

MISSOURI CIRCUIT COURT  
TWENTY-SECOND JUDICIAL CIRCUIT  
(St. Louis City)

STATE OF MISSOURI

FILED  
JUN 11 2015

22<sup>ND</sup> JUDICIAL CIRCUIT  
CIRCUIT CLERK'S OFFICE  
BY \_\_\_\_\_ DEPUTY

vs

CASE NO. 1422-CR04367

DIVISION 26

June 11, 2015

COURT ORDER

This cause was called for hearing on defendant's Motion to Dismiss. Parties appeared by and through counsel. Robert H. Pedroli, Jr., for defendant [REDACTED], and Assistant Attorney General, Scott E. Fox, for the State of Missouri. Arguments were submitted and this Court took the matter under submission. Defendant's Motion to Dismiss rests on two points. First, that the State's action is time barred and second, that the State cannot properly hold [REDACTED] liable as an individual because the "employer" is [REDACTED] LLC, a Missouri corporation in good standing.

Point I

Defendant argues that the statute of limitations has run. The applicable statute 287.128.11 RSMo states in its pertinent part: *Any prosecution for a violation of the provisions of this section or section 287.129 shall be commenced within three years after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is not a party to the offense. As used in this subsection, the term "person who has a legal duty to represent an aggrieved party" shall mean the attorney general or the prosecuting attorney having jurisdiction to prosecute the action.*

This action was filed by the Attorney General on November 21, 2014. The probable cause statement indicates that the investigation culminated in December of 2011. Defendant argues that because the action was not filed until immediately prior to the expiration of the three year statute of limitations the action is thus time barred. Defendant presents no plausible arguments to support such a position. Moreover, this Court finds that defendant's position is inconsistent with the statute. The applicable statute states, "within three years of discovery...", not as soon as, or once the offense is discovered.

This Court finds that the *Information* is sufficient, it: 1) properly advises the defendant of the nature and cause of the accusation against him; (2) consists of a plain, concise and definite written statement of the essential facts constituting the offense charged; (3) states facts which constitute the offense charged with reasonable certainty; and (4) makes the averments so clear and distinct that there could be no difficulty in determining what evidence would be admissible under them. See State v. Fernow, 328 S.W.3d 429, 430 (Mo. App. E.D. 2010). Defendant argues the information must be dismissed because of the statute of limitations proscribed by Section 287.128.11 RSMo. Based on the allegations in the probable cause statement the earliest date that

the offense could have been discovered is December 28, 2011. Thus, the three year period could have expired on December 29, 2014 at the earliest. The charging document, the *Misdemeanor Information* was filed with the Court on November 21, 2014. The allegations within the probable cause statement establish a sound basis for denying the defendant's Motion to Dismiss, because the *Information* can reasonably be interpreted to have been filed within three years of the discovery of the violation, which is within the statute of limitations. Moreover, the affirmative defense of statute of limitations in a criminal case is not jurisdictional. State v. Cotton, 295 S.W.3d 487, 490 (Mo. App. E.D. 2009)(citing Longhibler v. State, 832 S.W.2d 908, 910 (Mo. banc 1992)); Collins v. State, 887 S.W.2d 442, 444 (Mo. App. W.D. 1994). In the instant case, at trial the defendant will have the opportunity to rebut the State's evidence regarding when the offense was discovered, such evidence may serve as an affirmative defense.

Defendant's Point I is hereby denied.

Point II

Defendant argues that the charges were improperly brought against him and should have instead been brought against [REDACTED], LLC.

Section 287.128.7 RSMo states: *Any employer who knowingly fails to insure his liability pursuant to this chapter shall be guilty of a class A misdemeanor and, in addition, shall be liable to the state of Missouri for a penalty in an amount up to three times the annual premium the employer would have paid had such employer been insured or up to fifty thousand dollars, whichever amount is greater. Any person who has previously pled guilty to or has been found guilty of violating any of the provisions of this section and who subsequently violates any of the provisions of this section shall be guilty of a class D felony.*

Section 287.030.1 RSMo defines an employer as: *Every person, partnership, association, corporation, limited liability partnership or company, trustee, receiver, the legal representatives of a deceased employer, and every other person, including any person or corporation operating a railroad and any public service corporation, using the service of another for pay.*

Charges are often brought against corporate and company officers, employees and owners for violations of Missouri's workers' compensation law. See State ex rel. Nixon v. Jamison, 103 S.W.3d 836, 837 (Mo. App. E.D. 2003); Smith v. Fabricated Metal Prods., 883 S.W.2d 537, 539 (Mo. App. E.D. 1994); State v. Plastec, Inc., 980 S.W.2d 152, 153 (Mo. App. E.D. 1998).

"The entire criminal justice system rests on apparent prosecutorial discretion in choosing whether to file charges, what charges to file, and whether to accept a plea bargain." State v. Whitfield, 837 S.W.2d 503, 515 (Mo. banc 1992). "[A] prosecutor has broad discretion on the decision to prosecute and this decision is seldom subject to judicial review." State v. Juarez, 26 S.W.3d 346, 353 (Mo. App. W.D. 2000).

In this case, the State charged defendant with the class A misdemeanor of Failure to Insure Workers' Compensation Liability. The facts that formed the basis of the charge included that defendant is the owner of [REDACTED]. The facts also include defendant's statement that [REDACTED], who is listed as a member of [REDACTED] LLC on its application, registered the business but never owned it and had nothing to do with the day-to-day operations.

Under Missouri law, defendant could be charged with violations of Missouri's workers' compensation law. See State ex rel. Nixon v. Jamison, 103 S.W.3d 836, 837 (Mo. App. E.D. 2003); Smith v. Fabricated Metal Prods., 883 S.W.2d 537, 539 (Mo. App. E.D. 1994). Defendant only cites general case law regarding the interpretation of statutes in his brief and

does not cite any law that directly supports his argument. The Court finds that it is within the prosecutor's discretion here to bring charges only against defendant and not against [REDACTED] or its other members.

Defendant's Point II is hereby denied.

THEREFORE, it is Ordered and Decreed that defendant's Motion to Dismiss is denied.

**SO ORDERED:**

  
Calea Stovall-Reid, Judge

Dated: 6/11/2015