

IN THE CIRCUIT COURT OF MARION COUNTY
STATE OF MISSOURI

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

MOTION TO DISMISS

COMES NOW Defendant, by and through undersigned counsel, and moves this court dismiss counts four and five of the above-styled cause, and states in support as follows:

1. Defendant is charged with, inter alia, two counts of the class C felony of Stealing, in violation of § 570.030, RSMo.

2. Specifically, defendant is charged in count four with appropriating credit cards without the consent of their owner, with the purpose to deprive her thereof, in violation of § 570.030.3(3)(c), RSMo; and, in count five, with appropriating a motor vehicle without the consent of its owner, with the purpose to deprive her thereof, in violation of § 570.030.3(3)(a), RSMo.

3. Under § 570.030.1 RSMo a person commits the crime of stealing when he or she appropriates the property of services of another with the purpose to deprive the owner thereof.

4. § 570.030.3 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 certain conditions, set forth in § 570.030.3(1)-(3) are met.

5. The definition of stealing in § 570.030.1 RSMo is clear and unambiguous, and it does not include the value of the property or services appropriated as an element of the offense. State v. Bazell, SC95318.

6. Accordingly, § 570.030.3 RSMo does not enhance any of its provisions, set forth in § 570.030.3(1)-(3), to a class C felony. Id.

7. For these reasons, counts four and five must be dismissed, as the offenses alleged therein cannot be enhanced to felonies by the terms of § 570.030.3 RSMo.

8. Failure to grant the above-requested relief would violate defendant's rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, Article I, §§ 10, 18(a), and 19 of the Missouri Constitution and the laws of Missouri.

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

Respectfully submitted,

/s/ Joseph Whitener

Joseph Whitener, Mo Bar No. 65273
Attorney for Defendant
201 North Third Ste 301
Hannibal, MO 63401
Phone: 573-248-2430
Fax: 573-248-2432
E-Mail: Joseph.Whitener@mspd.mo.gov

Certificate of Service

I hereby certify that on this 24th day of August, 2016, an electronic copy of the foregoing was sent through the Missouri e-Filing system to counsel of record.

/s/ Joseph Whitener

Joseph Whitener