OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION ONE

STATE OF MISSOURI,	)	No. ED108716
	)	
Respondent,	)	Appeal from the Circuit Court
	)	of the City of St. Louis
vs.	)	1722-CR04019-01
	)	
GREGORY SHEGOG,	)	Honorable Thomas C. Clark II
	)	
Appellant.	)	Filed: May 11, 2021

Gregory Shegog ("Defendant") appeals the judgment, following two jury trials, convicting him of one count of first-degree assault of a law enforcement officer (Count I), one count of armed criminal action (Count II), and one count of unlawful possession of a firearm (Count V).[1] The trial court sentenced Defendant as a prior offender to a total of twelve years of imprisonment.

On appeal, Defendant argues, (1) there was insufficient evidence to support his conviction for unlawful possession of a firearm in Count V; and (2) the trial court erred in failing to dismiss Defendant's underlying charges for first-degree assault of a law enforcement officer and armed criminal action in Counts I and II with prejudice, and the trial court lacked authority to retry Defendant for those counts, because during Defendant's first jury trial the jury was unable to reach a unanimous verdict as to Counts I and II, and then the counts were not retried during "the same or next term of court" in accordance with portions of Article I, Section 19 of the Missouri Constitution ("Article I, Section 19 of the Missouri Constitution" or "Article I, Section 19").[2]

TRANSFERRED TO THE MISSOURI SUPREME COURT.

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[1] During Defendant's first jury trial, (1) the jury acquitted Defendant on Counts III and IV, which were charges for first-degree assault of a law enforcement officer and armed criminal action involving the shooting of police officer Jonathan Senf; (2) the jury could not reach a verdict as to Counts I and II, which were charges for first-degree assault of a law enforcement officer and armed criminal action involving the shooting of police officer Bryan Lemons; and (3) the jury found Defendant guilty of Count V, which was a charge for unlawful possession of a firearm. Defendant was subsequently retried by jury on Counts I and II, and the jury found him guilty of both offenses.

[2] Article I, Section 19 of the Missouri Constitution provides in relevant part that: ". . . if the jury fail to render a verdict the court may, in its discretion, discharge the jury and commit or bail the prisoner for trial at the same or next term of court . . .."

Division One holds:

(1) We would hold Defendant's claim asserting there was insufficient evidence to support his conviction for unlawful possession of a firearm in Count V has no merit.

(2) We would hold the language of Article I, Section 19 at issue in this appeal is directory rather than mandatory, and therefore, the trial court was not required to dismiss Defendant's charges for Counts I and II when they were not retried during "the same or next term of court." We would find these proposed holdings are consistent with, (1) the trial court's authority and discretion to continue a case for good cause; and (2) language in Missouri Supreme Court Rule 20.01(c) (2019).[3] Moreover, we would find Defendant's arguments that this Court should not consider Rule 20.01(c) in interpreting Article I, Section 19 have no merit. In sum, we would hold the trial court did not err in failing to dismiss Defendant's underlying charges for first-degree assault of a law enforcement officer and armed criminal action in Counts I and II with prejudice, and the trial court did not lack the authority to retry Defendant for those counts.

(3) We would affirm the trial court's judgment, but due to the general interest and importance of the constitutional issue involved herein, we transfer this case to the Supreme Court of Missouri pursuant to Missouri Supreme Court Rule 83.02 (2021).

Opinion by: Robert M. Clayton III, J.
Colleen Dolan, P.J., and Mary K. Hoff, J., concur.

Attorney for Appellant: Irene C. Karns

Attorney for Respondent: Eric S. Schmitt, Gregory L. Barnes

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.

[3] All further references to Rule 20.01(c) are to Missouri Supreme Court Rules (2019).