Summary of SC99747, *State of Missouri v. Jacob Hilbert*
Appeal from the St. Louis City circuit court; Judge Jason M. Sengheiser
Argued and submitted December 14, 2022; opinion issued March 21, 2023

Attorneys: Hilbert was represented by Joel J. Schwartz and Nathan T. Swanson of Rosenblum Schwartz & Fry in St. Louis, (314) 862-4332. The state was represented by Daniel N. McPherson of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It is provided by 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 defendant appeals from a judgment of conviction for two counts of first-degree statutory sodomy and one count of first-degree child molestation. In a unanimous decision written by Judge Robin Ransom, the Supreme Court of Missouri affirms the circuit court's judgment. The defendant's waiver of his right to a jury trial was sufficient based on the facts and circumstances in the record. Additionally, the circuit court did not plainly err in admitting the victim's forensic interview into evidence, as the video's existence and the interviewer's testimony demonstrated the recording device was capable of accurately recording and its operator was competent.

Facts: In 2018, Jacob Hilbert was charged with first-degree statutory sodomy and first-degree child molestation. The case proceeded to trial in January 2020. During the jury selection process – for which Hilbert was present – defense counsel made an inappropriate remark in front of the prospective jurors. As a result, the circuit court dismissed the jury panel and set a new trial date. A docket entry later indicates the case was to proceed as a bench trial (before a judge rather than a jury). At a pretrial hearing at which Hilbert was present, defense counsel acknowledged the case was to proceed to a bench trial. The bench trial began the following day. The court did not question Hilbert about waiving his right to a jury trial. At trial, the state sought to admit a video recording of the victim's interview. Hilbert did not object to the video's admission. At the close of evidence, the parties discussed Hilbert's waiver of a jury trial. Defense counsel indicated he would submit a written waiver. None ever was submitted. The circuit court found Hilbert guilty as charged. Following sentencing, the circuit court questioned Hilbert about the effectiveness of his counsel. Hilbert refused to answer any questions, including whether defense counsel had explained Hilbert's right to a jury trial. Hilbert appeals.

AFFIRMED.

Court en banc holds: (1) Hilbert's waiver of his right to a jury trial was sufficient. Whether there was a sufficient waiver turns on whether there are facts in the record demonstrating the waiver was knowing, voluntary and intelligent. Hilbert never has alleged, even on appeal, that trial counsel did not informed him of the right, that he did not understand the right, that he did not voluntarily waive the right, or that he would have asserted the right if questioned by the judge. Additionally, Hilbert was present both times his counsel acknowledged the waiver of his right to a jury trial, but he never objected. Furthermore, when directly questioned by the court

about whether he was informed of his right to a jury trial, Hilbert neither asserted a negative answer nor expressed concern or confusion.

(2) The circuit court properly admitted the forensic interview. The video's existence and the forensic interviewer's testimony demonstrated the recording device was capable of accurately recording. Additionally, the forensic interviewer's testimony established the recording was accurate and had not been altered. Finally, the recording's existence, combined with the forensic interviewer's testimony, created a reasonable inference that the equipment operator was competent. Therefore, the circuit court did not plainly err by allowing the video recording's admission pursuant to section 492.304, RSMo.