

## Summary of SC89322, *State of Missouri v. Robert Latall Jr.*

Appeal from the circuit court of Cole County, the Honorable Thomas Sodergren.

**Attorneys:** Latall was represented by Daniel Dodson of Jefferson City, and the state was represented by Doug Noland, Greg A. Perry and Ashley Harms of the attorney general's office in Jefferson City.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A man appeals his conviction for criminal nonsupport, arguing he has good cause for his failure to pay child support because of his financial inability to do so. In a 5-2 decision written by Judge Michael A. Wolff, the Supreme Court of Missouri reverses the conviction. The man met his statutory burden of injecting the issue of "good cause" for failure to pay child support by offering evidence that he has essentially no assets, no income and no means to pay support. The burden then shifted to the state to prove the defendant did not have good cause. Here, not only did the state offer no evidence as to whether the defendant's reason constitutes good cause, it did not offer evidence sufficient to support the conviction. Judge Michael Maloney, a retired judge from Clay County who sat by special designation, dissents so far as he would hold there was evidence sufficient to support the man's conviction. Judge Breckenridge concurs in the dissent, finding the inferences it draws from the evidence are the ones compelled by the proper standard of appellate review.

**Facts:** In February 2000, Robert Latall Jr. was ordered to pay child support and since has paid nearly \$58,00 in child support. Some time later, he left his management position at a Cole County sheet metal company, where he made more than \$100,000 a year and had a valuable retirement fund, to take a job in Kansas City. This company closed shortly after employing Latall, who then was unable to find work in his field, so he took a carpentry job paying \$10 per hour. Throughout this time, he continued to make child support payments. Then, in September 2004, he withdrew \$72,000 from his retirement fund to buy a bar in Grain Valley. At the time he bought it, the bar was not making money, and he also has not been able to turn a profit. The bank foreclosed on the house he had bought, and he moved into a room in the bar, where sometimes he works alone when he cannot afford to make payroll and where utility companies are threatening to turn off the gas and electric because he has not paid the bills. He stopped making payments after his bar venture began failing. The state charged him with the class A misdemeanor of criminal nonsupport, and the trial court found him guilty, sentenced him to two years of unsupervised probation, and ordered him to pay \$800 a month in child support. After he failed to meet the requirements, his probation was revoked. The court imposed a 90-day jail term but suspended execution of the sentence and placed Latall on two additional years of unsupervised probation, again ordering him to pay \$800 a month in child support. He appeals his conviction.

## **REVERSED.**

**Court en banc holds:** (1) Section 568.040.1, RSMo 2000, provides that a parent commits the crime of nonsupport if the parent “knowingly fails to provide, without good cause, adequate support” the parent legally is obligated to provide. It further provides that good cause is any substantial reason why the defendant parent is unable to provide adequate support and that good cause does not exist if the parent purposely maintains an inability to pay child support. Under the relevant statutes, the defendant has the burden of injecting the issue of good cause, after which the state has the burden of proving, beyond a reasonable doubt, that the defendant did not have good cause for failing to make support payments. The statute requires the defendant to show he has a “substantial reason” for not making payments, but it does not require him to offer “substantial evidence” to support his reason.

(2) Although Latall injected the issue of good cause, the state failed to produce evidence to show beyond a reasonable doubt that Latall did not have good cause not to pay child support. The record shows Latall provided uncontroverted testimony that he is heavily in debt; cannot afford housing, full-time support staff or the full cost of the bar’s utilities, and has no income, despite his efforts to revive his bar and to find a new sheet metal job. The state offered no evidence to the contrary, nor did it present evidence from which a trier of fact reasonably could have found Latall guilty. Accordingly, the conviction is reversed.

(3) The burden of production for good cause does not require an analysis of the soundness of the defendant’s financial decisions but merely evidence showing the defendant does not have the means to pay. At some point, however, reasonableness will come into play: If Latall’s business continues to fail, his willful maintenance of an untenable financial situation may constitute a prosecutable offense.

**Dissenting opinion by Senior Judge Maloney:** The author would hold that, accepting evidence tending to prove guilt as true and ignoring all contrary evidence and inferences, the evidence was sufficient to support Latall’s conviction. The evidence shows he made no voluntary child support payments for 15 months and persisted for months in limiting his efforts to obtain income to devoting all his productive time to running a bar that has not made money before or after he bought it. To hold that this evidence is not sufficient requires weighing evidence and raises the question as to whether the Court would have reached the same decision had the case been decided by a jury rather than a judge.

**Opinion concurring in dissent by Judge Breckenridge:** The author would hold that, in considering whether the evidence is sufficient for a trier of fact reasonably to find guilt beyond a reasonable doubt, an appellate court must consider the evidence and all reasonable inferences in the light most favorable to the conviction, especially given that the trier of fact is free to believe all, part or none of the testimony of any witness. The author agrees with the dissent’s reasonable inferences from the evidence because they are in the light most favorable to the conviction and are the ones the standard of review compels.