

Summary of SC94923, *State of Missouri v. S.F.*

Appeal from the Jackson County circuit court, Judge W. Brent Powell

Argued in closed court and submitted under seal November 4, 2015; opinion issued March 15, 2016

Attorneys: S.F. was represented by Jeannette L. Wolpink of the public defender's office in Kansas City, (816) 889-7699; and the state was represented by Shaun J. Mackelprang of the attorney general's office in Jefferson City, (573) 751-3321.

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: On appeal in a criminal case, a woman raises constitutional challenges to the statute under which she was convicted for exposing another to HIV. In a unanimous decision written by Judge Mary R. Russell, the Supreme Court of Missouri affirms the judgment. The statute regulates not speech but conduct that exposes individuals to HIV without their knowledge or consent. As such, it violates neither freedom of speech nor constitutional privacy rights.

Facts: S.F. was told she tested positive for HIV in 2003. Several years later, she engaged in sexual intercourse with a man to whom she did not first disclose she was HIV positive; he contracted HIV. The state charged her with the felony of exposing another to HIV under section 191.677, RSMo. At trial, she argued the statute violated her constitutional rights to free speech and privacy and stipulated to certain facts. The court found her guilty and sentenced her to seven years in prison. She appeals.

AFFIRMED.

Court en banc holds: (1) Section 191.677 does not violate federal or state constitutional provisions protecting the freedom of speech. On its face, the statute does not regulate not speech but conduct – specifically, conduct that exposes individuals to HIV without their knowledge or consent. Although the statute may compel speech by compelling a person to disclose HIV status, this burden on speech is incidental to the statute's regulation of conduct and, therefore, does not violate freedom of speech.

(2) Section 191.677 also does not violate the right to privacy. This statute does not criminalize consensual, non-harmful sexual conduct. It regulates only sexual conduct that would expose another person to a life-jeopardizing disease when that person has not consented to the conduct with knowledge of the risk of exposure.