

***Summary of SC92648, State of Missouri v. Joseph N. Holmes***

Proceeding originating in the Christian County circuit court, Judge John S. Waters  
Argued and submitted March 5, 2013; opinion issued June 11, 2013

**Attorneys:** Holmes was represented by James A. Burt of Ozark, (417) 581-4554, and the state was represented by Jonathan D. Osborne of the Springfield regional prosecutors' child support office in Springfield, (417) 868-4126.

*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 appeals his conviction for misdemeanor criminal nonsupport, arguing that the state failed to present sufficient evidence to support his conviction and that the criminal nonsupport statute – section 568.040, RSMo. Supp. 2011 – makes lack of good cause an element of the crime but then, by also making good cause an affirmative defense, unconstitutionally shifts the burden of proving good cause to the defendant. In a unanimous decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri affirms the defendant's conviction. Section 568.040 does not impermissibly shift the burden of proving good cause to the defendant but rather places the burden of proving lack of good cause on the state while simultaneously permitting the defendant to offer evidence of good cause. Further, the state presented sufficient evidence that the defendant lacked good cause.

**Facts:** Joseph Holmes failed to provide any monetary support for his son during the months of March, April and May 2011. The evidence at trial showed that Holmes was a self-employed tile setter, that he was physically and mentally able to work, and that he owned rental property from which he derived income. It further showed that Holmes was subject to an administrative order to pay his wife \$428 per month in child support, that he told his wife that “he did not want the state involved” and that he would fight efforts to enforce the order “as much as he could.” He also stated that he would pay what he could pay when he could pay, and he paid his wife nothing after she refused to accept his offer of simply paying half of the child's needs. Holmes did not present evidence in his defense and did not raise the affirmative defense of good cause for not paying the child support. At the conclusion of the trial, Holmes filed a motion for judgment of acquittal, asserting that section 568.040 violates the due process clause of the Fourteenth Amendment by unconstitutionally shifting the burden of proof for the element of good cause to the defendant. The trial court overruled the motion. Holmes appeals.

**AFFIRMED.**

**Count en banc holds:** (1) Section 568.040 does not shift the burden of proof to the defendant to prove good cause. By stating “A parent commits the crime of nonsupport if such parent knowingly fails to provide, without good cause, adequate support which such parent is legally obligated to provide ....”, paragraph 1 of the statute makes lack of good cause an element of the crime of criminal nonsupport that the state must prove beyond a reasonable doubt. While paragraph 3 of the statute also permits the defendant to show “[i]nability to provide support for good cause” as “an affirmative defense [to be proven] by a preponderance of the evidence,” this

does not negate the requirement that the state prove lack of good cause. Holmes' argument that the statute shifts the burden to the defendant to prove an element of the crime ignores the fact that the statute says the defendant bears the burden only of proving an affirmative defense, not an element of the crime.

(2) The state offered sufficient evidence that Holmes failed to pay adequate support without good cause. The state was required to show only that Holmes failed to provide adequate support, not that he was able to pay the full amount required by the administrative child support order. The state showed that Holmes provided no monetary support for his son during the months of March, April and May 2011. Further, the state showed that Holmes was self-employed, derived income from his rental property and told his wife that he would not pay the ordered support because he did not like being ordered to do so. As such, the evidence was sufficient to show that Holmes knowingly failed to provide adequate support for his son without good cause.