

**MISSOURI COURT OF APPEALS-WESTERN DISTRICT
DIVISION 3**

**Mark D. Pfeiffer, Presiding Judge
Gary D. Witt, Judge
Thomas N. Chapman, Judge**

**October 16, 2024
Missouri Western State University
St. Joseph, Missouri**

WD86373

**Christopher A. Scott, Appellant,
v.
State of Missouri, Respondent.**

Appellant Christopher Scott appeals the judgment of the Circuit Court of Boone County denying his Rule 29.15 motion for post-conviction relief. In 2020, a jury found Appellant guilty of first-degree robbery, armed criminal action, and unlawful use of a weapon. The Circuit Court of Jackson County sentenced Appellant to a total of 13 years' imprisonment. Following sentencing, Appellant filed a motion for post-conviction relief. His attorney filed an amended motion alleging that Appellant's trial counsel was ineffective because trial counsel never raised an objection to the charges based on double jeopardy. The motion alleged that Appellant could not be convicted for both first-degree robbery and unlawful use of a weapon because they were a part of the same continuing course of conduct. The motion argued that conviction for both is prohibited by double jeopardy under section 556.041(4), RSMo. At an evidentiary hearing on the motion, trial counsel testified that he did not raise the objection because he did not believe that the convictions violated double jeopardy. The circuit court denied the motion; finding that a double jeopardy objection would have been meritless because first-degree robbery and unlawful use of a weapon have different elements. This appeal followed.

Appellant's point on appeal:

1. The motion court clearly erred in denying claim 8/9(b) of Appellant's 29.15 amended motion, in violation of his rights to due process, a fair trial, and effective assistance of counsel, under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article I, §§ 10 and 18(a) of the Missouri Constitution, because a court must review the actual claim raised, in that the motion court denied the claim based on a double jeopardy theory that was not raised and failed to consider the actual claim raised.

WD86487

State of Missouri, Respondent,

v.

Suliang Bu, Appellant.

Appellant Suliang Bu appeals the judgment of the Circuit Court of Boone County convicting him of attempted first-degree rape, first-degree rape, and second-degree sexual abuse. As alleged during a bench trial, both Appellant and Victim were Chinese natives enrolled as graduate students in engineering at the University of Missouri. The two met in 2019 and, shortly after meeting, began spending time together frequently. By October 2019, they were dating. At trial, Victim testified that on October 4, 2019, she was studying with Appellant alone in the lab when Appellant grabbed her, pinned her hands over her head, pulled down her pants, unbuttoned his own pants, and tried to put his penis in her vagina. She testified that she told him to let her go. Appellant stopped when someone knocked on the door looking for Victim. Victim also testified that on October 23 or 24, 2019, when the two were again alone in the lab, Appellant began rubbing his penis on her. He carried her to an air mattress in the lab and asked her to have sex. She refused, but Appellant forcibly pulled her pants down and had sex with her. Appellant then forced Victim to take an emergency contraceptive pill. Victim also testified that during the course of their relationship, Appellant would sometimes take out his penis, force Victim to touch his penis, and would ejaculate on Victim. The University shut down in March 2020, due to the COVID-19 pandemic, and Appellant and Victim were unable to see each other. Victim tried to end the relationship and requested that Appellant apologize to her. Victim recorded the conversations without Appellant's knowledge. An English translation of those conversations was read into the record at trial. In the transcript of the conversations, Appellant admitted to forcing Victim to have sex and take emergency contraception. In August 2020, following the recorded conversations, Victim reported Appellant to the campus women's center which assisted in filing a Title IX report. The University of Missouri Police Department was notified of the allegations and took Victim's statement. Prior to trial, Appellant waived his right to a jury trial both in writing and after verbal questioning by the circuit court. Following a bench trial, the judge found Appellant guilty of all three counts. The court sentenced Appellant to ten years' imprisonment. This appeal followed.

Appellant's point on appeal:

1. The trial court committed plain error in accepting Appellant's jury trial waiver because U.S. Const. Amends. VI and XIV and Mo. Const. art. I, § 18(a), guarantee criminal defendants the right to a trial by jury, a defendant only may validly waive that right if the record reflects with unmistakable clarity that the waiver is made knowingly, voluntarily, and intelligently, a defendant who waives that right without an adequate understanding of the fundamental aspects of it does not do so knowingly, voluntarily, and

intelligently, and acceptance of a jury trial waiver that is not sufficiently knowing, voluntary, and intelligent is a manifest injustice constituting plain error in that the record reflects Appellant, who comes from a country with no jury trials, has limited English proficiency, and has no criminal history, was never informed – and did not understand – that potential jurors for his case would be chosen from a fair cross-section of Boone County, that he would have a right to participate in the selection of the jury, that the trial court would instruct the jury to presume him innocent and convict only if it concluded on the State’s burden beyond a reasonable doubt that he was guilty, or that the jury would have to make a unanimous decision in order to convict him.

WD86911

Jody Hendrick, et al., Appellants,

v.

Academy I, LP, d/b/a Academy Sports + Outdoors, et al., Respondents.

Appellants Jody and Jessica Hendrick appeal from the judgment of the Circuit Court of Jackson County dismissing Appellants’ petition filed against Respondent Academy I, LP, d/b/a/ Academy Sports + Outdoors (“Academy”) and Respondent Christopher Gaither, an employee of Academy. As alleged in the petition, on January 2, 2020, an individual attempted to buy ammunition and a firearm from Academy. Gaither retrieved the ammunition and firearm, and ran a background check. When the background check came back as “denied,” Appellants contend that Gaither did not properly secure the gun and ammunition. The individual was then able to jump over the counter, grab the firearm and ammunition, and leave the store. The individual then drove to Appellant Jody Hendrick’s work and shot him multiple times. Appellants filed a petition against Respondents raising claims of negligence and loss of consortium. Respondents filed a motion to dismiss. The circuit court granted that motion on January 22, 2024, finding that the claims fell under the Protection of Lawful Commerce in Arms Act and dismissed the petition. This appeal followed.

Appellants’ points on appeal:

1. The trial court erred in granting the Respondents’ Motion to Dismiss because Appellants’ claims do not constitute a “qualified civil liability action” as defined by The Protection of Lawful Commerce in Arms Act, in that there was not, and Appellants do not allege, a “sale” of a firearm.
2. The trial court erred in granting the Respondents’ Motion to Dismiss, and denying Appellants’ alternative request to amend the petition, because the trial court did not freely grant leave pursuant to Rule 67.06 to allow

Appellants to amend their pleadings to cure any deficiencies the trial court may have found, in that Appellants could have and would have amended to state a recognized exception to the Protection of Lawful Commerce in Arms Act in such amended pleading.