

NO. SC93170

**In the
Supreme Court of Missouri**

STATE OF MISSOURI,

Appellant,

v.

ARTHEL FORD HARRIS,

Respondent.

**Appeal from St. Louis City Circuit Court
Twenty-Second Judicial Circuit
The Honorable Philip D. Heagney, Judge**

RESPONDENT'S BRIEF

**JERRY MILLER,
Special Public Defender
Missouri Bar No. 20944**

**2800 Timberline Drive
Belleville, Illinois 62226
Telephone: (314) 368-3910
Email: Doggman@aol.com**

**ATTORNEY FOR RESPONDENT
ARTHEL FORD HARRIS**

TABLE OF CONTENTS

TABLE OF AUTHORITIES	2
JURISDICTIONAL STATEMENT	3
STATEMENT OF FACTS	4
POINT RELIED ON	5
ARGUMENT	6-7
The Honorable Philip D. Heagney, was correct in sustaining Respondent’s Motion to Quash the Indictment as violative of Mo. Const. Article I, § 13	
CONCLUSION	8
CERTIFICATE OF COMPLIANCE	9

TABLE OF AUTHORITIES

Cases:

F.R. vs. St. Charles County Sheriff's Department consolidated with
State vs. Raynor, 301 S.W. 3d (Mo banc 2010), holding based on
Squaw Creek Drainage Dist. vs. Turney, 38 S.W. 12 (Mo 1911) 5,6,7

Statutes and Constitution

Section 571.070 RSMo, as amended 6,7
 Mo. Const. Art. I § 13 5,6,7

Law Review Articles

Lauren Standless, *The Current State of Respective Law as Applied to
 Missouri Sex Offenders*, 66 J.Mo.B. 256 (2010) 6

JURISDICTIONAL STATEMENT

Respondent agrees with the information contained in the Jurisdictional Statement of Appellant, and also feels that this Court has exclusive appellate Jurisdiction on this matter.

STATEMENT OF FACTS

A grand jury in the City of St. Louis returned an indictment against Respondent Arthel Ford Harris on January 4, 2012, charging him with a single count of the class C felony of unlawful possession of a firearm, in violation of § 571.070. RSMo. The indictment further alleged that Respondent had been convicted on December 27, 2001, in the Circuit Court of Dunklin County of the felony of Distribution/Delivery/Manufacture of a Controlled Substance.

On July 25, 2012, Respondent filed his Motion to Quash said Indictment. In Respondent's motion he argued successfully, that § 571.0760 RSMo as amended in 2008, cannot be applied to him as it changes the legal effect of his past conviction and thus operates retrospectively in direct Violation of Article I, § 13 of the Missouri Constitution.

The Trial Court admirably represented by the Honorable Philip D. Heagney, after hearing arguments and taking under submission the various legal documents filed by both parties, noting this was a case of first impression in the State of Missouri, rejected the State's suggestion to endorse the Federal Rule on this issue; pointing out that Article I, Section 13, of our Missouri Constitution, imposes a broader obligation on the part of the State to ban retrospective applications of said statutes and constitutes an *ex post facto* law as applied to Respondent. Thereupon, the Honorable Philip D. Heagney on October 23, 2012, granted Respondent's motion to quash and ordered the indictment dismissed with prejudice.

POINT RELIED ON

The Trial Court, under the very knowledgeable direction of the Honorable Philip D. Heagney, acted property in dismissing Count III of the felony complaint filed against Respondent Arthel Ford Harris because the statue under which Respondent was charged, § 571.070 RSMo, as amended, constituted an *ex post factor* law as applied to Respondent under the Missouri Constitution.

F.R. vs. St. Charles County Sheriff's Department consolidated with *State vs. Raynor*, 301 S.W. 3d 56 (Mo banc 2010), holding based on *Squaw Creek Drainage Dist. vs. Turney*, 138 S.W.12 (Mo 1911)

Mo.Const. Art. I, § 13.

Lauren Standlee, *The Current State of Retrospective Law as Applied to Missouri Sex Offenders*, 66 J. Mo. B. 256 (2010)

ARGUMENT

The Trial Court, under the very knowledgeable direction of the Honorable Philip D. Heagney, acted property in dismissing Count III of the felony complaint filed against Respondent Arthel Ford Harris because the statue under which Respondent was charged, § 571.070 RSMo, as amended, constituted an *ex post factor* law as applied to Respondent under the Missouri Constitution.

The findings and ruling of the Honorable Philip D/. Heagney, must be affirmed by this tribunal since it is based entirely on the Rule of Law, as advocated by this Highest Tribunal in its rather recent decision of *F.R. vs. St. Charles County Sheriff's Department* consolidated with *State vs. Raynor*, 301 S.W.3d 56 (Mo. banc 2010). It would seem both superfluous and somewhat ungracious to attempt to add to the superb legal analysis of the Honorable Philip D. Heagney, in his Order of dismissal of all charges against Respondent on August 23, 2012. I suggest, therefore, that said Order be reviewed by this August Tribunal.

I shall note, however, that the issue of whether or not one should be able to carry a concealed weapon upon one's person, has been decided rather decisively with gun sales and concealed weapons permits issued in record numbers in Missouri. One could argue that Respondent needs a gun for his own protection from the thousands of "good citizens" that have concealed weapons which they can carry on their persons most everywhere!

There also appears no need to consume the time of this Tribunal on my review of

the various Federal cases that the Appellant has cited! If this Tribunal wishes to dispense with the reasons given by the Majority of this Tribunal in its ruling on *F.R. vs. St. Charles County Sheriff's Department* (supra), and adopt the Federal Rule on its view of Section 571.070 R.S.Mo (as amended), so be it. It took great courage and fortitude for the Majority in this Tribunal to find for the "particular" defendants in *F.R. vs. St. Charles County Sheriff's Department* (supra), yet the Rule of Law, and the words of Article I, Section 13 of "Our" Missouri Constitution regarding the retrospectively of that statute cast the deciding vote in favor of the only proper and correct ruling. I have full confidence in that same courage and fortitude in this August Tribunal affirming the excellent ruling of the Honorable Judge Philip D. Heagney.

CONCLUSION

In view of the foregoing, Respondent Arthel Ford Harris, submits that the ruling of the Honorable Philip D. Heagney on August 23, 2012, granting his Motion to Quash the indictment and dismissing of all charges against him be hereby affirmed and for further proceedings consistent with this Court's opinion.

Respectfully submitted,

/s/ Jerry Miller

Jerry Miller
Special Public Defender
Missouri Bar No. 20944

2800 Timberline Drive
Belleville, Illinois 62226
Telephone: (314) 368-3910
Email: Doggsmen@aol.com

Attorney for Respondent
Arthel Ford Harris

CERTIFICATE OF COMPLIANCE

I, hereby certify:

1. That the attached brief complies with the limitations contained in Supreme Court Rule 84.06, and contains 1,187 words as calculated pursuant to the requirements of Supreme Court Rule 84.06, as determined by Microsoft Word 2010 software; and

2. That a copy of this notification was sent through the E-Filing System on this 28th day of May 2013, to:

Daniel N. McPherson
Assistant Attorney General
Missouri Bar No. 471182

P. O. Box 899
Jefferson City, Missouri 63102
Telephone: (573) 751-3321
Fax: (573) 751-3321

/s/ Jerry Miller

Jerry Miller
Special Public Defender
Missouri Bar No. 20944

2800 Timberline Drive
Belleville, Illinois 62226
Telephone: (314) 368-3910
Email: Doggman@aol.com

Attorney for Respondent
Arthel Ford Harris