

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE OF MISSOURI,
RESPONDENT
vs.**

**AMANDA N. BAZELL,
APPELLANT**

DOCKET NUMBER WD77159

DATE: JULY 21, 2015

Appeal from:

The Circuit Court of Cass County, Missouri
The Honorable R. Michael Wagner, Judge

Appellate Judges:

Division Two: Thomas H. Newton, Presiding Judge, Victor C. Howard, Judge and Mark D. Pfeiffer, Judge

Attorneys:

Richard A. Starnes, for Respondent

Ellen H. Flottman, for Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI, RESPONDENT

v.

AMANDA N. BAZELL, APPELLANT

WD77159

Cass County, Missouri

Before Division Two: Thomas H. Newton, Presiding Judge, Victor C. Howard, Judge and Mark D. Pfeiffer, Judge

Amanda Bazell appeals her convictions and sentences following a jury trial for burglary in the first degree, section 569.160, RSMo 2000, two counts of stealing firearms, one count of stealing over \$500, and one count of stealing under \$500, section 570.030, RSMo Cum. Supp. 2013. She contends that the trial court abused its discretion in denying her request for a mistrial after a detective testified that he compiled a photo lineup from jail photos. Bazell also argues that the trial court plainly erred in accepting the jury's verdict for two counts of stealing firearms and in sentencing her for both counts in violation of her right to be free from double jeopardy. Bazell's convictions and sentences for first-degree burglary, one count stealing firearms, stealing property over \$500, and stealing property under \$500 are affirmed. Her conviction and sentence for one count of stealing firearms is reversed.

AFFIRMED IN PART, REVERSED IN PART.

Division Two holds:

(1) Where a detective testified that he used the jail photo system to find other people with similar characteristics to Bazell to fill out the rest of the lineup and did not establish that Bazell's photo was in the jail system or that he used the jail system to find her photo, his testimony did not show that Bazell committed, was accused of, was convicted of, or was definitely associated with other crimes or misconduct. The vague references to the jail photo system did not clearly associate Bazell with other crimes; therefore, the trial court did not err in denying Bazell's request for a mistrial.

(2) Where section 570.030 shows a legislative intent to not allow multiple punishments for a single incidence of theft of multiple firearms not valued over \$500 and the State did not allege a value of the firearms in the charging document and did not prove a value at trial, two convictions for stealing firearms in the course of one burglary violated Bazell's constitutional right to be free from double jeopardy, and the trial court plainly erred in entering judgment on both counts. Bazell's conviction under Count IV for theft of firearms is, therefore, reversed.

Opinion by: Victor C. Howard, Judge

Date: July 21, 2015

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