

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

COMPLETE TITLE OF CASE

STATE OF MISSOURI,

Appellant,

v.

MICHAEL J. FRESE,

Respondent.

DOCKET NUMBER WD78736

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: April 19, 2016

APPEAL FROM

The Circuit Court of Callaway County, Missouri
The Honorable Carol England, Judge

JUDGES

Division II: Martin, P.J., and Pfeiffer and Mitchell, JJ.

CONCURRING.

ATTORNEYS

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Attorneys for Appellant,

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Attorney for Respondent.



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

STATE OF MISSOURI,)
)
) **Appellant,**)
v.) **OPINION FILED:**
) **April 19, 2016**
MICHAEL J. FRESE,)
)
) **Respondent.**)

WD78736

Callaway County

Before Division II Judges: Cynthia L. Martin, Presiding Judge, and Mark D. Pfeiffer and Karen King Mitchell, Judges

The State of Missouri appeals the Judgment of the Circuit Court of Callaway County, Missouri, granting Michael Frese’s motion to dismiss as time-barred by section 287.128.11 the misdemeanor information against him for failure to insure workers’ compensation liability.

The State claims that because there was no “aggrieved party” in this case, the statute of limitations was triggered on the date the Attorney General discovered the offense, which was on January 26, 2012, when the Missouri Department of Labor and Industrial Relations (“DOLIR”) made the referral to the Attorney General. The State argues that when the Attorney General filed the information on January 16, 2015, it was within the three-year statute of limitations.

Frese argues that DOLIR and the Attorney General are collectively the “State,” and that discovery by the DOLIR of a referable offense is tantamount to discovery of the offense by the Attorney General.

AFFIRMED.

Division II holds:

The phrase “discovery of the offense by a person who has a legal duty to represent an aggrieved party,” § 287.128.11, contemplates both the Attorney General’s actual discovery of an offense, and the discovery of a referable offense by the State’s investigative agent.

The DOLIR, Division of Workers' Compensation, Fraud and Noncompliance Unit investigator stated in his Probable Cause Statement that during a recorded interview on December 22, 2011, Frese admitted that his company did not carry workers' compensation insurance. This statement establishes that the State, through the Fraud and Noncompliance Unit, *discovered* all the facts necessary to refer the offense to the Attorney General for prosecution on December 22, 2011, triggering the accrual period.

If discovery of a referable offense by the Fraud and Noncompliance Unit is not deemed to be discovery of the offense by the Attorney General, then a discovered offense could sit dormant for an indeterminate amount of time before being referred to the Attorney General, vitiating the purpose of a statute of limitations.

The Attorney General is deemed to have discovered an offense when the State's investigative unit discovers and is authorized to refer the offense. The commencement of the State's action on January 16, 2015, was more than three years after the discovery of the offense on December 22, 2011; therefore, the State's action against Frese was time-barred, and the trial court's judgment of dismissal was proper as a matter of law.

Opinion by: Mark D. Pfeiffer, Judge

April 19, 2016

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