Missouri Court of Appeals
Southern District

In Division

STATE OF MISSOURI, Respondent, v. RAYETTA ANN LAYTON, Appellant.	No. SD38797 **Filed: March 24, 2026**

APPEAL FROM THE CIRCUIT COURT OF GREENE COUNTY

Honorable Josephine Stockard, Judge

(Growcock, C.J., Goodman, J., Hamner, J.)

AFFIRMED

PER CURIAM. Rayetta Layton ("Layton") failed to stop at a stop sign and the vehicle she was driving collided with another vehicle, flipping both. The driver of the other vehicle suffered physical injures; the passenger suffered serious physical injuries. Layton exhibited symptoms consistent with methamphetamine use, and a laboratory test confirmed the presence of methamphetamine and methamphetamine metabolite in her blood. Methamphetamine can affect a person's ability to operate a vehicle. From this single accident, Layton was charged with and found guilty of the class D felony of

driving while intoxicated ("DWI") and the class E felony of DWI. She was sentenced to five years and four years in the Department of Corrections, to run concurrently, execution of sentence suspended, with thirty days of shock time in jail and placement on probation for five years.

Layton does not challenge the sufficiency of the evidence to support her convictions. Her only claim on appeal is that two DWI convictions arising from the same accident constitutes double jeopardy. "Whether a criminal defendant's constitutional rights have been violated is a question of law." ***State v. Heathcock***, 708 S.W.3d 163, 166 (Mo. banc 2025). Our evaluation of this issue involves statutory interpretation, which also is an issue of law we review *de novo*. ***Id.***

History and Parameters of Double Jeopardy

"Historians have traced the origins of our constitutional guarantee against double jeopardy back to the days of Demosthenes, who stated that 'the laws forbid the same man to be tried twice on the same issue'" ***Whalen v. United States***, 445 U.S. 684, 699 (1980) (Rehnquist, J., dissenting). The Double Jeopardy Clause of the Fifth Amendment protects against multiple prosecutions for the same offense after either an acquittal or a conviction, as well as multiple punishments for the same offense. ***State v. Onyejiaka***, 671 S.W.3d 796, 798 (Mo. banc 2023). Although these are different functions, they have the same meaning. ***United States v. Dixon***, 509 U.S. 688, 704 (1993). Double jeopardy is an affirmative defense; the defendant bears the burden to prove it applies. ***Heathcock***, 708 S.W.3d at 166.

The Double Jeopardy Clause "serves principally as a restraint on courts and prosecutors." ***Brown v. Ohio***, 432 U.S. 161, 165 (1977). "Few, if any, limitations are imposed by the Double Jeopardy Clause on the legislative power to define offenses." ***Sanabria v. United States***, 437 U.S. 54, 69 (1978). "The legislature remains free under the Double Jeopardy Clause to define crimes and fix punishments[,] but once the legislature has acted[,] courts may not impose more than one punishment for the same offense." ***Brown***, 432 U.S. at 165. "With respect to cumulative sentences imposed in a single trial, the Double Jeopardy Clause does no more than prevent the sentencing court from prescribing greater punishment than the legislature intended." ***Missouri v. Hunter***, 459 U.S. 359, 366 (1983).

"Because the substantive power to prescribe crimes and determine punishments is vested with the legislature, the question under the Double Jeopardy Clause whether punishments are 'multiple' is essentially one of legislative intent." ***Onyejiaka***, 671 S.W.3d at 798 (quoting ***Ohio v. Johnson***, 467 U.S. 493, 499 (1984)). When a defendant's conduct involves more than one victim, we focus on the conduct the legislature intended to proscribe under the statute. ***State v. Liberty***, 370 S.W.3d 537, 546 (Mo. banc 2012). "Accordingly, this Court's double jeopardy analysis regarding multiple punishments is limited to determining whether the legislature intended to impose multiple punishments." ***Onyejiaka***, 671 S.W.3d at 798.

The General Assembly need not use "certain magic words" to express its intent to authorize multiple punishments. ***Id.*** at 800-01. Such an intent may be conveyed in one of two ways: 1) expressly within a statute, or 2) "in the absence of an offense-specific

indication of legislative intent, the legislature has generally expressed its intent regarding multiple punishments in section 556.041." ***Id.*** at 799. Section 556.041[1] provides, "When the same conduct of a person may establish the commission of more than one offense he or she may be prosecuted for each such offense." Both this general statement of intent, and the enumerated exceptions thereto, have been unchanged in substance since that statute became effective in 1979.

Legislative Intent for Multiple DWI Punishments

The offense of DWI and its classifications have been codified at §577.010:

1. A person commits the offense of driving while intoxicated if he or she operates a vehicle while in an intoxicated condition.

2. The offense of driving while intoxicated is:

(1) A class B misdemeanor;

…

(3) A class E felony if:

…

(b) While driving while intoxicated, the defendant acts with criminal negligence to cause physical injury to another person;

(4) A class D felony if:

…

(c) While driving while intoxicated, the defendant acts with criminal negligence to cause serious physical injury to another person[.]

[1] Statutory references are to RSMo. 2016, as amended through November 11, 2021, the date of alleged crime.

Layton was charged with and found guilty of the class E felony of DWI causing physical injury to the other driver (§577.010.2(3)(b)), and the class D felony of DWI causing serious physical injury to the passenger (§577.010.2(4)(c)).

Section 577.010 itself does not expressly provide whether one act of driving while intoxicated may be charged and punished under different subsections of that statute. The language arguably could support different interpretations. On the one hand, the General Assembly utilized the definite article "the" to modify "offense of driving while intoxicated" in both subsections one and two, which could indicate DWI is intended to be but one offense with different possible classifications and punishments. On the other hand, the seven different classifications of DWI also could indicate an intent to have additional or greater punishment for more culpable conduct, even if the classifications all share the common elements of driving and intoxication. These classifications are not separated by the coordinating conjunction "or," unlike the listed methods to prove each class of the offense. These factors could indicate that a conviction for one classification of DWI under subsection two was not intended to exclude the possibility of a conviction for another classification of DWI under that same subsection.

Because the statute itself does not definitively answer the question of legislative intent, we must default to the General Assembly's general statement of intent in §556.041. Layton does not refer to this statute or its exceptions in her brief, and she does

not argue that DWI generally, or the specific facts of her case, come within any of these exceptions.[2]

We find support for application of this general legislative intent in the DWI context by the qualification the General Assembly placed in the definitions applicable to Chapter 577. "When determining the legislative intent of a statute, no portion of the statute is read in isolation, but rather the portions are read in context to harmonize all of the statute's provisions." ***Heathcock***, 708 S.W.3d at 167. In §577.001, the General Assembly included definitions of "aggravated offender," "chronic offender," "habitual offender," and "persistent offender." Each of these statuses, which can enhance a DWI offender's punishment if proven by the state, require a showing that an offender has been found guilty of a number of intoxication-related traffic offenses *committed on separate occasions*. Section 577.001. This "separate occasions" language would be superfluous if a person cannot be found guilty of more than one intoxication-related traffic offense, such as DWI, arising from the same incident or occasion. "We presume every word in the text has meaning and understand that there is no superfluous language." ***State v. Johnson***, 675 S.W.3d 620, 626 (Mo.App. S.D. 2023).

[2] We would be remiss if we did not observe that the class B misdemeanor of DWI, for which the state need only prove the elements of subsection one of §577.010, is a lesser included offense of the felony classifications of DWI. Nothing in this opinion should be construed as contrary to §556.041(2), which precludes conviction for more than one offense if one offense is included in another.

No Double Jeopardy Violation

Despite the fact that the general legislative intent supports the potential for multiple convictions, Layton argues that §577.010, and all of its subsections, represent one "unit of prosecution," such that one act of driving while in an intoxicated condition cannot be charged and punished as multiple offenses.

The test to determine whether two or more offenses are in fact a single offense for the purpose of Double Jeopardy was established nearly a century ago in ***Blockburger v. United States***, 284 U.S. 299 (1932). "The same-elements test, sometimes referred to as the '*Blockburger'* test, inquires whether each offense contains an element not contained in the other; if not, they are the 'same offence' and double jeopardy bars additional punishment and successive prosecution." ***Dixon***, 509 U.S. at 696. For a few years the Supreme Court of the United States strayed from the same elements test in favor of an analysis more focused on the underlying conduct of the offender. *See* ***Grady v. Corbin***, 495 U.S. 508, 520-23 (1990). This same conduct test proved to be "wrong in principle," "unstable in application," "a continuing source of confusion," and accordingly has been overruled. ***Dixon***, 509 U.S. at 704-12.

As with the United States Supreme Court, the Supreme Court of Missouri has adopted the same elements test and has rejected the same conduct test.

> The applicable rule is that, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not. If each crime requires proof of a fact the other does not, and the defendant is convicted of both, double jeopardy is not violated. Multiple punishments are permissible if the defendant has in law and in fact committed separate crimes.

State v. Collins, 648 S.W.3d 711, 719 (Mo. banc 2022), *as modified on denial of reh'g* (Aug. 30, 2022) (internal citations omitted). "The focus is on the elements of the offenses at issue, not the underlying conduct that resulted in the defendant being charged." ***State v. Daws***, 311 S.W.3d 806, 808 (Mo. banc 2010) (citing ***Dixon,*** 509 U.S. at 704).

"The elements of a crime are found *only* in the statute creating that crime." ***State v. Winter***, 719 S.W.3d 738, 745 (Mo. banc 2025) (citing §556.026). "[T]he state's burden of proof beyond a reasonable doubt begins and ends with the statutory elements of the crime and applicable sentence." ***Id.*** at 746. The comparison is between the statutory elements of the charged offenses, not the charges or averments themselves. ***State v. Collins***, 648 S.W.3d 711, 720 n.6 (Mo. banc 2022).

The class D and class E variants of DWI as defined by §577.010 include some of the same elements, driving while in an intoxicated condition, but they are differentiated by the severity of injury caused and by injuries to different victims. Case law from analogous Missouri cases instructs that these facts properly are considered both for classification of the offenses *and* as elements of the offenses for the purpose of double jeopardy scrutiny.

In ***State v. Burns***, 877 S.W.2d 111, 113 (Mo. banc 1994), the court held double jeopardy was not violated when a defendant was acquitted of possession with intent to distribute marijuana but was convicted of possession of greater than 35 grams of marijuana arising from the same incident. The defendant argued that both offenses involved the same conduct (possession of marijuana), that each degree of the offense of

possession had the same elements, that the amount of marijuana was not an element of either crime, and that the requirement to prove the amount possessed pertained only to the permissible range of punishment with no connection with the elements of the offense. ***Id.*** at 112-13. The court disagreed: "Even though [the amount of marijuana possessed] goes to the classification of the offense, and therefore to punishment, it is still an element of the crime." ***Id.***

This principle from ***Burns*** was cited approvingly in ***State v. French***, 79 S.W.3d 896, 899 (Mo. banc 2002), when the defendant in that case argued that his continuing nonpayment of child support for twelve consecutive months was one indivisible crime, so he could not be found guilty of two counts of felony nonsupport. The court held that double jeopardy did not preclude two convictions because the statute defining the offense provided that specific six-month periods of the prohibited conduct constituted separate offenses. ***Id.*** at 900. The court reasoned, "[E]ven though the six-month period of nonpayment under section 568.040.4 goes to the classification of the offense as misdemeanor or felony, and therefore to punishment, it is still an element of the crime, and, as in *Burns,* it establishes a separate unit of prosecution." ***Id.*** at 899.

In ***State v. Barraza***, 238 S.W.3d 187 (Mo.App. W.D. 2007), the defendant killed one man and injured another by shooting a firearm. Among other things, he was charged with and found guilty of unlawful use of a weapon and armed criminal action as to each victim, for a total of four firearm-related convictions. He argued that double jeopardy precluded any more than one conviction for unlawful use of a weapon and one conviction for armed criminal action because the legislature intended to make each firing of the

firearm subject to separate convictions, and the state only proved a single shot killed one victim and injured the other. ***Id.*** at 194. The court disagreed, finding that there were two victims, and each offense required proof of a separate element, so the defendant could be convicted of four separate firearm-related offenses regardless of how many shots he had fired. ***Id.***

In ***Johnson***, 675 S.W.3d 620, the defendant drove his vehicle into another vehicle, collided with and killed persons standing outside that vehicle, and continued driving. Among other offenses, the defendant was charged with and found guilty of two counts of leaving the scene of an accident: one for striking the vehicle and one for striking a person outside of the vehicle. He argued double jeopardy precluded a second charge for the same accident. ***Id.*** at 625-29. We affirmed, holding each impact was a separate accident and therefore constituted a separate offense. ***Id.*** at 627-28.

Our decision in ***Johnson*** was guided by ***State v. Brown,*** 547 S.W.2d 217 (Mo.App. St.L.D. 1977), in which the court found double jeopardy did not preclude two separate charges for leaving the scene of an accident when the defendant fled after his vehicle struck and injured two pedestrians. "The fact that two crimes occur at substantially the same time or that substantially the same evidence must be shown to prove both crimes does not require the state to present only one charge. The important question is whether two crimes occurred." ***Id.*** at 219.

In light of these cases, Layton has not carried her burden to persuade us that her DWI convictions are for the same offense. While some of Layton's conduct for each offense was the same, driving while in an intoxicated condition and striking the victims'

vehicle, each offense required proof of an element the other did not: for the class E felony the state had to prove, and the fact-finder had to find, criminal negligence causing physical injury to the other vehicle's driver. For the class D felony the state had to prove, and the fact-finder had to find, criminal negligence causing serious physical injury to the other vehicle's passenger. The felony offenses in this case had different victims with different severities of injuries. "When the same conduct results in harm to two or more victims, double jeopardy is not violated if a defendant is convicted for the harm to each victim." ***State v. Smith***, 456 S.W.3d 849, 853 (Mo. banc 2015).[3]

Conclusion

Section 577.010 does not expressly state whether the General Assembly intended multiple felony DWI charges to arise from the same incident or occurrence of driving while in an intoxicated condition, so we defer to the legislature's §556.041 general intent that when the same conduct may establish the commission of more than one offense, a

[3] Although we do not look to the verdict director to determine the elements of an offense, ***Collins***, 648 S.W.3d at 720 n.6., a verdict director that does not contain every element of the offense violates Due Process because it relieves the state of its burden of proof and allows the state to obtain a conviction without the jury deliberating on and determining every contested element of the offense. ***State v. Hendricks***, 619 S.W.3d 171, 179 (Mo.App. W.D. 2021). Consistent with our interpretation of §577.010, the verdict director for misdemeanor DWI at the time of Layton's trial, §431.02 MAI-CR 4th (2021), was not to be used "if the offender is charged with driving while intoxicated where injury or death occurred." §431.02 MAI-CR 4th (2021) Note on Use 2. Unlike the misdemeanor verdict director, the felony DWI verdict director, § 431.03 MAI-CR 4th (2021), requires identification of a specific act of criminal negligence, as well as a required finding that the criminal negligence caused (serious) physical injury (or death) to an *identified* victim. Jury instruction references are to Missouri Approved Instructions – Criminal, 4th ed. (2021).

defendant may be prosecuted for each such offense. No double jeopardy violation occurred because the two felony DWI convictions did not arise from one unit of prosecution. We affirm the judgment and convictions.