In the Missouri Court of Appeals
Eastern District
DIVISION ONE

STATE OF MISSOURI,	)	No. ED108691
	)	
Appellant,	)	
	)	Appeal from the Circuit Court
	)	of the City of St. Louis
vs.	)	Cause No. 1922-CR01066-01
	)	
GARY ANDREWS, JR.,	)	Honorable David C. Mason
	)	
Respondent.	)	Filed: February 23, 2021

OPINION SUMMARY

The State of Missouri appeals the trial court's order granting Gary Andrews's ("Defendant") motion to dismiss the count charging him with possession of a controlled substance on double jeopardy grounds. The court found that the State was barred from continuing to prosecute that count after Defendant pleaded guilty to another count in the same indictment, charging him with unlawful use of a weapon by possessing a firearm while also in possession of a controlled substance.

AFFIRMED.

Division One holds:

The specific statutes under which Defendant was charged, §§ 579.015 and 571.030.1(11), are silent as to whether cumulative punishment for both crimes is authorized. Under the same elements test, possession of a controlled substance in § 579.015 is clearly included in the offense of unlawful use of possession of a firearm while also possessing a controlled substance in § 571.030.1(11). Therefore, these are the "same offense" for double jeopardy purposes, and Defendant was protected from both successive prosecution of and cumulative punishment on these two offenses.

Although the offenses were charged in a single indictment, when Defendant elected to plead guilty to only the greater offense and the State did not object, the State was barred from

continuing to prosecute the lesser-included offense for the same reasons it would have been barred from successively prosecuting it, namely to give Defendant the benefit of finality and to prevent government overreaching. Therefore, it was not premature for the trial court to dismiss the possession count prior to conviction and sentencing.

Opinion by: Colleen Dolan, P.J.

Robert M. Clayton III, J., and Kelly C. Broniec, J., concur.

Attorney for Appellant: Julia E. Reeves

Attorney for Respondent: Abraham P. Copi

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