

**Summary of SC94668, *State of Missouri v. Dennis E. Meacham***

Appeal from the Jefferson County circuit court, Judge Troy Cardona

Argued and submitted September 9, 2015; opinion issued October 13, 2015

**Attorneys:** The state was represented by Gregory Barnes and Shaun J. Mackelprang of the attorney general's office in Jefferson City, (573) 751-3321; and Jacob T. Costello of the Jefferson County prosecutor's office in Hillsboro, (636) 787-5321. Meacham was represented by Amy M. Bartholow of the public defender's office in Columbia, (573) 777-9977.

*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 a circuit court's judgment dismissing charges of criminal nonsupport and finding the nonsupport statute unconstitutional. In a unanimous decision written by Judge Mary R. Russell, the Supreme Court of Missouri reverses the judgment and remands (sends back) the case. The statute complies with constitutional standards of due process and does not shift the burden of proving any element of the crime to the defendant, although a defendant is required to prove an affirmative defense.

**Facts:** The state charged Dennis Meacham with criminal nonsupport in violation of section 568.040, RSMo. In the probable cause statement, Meacham's ex-wife alleged that he was more than 12 months in arrears in paying support for his three children and that he had not provided any non-monetary support for the children. The circuit court ultimately granted Meacham's motion to dismiss the information, finding section 568.040 unconstitutional under the due process clauses of the state and federal constitutions. The state appeals.

**REVERSED AND REMANDED.**

**Court en banc holds:** Section 568.040 fully complies with constitutional standards of due process. Prior to 2011, section 568.040 defined criminal nonsupport as knowingly failing to provide, without good cause, adequate support the parent legally is obligated to provide. In 2009, without changing the definitional elements of nonsupport, the legislature added that inability to provide support for good cause was an affirmative defense to a charge of criminal nonsupport. Then, in 2011, the legislature amended section 568.040 to remove "without good cause" from the definition of criminal nonsupport. It was this version of the statute under which Meacham was charged. The culpable mental state is "knowingly." Although good cause remains an affirmative defense, "without good cause" is not a definitional element, nor is it an implied element – the burden of proof was not shifted to Meacham to prove any element of the offense. It does not violate due process to require the defendant to prove an affirmative defense.