

Summary of SC91368, *State of Missouri v. Melvin Ray Davis*

Appeal from the Greene County circuit court, Judge Jason R. Brown
Argued and submitted May 4, 2011; opinion issued Aug. 30, 2011

Attorneys: The state was represented by Daniel N. McPherson of the attorney general's office in Jefferson City, (573) 751-3321; and Davis was represented by Ruth K. Russell of the public defender's office in Springfield, (417) 895-6740.

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 filed a criminal complaint against a registered sex offender for violating a statute making it a crime for a registered sex offender knowingly to be within 500 feet of a public park that contains playground equipment and a public swimming pool. The trial court dismissed the complaint on the ground that the statute was unconstitutionally retrospective in operation as applied to the defendant, and the state appeals. In a unanimous decision written by Judge Patricia Breckenridge, the Supreme Court of Missouri affirms the dismissal. The state failed to raise in the trial court its assertion that the trial court erred in finding the statute unconstitutional because the prohibition against retrospective laws applies only to civil statutes and the statute in question here is criminal, not civil, in nature. As such, the state failed to preserve this issue for appeal.

Facts: Melvin Davis pleaded guilty in May 1983 to one count of sexual abuse. Due to this conviction, the federal sexual offender registration and notification act required him to register as a sex offender. In 2009, Missouri's legislature enacted section 566.100, RSMo. Supp. 2010, which makes it a crime for a registered sex offender to knowingly be present in or loiter within 500 feet of any public park with playground equipment or a public swimming pool. In June 2010, a park ranger apprehended Davis for drinking alcohol in a city park in violation of a Springfield municipal ordinance. When the ranger determined that Davis was a registered sex offender, he arrested Davis for knowingly being present within 500 feet of Grant Beach Park, a public park that contains playground equipment and a public swimming pool. Two months later, the state charged Davis with the class D felony of violating section 566.100. He moved to dismiss the criminal complaint, alleging the statute was unconstitutionally retrospective as applied to him because he was convicted of sexual abuse 26 years before the statute was enacted. The circuit court dismissed the complaint without prejudice, determining that section 566.150 was unconstitutionally retrospective as applied to Davis because it placed a new disability on him based on a prior conviction. The state appeals.

AFFIRMED.

Court en banc holds: On appeal, the state asserts the trial court erred in finding that section 566.150 was unconstitutional as applied to Davis because the prohibition against retrospective laws in article I, section 13 of the Missouri Constitution applies only to civil statutes and that section 566.150 is criminal in nature. The state concedes it did not raise this issue at trial. An issue that never was presented to the trial court is not preserved for appellate review, and an

appellate court generally will not find, absent plain error, that a lower court erred on an issue that was not put before it to decide.