

**IN THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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**COMPLETE TITLE OF CASE**

STATE OF MISSOURI,

Appellant,

v.

JEFFREY LUKE MOAD,

Respondent.

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**DOCKET NUMBER WD75652**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** April 23, 2013

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**APPEAL FROM**

The Circuit Court of Cole County, Missouri  
The Honorable Jon E. Beetem, Judge

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**JUDGES**

Division I: Witt, P.J., and Newton and Pfeiffer, JJ.

CONCURRING.

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**ATTORNEYS**

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Attorneys for Appellant,

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Jefferson City, MO

Attorneys for Respondent.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**  
**MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

STATE OF MISSOURI, )  
)  
) **Appellant,** )  
v. ) **OPINION FILED:**  
) **April 23, 2013**  
JEFFREY LUKE MOAD, )  
)  
) **Respondent.** )

**WD75652**

**Cole County**

**Before Division I Judges:** Gary D. Witt, Presiding Judge, and Thomas H. Newton and Mark D. Pfeiffer, Judges

The State of Missouri (“State”) appeals from the judgment of the Circuit Court of Cole County, Missouri (“trial court”), dismissing with prejudice the involuntary manslaughter charge against Jeffrey Luke Moad (“Moad”).

Due to a hung jury, no verdict was reached after Moad’s trial, and the trial court declared a mistrial. A jury trial was rescheduled, but shortly before trial, the prosecutor dismissed the case *nolle prosequi*. Moad did not consent to having the case dismissed “without prejudice.”

Thereafter, Moad was re-indicted by a grand jury on the same charge of involuntary manslaughter. Moad filed a motion to dismiss pursuant to section 56.087. Moad argued that without his consent to the dismissal, the *nolle prosequi* filed by the State was rendered a dismissal *with prejudice*, which barred the refile of charges. The trial court agreed and entered its judgment, dismissing the charges against Moad with prejudice. The State appeals, contending that section 56.087 should not be interpreted to bar retrial on charges following a mistrial due to a hung jury.

**AFFIRMED.**

**Division I holds:**

Subsection 4 of section 56.087 expressly provides that “[f]or the purposes of this section, double jeopardy attaches in a jury trial when the jury has been impaneled and sworn.” A dismissal filed by the prosecutor after the jury has been impaneled and sworn—that is, after double jeopardy has attached pursuant to the statute—is with prejudice, “unless the criminal defendant has consented to having the case dismissed without prejudice.” § 56.087.2. “A dismissal with prejudice means that the prosecutor . . . cannot refile the case.” § 56.087.3.

In this case, Moad did not consent to a dismissal without prejudice. Therefore, the State’s dismissal of the charge after the first jury was impaneled and sworn—even though that sworn jury was unable to reach a verdict—was with prejudice for the purposes of section 56.087, and such dismissal barred the case from being refiled.

**Opinion by: Mark D. Pfeiffer, Judge**

April 23, 2013

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THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.