IN THE CIRCUIT COURT OF ST. FRANCOIS COUNTY
STATE OF MISSOURI

STATE OF MISSOURI, Plaintiff	)	Cause No. [redacted]
	)	Division No. 02
v.	)	
[redacted] Defendant	)	

DEFENDANT'S FIRST AMENDED MOTION TO DISMISS WITH PREJUDICE FOR LACK OF JURISDICTION

COMES NOW Defendant, [redacted] by and through counsel, and moves this Court for an order dismissing the above-styled cause with prejudice for lack of jurisdiction. In support thereof, Defendant states as follows:

1. Defendant was originally charged by way of Complaint with the class C felony of stealing on August 20, 2015 that alleged Defendant committed the offense sometime between July 2010 and April 2013.

2. On April 19, 2016 a preliminary hearing was held and the associate circuit court determined that probable cause existed and this cause was bound over to circuit court for trial.

3. Defendant is now charged by way of Information with the class C felony of stealing in violation of Section 570.030, RSMo.

4. The Information alleges that [redacted] DOB [redacted] "committed the class C felony of stealing, punishable upon conviction under Sections 558.011 and 560.011, RSMo, in that on or about July 1, 2010, in the County of St. Francois, State of Missouri, the defendant appropriated cash of a value of at least five hundred

dollars, which property was in the possession of [redacted] and the defendant appropriated such property without the consent of [redacted] and with the purpose to deprive them thereof. "

5. The probable cause statement alleges, "He stated from 7/2010 to 4/2013 [redacted] stole a total of $3007.61 dollars throughout a 3 year period in misdemeanor amounts."

6. The probable cause statement further states, "[redacted] was informed the thefts were past the statute of limitations based on the information provided."

7. In State v. Bazell, SC95318, 2016 WL 4444392, at *2 (Mo. banc Aug. 23, 2016), the Missouri Supreme Court held, "[T]he felony enhancement provision, by its own terms, only applies if the offense is one 'in which the value of the property or services is an element.' Stealing is defined in section 570.030.1 as 'appropriat[ing] property or services of another with the purpose to deprive him or her thereof, either without his consent or by means of deceit or coercion.' The value of the property or services appropriated is not an element of the offense of stealing."

8. The Court in Bazell stated, "Here, there is no need to resort to tools of interpretation because the language of section 570.030.3 is clear. We cannot know why the legislature, in 2002, decided to amend section 570.030.3 to add the requirement that only offenses for which 'the value of property or services is an element' may be enhanced to a felony, but this is what the legislature clearly and unambiguously did. As a result, section 570.030.3 does not apply here. Defendant's offenses must be classified as misdemeanors because they cannot be enhanced to

felonies by the terms of section 570.030.3. The two felony convictions for the firearms stolen must be reversed and the case remanded." Id. at *3.

9. In this case, Defendant has been charged with the class C felony of stealing under Section 570.030.3(1) alleging that Defendant appropriated cash of a value of at least five hundred dollars; however, under the Bazell decision, which was a unanimous en banc Missouri Supreme Court decision, the State cannot prosecute Defendant for felony stealing.

10. Pursuant to Section 556.036.2(2), the statute of limitations for all misdemeanor offenses in the State of Missouri is one year.

11. Despite viewing all of the evidence in the light most favorable to the State, Defendant simply cannot be prosecuted for misdemeanor stealing either because the last allegations occurred in April of 2013 and this cause was not filed until August 20, 2015--well beyond the one-year statute of limitations.

12. The period of limitations is tolled "[d]uring any time when the prosecution against the accused for the offense is pending in this state." Section 556.036.6(3), RSMo.

13. "A prosecution is not tolled, however, where the charges alleged in an amended information constitute a 'different' offense." State v. Rotter, 958 S.W.2d 59, 63 (Mo.App.1997) *(quoting* Reeves v. State, 726 S.W.2d 366, 369 (Mo.App.1987); State v. Priest, 660 S.W.2d 300, 307 (Mo.App.1983))

14. In other words, the State cannot simply amend the stealing charge, or dismiss this case and re-file a receiving stolen property charge, because the stealing

charge is a different offense that arose under Section 570.030, RSMo., whereas receiving stolen property charges arise under Section 570.080, RSMo. The statute of limitations runs, and does not toll, if the State amends, or dismisses and re-files a case, to charge a defendant for an offense that arose from a different statutory section. Rotter, at 63-64.

15. The sole reason for Defendant filing this Defendant's First Amended Motion to Dismiss with Prejudice for Lack of Jurisdiction is to inform the Court of the fact that the statute of limitations would not toll if the State attempts to amend the charge to receiving stolen property or if the State attempts to dismiss and re-file a receiving stolen property charge. Therefore, the Court is without jurisdiction to do anything except enter an order dismissing this case with prejudice.

WHEREFORE, Defendant moves this Honorable Court for an order dismissing this case with prejudice for lack of jurisdiction.

Respectfully submitted,

/s/ Ryan Martin

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Certificate of Service

I hereby certify that on this 28th day of September, 2016, an electronic copy of the foregoing was sent through the Missouri e-Filing system to counsel of record.

/s/ Ryan Martin

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Ryan Martin