

SC92532, State of Missouri v. Kirk Jackson

Proceeding originating in the St. Charles County circuit court, Judge Terry R. Cundiff
Argued and submitted Sept. 5, 2012; opinion issued Oct. 30, 2012

Attorneys: Jackson was represented by Louis R. Horwitz of Lou Horwitz LLC in St. Peters, (636) 279-1532, and the state was represented by Breck K. Burges and Rebecca Shaffar of the St. Charles County prosecutor's office in St. Charles, (636) 949-7355. The Missouri Association of Prosecuting Attorneys, which submitted a brief as a friend of the Court, was represented by its president, St. Louis County Prosecuting Attorney Robert P. McCulloch of Clayton, (314) 615-2600.

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 was arrested for 14 counts of felony invasion of privacy after he allegedly secretly filmed female clients in states of partial or total undress at his massage therapy business. After indictment, the trial court set the man's bond at \$75,000, cash only, without the possibility of executing a 10-percent cash bond. In a 6-0 decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri rejects the man's request that the Court issue an order directing the trial court to permit a 10-percent bond or a third-party surety or that this Court itself issue such an order. A trial court has the authority under the Missouri constitution to set a cash-only bond as sufficient surety so long as it is set no higher than necessary to secure the defendant's appearance or to protect the victim, community or others.

Facts: According to prosecutors, Kirk Jackson operated a massage therapy business and secretly videotaped clients while they undressed. A police raid in March 2012 allegedly led to the discovery of a camera hidden in a wall hanging, and a subsequent search of Jackson's home led to the seizure of an external hard drive containing images of female clients partially or fully nude. In April 2012, the state indicted Jackson on 14 counts of felony invasion of privacy for filming victims without their knowledge or consent. The circuit court set Jackson's bond at \$75,000, cash only, without the possibility of executing a 10-percent cash bond. Jackson seeks this Court's relief, arguing that the imposition of cash-only bail violates article I, section 20 of the Missouri Constitution, which states that all persons shall be bailable by sufficient sureties.

COURT REJECTS DEFENDANT'S REQUEST TO ISSUE AN ORDER.

Court en banc holds: (1) Considering the purposes and the history of bail as well as the numerous understandings of the word "sufficient surety," imposing cash-only bail does not violate article I, section 20 of the Missouri constitution. Article I, section 20 states that "all persons shall be bailable by sufficient sureties, except for capital offenses." Jackson has not shown that the phrase "sufficient sureties" was intended to refer only to commercial bail bondsmen. The practice of using a commercial bail bondsman to post bail did not become widespread until well after Missouri's first constitution was

approved, and there is no indication that 10-percent bonds were utilized by courts at the time of Missouri's statehood. Furthermore, in *State v. Echols*, 850 S.W.2d 344 (Mo. banc 1993), this Court did approve the use of a cash payment as surety for a defendant's appearance. Although *Echols* did not involve a constitutional challenge, its reasoning is consistent with that used by the five state courts that have upheld the use of cash-only bail against constitutional challenge. Moreover, article I, section 32 of the Missouri constitution provides that a court may deny bail or impose special conditions on a showing that the defendant poses a danger to a crime victim, the community or any other person.

(2) Cash-only bail does not inherently have the effect of keeping a defendant in jail. Article I, section 20 is intended to address the type of bail, not claims of excessive bail. Cash-only bail should not be set in such high amounts that it prevents pretrial release of defendants who are not a danger to the victim, community or others and who do not need a high cash bail to secure their appearance at trial. But these concerns are addressed through the prohibition in article I, section 21 against excessive bail, and Jackson makes no claim that the bail set was excessive.