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CRIMINAL

Burnell v. State, 2020 Ark. 244 [**admission of evidence; Ark. R. Evid. 401; 403**] The circuit court did not abuse its discretion by admitting into evidence a letter in which appellant requested the proceeds of his deceased wife's life insurance policy. The letter suggested a possible financial motive for his wife's murder and therefore was relevant to appellant's guilt. Additionally, the financial motive countered appellant's argument that the murder was a horrible incident derived from a combination of anger and alcohol. The letter was also relevant to rebut appellant's argument that he had accepted responsibility for his actions or had exhibited remorse, further evincing his character. The prejudice derived from admission of the letter did not substantially outweigh its probative value because the correspondence provided evidence of appellant's motive for the murder and displayed his conduct after the murder, and the jury could have weighed both in its consideration of appellant's request for a lighter sentence, which was based upon his alleged remorseful and cooperative conduct after his wife's murder. (Jones, C.; CR-20-5; 6-11-2020; Wood, R.)

Thomas v. State, 2020 Ark. App. 357 [**Ark. Code Ann. § 16-97-103**] The trial court did not abuse its discretion when during sentencing it admitted evidence pertaining to two other crimes with which appellant had been charged but not yet convicted. Pursuant to Ark. Code Ann. § 16-97-103, certain evidence is admissible at the penalty phase that would not have been admissible

at the guilt-innocence phase of the trial. Specifically, evidence of prior or subsequent uncharged criminal conduct can be admissible at the penalty phase of a trial if it is relevant evidence of the defendant's character or evidence of an aggravating circumstance. In appellant's case, the evidence showed that the crime for which appellant was on trial was not an isolated incident. The evidence of other crimes demonstrated that appellant engaged in a pattern of criminal behavior and was relevant character evidence for the jury to consider in its determination of an appropriate sentence. (Hearnberger, M.; CR-19-67; 8-26-2020; Whiteaker, P.)

JUVENILE

Randall-McCoy v. Ark. Dep't of Human Servs., 2020 Ark. App. 325 [**TPR—ICWA**] Mother appealed termination of her parental rights under ICWA. Her two young sons were removed from her custody after the death of her two-year-old daughter, who had been abused by mother's boyfriend. The appellate court affirmed termination, finding that it was in the children's best interest where mother had allowed the two-year-old to be severely abused by the boyfriend and had continued exposing the siblings at issue to domestic violence by the boyfriend after the toddler's death. Applying the ICWA standard, the court found beyond a reasonable doubt that termination was appropriate. (Smith, T.; JV-18-636; June 3, 2020; Abramson, R.)

Kilpatrick v. Ark. Dep't of Human Servs., 2020 Ark. App. 342 [**TPR—sufficiency of the evidence**] Mother, who had failed to complete services or make significant progress, argued that termination was not in children's best interest and that she should be allowed more time to complete services because the children were not in an adoptive placement at the time of the TPR hearing. The court disagreed, finding that it was in the children's best interest to move toward permanency by terminating mother's rights. The mother repeatedly exposed the children to violence, was regularly intoxicated, and did not demonstrate an ability to protect the children. Finding that the evidence was sufficient to support that termination was in the children's best interest, the order terminating parental rights was affirmed. (Zimmerman, S.; JV-17-28; June 3, 2020; Murphy, M.)

Tovias v. Ark. Dep't of Human Servs., 2020 Ark. App. 337 [**TPR—sufficiency of the evidence**] Tovias, the father, appealed termination, arguing that there was insufficient evidence that his son would be subjected to potential harm if he were returned to Tovias's custody and that termination was not in his best interest. Tovias had been living with the mother of his child, Miranda, and four other children, one of whom was severely abused by Miranda, including starvation, handcuffing him to furniture, and threatening him with a knife. Tovias allowed his son to be present in the home and witness this abuse. Tovias claimed that he planned to separate from Miranda but the court found this testimony by Tovias not to be credible and was not convinced that Tovias would

separate from Miranda and protect their son. Finding that the child was at risk of potential harm and that termination was in the child's best interest, Toviias's rights were terminated. Finding no clear error, the appellate court affirmed. (Zimmerman, S.; JV-18-95; June 3, 2020; Whiteaker, P.)

Garner v. Ark. Dep't of Human Servs., 2020 Ark. App. 328 [**Adjudication; sufficiency of the evidence**] Mother appealed adjudication order finding her infant dependent-neglected under "Garrett's Law" due to the presence of methamphetamine in the umbilical cord at the child's birth. The mother claimed that she did not know that she was pregnant and thus lacked the mental culpability necessary to prove dependency-neglect. The appellate court affirmed termination, deferring to the discretion of the trial court in determining credibility. The trial court did not find the mother's claim that she was unaware of her pregnancy to be credible because she was found to be of above-average intelligence, she had given birth to several other children previously, and her other children had been previously removed from her custody due to the mother's illegal drug use. (DeLay, G.; JV-19-275; June 3, 2020; Virden, B.)