Summary of SC93172, *State of Missouri v. Gene Morris Jeffrey*
Appeal from the Warren County circuit court, Judge Gael D. Wood
Argued and submitted May 1, 2013; opinion issued June 25, 2013

Attorneys: Jeffrey was represented by Tyler Patrick Coyle and Ellen H. Flottman of the public defender's office in Columbia, (573) 882-9855, and the state was represented by Jessica P. Meredith of the attorney general's office in Jefferson City, (573) 751-3321.

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 convicted of exposing himself to girls younger than 15 years old challenges the constitutional validity of the statute under which he was charged as well as the sufficiency of the evidence presented at trial. In a unanimous decision written by Judge Zel M. Fischer, the Supreme Court of Missouri affirms the trial court's judgment. The statute is not unconstitutional, and the evidence is sufficient to support the man's convictions.

Facts: A jury found Gene Jeffrey guilty of two counts of sexual misconduct involving a child under section 566.083, RSMo Supp. 2010, and two counts of attempted sexual misconduct involving a child. The evidence was that, in January and November 2010, Jeffrey knowingly exposed his genitals to girls younger than 15 years old by standing nude, facing the street, in either his front doorway or a front window just as the girls passed his home on their way home from school. Jeffrey appeals.

AFFIRMED.

Court en banc holds: (1) Section 566.083 is not unconstitutionally overbroad and is not unconstitutional as applied to the facts of Jeffrey's case. The United States Supreme Court and this Court have limited the use of the overbreadth doctrine to the First Amendment context to prevent a chilling effect on protected speech. Statutes challenged on the basis of other rights may be challenged as violating the constitution on an as-applied basis. Here, Jeffrey has not demonstrated how section 566.083 will – or even might – have a chilling effect on protected speech. The statute prohibits conduct, not speech. Both the Supreme Court and this Court have recognized that the overbreadth doctrine generally is not applicable when a statute regulates only conduct. Jeffrey has not demonstrated that section 566.083 is so substantially overbroad as to be invalid. Further, because Jeffrey has conceded that his conduct was not expressive, section 566.083 is not unconstitutional as applied to him.

(2) Section 566.083 does not violate Jeffrey's right to privacy. The United States Supreme Court has recognized that the Fourteenth Amendment guarantees a right to privacy for certain fundamental personal rights, many of which inure to activities conducted in the home or decisions regarding childbirth and parentage. This right is not absolute, however, and activities are not protected from regulation simply because they occur in the home. Here, Jeffrey is not being punished merely for walking around his home in the nude. By standing in full view of the street, Jeffrey eliminated any right to privacy to which he might have been entitled. Moreover,

Jeffrey could not be punished for an inadvertent exposure because the language of section 566.083 requires that a person *knowingly* expose his or her genitals to a child younger than 15 years old under circumstances in which he or she *knows* that such conduct is likely to cause affront or alarm.

(3) The evidence was sufficient to support Jeffrey's conviction under section 566.083.

> (a) Evidence of Jeffrey appearing nude in his doorway or window on several occasions, even after a police deputy expressly told Jeffrey that children walking past his house could see him naked through the glass storm door, allowed the jury to infer that Jeffrey did not expose himself to the girls accidentally or mistakenly.
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> (b) A jury also could have inferred reasonably from the evidence that Jeffrey knew his exposure would cause affront or alarm to the girls. A reasonable adult who is a stranger to a group of girls walking down the street would know that exposing his genitals to the group would be likely to cause affront or alarm.
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> (c) Further, to support the counts of attempted sexual misconduct, the evidence is sufficient to support the jury's finding that Jeffrey twice had the purpose of violating section 566.083 and took a substantial step toward doing so. The only reason the offense was not completed is because, on those occasions, the girl passing in front of Jeffrey's house did not look at him while he stood nude in front doorway and, on the other occasion, a mother of one of the girls drove her car between a young girl and the window where Jeffrey stood nude.