

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI**

**v.  
TAWANDA KUNONGA**

**RESPONDENT,**

**APPELLANT.**

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DOCKET NUMBER WD77357  
DATE: March 29, 2016

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Appeal From:

Jackson County Circuit Court  
The Honorable Charles H. McKenzie, Judge

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Appellate Judges:

Division Two: Cynthia L. Martin, Presiding Judge, Mark D. Pfeiffer, Judge and Karen King Mitchell, Judge

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Attorneys:

Daniel N. McPherson, Jefferson City, MO, for respondent.

Jeannette L. Wolpink, Kansas City, MO, for appellant.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI,**

**RESPONDENT,**

**v.**

**TAWANDA KUNONGA,**

**APPELLANT.**

No. WD77357

Jackson County

Before Division Two: Cynthia L. Martin, Presiding Judge, Mark D. Pfeiffer, Judge and Karen King Mitchell, Judge

Tawanda Kunonga appeals his convictions of one count of first-degree murder and one count of armed criminal action following a jury trial. Kunonga argues that the trial court erred (1) by failing to *sua sponte* intervene and prevent the admission of alleged propensity evidence; (2) by failing to *sua sponte* intervene and prevent the admission of alleged hearsay testimony; (3) by failing to grant a mistrial after the State introduced evidence that Kunonga invoked his right to remain silent; and (4) in allowing him to represent himself at trial because the waiver of counsel form he signed prior to trial did not comply with section 600.051, depriving him of his constitutional right to counsel.

**Affirmed.**

**Division Two holds:**

The trial court did not plainly err in failing to *sua sponte* intervene and prevent the admission of alleged propensity evidence or alleged hearsay testimony. Kunonga cannot prove that the jury's verdict would have been different had the alleged propensity evidence or alleged hearsay testimony not been admitted at trial given the overwhelming evidence of Kunonga's guilt.

The trial court did not err in failing to grant a mistrial. The State did not introduce evidence in which Kunonga invoked his right to remain silent during a police investigation. Kunonga's statement admitted at trial was not a clear and unequivocal statement that Kunonga was invoking his right to remain silent.

The trial court did not plainly err in allowing Kunonga to represent himself at trial. The waiver of counsel form Kunonga signed did not strictly comply with section 600.051, a violation that establishes a manifest injustice or a miscarriage of justice within the meaning of plain error review. But the State objectively demonstrated that the section 600.051 violation did not impact the knowing, voluntary, and intelligent waiver of counsel by Kunonga. The trial court orally questioned Kunonga about his decision to waive counsel with questions that tracked the language of section 600.051 nearly verbatim. As a result, the State showed that the violation of section 600.051 did not result in a manifest injustice or a miscarriage of justice.

Opinion by Cynthia L. Martin, Judge

March 29, 2016

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