

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI, Respondent,)	No. ED46436-01
)	
vs.)	Appeal from the Circuit Court of
)	St. Louis County
CHRISTOPHER X. BOHLEN, Appellant.)	
)	Filed: March 24, 2009

OPINION SUMMARY

Christopher Bohlen (“Defendant”) filed a motion to recall the mandate issued in this case asserting that his appellate counsel was ineffective because he failed to raise on appeal that one count of Defendant’s three count conviction for first degree robbery violated the Double Jeopardy Clause of the United States Constitution. We granted the motion to permit Defendant to address the merits of his claim. See State v. Zweifel, 615 S.W.2d 470, 473 (Mo.App. 1981).

JUDGMENT AND SENTENCE VACATED AS TO COUNT I.

Division One Holds: Defendant’s conviction on Count I (force against store manager to obtain jewelry owned by store), in addition to his conviction on Count II (force against store manager to obtain watch owned by store manager) and Count III (force against employee to obtain watch owned by employee), violated his right to be free of double jeopardy. The constitutional protection against double jeopardy precludes conviction for multiple counts of robbery where both an employer’s property and the employee’s personal property were taken from the same employee. We conclude that appellate counsel’s failure to raise this argument, which was obvious from the record, was sufficiently serious that, had it been raised, the outcome of the appeal would have been different.

Opinion by: Patricia L. Cohen, J. Kurt S. Odenwald, P.J. and Glenn A. Norton, J., concur.

Attorney for Appellant: Ellen H. Flottman

Attorneys for Respondent: Shaun J. Mackelprang and Dora A. Fichter

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