MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI

RESPONDENT,

v.

THEAUN ROMAINE HARDRIDGE

APPELLANT.

DOCKET NUMBER WD83755

DATE: July 6, 2021

Appeal From:

Lafayette County Circuit Court
The Honorable Dennis A. Rolf, Judge

Appellate Judges:

Special Division: Zel M. Fischer, Special Judge, Presiding, Cynthia L. Martin, Chief Judge and Gary D. Witt, Judge

---

Attorneys:

Kristen S. Johnson, Jefferson City, MO, for respondent.

Irene C. Karns, Columbia, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI, RESPONDENT,
v.
THEAUN ROMAINE HARDRIDGE, APPELLANT.

No. WD83755 Lafayette County

Before Special Division: Zel M. Fischer, Special Judge, Presiding, Cynthia L. Martin, Chief Judge and Gary D. Witt, Judge

Theaun Hardridge ("Hardridge") appeals the judgment of the Circuit Court of Lafayette County, Missouri ("trial court"), finding him guilty of one count of assault in the second degree, section 565.052; one count of unlawful use of a weapon, section 571.030.1(9); one count of unlawful use of a weapon, section 571.030(4); two counts of armed criminal action, section 571.015; and one count of resisting a lawful stop, section 575.150. On appeal, Hardridge argues that section 571.030.1(9) is ambiguous, and that his charge for unlawful use of a weapon pursuant to that subsection was improper. Hardridge also argues that the trial court plainly erred by admitting evidence at his sentencing hearing of his bad conduct while Hardridge was in jail awaiting trial.

AFFIRMED.

This Court has, on several occasions, found that section 571.010.1(9), although inartfully drafted and perhaps redundant, is not ambiguous. *See, e.g.*, *State v. Barraza*, 238 S.W.3d 187, 192 (Mo. App. W.D. 2007), *State v. Key*, 437 S.W.3d 264, 268 (Mo. App. W.D. 2014). We see no reason to change course from our prior decisions. The Missouri legislature has, since *Barraza*, amended section 571.010 five times without changing the language to which the appellant objects in this case, which indicates that the legislature has adopted the court's construction. *State v. Ostdiek*, 351 S.W.3d 758, 766 (Mo. App. W.D. 2011). Also, which charges to file against a particular defendant when several different statutes would proscribe the defendant's conduct is generally left to the discretion of the prosecutor. *State v. Haynes*, 564 S.W.3d 780, 786 (Mo. App. E.D. 2018).

The trial court has discretion during the punishment phase of a bifurcated jury trial to admit "whatever evidence it deems helpful to the jury in assessing punishment." *State v. Winfield*, 5 S.W.3d 505, 515 (Mo. banc 1999). Evidence relevant to punishment includes evidence of "the history and character of the defendant." Section 557.036.3. Evidence of a defendant's bad acts while in custody awaiting trial constitutes such relevant evidence.

Opinion by Gary D. Witt, Judge July 6, 2021

****

This summary is UNOFFICIAL and should not be quoted or cited.