



GREENE COUNTY
PROSECUTING ATTORNEY'S OFFICE

Criminal Law Update

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Waiver of Counsel

State v. Speer, 2026 WL 438446 (Mo. App. E.D. 2026)

- ▶ Facts of the case:
- ▶ The defendant was charged with a B misdemeanor (property damage) and C misdemeanor (assault in the fourth degree)
- ▶ Prior to trial, the court observed that the defendant was there without counsel and asked if the defendant intended to represent herself
- ▶ The defendant said that she did intend to represent herself
- ▶ The court's inquiry:
 - ▶ “Do you understand that you are subject to the same rules of evidence and procedure that an attorney would be?”
 - ▶ Defendant said she understood and was ready to proceed
- ▶ Defendant was found guilty on both misdemeanors

Waiver of Counsel

State v. Speer, 2026 WL 438446 (Mo. App. E.D. 2026)

- ▶ All waivers of counsel must be:
 - ▶ Knowing
 - ▶ Voluntary
 - ▶ Intelligent
- ▶ Those hearings are called *Faretta* hearings
- ▶ Though the *Faretta* hearings do not need to follow a specific litany of questions, it should explore various subjects
- ▶ The court held that this one fell short
- ▶ The court “should ensure that the defendant is not acting under duress, does not suffer from mental incapacity, is literate and minimally familiar with the trial process (including possible defenses to the crime charged), the different phases of trial, objection procedure, and the elements of the crime charged”

Waiver of Counsel

State v. Speer, 2026 WL 438446 (Mo. App. E.D. 2026)

- ▶ The court should always first ensure the defendant understands that he/she has the right to counsel, including appointed counsel
- ▶ The trial court should advise the defendant that it is usually a mistake to proceed without a lawyer and then specifically warn the defendant about the dangers, disadvantages, and repercussions of self-representation
- ▶ It is essential that a record be made reflecting that the defendant was apprised of the perils of self-representation in terms sufficient to enable the defendant to intelligently decide on what course to follow

600.051 RSMo

► ≡ Revisor of Missouri

🏠 Words ▾ 1st search term or section number And ▾ 2nd search term 🔍 ?

Title XXXVIII CRIMES AND PUNISHMENT; PEACE OFFICERS AND PUBLIC DEFENDERS

Chapter 600

< > Effective - 28 Aug 1976, highlighted 1 ↓

600.051. Waiver of counsel, when permitted. — 1. Any judge of a court of competent jurisdiction may permit a waiver of counsel to be filed in any criminal case wherein a defendant may receive a jail sentence or confinement if the court first determines that defendant has made a knowledgeable and intelligent waiver of the right to assistance of counsel and the waiver is signed before and witnessed by the judge or clerk of the court, providing further that the waiver contains at least the following information which the defendant has read or which has been read to the defendant before the signing thereof:

(1) That the defendant has been charged with the offense of _____ (nature of charge must be inserted before signing);

(2) That the defendant has a right to a trial on the charge and further that the defendant has a right to a trial by a jury;

(3) That the maximum possible sentence on the charge is _____ imprisonment in jail and a fine in the amount of _____ dollars or by both imprisonment and fine. That the minimum possible sentence is _____ imprisonment in jail or by a fine in the amount of _____ dollars or by both such confinement and fine;

(4) That the defendant is aware that any recommendations by a prosecuting attorney or other prosecuting official are not binding on the judge and that any such recommendations may or may not be accepted by judge;

(5) That if defendant pleads guilty or is found guilty of the charge, the judge is most likely to impose a sentence of confinement;

(6) That, if indigent, and unable to employ an attorney, the defendant has a right to request the judge to appoint counsel to assist the defendant in his defense against the charge.

2. Such a waiver and procedure shall be required if the judge imposes an order of probation, parole or suspension of sentence whereby subsequently the defendant may be ordered confined thereunder. Whenever a judge has permitted the filing of a waiver and a plea of guilty or a finding of guilty on the charge is entered and before the imposition of a sentence of confinement (including probation, parole or suspended sentence), the judge shall determine:

(1) That if a plea of guilty has been entered, there is a factual basis for such a plea and, upon inquiry of defendant, that defendant is in fact guilty of the charge;

(2) That the defendant does not know of the existence of any witness or of any fact, circumstances or evidence which was not presented to the court, which would exonerate defendant of the charge;

(3) That upon inquiry of the prosecuting attorney there are no witnesses or evidence which would cast a reasonable doubt about the defendant's guilt or defenses available to defendant not disclosed to the court.

(L. 1976 H.B. 1095 § 600.046)

Screening a Child Witness - Confrontation

Pitts v. Mississippi, 146 S.Ct.413 (2025)

- ▶ A Mississippi statute provided that child witnesses had the right to a “properly constructed screen that would permit the judge and jury in the courtroom... to see the child but would obscure the child’s view of the defendant.”
- ▶ The trial court rejected the defendant’s objection that no showing had been made that the screening was necessary under the particular circumstances of that case
- ▶ The Supreme Court reversed and held that, while the Sixth Amendment tolerates screening in child abuse cases, it may only be done if the court hears evidence and makes a “case specific” finding of the requisite necessity for doing so in that particular case
- ▶ The right to confrontation cannot be denied by generalized findings underlying a state statute

Elements of Crimes- Armed Criminal Action

Sufficiency- “deadly weapon”

Cook v. State, 2026 WL 522690 (Mo. App. E.D. 2026)

- ▶ Defendant was found guilty of assault in the first degree and armed criminal action
 - ▶ Armed criminal action (571.015 RSMo): any person who commits a felony under the laws of this state by, with, or through the use, assistance or aid of a dangerous instrument or deadly weapon is also guilty of the offense of armed criminal action
- ▶ The weapon in question was a knife and was charged as “deadly weapon”
- ▶ “Deadly weapon” is defined in the criminal code as “any firearm, loaded or unloaded, or any weapon from which a shot, readily capable of production death or serious physical injury, may be discharged, or a switchblade knife, *dagger*, billy club, blackjack, or metal knuckles” (emphasis added)
- ▶ The knife in this case was not a switchblade knife
- ▶ **Question: Does the knife in this case qualify as a “dagger”?**

Elements of Crimes- Armed Criminal Action

Sufficiency- “deadly weapon”

Cook v. State, 2026 WL 522690 (Mo. App. E.D. 2026)

- ▶ In Chapter 571, the term “knife” is defined as “any dagger, dirk, stiletto, or bladed hand instrument that is readily capable of inflicting serious physical injury or death by cutting or stabbing a person” and that “for purposes of this chapter, knife does not include any ordinary pocketknife with no blade more than four inches in length”
 - ▶ Knife in question: about 3.5 inches in length

Elements of Crimes- Armed Criminal Action

Sufficiency- “deadly weapon”

Cook v. State, 2026 WL 522690 (Mo. App. E.D. 2026)

► Court’s analysis:

- Missouri court’s had previously held that the definition of knife in Chapter 571 did not purport to define what is or is not a “dangerous instrument” or “deadly weapon”
- *State v. Payne*, 250 S.W.3d 815 (Mo. App. W.D. 2008) summarized certain characteristics of daggers
 - A fixed or locking blade, with sharpened edges, shorter than a sword and longer than an ordinary pocketknife, ranging between 4 and 25 inches, hilt, and designed with the intent to be used primarily for stabbing during combat
 - Not each of these characteristics need to be present for a submissible case
- Other courts have found various knives and other implements qualified as daggers
 - Example: while daggers often have sharpened edges, prior decisions have held that a knife with a single sharpened edge can be a dagger

Elements of Crimes- Armed Criminal Action

Sufficiency- “deadly weapon”

Cook v. State, 2026 WL 522690 (Mo. App. E.D. 2026)

- ▶ The Court found that the length of the blade in this case did not fall within the range identified in *Payne*, but the absence of that characteristic was not sufficient for the defendant to prove that there was a meritorious basis for counsel to challenge the sufficiency of the evidence
- ▶ Practical take away:
 - ▶ A knife that might not qualify as a dagger will likely satisfy the definition of “dangerous instrument”
 - ▶ Armed criminal action can be based on either “deadly weapon” or “dangerous instrument”

Admissibility of Evidence: Authentication

State v. Townsend, 720 S.W.3d 918 (Mo. App. S.D. 2025)

► Facts:

- Townsend was convicted of first degree murder, unlawful use of a weapon, resisting arrest, and armed criminal action
- At trial, the state admitted a screen-recording of a Facebook video from Townsend's Facebook account
- The video was admitted during testimony of an officer who had received the screen recording via text message
- The officer:
 - Identified the individual in the Facebook profile photo as Townsend
 - Identified that the Facebook page had Townsend's name
 - Identified Townsend in the video
- The video was a "few second clip" of Townsend holding the weapon used in the murder, including a red laser that one of the witnesses described as being pointed at her

Admissibility of Evidence: Authentication

State v. Townsend, 720 S.W.3d 918 (Mo. App. S.D. 2025)

- ▶ Court held:
 - ▶ Because the officer had reviewed the video and could identify Townsend in the video along with his identifiers on the Facebook page, this was sufficient foundation for admission
- ▶ Usual or best practice
 - ▶ Obtain the records from Facebook with a business record affidavit

Admissibility of Evidence: Authentication

State v. Lematty, 2026 WL 88939 (Mo. App. E.D. 2026)

► Facts

- Victim went out after work with coworkers, including Lematty
- Lematty kept buying drinks for the victim, who became intoxicated after a few hours
- Victim and Lematty left
- Victim's friends were concerned about her and went to Victim's apartment where they found her and Lematty undressed from the waist down
- Victim passed out and was taken to the hospital
- Her friends suspected she had been sexually assaulted
- Subsequent testing revealed that her BAC at 1 AM would have been .238
- While the victim was unconscious at the hospital, her sister saw that victim's phone was receiving Snapchat messages
- The sister opened the victim's phone, looked at the messages, and took pictures of the messages with her own phone
- The messages, which came in between 3:30 AM and 4:00 AM purported to come from Lematty
- "Your [sic] on the pill right? I came in you twice. I can buy you the morning after pill if you aren't. I had a lot of fun hope you did too. You seemed like you had fun."

Admissibility of Evidence: Authentication

State v. Lematty, 2026 WL 88939 (Mo. App. E.D. 2026)

- ▶ Victim testified at trial:
 - ▶ She had added Lematty as a Snapchat friend the day they went out to the bar
 - ▶ Her Snapchat profile was set to “friends only”
 - ▶ Only people whom she added could send messages
- ▶ Victim’s sister testified at trial:
 - ▶ The person sending the messages identified himself as “Dallas....from work”
 - ▶ The avatar was of a male with short blond hair
- ▶ The messages referenced a sexual encounter between the victim and the person sending the messages
- ▶ These details provided distinctive information indicating that Lematty was the person who sent the messages
- ▶ Sufficient foundation was laid for admissibility of the Snapchat messages

Admissibility of Evidence: Silent Witness

State v. Miller, 722 S.W.3d 593 (Mo. App. W.D. 2025)

► Silent witness theory:

- A video being offered as evidence is considered a silent witness which speaks for itself, and is substantive evidence of what it portrays independent of a sponsoring witness
- (1) whether the camera, recording system and storage method were working properly at the time of the events depicted; (2) the historic reliability of the camera, recording system and storage method used and whether they are sufficiently protected from tampering by third parties; and (3) whether the recording in the medium presented at trial is a fair and accurate portrayal of the recording in its original form and has not been altered, tampered with or modified (or that any alteration or modification is sufficiently explained and does not affect the reliability or accuracy of the evidence).

Admissibility of Evidence: Silent Witness

State v. Miller, 722 S.W.3d 593 (Mo. App. W.D. 2025)

- ▶ State offered security video footage from a convenience store under the silent witness theory
- ▶ A convenience store employee testified that the store had a surveillance system with multiple cameras inside and outside the store
 - ▶ The computer was secured in the back room and was accessible only to employees
 - ▶ System was operational and working the day of the incident
 - ▶ The footage was not able to be tampered or altered
- ▶ A forensic specialist with the police department downloaded the footage onto a hard drive
 - ▶ While it was being downloaded, the room was secure
 - ▶ He did not observe any indications that the footage had been tampered with
- ▶ Sufficient foundation was laid to admit the footage

Admissibility of Evidence: Best Evidence Rule

State v. Pritchett, 728 S.W.3d 592 (Mo. App. E.D. 2025)

- ▶ Pritchett argued that the court violated the best evidence rule by allowing the building manager and an officer to testify about screenshots or still photos taken from surveillance video of a burglary
- ▶ The original surveillance video was never entered into evidence
- ▶ The court found:
 - ▶ Best evidence rule did NOT apply because the witnesses only testified about the screenshots, which were admitted into evidence and available to the jury
 - ▶ Testimony based solely on images available to the jury does not implicate the best evidence rule
 - ▶ The witnesses did not attempt to prove the contents of the unavailable surveillance video
- ▶ The court differentiated this case from *State v. King*, where the use of screenshots WAS found to violate the best evidence rule
 - ▶ In *King*, the witnesses described the actions depicted in the surveillance video that were not apparent from the screenshots put into evidence
- ▶ In this case, the witnesses were not testifying as to anything exclusive to the surveillance video, but only to the screenshots

Hearsay: Forfeiture by Wrongdoing

State v. Moore, 721 S.W.3d 893 (Mo. App. S.D. 2025)

- ▶ The Confrontation Clause of the Sixth Amendment provides that during criminal prosecutions, a defendant shall “enjoy the right to...be confronted with the witnesses against him.” U.S. Const. amend. VI. The Missouri Constitution also provides that, “in criminal prosecutions the accused shall have the right to...meet the witnesses against him face to face.” Mo. Const. art. I sec. 18(a).
- ▶ The doctrine of forfeiture by wrongdoing allows for the extinguishment of confrontation rights against those defendants who attempt to procure or coerce silence from a potential witness and permits the admission of statements that are otherwise considered hearsay. *State v. McLaughlin*, 265 S.W.3d 257, 271-273 (Mo. 2008).
- ▶ The right to confrontation does NOT prohibit forfeiture by wrongdoing
- ▶ “When defendants seek to undermine the judicial process **by procuring or coercing silence** from witnesses and victims, the Sixth Amendment does not require courts to acquiesce. While defendants have no duty to assist the State in proving their guilt, they *do* have the duty to refrain from acting in ways that destroy the integrity of the criminal-trial system.”
 - ▶ *Davis v. Washington*, 547 U.S. 813, 833 (2006)

Hearsay: Forfeiture by Wrongdoing

State v. Moore, 721 S.W.3d 893 (Mo. App. S.D. 2025)

- ▶ Section 491.016 RSMo codifies the forfeiture by wrongdoing doctrine
 - ▶ A hearsay statement made by a witness may be admissible after a court finds by a preponderance of evidence that (1) the defendant engaged in wrongdoing with the purpose of causing the witness's unavailability; (2) the said wrongdoing substantially contributed to the witness's unavailability; (3) the state exercised due diligence to compel the witness to appear or the witness is unavailable because the defendant caused her death; and (4) the witness fails to appear.

Hearsay: Forfeiture by Wrongdoing

State v. Moore, 721 S.W.3d 893 (Mo. App. S.D. 2025)

► Facts:

- Law enforcement responded to a domestic assault call and was told by the victim that the defendant had choked her and kicked one of her children
- Less than a month later, the deputy again responded to a domestic dispute involving the same victim and defendant, and the victim reported the defendant tried to kick in the door and slapped her in the face
- Two weeks later, the deputy was dispatched again and the victim reported the defendant punched her in the face, pushed her against a wall, and punched her 9 year old son in the stomach
- The victim also gave a written statement describing the incident in detail
- During a forfeiture by wrongdoing hearing, the victim testified that she would refuse to answer the prosecutor's questions during trial
 - The state produced jail calls during which the defendant told the victim she did not have to comply with the state's subpoena and that there was nothing the state could do if she did not show up for trial
- The victim was subpoenaed for trial and did not appear
- The deputy was allowed, pursuant to the doctrine of forfeiture by wrongdoing, to testify about what the victim had told him during his contact with her

Hearsay: Forfeiture by Wrongdoing

State v. Moore, 721 S.W.3d 893 (Mo. App. S.D. 2025)

- ▶ Court held
 - ▶ Trial court did not abuse its discretion by allowing the hearsay statements of the victim into evidence at trial
- ▶ Court rejected the defendant's argument that the jail call did not contain threats to harm the victim
 - ▶ Court noted the defendant used other manipulation tactics such as accusing the victim of being unfaithful, preying on her loyalty by not testifying, exaggerating the potential sentence he would receive, and downplaying the adverse consequences from her failure to comply with the subpoena
- ▶ The “intent to cause unavailability of a witness may be shown by circumstantial evidence or inferred from surrounding facts”

Propensity Evidence

State v. Costa, No. SD38704 (Mo.App. S.D. 2026)

- ▶ Article I, Section 18 (c) of the Missouri Constitution:
 - ▶ In prosecutions for crimes of a sexual nature involving a victim under eighteen years of age, relevant evidence of prior criminal acts, whether charged or uncharged, is admissible for the purpose of corroborating the victim's testimony or demonstrating the defendant's propensity to commit the crime with which he or she is presently charged
 - ▶ The court may exclude relevant evidence of prior criminal acts if the probative value of the evidence is substantially outweighed by the danger of unfair prejudice
- ▶ *State v. Williams*, 548 S.W.3d 275 (Mo. Sup. Ct. 2018) lays out several balancing factors for the admission of propensity evidence

Propensity Evidence

State v. Costa, No. SD38704 (Mo.App. S.D. 2026)

- ▶ Here, the prosecution presented evidence of Costa's conduct toward a witness that occurred one to two years after the offense charged against him
- ▶ The court held that the plain language of Article 1 refers only to relevant evidence of prior criminal acts, which the court understood to mean prior to the charged offenses
- ▶ The admission of the propensity evidence was erroneous

Warrantless Searches

State v. Roth, WD88224 (Mo. App. W.D. 2026)

► Facts:

- Roth was charged with possession of child pornography
- A police officer was contacted by a witness who said she had taken Roth's cell phone without permission
- She took it home, went through the phone, and found what she believed to be pictures of young, naked girls
- The officer said that he looked at the phone and saw several pictures of young, naked girls
- The officers submitted an affidavit in support of search warrants for the cell phone and Roth's residence
 - Additional child pornography was found

► Roth filed a motion to suppress

- Trial court granted, finding that the search of the cell phone obtained from the witness was conducted without a warrant and no exception existed
- All evidence obtained by law enforcement as a result of the initial warrantless search and seizure of the phone was excluded as fruit of the poisonous tree

Warrantless Searches

State v. Roth, WD88224 (Mo. App. W.D. 2026)

- ▶ On appeal the State argued:
 - ▶ The officer did not conduct an unreasonable search or seizure of the phone because the phone was obtained from the witness' private conduct
 - ▶ Private search doctrine: the fourth amendment does not apply to searches conducted by private individuals acting independently of government direction or control
 - ▶ When a private party conducts a search independent of the government, law enforcement may perform the same search as the private party without violating the fourth amendment
 - ▶ A warrantless search expanded beyond that conducted by the private party can violate the fourth amendment
- ▶ The State failed to present any evidence establishing the legality of the officer's warrantless examination of the phone contents
 - ▶ The appellate court could, thus, not determine the similarity or difference between the private witness' prior search and the officer's later warrantless examination
 - ▶ The record did not reflect whether the officer directed the witness as she exhibited the phone's contents or whether the witness navigated the phone on her own

Warrantless Searches

State v. Roth, WD88224 (Mo. App. W.D. 2026)

- ▶ During a motion to suppress, the burden is on the state to show that the motion should be overruled
 - ▶ In this case, the prosecutor presented no witnesses, but merely put into evidence the search warrant
- ▶ The evidence was not clear
- ▶ Evidence suggested that the officer may have exceeded the scope of the private search
- ▶ Trial court's suppression was not clearly erroneous

Enhancement of Sentence: Proof of prior convictions

State v. El-Mumin, 2025 WL 2698537 (Mo. App. E.D. 2025)

- ▶ *Erlinger v. United States*, 144 S. Ct. 1840 (2024)
 - ▶ Big, recent change in the law
 - ▶ Requires that there be a jury finding (unless waived) that the prior convictions occurred at different times
- ▶ Here, the trial court found that the defendant had two prior convictions: one from February 17, 1993 and one from May 20, 2000
- ▶ The court held that, because the defendant admitted his prior convictions, the issue did not have to be presented to the jury
- ▶ The defendant's admission of the pleaded facts constituting his persistent status relived the state of its burden of proof on the matter and relieved the jury from having to make the finding

Justification: Self Defense

State v. Burkett, 725 S.W.3d 565 (Mo. 2025)

► Facts:

- Defendant and victim (brother in law) got into a fight at a convenience store
- Victim confronted the defendant after the defendant had threatened members of the Amish community with a weapon
- Confrontation led to the two men wrestling before being separated by other men
- Defendant then pulled out a handgun, pointed it at victim's head, and said "You're a dead mother f*****r," and pulled the trigger
- The gun did not fire
- As the defendant seemingly tried to unjam the gun, the store owner pulled a shotgun and told him to leave
- Defendant made statements to law enforcement that it was "self defense"

► At trial

- Self defense instruction was not requested by the defense
- Defense at trial was that he never intended to shoot the victim
- Defense argued that the gun was unloaded and he only wanted to scare victim

Justification: Self Defense

State v. Burkett, 725 S.W.3d 565 (Mo. 2025)

- ▶ On appeal, defendant asserted that the trial court plainly erred in failing to instruct on self defense
- ▶ Context:
 - ▶ Self defense is a special negative defense, meaning that the state bears the burden of proving beyond a reasonable doubt that the defense is inapplicable
 - ▶ Whenever there is substantial evidence of self defense, the self defense instruction must be given, even if it is not requested by the parties
- ▶ Court observed there was substantial evidence of self defense
 - ▶ Defendant testified that he pulled out the gun in self defense after the store owner handed his gun to victim and told victim to shoot him
 - ▶ Trial court's failure to give a self defense instruction was "likely" plain error
- ▶ However, court exercised its discretion not to engage in plain error review
 - ▶ Defendant had not requested the instruction and made no objection to the jury instructions
 - ▶ Defendant did not include that in his motion for new trial
 - ▶ Self Defense was completely inconsistent with defendant's theory of the case and the crux of his defense, which was that he lacked the requisite intent to commit the offense
 - ▶ Defense theory: the gun was unloaded and he only intended to scare victim, not that he intended to use physical force

Questions?

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