OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI, Respondent,	)	No. ED98027
	)	Appeal from the Circuit Court of
vs.	)	St. Louis County
	)	Honorable Mark D. Seigel
RICK CUSUMANO, Appellant.	)	Filed: June 4, 2013

Rick Cusumano (Defendant) appeals the judgment of the Circuit Court of St. Louis County convicting him of forcible rape. Defendant contends the trial court plainly erred in: (1) allowing the State to prosecute Defendant for forcible rape in violation of his right to be free of double jeopardy; and (2) overruling Defendant's objections to the admission of victim impact testimony during the guilt phase of trial.

AFFIRMED.

Division Four Holds: The trial court did not plainly err in allowing the State to prosecute Defendant for forcible rape. In Defendant's first trial, the jury found him guilty of the lesser included offenses of forcible rape and forcible sodomy. Because the first jury did not unambiguously determine that Defendant did not act with another in committing the charged offenses and that neither Defendant nor another displayed a deadly weapon in a threatening manner, collateral estoppel did not bar the State from prosecuting Defendant for aggravated forcible rape under a theory of accomplice liability. In addition, the trial court did not plainly err in admitting victim impact testimony during the guilt phase of trial as the victim's testimony was relevant to the elements of force, display of a deadly weapon, and presence of more than one actor, and its admission did not result in manifest injustice or a miscarriage of justice.

Opinion by: Patricia L. Cohen, J.
Lawrence E. Mooney, P.J., and Kurt S. Odenwald, J., concur.

Attorney for Appellant: Margaret Mueller Johnston

Attorney for Respondent: Karen M. Kramer

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.