

Summary of SC91670, *State of Missouri v. Danny Vaughn*

Appeal from the Scott County circuit court, Judge J. Scott Thomsen
Argued and submitted Dec. 13, 2011; opinion issued May 29, 2012

Attorneys: The state was represented by John W. Grantham and Daniel N. McPherson of the attorney general's office in Jefferson City, (573) 751-3321; Vaughn was represented by Ellen H. Flottman of the public defender's office in Columbia, (573) 882-9855.

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: The state appeals dismissal of harassment charges based on two statutory sections the circuit court found to be unconstitutionally overbroad infringements on free speech rights. In a unanimous decision written by Judge William Ray Price Jr., the Supreme Court of Missouri affirms the judgment as to one statute, reverses it as to the other statute and remands (sends back) the case. One subdivision – which criminalizes a person who knowingly communicates more than once with another individual who does not want to receive the communications – is unconstitutionally overbroad and is severed from the rest of the statute. The other subdivision – which criminalizes a person who, without good cause, engages in “any other act” with the purpose to frighten, intimidate or cause emotional distress to another person – is neither overly broad nor vague.

Facts: In October 2010, Danny Vaughn was charged with one count of second-degree burglary under sections 569.170, RSMo 2000, and section 565.090.1(6), RSMo Supp. 2008, and one count of harassment under section 565.090.1(5), RSMo Supp. 2008. In the charges, the state alleged that Vaughn harassed his former wife in April 2010 by entering her home without her permission and making repeated unwanted telephone calls to her. Vaughn moved to dismiss the charges against him, arguing subdivisions (5) and (6) of section 565.090.1 are overbroad, violating his rights to free speech under the First Amendment to the United States Constitution and article I, section 8 of the Missouri Constitution, and vague, violating his due process rights under the federal and state constitutions. The circuit court dismissed both counts, holding that subdivisions (5) and (6) are unconstitutionally vague and overbroad. The state appeals.

AFFIRMED IN PART; REVERSED IN PART; REMANDED.

Court en banc holds: (1) Statutes are presumed to be constitutional, and if a statutory provision can be interpreted in two ways – one constitutional and the other not – the constitutional construction shall be adopted. When the language of a statute is clear and unambiguous, there is no room for construction. Criminal statutes require particularly careful scrutiny, as those that make unlawful a substantial amount of constitutionally protected conduct may be held invalid on their face even if they also have a legitimate application. The United States Supreme Court long has held that free speech guarantees forbid states from punishing the use of words or language not within narrowly limited classes of speech. Words that essentially have “nonspeech” elements may be regulated. The first step in determining whether a statute is unconstitutionally overbroad is to construe the challenged statute. If it fairly may be construed in a manner that limits its application to a core of unprotected expression, it may be upheld.

(2) The circuit court correctly held that section 565.090.1(5) is unconstitutionally overbroad. This provision defines “harassment” to occur when a person “knowingly makes repeated unwanted communication to another person.” On its face, this statute criminalizes a substantial amount of protected expression. Unlike the other subdivisions of section 565.090.1 – and even with the narrowing constructions suggested by the state – subdivision (5) does not require the proscribed conduct to harass in any sense of the word but criminalizes any person who knowingly communicates more than once with another individual who does not want to receive the communications. The privacy interest in avoiding unwanted communication does not except the speech prohibited here from First Amendment protection. The United States Supreme Court has held that government’s ability to shut off discourse solely to protect others from hearing it depends on a showing that substantial privacy interests are being invaded in an essentially intolerable manner. For example, unwanted speech may be regulated when the degree of captivity makes it impractical for the unwilling recipient to avoid exposure to the speech. Speech may not be prohibited, however, merely because it is unwanted by some people or because the ideas are offensive to others. Unconstitutional provisions of a statute – such as subdivision (5) here – should be severed, if possible, saving the remainder of the statute. Here, six independent definitions of “harassment” comprise the statute, and none is bound up in the others. Accordingly, subdivision (5) is severed.

(3) The circuit court erred in holding that section 565.090.1(6) is unconstitutional. This provision criminalizes a person who, without good cause, engages in “any other act” with the purpose to frighten, intimidate or cause emotional distress to another person. The ban of “any other act” applies only to conduct not governed in subdivisions (1) through (5) and, therefore, still leaves the potential for expressive conduct. Because the legislature intentionally excluded acts for which there could be good cause, both the intended and resulting effects must be substantial, preventing the statute’s application to generally harmless acts. Acts that cause immediate substantial fright, intimidation or emotional distress, however, are the sort of acts that tend to inflict injury, provoke violence or incite an immediate breach of the peace. Such activity is not protected by the First Amendment. Because the provision’s application is limited to a core of unprotected expression, it is not overly broad. It also is not unconstitutionally vague. The words “frighten,” “intimidate” and “emotional distress” – despite the contrary holding by the circuit court – are words with common understanding. Further, the statute is predicated on an objective “reasonable person” standard and not the subjective reaction of a victim. As such, it gives the public reasonable notice of the conduct it prohibits. In addition, this Court previously has held that “good cause” provides sufficient notice as to the criminal conduct proscribed. *See State v. Davis*, 469 S.W.2d 1, 5 (Mo. 1971). The use of this term in subdivision (6) gives notice to potential actors and provides a sufficiently concrete standard that mitigates the potential for arbitrary enforcement.