No. 23-_____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 2023

Sylvester Onyejiaka, Jr.,

Petitioner,

v.

State of Missouri,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Missouri

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QUESTION PRESENTED

Is a defendant's Fifth Amendment right against double jeopardy violated when a conviction and sentence is entered and imposed for unlawful use of a weapon while in possession of a controlled substance, and for possession of a controlled substance, when the controlled substance used to establish violation of both offenses was the same controlled substance?

RELATED PROCEEDINGS

1. The 22nd Judicial Circuit of Missouri, No. 1922-CR01088-01, *State of Missouri v. Sylvester Onyejiaka, Jr.* (March 3, 2020).
2. The Missouri Court of Appeals, Eastern District, No. ED109930, *State of Missouri v. Sylvester Onyejiaka, Jr.* (September 27, 2022).
3. The Supreme Court of Missouri, No. SC99871, *State of Missouri v. Sylvester Onyejiaka, Jr.* (June 13, 2023).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

CONSTITUTIONAL PROVISIONS

RULES

CITATIONS

State v. Onyejiaka, 671 S.W.3d 796 (Mo. banc 2023)

State v. Onyejiaka, ED109930, 2022 WL 4474828, at *1 (Mo. App. 2022)

JURISDICTION

Following the June 13, 2023, decision and opinion of the Supreme Court of Missouri denying Mr. Onyejiaka's direct appeal, Mr. Onyejiaka timely filed a motion for rehearing on June 28, 2023. The Missouri Court denied that motion on August 15, 2023. Mr. Onyejiaka invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within ninety days of the Supreme Court of Missouri's order denying Mr. Onyejiaka's motion for rehearing.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend XIV, § 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES OF MISSOURI INVOLVED

1. A person commits the offense of possession of a controlled substance if he or she knowingly possesses a controlled substance[.]

§ 579.015.1, RSMo.

1. A person commits the offense of unlawful use of weapons . . . if he or she knowingly: (11) Possesses a firearm while also knowingly in possession of a controlled substance that is sufficient for a felony conviction of section 579.015.

§ 571.030.1(11), RSMo.

STATEMENT OF THE CASE

On January 28, 2019, two officers patrolling in the City of St. Louis pulled over Mr. Onyejiaka's car. The officers saw a firearm between the driver's seat and the center console. With Mr. Onyejiaka's consent, the officers searched the car. Officers found an off-white substance wrapped in

cellophane, later identified as .33 grams of cocaine base, and arrested Mr. Onyejiaka.

Missouri charged Mr. Onyejiaka with violating § 579.015.1, RSMo—possession of a controlled substance, and § 571.030.1(11)—unlawful use of weapons by possessing a firearm while in possession of a controlled substance. But for the .33 grams of cocaine base, Mr. Onyejiaka lawfully possessed the firearm. The .33 grams of cocaine base seized by the officers during the search was used to form the charges and subsequent convictions and sentences of both charges.

A jury found Mr. Onyejiaka guilty of both charges. On June 15, 2021, the trial court sentenced Mr. Onyejiaka to concurrent terms of three years' imprisonment in the Missouri Department of Corrections on each count but suspended the execution of sentence and ordered supervised probation for three years.

On appeal to the Missouri Court of Appeals, Eastern District, Mr. Onyejiaka raised, for the first time, that:

> The trial court plainly erred in accepting guilty verdicts for both possession of a controlled substance (Count 1) and UUW-Possession (Count 2), in entering judgment of conviction on both counts, and in sentencing Mr. Onyejiaka for both counts, in violation of Mr. Onyejiaka's right to be free from double jeopardy under the Fifth Amendment to the

> United States Constitution[1] in that Counts 1 and 2 constituted "the same offense" for double jeopardy purposes and the [Missouri] legislature did not specifically authorize or intend cumulative punishments for these two offenses.

Appellant's Brief at 9, ED109930 (April 7, 2022).

Despite the failure of Mr. Onyejiaka to preserve the issue in the trial court, the Missouri Court of Appeals reviewed the claim under plain error review "because the right to be free from double jeopardy is a 'constitutional right that goes "to the very power of the State to bring the defendant into court to answer the charge brought against him."'" *State v. Onyejiaka*, ED109930, 2022 WL 4474828 at *2 (September 27, 2022) (quoting *State v. Liberty*, 370 S.W.3d 537, 546 (Mo. banc 2012) (quoting *Blackledge v. Perry*, 417 U.S. 21, 30 (1974))).

The Missouri Court of Appeals denied Mr. Onyejiaka's appeal. It held that because there was more than one way to commit unlawful use of weapons (there are 11 separate offenses in § 571.030, RSMo), and that possession of a controlled substance was not an element in each offense under

[1] The constitution of Missouri's double jeopardy clause only protects against retrial of the same offense following an acquittal, which is why the state's constitution is not invoked at any point in Mr. Onyejiaka's cases. Mo. Const. art. I § 19.

the statute, that the convictions and sentences did not violate the Double Jeopardy Clause of the Fifth Amendment.

The Missouri Supreme Court granted Mr. Onyejiaka's application for transfer. There, Mr. Onyejiaka raised the same claim as before the Missouri Court of Appeals, with slightly different wording:[2]

> The trial court plainly erred in entering convictions and sentences for both possession of a controlled substance (Count I) and unlawful use of weapons—subsection 11—possessing a firearm while in possession of a controlled substance (Count II), because the entering of multiple convictions exceeded the authority of the trial court in violation of Mr. Onyejiaka's right to be free from double jeopardy under the Fifth Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment, in that the legislature did not specifically authorize or intend cumulative punishments for these two offenses.

Appellant's Brief at 10, *State v. Onyejiaka*, SC99871 (Mo. banc 2023).

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[2] Instead of using Questions or Issues Presented, Missouri requires an appellant use a Point Relied On to raise a claim. Missouri Supreme Court Rule 84.04(d). If an appellant raises the claim incorrectly, the Missouri Court may (and has) dismissed an appeal for failure to comply with the Point Relied On format. To avoid this, Mr. Onyejiaka's new counsel (undersigned counsel here) revised the Point Relied On.

Citing the same reason given by the Missouri Court of Appeals, the Missouri Supreme Court reviewed Mr. Onyejiaka's claim under plain error review. *Onyejiaka*, 671 S.W.3d at 798. The Court held that the convictions did not violate the Double Jeopardy Clause of U.S. Const. amend V, because "the plain language of the statutes, combined with several fundamental principles of statutory interpretation, clearly demonstrates the [Missouri] legislature's intent to authorize multiple punishments" for both offenses. *Id.* at 801.

REASONS FOR GRANTING THE WRIT

This writ should issue because the Missouri Court's opinion (1) decided an important federal question in a way that conflicts with relevant decisions of this Court; and (2) decided an important federal question in a way that conflicts with the decisions of other state courts of last resort. Supreme Court Rule 12(b)-(c).

Normally, when a state court of last resort interprets its own laws, this Court is bound by the state court's construction. *Missouri v. Hunter*, 459 U.S. 359, 368 (1983). But "[o]n rare occasions the Court has reexamined a state-court interpretation of state law when it appears to be an 'obvious subterfuge to evade consideration of a federal issue.'" *Mullaney v. Wilbur*, 421 U.S. 684, 691 n.11 (1975) (quoting *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 129 (1945)).

Such "rare occasion" is found here. Stretching the holdings of *Blockburger*, *Hunter*, and *Whalen* by relying on "statutory interpretation principles" instead of the plain language of the statute allowed Missouri to avoid addressing its unconstitutional holdings in two of its cases interpreting the federal right against double jeopardy. *See generally State v. Hardin*, 429 S.W.3d 417 (Mo. banc 2014); *State v. Collins*, 648 S.W.3d 711 (Mo. banc 2022); Appellant's Substitute Brief, SC99871, at 12-33.

Without intervention by this Court, a fundamental federal constitutional right will fully exist in some states—but not all states—and certainly not in Missouri. The people of Missouri have no other recourse but for this Court, as the double jeopardy right in the state constitution does not protect against cumulative punishment, only retrial after acquittal. Mo. Const. art. I § 19.

This Court should intervene.

1. The Supreme Court of Missouri's Holding Decided an Important Federal Question in a Way That Conflicts with Relevant Decisions of this Court, Specifically *Missouri v. Hunter* and *Whalen v. United States*.

The federal right against double jeopardy, found in the Fifth Amendment to the U.S. Constitution, protects the people from "successive punishments and [from] successive prosecutions for the same criminal offense." *United States v. Dixon*, 509 U.S. 688, 695-96 (1993). "[W]here two

offenses for which the defendant is punished or tried cannot survive the 'same-elements' test, the double jeopardy bar applies." *Id*. at 696.

The "same elements" test comes from this Court's opinion in *Blockburger v. United States*, 284 U.S. 299, 304 (1932). There, this Court held "[t]he applicable rule is that, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses of only one, is whether each provision requires proof of a fact which the other does not. *Id*.

In *Hunter*, this Court held:

> Where, as here, a legislature *specifically authorizes* cumulative punishment under two statutes, regardless of whether those two statutes proscribe the "same" conduct under *Blockburger*, a court's task of statutory construction is at an end and the prosecutor may seek and the trial court or jury may impose cumulative punishment under such statutes in a single trial.

Hunter, 459 U.S. 359, 368-69 (1983) (emphasis added).

And in *Whalen*, this Court explained:

> The assumption underlying the [*Blockburger*] rule is that Congress ordinarily does not intend to punish the same offense under two different statutes. Accordingly, where two statutory provisions proscribe the "same offense," they are construed not to authorize cumulative punishments in the absence of a *clear indication of contrary legislative intent*.

Whalen v. United States, 445 U.S. 684, 691-92 (1980) (emphasis added).

The statute in question here does not "specifically authorize" or demonstrate a "clear indication" of legislative intent to authorize cumulative punishment. Section 571.030.1(11), RSMo provides: "A person commits the offense of unlawful use of weapons . . . if he or she knowingly: (11) possesses a firearm while also knowingly in possession of a controlled substance that is sufficient for a felony conviction of section 579.015."

Still, the *Onyejiaka* Court held "the plain language of the statutes, combined with several fundamental principles of statutory interpretation, clearly demonstrates the legislature's intent to authorize multiple punishments under sections 579.015 and 571.030.1(11). Nothing further is required. No double jeopardy violation exists." *Onyejiaka*, 671 S.W.3d at 801.

But *Hunter* and *Whalen* require the legislative intent to be "clear from the face of the statute or the legislative history." *Garrett v. United States*, 471 U.S. 773, 779 (1985). There is no mention of statutory interpretation principles past reading the plain language of the statute, and for good reason: a criminal statute must provide notice to those subject to punishment for its violation. *See Kolender v. Lawson*, 461 U.S. 352, 357 (1983). Here, section 570.030.1(11) provides no notice that a person could be punished twice for possessing the same controlled substance.

The Missouri Court employed other statutory interpretation principles as well. For example, it noted the state's armed criminal action statute—the

topic of this Court's decision in *Missouri v. Hunter*[3]—provides an "obvious indication of legislative intent." But "that language is not the only way for the legislature to express its intent to authorize multiple punishments," and that "[t]he legislature need not use 'certain magic words.'" *Onyejiaka*, 671 S.W.3d at 800-01 (citing *Bachtel v. Miller Cnty. Nursing Home Dist.*, 110 S.W.3d 799, 804 (Mo. banc 2003). But *Bachtel* was not discussing criminal law. It was discussing the state's waiver of sovereign immunity. *Bachtel*, 110 S.W.3d at

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[3] At the time of *Missouri v. Hunter*, the following version of Missouri's armed criminal statute was in effect:

> [A]ny person who commits any felony under the laws of this state by, with, or through the use, assistance, or aid of a dangerous or deadly weapon is also guilty of the crime of armed criminal action and, upon conviction, shall be punished by imprisonment by the division of corrections for a term of not less than three years. *The punishment imposed pursuant to this subsection shall be in addition to any punishment provided by law for the crime committed by, with, or through the use, assistance, or aid of a dangerous or deadly weapon.* No person convicted under this subsection shall be eligible for parole, probation, conditional release or suspended imposition or execution of sentence for a period of three calendar years.

§ 559.225, RSMo (1979).

Today's version has been slightly modified but retains the italicized language. § 571.015, RSMo.

800. Sovereign immunity is a right of the state, and it may waive it if it so chooses. The right to be free from double jeopardy belongs to the people, and the state may not waive it.

The Missouri Court also relied on an examination of the levels of punishment proscribed for each offense. Possession of a controlled substance is a class D felony, while unlawful possession of a firearm while in possession of a controlled substance is a class E felony. But this is not apparent from the face of section 570.030.1(11), RSMo. *Garrett*, 471 U.S. at 779 (1985) ("[T]he *Blockburger* rule is not controlling when the legislative intent is clear from the face of the statute or the legislative history."). The Double Jeopardy Clause "requires a comparative analysis of statutory elements, not penalties." *State v. Dragoo*, 765 N.W.2d 666, 672 (Neb. 2009).

The Missouri Court's holding stretches the exception to *Blockburger* and double jeopardy by diminishing the requirements that a legislature must "specifically authorize" cumulative punishment and, in the absence of a "clear indication of contrary legislative intent," statutes must be construed as to not authorize cumulative punishment.

In reaching its conclusion, the Missouri Court found a state court loophole to deny Mr. Onyejiaka his federally protected right against double jeopardy. Where, as here, a court must rely on "the plain language of the statues, *combined with several fundamental principles of statutory*

interpretation" to reach a conclusion that the legislature "clearly" intended to authorize multiple punishment for the same offense, it renders the federal protection meaningless for state defendants. This Court should intervene and issue this writ.

2. The Supreme Court of Missouri's Holding Decided an Important Federal Question in a Way That Conflicts with the Decisions of the Courts of Last Resort of Illinois, Michigan, Nebraska, New Jersey, New Mexico, Virginia, and West Virginia.

A review of the decisions of the many state courts of last resort supports Chief Justice Rehnquist's observation that "the decisional law [of the Double Jeopardy Clause] is a veritable Sargasso Sea which could not fail to challenge the most intrepid judicial navigator." *Albernaz v. United States*, 450 U.S. 333, 343 (1981). Despite this Court's requirement that a statute "specifically authorize" multiple punishments, otherwise *Blockburger* applies, the states disagree as to the rule's application.

As explained above, the Supreme Court of Missouri not only read the plain language of the statute, but also applied principles of statutory interpretation that a lay person would not know or understand how to apply. This application by the Missouri Court directly contradicts the state courts of

last resort in Illinois,[4] Michigan,[5] Nebraska,[6] New Jersey,[7] New Mexico,[8] Virginia,[9] and West Virginia.[10] Those states first determine whether the plain

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[4] *People v. Donaldson*, 435 N.E.2d 477, 478 (Ill. 1982) (using *Blockburger* test due to lack of "a clear legislative expression" of intent to impose multiple punishments).

[5] *People v. Miller*, 869 N.W.2d 204, 212-13 (Mich. 2015) (using *Blockburger* due to a lack of a clear expression of intent and noting the legislature's ability to express its intent to do so was demonstrated in other section of the statute).

[6] *State v. Dragoo*, 765 N.W.2d 666, 671-72 (Neb. 2009) (using *Blockburger* due to a lack of legislative intent and rejecting the state's argument that intent could be inferred because the included offense had a lower classification and penalty).

[7] *State v. Dillihay*, 601 A.2d 1149, 1152 (N.J. 1992) ("If, however, the legislative intent to allow multiple punishments is not clear, the Court must then apply the [*Blockburger* test] to determine whether the defendant is unconstitutionally faced with multiple punishment for the 'same' offense.").

[8] *New Mexico v. Gutierrez*, 258 P.3d 1024, 1044 (N.M. 2011) (moving straight to *Blockburger* test when statute did not clearly express legislative intent to impose cumulative punishments).

language of the statute specifically authorizes multiple punishments. If the statute does not clearly demonstrate intent by the legislature to impose cumulative punishments, those states move directly to the *Blockburger* test.

Other states review far more material than just the statute at issue. For example, Wisconsin uses a four-factor test to determine legislative intent of multiple punishments. The courts there examine "(1) 'all applicable statutory language'; (2) 'the legislative history and context of the statutes'; (3) 'the nature of the proscribed conduct'; and (4) 'the appropriateness of multiple punishments for the conduct.'" *State v. Steinhardt*, 896 N.W.2d 700, 708-09 (Wis. 2017) (quoting *State v. Ziegler*, 816 N.W.2d 238, 255 (Wis. 2012)).

The Supreme Court of Missouri's opinion is an outlier and directly contradicts other state courts of last resort. By impermissibly expanding this Court's requirement that a statute must specifically authorize cumulative punishment to relying on statutory interpretation principles to avoid the

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[9] *Commonwealth v. Gregg*, 811 S.E.2d 254, 258-59 (Va. 2018) (applying *Blockburger* when plain language of statute did not clearly express legislative intent to impose cumulative punishments).

[10] *State v. Duke*, 873 S.E.2d 867, 877 (W. Va. 2022) (noting other state statutes where the legislature clearly expressed legislative intent, finding no such intent in the statute at bar, therefore applied *Blockburger*).

Blockburger test—which Missouri's case law in *Hardin* and *Collins* clearly contradicts—the people of Missouri are being denied their full federal right against double jeopardy. This Court should intervene and issue this writ.

CONCLUSION

Appellant Sylvester Onyejiaka, Jr., moves this Court to grant his petition for a writ of certiorari to the Supreme Court of Missouri.

Respectfully submitted,

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