

**MISSOURI COURT OF APPEALS, WESTERN DISTRICT  
DIVISION I**

**Lisa White Hardwick, Presiding Judge  
Cynthia L. Martin, Judge  
Janet Sutton, Judge**

**October 22, 2024  
University of Central Missouri  
Warrensburg, Missouri**

**WD86183**

**State of Missouri, Respondent,**

**v.**

**Solowmenn James Warren, Appellant.**

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Appellant Solowmenn Warren appeals the judgment of the Circuit Court of Cole County convicting him of one count of misdemeanor domestic assault in the fourth degree, one count of felony kidnapping in the second degree, one count of unlawful possession of a firearm, one count of unlawful use of a weapon, and three counts of armed criminal action. As alleged at trial, Victim met Appellant in August 2022, at the gas station where Victim worked. A week or two after they met, Victim and Appellant began a romantic relationship. Victim allowed Appellant to stay with her so that he could save money. On September 21, 2022, the couple were experiencing problems and Victim asked Appellant to leave her apartment. Victim went to bed and awoke the next morning. As she was preparing to go to work, Appellant came out of the bathroom with a gun. Appellant pointed the gun at Victim and told her she had to listen to him talk. Appellant said a number of derogatory things about Victim. He then insisted that she take him to a different location. Victim refused and Appellant stated he would kill her. Appellant agreed to leave the apartment but, before she left, wrote a note that, if she were found dead, Appellant had killed her. Victim was eventually able to leave without Appellant by telling him he could remain in the apartment until she got off work. Victim got in her vehicle and left. But, before she got to work, Victim realized she did not have her phone and returned to the residence. Upon Victim's return, Appellant yelled at Victim for approximately twenty minutes before she was able to leave again. Victim went to work and worked her full shift. After her shift, Victim told her manager what had happened. Her manager told her to contact the police. Following a jury trial, Appellant was found guilty of the counts above but not guilty of other charges. The court sentenced Appellant to a total of twenty years' imprisonment. This appeal followed.

Appellant's points on appeal:

1. The trial court erred in finding Appellant could be sentenced to a class C felony under section 571.070, RSMo, because of prior criminal conduct on Count III and also finding he was a prior and persistent felony offender because of prior criminal conduct and was thus subject to a further enhanced prison sentence under the class B felony range of punishment on that count in derogation of Appellants' right to due process of law under the Fourteenth Amendment to the United States Constitution and Article I, section 10 of the Missouri Constitution, in that the plain language of section 558.016, RSMo, clearly prohibits the government from seeking both the statute-specific enhancement for prior unlawful-possession-related dangerous-felony conduct found in section 571.070, RSMo, and the general recidivism enhancement found in section 558.016, RSMo. Section 558.016, RSMo, plainly states the trial court may only apply one of these types of enhancements to extend a criminal defendant's sentence because of prior criminal conduct. Because the trial court sentenced him to the maximum punishment for a class B felony on Count III, Appellant was prejudiced by the trial court's finding of double enhancements.
2. The trial court plainly erred in failing to administer the trial oath to swear the jury to well and truly try Appellant's case in derogation of his rights to due process of law and to a fair and impartial jury under the Sixth and Fourteenth Amendments to the United States Constitution and Article I, sections 10, 18(a), and 22(a) of the Missouri Constitution, Rule 27.02(d), and section 546.070, RSMo, in that, where the juror oath was an essential element of the common-law jury trial long before the ratification of Missouri's first constitution in 1820 and remains so today, where the jurors' oath bears directly on the impartiality of the jurors' state of mind as a promise to set aside their impressions or opinions and render a verdict based solely on the evidence presented in court, and where the record below is devoid of any indication the trial court administered any oath to the jury at any point prior to the jury rendering its verdict, such was evident, obvious and clear error. Because the trial court's failure to swear Appellants' jury with a trial oath constitutes structural error threatening the integrity of the judicial process, such failure was a manifest injustice or miscarriage of justice.

**WD86636**

**M. Comtois, Appellant,**

**v.**

**First Call-Alcohol/Drug Prevention & Recovery, Respondent.**

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Appellant Michelle Comtois appeals from the judgment of the Circuit Court of Jackson County finding in favor of Respondent First Call-Alcohol/Drug Prevention & Recovery. Appellant brought suit against Respondent alleging age discrimination and retaliation in violation of the Missouri Human Rights Act. As alleged at trial, Appellant began

working for Respondent in 2012 as a mental health and substance abuse counselor. After approximately six months, she was promoted to Vice President of Programs. Appellant worked in that position until July 19, 2019. In early 2019, Appellant interviewed internal candidates for a team lead position that was opening. Following interviews, Appellant put forth to Respondent's CEO the particular candidate that Appellant had chosen. The CEO disagreed with Appellant's choice and wanted to promote a different employee. Appellant informed CEO that she believed hiring the CEO's choice would open the organization to an age discrimination suit because the CEO's candidate was younger and less experienced than Appellant's candidate. In July of 2019, the CEO gave Appellant a written disciplinary notice. Shortly after the disciplinary notice, Appellant was terminated. Appellant filed suit against Respondent alleging that her termination was retaliatory for raising her concerns about age discrimination. A jury found in favor of Respondent. This appeal followed.

Appellant's point on appeal:

1. The trial court abused its discretion in denying Appellant's motion for new trial, because defense counsel's statements in closing argument were prejudicial, and denied Appellant's right to a fair trial, in that counsel referred to evidence outside of the record, and impugned Appellant's, and her counsel's, integrity solely for her consulting with legal counsel to access the justice system.

**WD86869**

**Brian S. Wetzel, Respondent,**

**v.**

**Root Insurance Company, Appellant.**

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Appellant Root Insurance Company appeals the judgment of the Circuit Court of Ray County denying its motion to set aside the default judgment entered against Appellant on January 9, 2023. Respondent Brian Wetzel filed suit against Appellant alleging that, following a motor vehicle accident, Appellant refused to settle his insurance claim in a timely manner. Further, that Appellant's refusal constituted vexatious refusal to settle in violation of section 375.420, RSMo. Respondent served Appellant with the summons and petition through the Department of Insurance. The Department forwarded the documents to Appellant's registered agent, CT Corporation. Appellant did not timely respond to Respondent's suit. Respondent moved for, and was granted, default judgment in the amount of \$42,150, plus interest. A copy of the default judgment was sent to Appellant. As alleged in its motion, Appellant became aware of the lawsuit when it received the default judgment. Appellant alleged that CT Corporation never notified Appellant of the suit because there was a dispute between the two companies. The circuit court denied Appellant's motion to set aside the default judgment. This appeal followed.

Appellant's points on appeal:

1. The trial court erred in failing to set aside the default judgment entered against Appellant in its judgment because it abused its discretion in that Appellant demonstrated that good cause existed to set aside the judgment as Appellant demonstrated it had designated a Registered Agent, there was no recklessness, since Appellant did not have notice of the lawsuit, its action was not deliberately indifferent, and there no was impediment to the judicial process.
2. The trial court erred in failing to set aside the default judgment entered against Appellant in its judgment because it abused its discretion in that Appellant demonstrated that it had a meritorious defense as it had an applicable exclusion in its policy.

**WD86693**

**C.T.S., Appellant,**

**v.**

**Missouri State Highway Patrol Criminal Justice Information Services, Respondent;  
Lafayette Prosecuting Attorney, Respondent.**

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Appellant C.T.S. appeals the judgment of the Circuit court of Lafayette County denying his petition for expungement of his marijuana related offense. In 2017, Appellant pled guilty to possession of a controlled substance, marijuana, and unlawful use of a weapon for possessing a 9 mm pistol in the presence of more than 35 grams of marijuana. On June 16, 2023, Appellant filed a petition requesting expungement of both his charge for possession and his charge for unlawful use of a weapon. The State stipulated that Appellant was entitled to expungement of his possession charge, but objected to the expungement of the weapons charge. The circuit court ultimately granted C.T.S. expungement as to his possession of marijuana charge but denied expungement of the unlawful use of a weapons charge. This appeal followed.

Appellant's point on appeal:

1. The trial court erred in denying Appellant's Petition for Expungement, because the trial court misinterpreted or incorrectly applied the law, in that the trial court incorrectly concluded that the charge of Unlawful Use of a Weapon, as charged against Appellant, is not considered a marijuana offense as contemplated for Expungement by Article XIV, section 2 of the Missouri Constitution.