

IN THE CIRCUIT COURT OF ST. LOUIS CITY
STATE OF MISSOURI

STATE OF MISSOURI,
Plaintiff

v.

[REDACTED]
Defendant

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Cause No. [REDACTED]

Division No. 16

Motion to Dismiss

COMES NOW Defendant, by and through undersigned counsel, and moves this Court to dismiss count two of the above-styled cause, and states in support as follows:

1. Defendant is charged in count two with Stealing of Any Firearm, in violation of Section 570.030, RSMo. The indictment charges this as a class C felony.
2. The offense of stealing is defined as "appropriat[ing] property or services of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion." Section 570.030.1 RSMo.
3. Unless otherwise specified in Section 570.030, stealing is a class A misdemeanor. Section 570.030.9 RSMo.
4. Section 570.030.3(3)(d) RSMo provides for the enhancement of "any offense in which the value of property or services is an element" to a class C felony if any of several conditions is met, including "[t]he property appropriated consists of... (d) any firearms."
5. As the Missouri Supreme Court recently explained, the plain language of the former phrase serves as a threshold to the latter provisions. The felony enhancement "only applies if the offense is one in which the value of property or services is an element." *State v. Bazell*, No. SC95318, slip op. at 5 (Mo. banc Aug. 23, 2016) (per curiam) (internal quotations omitted). In other words, the felony enhancement cannot apply unless the value of property or services is already an element of the root offense

itself.

6. The case at bar deals with exactly the same offense as that which the Court considered in *Bazell* , namely, stealing of a firearm. Therefore, the ruling in *Bazell* is directly applicable in the instant case. The Court stated, "[E]nhancement pursuant to section 570.030.3 does not apply to Defendant's stealing convictions for the theft of firearms. These offenses must, therefore, be classified as misdemeanors." *Id.* at 2.

7. Moreover, the Missouri Supreme Court issued its mandate in *State v. Bazell* on September 20, 2016, and the law is now controlling.

8. This Court should dismiss Count II of the indictment with prejudice, or in the alternative, allow the state to amend the indictment to a class A misdemeanor offense. Failure to do so would deny this defendant his rights to due process of law, to effective assistance of counsel, to prepare a defense, to a fair trial, and to be free from cruel and unusual punishment under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 10, 18(a), and 21 of the Missouri Constitution.

WHEREFORE, Defendant prays that the above-requested relief be granted, and for such other and proper relief as the Court deems just and proper.

Respectfully submitted,

/s/ Gina Savoie

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Certificate of Service

I hereby certify that on this 30th day of September, 2016, an electronic copy of the

foregoing was sent through the Missouri e-Filing system to counsel of record.

/s/ Gina Savoie

Gina Savoie