

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

STATE OF MISSOURI,) Cause No. [REDACTED]
Plaintiff)
) Division No. 1
v.)
)
[REDACTED])
Defendant)

[REDACTED] MOTION TO STRIKE THE STATE'S AMENDED INFORMATION

Comes now [REDACTED] through counsel, and moves this Court strike the state's Amended Information, filed with this Court October 17, 2016, and to then rule on [REDACTED] Motion to Dismiss, filed with this Court on August 29, 2016. In support thereof, [REDACTED] states the following:

1. On January 28, 2016, the State of Missouri filed with this Court a document titled "Information," which alleged [REDACTED] to have committed the class C felony of stealing under Section 570.030, RSMo. Specifically, that information alleged [REDACTED] to have "appropriated a 2003 white Chevrolet Cavalier, a motor vehicle, which property was owned by [REDACTED] and [REDACTED], appropriated such property without the consent of [REDACTED] and with the purpose to deprive her thereof."
2. On August 29, 2016, [REDACTED] filed with this Court a Motion to Dismiss this cause under the recently decided *Missouri v. Bazell*, No. SC95318 (Mo. Banc August 23, 2016).
3. On October 27, 2016, the State of Missouri filed an Amended Information with this Court, which alleges [REDACTED] to have committed the class C felony of tampering in the first degree under Section 569.080.1(2), RSMo. Specifically, the state alleges in the Amended Information that [REDACTED] "knowingly and without the consent of the owner unlawfully operated an automobile, 2003 white Chevrolet Cavalier owned by [REDACTED]"
4. Missouri Supreme Court Rule 23.08 governs how the State may amend a charge, and provides that "[a]ny information may be amended or an information may be substituted for an indictment at any time before verdict or finding if: (a) No additional or different offense is charged, and (b) A defendant's substantial rights are not thereby prejudiced."
5. The State is not in compliance with Missouri Supreme Court Rule 23.08 because their Amended Information alleges a different offense from the one originally charged. Stealing under 570.030 and Tampering under 569.080.1(2) require entirely different elements to

prove.

6. To proceed with the amended information would further prejudice [REDACTED] in that it would deprive him of his rights to Due Process under the 5th and 14th Amendments to the United States Constitution and Article I, Section 10 of the Missouri Constitution, as well as his right to Equal Protection under the lawthe law under the 5th and 14th Amendments to the United States Constitution and Article I, Section 2 of the Missouri Constitution.

Wherefore, [REDACTED] moves this Court strike the State's Amended Information, and announces his intention to proceed to trial as scheduled under the originally filed Information.

Respectfully submitted,

/s/ Walter Stokely

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Certificate of Service

I hereby certify that on this 20th day of October, 2016, an electronic copy of the foregoing was sent through the Missouri e-Filing system to counsel of record.

/s/ Walter Stokely

Walter Stokely