

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI,  
APPELLANT**

**vs.**

**TRAVIS LOVETT,  
RESPONDENT**

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DOCKET NUMBER WD76646

DATE: APRIL 22, 2014

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Appeal from:

The Circuit Court of Macon County, Missouri  
The Honorable Frederick P. Tucker, Judge

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Appellate Judges:

Division Four: James E. Welsh, C.J., Joseph M. Ellis, J. and Mary Rhodes Russell,  
Sp.J.

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Attorneys:

Timothy Anderson, for Appellant

Stephen Wyse, for Respondent

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI, APPELLANT**

**v.**

**TRAVIS LOVETT, RESPONDENT**

WD76646

Macon County, Missouri,

Before Division Four Judges: James E. Welsh, C.J., Joseph M. Ellis, J. and Mary Rhodes Russell, Sp.J.

The State appeals from a judgment entered by the Circuit Court of Macon County that presumably dismisses the information charging Respondent Travis S. Lovett with possession of an imitation controlled substance with intent to distribute, § 195.242, and possession of drug paraphernalia, § 195.233. The charges against Respondent arose after authorities observed Respondent and another man, Stephen Wright, smoking what the authorities believed to be marijuana. Respondent and Wright explained that the green leafy substance was not marijuana, but incense. Respondent sold the incense in individual baggies labeled “sedation incense” at two stores he owned. Wright explained that the individuals who purchase the incense smoke it because it produces a high similar to that of marijuana.

After the charges were filed, Respondent filed a motion to dismiss the information on the basis that § 195.010(21), which defines the term “imitation controlled substance,” is ambiguous and unconstitutionally vague. Respondent further alleged in his motion that the information must be dismissed because it failed to state a crime in that the legislature intended § 195.242 to prohibit instances where individuals, who are engaged in illegal drug trafficking, deliver or possess a non-controlled substance representing it to be an actual controlled substance.

On July 10, 2013, the trial court entered its “Findings of Fact, Conclusions of Law, and Judgment.” In doing so, the trial court explained that cases concerning the sufficiency of the evidence in matters involving imitation controlled substances have uniformly involved situations in which either the defendant was alleged to have made “direct representations” that the item in question was a controlled substance or the defendant had engaged in multiple drug sales to undercover agents and one of those sales involved items which were later determined not to be an actual controlled substance. The trial court then found that there was no evidence in this case that Respondent or Wright told anyone that the material in question was marijuana or that either defendant had previously sold marijuana. The trial court then concluded the purported judgment by stating that “[i]t is hoped that an appellate decision will help clear up this area of the law. So Ordered[.]”

The State now appeals from the trial court's "Findings of Fact, Conclusions of Law, and Judgment." The State contends that the trial court erred in dismissing the information because the information sufficiently states and apprises Respondent of the essential elements of the charged offenses. Respondent avers that the trial court correctly dismissed the information because Respondent's conduct does not come within the purview of the imitation controlled substance statutes.

**DISMISSED AND REMANDED.**

**Division Four holds:**

1. Given the lack of clarity in the trial court's judgment, the parties' arguments on appeal, and the procedural posture of this case, we must dismiss the State's appeal and remand the case for further proceedings consistent with this opinion because any decision that we would make in this case would amount to nothing more than an advisory opinion in that we cannot ascertain what was decided in the trial court. Although the parties treat the judgment as granting Respondent's motion to dismiss, nothing in the judgment expressly states or indicates that the trial court is granting such relief. In fact, the judgment fails to indicate what, if any, relief is being granted. Thus, we cannot determine whether one or both counts charged in the information were dismissed. Without knowing what was actually dismissed by the judgment, we cannot determine whether the judgment is final for purposes of appeal. Accordingly, the appeal must be dismissed.

Opinion by Joseph M. Ellis, Judge

Date: April 22, 2014

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