

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE OF MISSOURI,
APPELLANT**

vs.

**CURTIS K. KAMAKA,
RESPONDENT**

WD69664

DATE: FEBRUARY 24, 2009

Appeal from:
PLATTE COUNTY CIRCUIT COURT
THE HONORABLE OWENS L. HULL, JR., JUDGE

Appellate Judges:
Division Two: Hardwick, P.J., Howard and Dandurand, JJ.

Attorneys:
Jane Woods, Esq., Jefferson City, MO., for Appellant

James R. Hobbs, Esq., Kansas City, MO, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS, WESTERN DISTRICT

**STATE OF MISSOURI,
v.
CURTIS K. KAMAKA,**

**Appellant

Respondent**

WD69664

Platte County, Missouri

Before Division Two Judges: Hardwick, P.J., Howard and Dandurand, JJ.

After pleading guilty to one count of possessing child pornography in Clay County, Missouri, Curtis Kamaka was charged in Platte County with one count of promoting child pornography. Kamaka filed a motion to dismiss the promotion charge, which the trial court granted based on its finding that the subsequent prosecution violated Kamaka's right to be free from double jeopardy. The State appeals.

AFFIRMED.

Division Two holds:

(1) Although the possession and promotion charges were based on conduct occurring on different dates, where the record reflected that the charges arose from the possession and promotion of the same video file and Kamaka continuously possessed the file from the time of promotion until the police found him in possession of it one month later, Kamaka's actions constituted the same conduct for purposes of double jeopardy analysis.

(2) Where the State charged Kamaka with promoting the file by disseminating it, the possession of child pornography charge constituted a lesser-included offense of the promotion charge in that it was impossible for Kamaka to disseminate the file without first possessing it. Therefore, the State's prosecution of the promotion charge violated Kamaka's right to be free from double jeopardy, and the trial court properly granted Kamaka's motion to dismiss.

Opinion by: Victor Howard, J.

February 24, 2009

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