

**Summary of SC92229, *State of Missouri v. Joey D. Honeycutt***

Appeal from the Greene County circuit court, Judge Jason Brown

Argued and submitted September 3, 2013; opinion issued November 26, 2013, and modified on the Court's own motion December 24, 2013

**Attorneys:** The state was represented by Daniel N. McPherson of the attorney general's office in Jefferson City, (573) 751-3321; and T. Todd Myers of the Greene County prosecuting attorney's office in Springfield, (417) 868-4061. Honeycutt was represented by Margaret M. Johnston of the public defender's office in Columbia, (573) 882-9855; and Christopher S. Hatley, an attorney in Springfield, (417) 895-6740.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** The state appeals a trial court's dismissal of a firearm charge after the court found the statute on which the charge was based unconstitutional as applied to the defendant. In a decision written by Judge Zel M. Fischer and joined by three other judges, the Supreme Court of Missouri reverses the judgment and remands (sends back) the case. The state constitutional prohibition against any law "retrospective in its operation" applies only to laws affecting civil rights and remedies and never was intended to apply to criminal statutes. Because the statute here is a criminal statute, the circuit court erred in finding it was unconstitutionally retrospective.

Judge Laura Denvir Stith wrote a concurring opinion that was joined by two other judges. She agrees the term "retrospective" should apply only to laws with a civil, regulatory effect – the only cases to which it has been applied since the state's first constitution was adopted – but disagrees the term, as used in the state constitution, necessarily was limited to civil matters. She further agrees it was the man's post-conviction conduct that resulted in his present conviction.

**Facts:** Since it was amended in 2008, section 571.070, RSMo, has made it a crime for a person who previously has been convicted of a felony under Missouri law to have a firearm knowingly in his possession. Before 2008, the statute made it a crime for persons convicted only of a "dangerous felony" to possess a concealable firearm. The state filed a three-count indictment against Joey Honeycutt for firearms violations. The third count, filed under section 571.070, alleged that Honeycutt knowingly possessed a shotgun between November 2010 and March 2011 and that he had been convicted of felony possession of a controlled substance in September 2002. Honeycutt moved to dismiss this count, challenging the constitutional validity of section 571.070 as applied to him on the ground that, when he was convicted of the drug charge in 2002, that conviction did not prohibit him from owning a firearm under the version of section 571.070 in effect at that time. The circuit court sustained Honeycutt's motion, finding section 571.070 unconstitutional as applied to Honeycutt. The state appeals.

**REVERSED AND REMANDED.**

**Court en banc holds:** Because section 571.070 is a criminal law, the circuit court erred in dismissing the third count of the indictment against Honeycutt on the grounds that the statute was unconstitutionally retrospective as applied to him.

(1) The constitutional prohibition against any law “retrospective in its operation” applies only to laws affecting civil rights and remedies and never was intended to apply to criminal statutes. The constitutions of the United States and every state prohibit “ex post facto” laws, but only a handful of state constitutions prohibit the passage of a law that is “retrospective in its application.” In Missouri’s constitution, both prohibitions are in article I, section 13. Historically, the prohibition against laws retrospective in operation has been given a meaning separate and apart from the ex post facto provision. In fact, this Court long ago did just that – concluding in the 1877 case *Ex parte Bethurum* that these phrases have distinct, technical, legal meanings. This conclusion is supported by the debates of Missouri’s 1875 constitutional convention, which took place two years before the *Bethurum* decision and which indicate the drafters understood the prohibition against laws “retrospective in their operation” had an accepted technical legal meaning predating the state’s 1820 constitution and apart from that of an “ex post facto” law. *Bethurum* specifically held that “there can be no doubt that the phrase ‘retrospective in its operation,’ as used in the bill of rights, has no application to crimes and punishments, or criminal procedure, and the [statute at issue] is neither an ex post facto law nor a law retrospective in its operation.” On multiple occasions, Missouri courts have reaffirmed the proposition that article I, section 13 applies to civil – not criminal – laws. Neither the longstanding technical meaning of the terms “retrospective in its operation” and “ex post facto” nor this Court’s decision in *Bethurum* were overruled – silently, implicitly or otherwise – in this Court’s recent cases, which did not analyze whether the particular statutes at issue were criminal or than civil because the state did not preserve the issue at trial or present the issue on appeal.

(2) Because section 571.070 is a criminal statute, article I, section 13’s prohibition against laws retrospective in their operation does not apply, and this Court recently held that section 571.070 does not violate the constitution’s ex post facto provision.

**Concurring opinion by Judge Stith:** Although the author agrees that this Court should interpret the term “retrospective laws” to apply only to civil laws or laws with a civil, regulatory effect, she writes separately because she disagrees that the traditionally recognized meaning of the term “retrospective in operation” in article I, section 13 of the state constitution necessarily was limited to civil matters. While this Court’s 1877 decision in *Ex parte Bethurum* so stated, it did so in reliance on authorities that did not address the issue directly. The definition this Court used for retrospective laws in its 1866 decision in *Hope Mutual Insurance Co. v. Flynn*, which can be traced to an 1814 federal court decision, is the settled meaning of the term. But nothing in these definitions explain why this settled meaning is limited to civil laws. In fact, both the United States Supreme Court’s 1798 decision in *Calder v. Bull* and at least one legal commentary dating to 1854 suggest that a criminal law can be retrospective yet not ex post facto. But because of its consistent application only to civil cases for nearly 200 years since the state’s first constitution was adopted in 1820, the author would agree the term “retrospective in operation” has acquired a meaning that limits it to the civil context. She further would agree limiting “retrospective” laws to civil matters is consistent with this Court’s application of the ban in certain recent cases

involving regulations placed on sex offenders. As to Honeycutt, she concurs that it was his post-conviction conduct of carrying a firearm that resulted in his conviction.