# MISSOURI COURT OF APPEALS
# WESTERN DISTRICT

**STATE OF MISSOURI,**

**Respondent,**

**v.**

**CANDY M. PHILLIPS,**

**Appellant.**

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DOCKET NUMBER WD83458

**Date: October 12, 2021**

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Appeal from:

Buchanan County Circuit Court
The Honorable Patrick K. Robb, Judge

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Appellate Judges:

Division One: Alok Ahuja, Presiding Judge, Lisa White Hardwick and Anthony Rex Gabbert, Judges

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Attorneys:
Michael K. Hill, Kansas City for appellant.
Michael A. Trapasso, Jefferson City for respondent.

**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS**
**WESTERN DISTRICT**

**STATE OF MISSOURI, Respondent,**
**v.**
**CANDY M. PHILLIPS, Appellant.**

WD83458 Buchanan County

Before Division One Judges: Alok Ahuja, Presiding Judge, Lisa White Hardwick and Anthony Rex Gabbert, Judges

Candy Phillips appeals from her conviction of two counts of stealing. Phillips contends the circuit court erred in admitting hearsay evidence because the State failed to lay an adequate foundation under the business records exception. Phillips also contends the circuit court erred in submitting a jury instruction that violated her due process rights.

**AFFIRMED.**

**Division One holds:**

(1) The circuit court did not abuse its discretion by admitting into evidence the logistics reports for Chatsworth Apartments under the business records exception to the rule against hearsay. The reports were not admitted to prove the truth of the matter asserted and were therefore admissible as relevant, non-hearsay statements. Even if the reports were hearsay, the circuit court did not abuse its discretion in finding that the business records exception applied. The State demonstrated that Son was a qualified witness through his testimony that he was in regular communication with Father about the inner workings of Chatsworth and because he was directly involved with the inner workings of Chatsworth under the facts of this case. Finally, the circuit court did not abuse its discretion by interpreting Son's testimony as evidence of Chatsworth's actual business practice of record keeping near-in-time to relevant events and in the ordinary course of business.

(2) The circuit court did not commit plain error in issuing Instruction No. 8 to the jury, which formed the basis of Count II. Instruction No. 8 did not violate Phillips's right to a unanimous verdict because the State properly aggregated

multiple misdemeanors of stealing into a single felony under section 570.030.11, RSMo. Under the statute, any properly aggregated instances of criminal conduct must be treated as a "single criminal episode." Therefore, the jury did not consider multiple acts which could each be the basis of the charge; rather, the jury considered a single course of conduct in deciding to convict Phillips on Count II.

**Opinion by: Lisa White Hardwick, Judge** October 12, 2021

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