

### **Summary of SC95318, *State of Missouri v. Amanda Bazell***

Appeal from the Cass County circuit court, Judge R. Michael Wagner

Argued and submitted April 26, 2016; per Court order, supplemental briefs filed July 18, 2016; opinion issued August 23, 2016, and modified on the Court's own motion September 20, 2016

**Attorneys:** Bazell was represented by Ellen H. Flottman of the public defender's office in Columbia, (573) 777-9977. The state was represented by Richard A. Starnes of the attorney general's office in Jefferson City, (573) 751-3321.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A woman convicted of burglary and stealing challenges, in part, her felony convictions for stealing two firearms and testimony about the photographic lineup used in her case. In a unanimous per curiam opinion that cannot be attributed to any particular judge, the Supreme Court of Missouri affirms the judgment in part, reverses it in part and remands (sends back) the case to the trial court. The trial court did not abuse its discretion in overruling the woman's request for a mistrial based on testimony about the photographic lineup. But her felony convictions for stealing the firearms must be reversed and the case remanded to the trial court. The statute permitting the state to enhance certain misdemeanors to felonies does not apply because the stealing statute does not include, as an element of the offense, the value of the property or services appropriated.

**Facts:** Amanda Bazell broke into two homes on the same day. From one, she stole two firearms and other items; from the other, she stole rings valued at \$8,000. The state charged her, as a prior and persistent offender, with two counts of first-degree burglary and four counts of stealing under section 570.030, RSMo. Three of the stealing counts were charged as class C felonies – one for the rings stolen and two for the two firearms stolen; the fourth stealing count was charged as a misdemeanor. The jury found Bazell guilty of one count of first-degree burglary and all four counts of stealing. The trial court sentenced her to concurrent terms of 12 years in prison for the burglary and felony stealing convictions and one year in the county jail for the misdemeanor stealing conviction. Bazell appeals.

### **AFFIRMED IN PART; REVERSED IN PART; REMANDED.**

**Court en banc holds:** (1) Because section 570.030.3 does not permit the charges for the two firearms stolen to be enhanced from misdemeanors to felonies, Bazell's two felony convictions for the stolen firearms must be reversed. Section 570.030.3 – the felony enhancement provision of Missouri's stealing statute provides in relevant part: "Notwithstanding any other provision of law, any offense in which the value of property or services is an element is a class C felony if ... [t]he property appropriated consists of ... [a]ny firearms." In ascertaining the meaning of this statute, the Court must give effect to the plain and ordinary meaning of the statutory language and, when the meaning is clear, it must not employ canons of construction to achieve a desired result. The meaning here is clear – by its own terms, the felony enhancement provision only

applies if the offense is one in which “the value of property or services is an element.” The value of the property or services appropriated, however, is not an element of stealing as defined by section 570.030.1. As such, the enhancement provision of section 570.030.3 does not apply. Because Bazell’s offenses for stealing the two firearms must be classified as misdemeanors and not felonies, there is no need to address her argument that being convicted of the two felonies violates double jeopardy.

(2) The trial court did not abuse its discretion in overruling Bazell’s motion for a mistrial based on testimony regarding a photographic lineup. She failed to show the detective’s testimony was evidence that Bazell had committed or was clearly associated with other crimes. The detective repeatedly explained that he obtained the lineup photographs, including Bazell’s, from department of motor vehicle records. His testimony did not establish that Bazell’s photograph was in the jail system or that he used the jail system to find her photograph.