwein traveled with her son in this manner since 2011. -10-

STATEMENT OF THE CASE

The court of Appeals further holds that on or about June 14, 2019 is not relevant for A.H. to be removed or enticed from the custody of the father (this it says could have happened from October of the previous year since father testified in court to not having seen A.H. since then). It also holds that Hartwein told the circuit court that she had moved to North Carolina since November of 2018, that she could have removed A.H. at that time, so that Hartwein didn't have to be at all in Missouri on or about June 14th, 2019 to be convicted with this Missouri offense. This inference goes against the record as A.H. completed his school year in Middle School and was enlisted the following year in High School. If Hartwein had detained A.H. in North Carolina since October 2018, A.H. would not have been physically present for his last year of Middle School, or been able to complete it on May 2019. The fact that one of A.H.'s principals, The High School Principal, was a Hartwein witness at Trial clearly shows the son progressed without absences. The Court of Appeals also erroneously states Hartwein did not have any witnesses at trial. She had the High School Principal of her son and one of her son's best friends. The Court of Appeals suggested that based on the 2017 order (which was expired on 2018 and 2019), a reasonable fact-finder could assume she knowingly was interfering with custody by detaining A.H. in North Carolina on June 14, 2019.

This departs from the well established law of Missouri. Rather, if the specification refines an element of the offense by pointing to a specific act, the state "is held to proof of that act, and a defendant may be convicted only on that act," *State v. Jackson*, 896 S.W. 2d 77, 82

STATEMENT OF THE CASE

(Mo. App. 1995). And "when the evidence fails to show that a defendant committed a crime in the specific manner charged, reversal is required." *State v. Glass*, 439 S.W.3d 838, 842 (Mo. App. 2014)

while the Appeals court is correct that the ~~Trial Court~~ ^{State} was not required to allege a specific court order (as in violation of custody by someone that has no rights at all to custody having chosen to allege violation of a particular order that delineates custody on the date of the alleged crime, it had to prove Hartwein knew about that order. The 2019 order materially changed the dates of her physical custody for June 2019. The 2011 order gives the right to Hartwein to exercise her summer custody with her son, whereas the 2019 order takes that right of custody away and gives it to father. Simply, Hartwein can not manage what she doesn't know and made aware to manage (in terms of custody).

Indeed, it is elementary that when the State charges someone with a crime for violation of a specific court order, it is required to prove the defendant had knowledge of that order, and where it does not, the conviction must be reversed. See, e.g., *State ex rel. O'Brian v. Moreland*, 703 S.W.2d 597, 600 (Mo. App. 1986). In *O'Brian*, there was no evidence the defendant herself had seen a court order which she was charged violating, and the appeal court granted a writ of Habeas Corpus discharging the defendant. This remains true in interference with custody cases, where if it is a particular order that gives custody to the other party, the defendant must have actual knowledge of that order. See e.g., *State v. Licata* 501 S.W.3d 449, 453-54 (Mo. App. 2016)

STATEMENT OF THE CASE

The state had to prove beyond a reasonable doubt defendant had actual knowledge on date of offense of order granting party custody.

The state did refine the element of the crime, the offense as charged departed from the specification and the Appeal Court called it "surplusage". Taking A.H. knowing custody had been entrusted to Father in the June 2019 order was the offense charged. The identification of the June 2019 order did specify what knowledge ~~element~~ Hartwein was charged in possessing.

The Appeal Court deciding that a knowledge element somehow is different than any other for specification, conflicts with the existing law, warranting this court examination and clarification.

whether when a state specifies a court order in a charge for violating ~~a~~ that particular court order, is a question of importance warranting Supreme Court review. The Eastern District's decision it is ~~surplus~~ surplusage conflicts with the Western ~~D~~ District decision in State v. Licata, 501 S.W. 3d 449 (Mo. App. 2016), requiring actual knowledge of the order being violated, and with the doctrine that specifying the manner an element of an offense was committed holds the State to proof of that manner.

The Appeals court also erroneously stipulated that somehow Hartwein failed to provide address change. Hartwein did not change her primary address, was living in North Carolina due to work, and had not moved there on or about June 2019.

STATEMENT OF THE CASE

• Hearsay Statements And Forfeiture by Wrongdoing

The Trial Court admitted A.H.'s statements to police officers under the "forfeiture by wrongdoing" exception as testimonial hearsay statements the Sixth Amendment's confrontational clause ordinarily bars. The Appeal Court reviewed the issue for plain error, agreed these were testimonial hearsay statements, and it agrees these statements impacted the jury's verdict, as the Court relied on these statements in holding the evidence was sufficient to prove attempted interference of custody for Count II. Then this was extrapolated to 2019 to show a trend of behavior for Hartwein in Trial, to convict her for Count I felony. However, the Appeal court holds A.H.'s statements were properly admitted, because a "reasonable fact-finder could infer from the record of the motion hearing that Hartwein was keeping A.H. in her custody and preventing him from testifying in her case with requisite intent to prevent him from providing incriminating testimony against her. As Appeals Court states "the State was required to show by a preponderance of evidence that Hartwein procured A.H.'s unavailability for trial with the intent to prevent A.H. from testifying." The state must prove that it "exercised due diligence to secure by subpoena or other means the attendance of the witness at the proceeding." But there was no evidence at all that A.H. was unavailable at the time of trial, nor does the court cite any. Trial was held in September 2020. As the court recounts, the only evidence the state introduced

STATEMENT OF THE CASE

in support of forfeiture ~~of~~ by wrongdoing was about Hartwein attempting to entice A.H. in February 2017, A.H. running away in 2019, and A.H.'s whereabouts in 2019.

At no time did the State ever show that A.H. was missing in June 2020 or September 2020 at all, let alone that it had exercised any diligence to secure his attendance. Instead, it showed solely events in 2017 and 2019, over a year before trial. No evidence whatsoever about A.H.'s whereabouts at any time close to the time of trial was introduced into the evidence. Therefore, the State failed the first and most crucial element of forfeiture by wrongdoing; that A.H. was unavailable for trial at all.

In all cases Appeals Court cites, the prosecution proved that the hearsay declarant was unavailable at trial. See *State v. Shaka*, *Brittain v. State*, *State v. Ivey*, 427, W. 3d 854, 860-64 (Mo. App. 2014). Indeed, the Appeal Court description of these decisions show this. That evidence was entirely missing here. Therefore the State could not prove that Hartwein physically made A.H. unavailable, and that she did so for the purpose of preventing him from testifying. The error affected the outcome of the trial and it left Hartwein unable to test through cross-examination the veracity of A.H.'s statements.

Whether a criminal defendant's rights were violated under the confrontational clause by the admission of hearsay testimony, violating Hartwein's right to confront the witnesses against her is against the U.S. and

STATEMENT OF THE CASE

Missouri Constitution. The Confrontation clause of U.S. Const. Amend. VI provides "in all criminal prosecutions, the accused shall enjoy the right to be confronted with witnesses against him." The Sixth Amendment is incorporated against the States through U.S. Const. Amend. XIV. *Pointer v. Texas* 380 U.S. 400, 407 (1965). The "Missouri Constitution echoes" this "guaranteeing" that "in criminal prosecutions the accused shall have the right... to meet the witnesses against him face to face." *State v. Biggs*, 333 S.W. 3d 472, 477 (Mo banc 2011) (quoting Mo. Const. Art 4 § 1810(a)). These hearsay statements were inadmissible.

Here, the State introduced Sergeant's Weekes's and Myer's statements of what A.H. allegedly told them when they questioned him on February 21st, 2017. These were uncontroverted testimonial statements of a witness who does not appear at trial, therefore the Confrontation Clause of the Sixth Amendment bars admission of them. The State motioned "Forfeiture by Wrongdoing" exception to a defendant's confrontation rights in seeking to admit these statements. The Trial Court erred by agreeing and granting the State's request, stating "After testimony the Court finds that Defendant continues to have contact with the witness A.H. and withholding information as to A.H. whereabouts from law enforcement." (App. F)

In *Giles v. California*, 554 U.S. 353 (2008), the U.S. Supreme Court limited the application of "forfeiture by wrongdoing" to circumstances in which the defendant procured the ~~debarment~~ declarant's unavailability at trial (typically by engaging in the wrongdoing she was accused of), with the intent to prevent the declarant from testifying.

STATEMENT OF THE CASE

The state secondly must prove the defendant engaged in the wrongdoing and procured the defendant's absence with the intent to prevent the declarant from testifying. Notably, the Trial Court here did not use this standard requirement, but instead held the forfeiture by wrongdoing exception applied because the defendant, Hartwein, did not interfere but attempted to interfere (based on unchallenged hearsay evidence submitted). There was no evidence Hartwein interfered. She did not commit any actions indicating an intent. Furthermore, Hartwein was not charged with any offenses concerning the time of Trial, nor was there any evidence she was causing A.H.'s unavailability at the time of trial at all.

She was charged with interfering with custody on February 21, 2017. She was charged with interference of custody again on June 14, 2019. No other charges were pending or were inacted.

And there was no evidence even supporting the Trial Court's statement in June 2020 that Hartwein "continues to have contact with the witness A.H. and withholding information as to A.H.'s whereabouts from law enforcement, nor was she charged with any offense related to that.

A.H.'s statements were the only evidence directly supporting the state's allegation of attempted enticement, and without them the state was limited almost solely to Hartwein's statements to law enforcement concerning the 2017 incident, which could support the jury finding no enticement. Hearsay statements from A.H. lent the state's case on both Count I and Count II an undue credibility that it would not otherwise had.

REASONS FOR GRANTING THE PETITION

This case is submitted to the Supreme Court as a first impression in a crisis that is ubiquitous, transcends constitutional boundaries, but has not had a proper visibility until recently. The criminal conviction of interference with custody in this case follows a highly litigated divorce and custody matter in which one parent [Hartwein] claimed domestic abuse and neglect of the minor child, and the other parent [Father] counter-claimed parental alienation. The parties litigated custody for more than a decade prior to Hartwein's conviction in criminal court.

An Empirical study by professor Joan S. Meier from George Washington University reviewed 240 cases with highly litigated custody and concluded how family courts treat abuse and accusation of parental alienation. The findings show the courts are prejudiced against the mothers once the other parents come forth with alienation claims. The allegations of domestic assaults are silenced and not investigated, and the parental alienation doctrine is used as a vehicle and tactic for one parent (usually the abusive one) to gain access and custody of the minor children. And in all these cases the minor children have endured more abuse, sexual assault and even loss of life in the hands of the abuser. For example, in Amy Castillo's case, father had claimed he would harm the kids and when mother tried to report this, it was discarded by the court. Father ended up drowning the three kids shortly after.

REASONS FOR GRANTING THE PETITION

When the evidence clearly shows episodes of domestic abuse, this evidence is discarded by the civil courts. Kid's voices of abuse and neglect are also silenced.

The courts have sided with the rights of the abusive parent to exercise custody with his/her kids, rather than prioritize the minor children's right to an environment which is abuse-free, an environment that would enable the child's constitutional rights to liberty, ~~life~~^{life}, and happiness, while many are trying to change the legislation currently to fix these matters, there is an opportunity to uphold the constitutional rights of children and set the precedence for other cases to follow. Hartwein's case can accomplish this, as it has well documented issues spanning ten years of litigation.

The divorce proceedings in Hartwein's case (2011 order) started from a domestic violence episode on March 7th, 2009, in which Father pled guilty. Hartwein was awarded a one year order of protection from Father. Previously, on December 6, 2007, Father was arrested for domestic assault on Hartwein, and resisting arrest. On May 15, 2008 Father pled guilty to driving while intoxicated.

After the divorce, on May 24, 2012, Father pled guilty to driving while intoxicated, and on October 10th, 2012 Father pled guilty to possession of up to 35 grams of synthetic cannabinoid and unlawful use of drug paraphernalia.

Hartwein claimed domestic abuse with excessive drug and

REASONS FOR GRANTING THE PETITION

alcohol usage by Father. The Family Court disregarded the claims and upheld Father's counter-claim of parental alienation. It punished Hartwein by awarding Father sole legal and physical custody of A.H..

From 2012 to 2015, the parties continued to litigate custody of A.H. with the same claims. However, in late 2014 and through out 2015, A.H. exhibited repetitive bouts of bacterial infections which started to become resistant to antibiotic treatments and resulted in son's diminished health. In depositions in 2015, Father confessed to having moved Biobelt Laboratories, a full-service microbiology laboratory in his house and was operating it from the basement and garage of the residence he lived in with A.H.

As a degreed scientist, Hartwein immediately filed a TRO (Temporary Restraining Order) in 2016 and moved the court to restrict the minor son's exposure to the laboratory. Biobelt Laboratories work on MERSA killing bacterial strains are available on the web. She brought forth OSHA regulations (which states entrance to a biohazard environment should be only by trained personnel, not minor children), and a notarized letter from A.H.'s life-long pediatrician, Dr. Reichert who stated that "if the father has a microbiology laboratory in his residence, it is my professional experience and opinion that this is not an environment for a child." Besides these claims of neglect, Hartwein brough another episode in 2016 of domestic assault by Father, in which he assaulted Hartwein in presence of A.H. in order to obtain Hartwein's cellphone.

Reasons For Granting the Petition

Except for the pediatrician's letter, all other evidence was prohibited to be entered in court. The court stated the evidence was not submitted by due process from then Pro Se Hartwein. The court entered a Temporary Family Access ~~not~~ order in 2017 awarding Father compensatory time with A.H., The 2017 order expired in July 2017.

Immediately, Hartwein hired an attorney and moved the court for modification of custody, re-entering all the evidence that were rejected earlier according to the required process by the family court. A new TRO was entered which was taken into advisement but not ruled on by the court. Expert witness Bruce Hemming, a Doctor Microbiologist, visited the microbiology laboratory and reported in his brief that not only the illicit microbiology laboratory is harmful to A.H., it presents harm to the community at large.

Countering these claims of neglect, Father entered his claims for parental alienation and demanded court to intervene with Family Access order again.

In June 2019, Family Court entered an order (2019 order) that directed Hartwein to deliver A.H. to Father on June 14, 2019. It restricted Hartwein's visitations to supervised only after completion of five sessions with a psychiatrist. The accusations of neglect and abuse by Father, were discarded, Dr. Hemming's report was restricted by the court from distribution.

When Hartwein didn't appear at the Police Department on June 14, 2019, orders of arrests were entered and the criminal case unfolded. The Family court, Judge Erin Burlison was reported to have an intimate and romantic relationship with the prosecutor Timothy A. Lohmar during the pendency of both criminal and civil case proceedings. Neither of them recused.

REASONS FOR GRANTING THE PETITION

Docket entries state certified copies of the June 2019 order were mailed to [Father]'s attorney and pro se [Hartwein] on 06-10-19", though it does not say how they were mailed or to what address for Hartwein. At Trial Court, Hartwein produced evidence that she had stopped living at her O'Fallon address in April or May 2019, with a tenant testifying he had lived there since May.

The following reasons are why Supreme Court Review should be granted:

(1) As Meier's work delineated, there is a prevailing trend for courts to discard domestic violence and neglect when it comes from mothers, and an embrace of parental alienation as a counterclaim from fathers:

- Both Hartwein's witnesses at the Trial Court, Principal Drew Spiegel and son's friend A.K. testified A.H. was physically assaulted by Father on October 12th, 2019 and A.H. had a harrowing escape via the traintracks and took refuge from subzero temperatures all night in A.K.'s shed. In this episode of domestic violence, Father appeared drunk and attacked A.H. to obtain his cellphone. No court actions followed.
- At trial, Hartwein called Dr. Bruce Hemming to testify that the microbiology residence / laboratory posed health risks to A.H. and community at large. On State's request, the Trial Court dismissed this witness testimony based on relevance.

A.H. was telling the police and family court that he would not go to Father's house due to abuse and the microbiology laboratory, the police claimed A.H. was watched, but didn't investigate the laboratory.

The squashing and disregarding of abuse and neglect claims by authorities that are tasked to investigate need to be addressed.

Reasons For Granting the Petition

(2) The U.S. Supreme Court has limited the use of forfeiture by wrongdoing for admission of testimonial hearsay.

As a matter of first impression, in this non-homicide case, decedent A.H. was not proven to be unavailable at the time of trial.

This case opens the door for any State to enter testimonial hearsay into evidence, without the burden of proof that the decedent is unavailable, in non-homicide cases.

In criminal, non-homicide cases, would the proof need be beyond reasonable doubt or is it preponderance of evidence?

In this court case, to submit A.H.'s statements, A.H. was not shown to be unavailable at the time of trial, the State didn't show any action it took to secure A.H.'s attendance. There was no action shown in evidence that Hartwein undertook in 2020 to make A.H. unavailable (there were no charges for Hartwein in 2020) and therefore no intent was shown that Hartwein prevented A.H.'s appearance at trial.

The trial court simply imputed ~~and~~ Hartwein's wrongdoing and Appeals Court Affirmed. It can continue to impute this wrongdoing to Hartwein in perpetuity.

(3) At Trial, the State held that "the [2019] Judgement is an actual element of the crime that was charged" for Count I.

The Appeal Court brings the expired "2017 order" to base ~~its~~ its conclusion of affirming Count I. It says "The 2017 order reaffirmed Father's sole legal and sole physical custody of A.H. with Hartwein having rights to visitations . . . physical custody was placed with father at all times." Then it goes one step further and states that the Southern District recently clarified that a court order is not a required element of interference with custody. In *Younger* 640 S.W.3d at 169,

REASONS FOR GRANTING THE PETITION

the defendant had no legal rights to take a girl from her father's custody as he went on an interstate road trip. The facts didn't involve a court order of custody. This makes sense in lieu that the defendant didn't have any legal rights or visitation rights.

However, § 565.160 R.S. Mo (1) states that "it shall be an absolute defense to the offenses of interference of custody... the person had custody of the child pursuant to a valid court order granting legal custody or visitation rights which existed at the time of the alleged violation, except that this defense is not available to a person charged with child abduction."

Hartwein was never charged with child abduction.

On or about June 2019 (time of the offense), the valid court order was the 2011 order, not the 2017 order. The 2011 order gave Father sole legal and physical custody of A.H., but gave Hartwein visitation rights for four week of A.H.'s summer break. Hartwein was exercising this visitation right when the June 2019 order was entered.

Therefore, this case is like the Missouri Western District State v. Licata, requiring actual knowledge of the order being violated.

The Missouri Eastern District's Decision that the 2019 order is merely a "surplusage" can not hold, as this order redesigned the visitation rights for Hartwein from June 14th and ongoing. Actual knowledge of the order needed to be proven by the State, and it was not.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

OGERTA HARTWEIN



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