

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI

**v.
LEVI SCOTT ELLIOTT**

RESPONDENT,

APPELLANT.

DOCKET NUMBER WD78334

DATE: October 18, 2016

Appeal From:

Benton County Circuit Court
The Honorable Michael O'Brien Hendrickson, Judge

Appellate Judges:

Division Four: Mark D. Pfeiffer, Chief Judge, Presiding, Victor C. Howard, Judge and Gary D. Witt, Judge

Attorneys:

Dora A. Fichter, Jefferson City, MO, for respondent.

Casey A. Taylor, Columbia, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
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STATE OF MISSOURI,

RESPONDENT,

v.

LEVI SCOTT ELLIOTT,

APPELLANT.

No. WD78334

Benton County

Before Division Four: Mark D. Pfeiffer, Chief Judge, Presiding, Victor C. Howard, Judge and Gary D. Witt, Judge

Levi Scott Elliott ("Levi") was convicted, following a jury trial in Benton County, Missouri, of murder in the second degree, armed criminal action, and tampering with a motor vehicle. The events giving rise to these convictions were that Levi, age 15, shot and killed his half-sister. Levi was sentenced to consecutive terms of imprisonment of twenty years, five years, and five years, respectively. Levi raises two claims of error in his appeal. First, Levi claims that the trial court erred in not *sua sponte* preventing the State from entering a *nolle prosequi* and refiling the charges because this deprived Levi of the opportunity to be considered for dual jurisdiction in sentencing pursuant to section 211.073. Second, Levi claims that the trial court erred in overruling a hearsay objection at trial.

AFFIRMED.

Division Four holds:

(1) The trial court did not commit plain error in failing to *sua sponte* prevent the State from entering a *nolle prosequi* and refiling the charges against Levi. It is well-established that a prosecutor has great discretion whether to pursue charges against a defendant, which is codified in section 56.087. Levi has cited no authority to support his contention that the broad discretion granted to prosecutors to *nolle prosequi* charges is limited or can be limited by section 211.073.

In the absence of any authority whatsoever to support the limitation of the prosecutor's discretion to dismiss and refile the charges under these facts, under plain error review, we cannot find that facially there has been established any substantial ground for believing that manifest injustice or a miscarriage of justice has resulted. Therefore, we decline plain error review.

(2) We need not determine whether the challenged hearsay testimony at trial was admitted in error because Levi cannot demonstrate prejudice. In addition to a number of factors lessening the import of the challenged hearsay evidence, the evidence against Levi at trial was overwhelming. There is not a reasonable probability that the outcome of the trial would have been different had the challenged evidence been excluded.

Opinion by: Gary D. Witt, Judge

October 18, 2016

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