

SUPREME COURT OF VERMONT

State v. Jack Sawyer

187 A.3d 377 (Vt. 2018) · No. 2018-105 · Decided April 11, 2018

SUMMARY

The Vermont Supreme Court reviewed an order holding Jack Sawyer without bail on charges arising from an alleged planned mass shooting at Fair Haven Union High School. The court held that, under Vermont’s definition of criminal attempt, the evidence showed only preparatory acts and was not great enough to support the charged attempted offenses, reversing and remanding the hold-without-bail order.

CASE DETAILS

|                       |                                                                                                                                                                                                         |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Vermont                                                                                                                                                                                |
| WRITING FOR THE COURT | Beth Robinson; Harold E. Eaton, Jr.; Karen R. Carroll                                                                                                                                                   |
| JURISDICTION          | Vermont                                                                                                                                                                                                 |
| DECIDED               | April 11, 2018                                                                                                                                                                                          |
| DOCKET                | 2018-105                                                                                                                                                                                                |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                   |
| PROCEDURAL POSTURE    | Defendant appealed an order of the Rutland Superior Court holding him without bail under 13 V.S.A. § 7553.                                                                                              |
| STANDARD OF REVIEW    | The Supreme Court reviewed the hold-without-bail decision without deference, examining the record presented below and applying the standard from State v. Duff. Questions of law were reviewed de novo. |
| PRECEDENTIAL VALUE    | Published Vermont Supreme Court opinion; precedential.                                                                                                                                                  |
| PARTIES               | Jack Sawyer v. State of Vermont                                                                                                                                                                         |

TOPICS

- bail
- criminal procedure
- probable cause
- statutory interpretation
- mens rea

PRACTICE AREAS

- criminal law
- criminal procedure
- bail and pretrial detention

QUESTIONS PRESENTED

1. Whether the evidence of guilt was great under the Vermont Constitution and 13 V.S.A. § 7553 so that Sawyer could be held without bail on charges punishable by life imprisonment.
2. Whether Sawyer's conduct satisfied Vermont's legal definition of an attempt to commit the charged crimes.

## HOLDINGS

1. The evidence was not great that Sawyer had attempted to commit any of the charged crimes, so the State failed to satisfy the evidentiary prerequisite for holding him without bail.
2. Under Vermont law, an attempt requires intent to commit a crime coupled with an act sufficiently proximate to the crime's completion that, absent interruption, it would likely culminate in the completed crime; mere preparation does not constitute an attempt.
3. Vermont's attempt law is governed by the proximity and commencement-of-consummation standard of Hurley, not the Model Penal Code substantial-step standard; Vermont does not recognize abandonment as a defense once the required overt act constituting an attempt has occurred.

## KEY QUOTATIONS

*“We hold that the weight of the evidence is not great that defendant has committed any act or combination of acts that would satisfy Vermont’s definition of an attempt to commit any of the charged crimes.” (¶ 1)*

*“Proximity is the test under Hurley, whether measured as the actor’s physical proximity to the location of the intended crime, or the temporal or kinetic proximity of the act to the completion of the intended crime.” (¶ 13)*

*“Each of defendant’s actions was a preparatory act, and not an act undertaken in the attempt to commit a crime.” (¶ 24)*

## FACTUAL BACKGROUND

Police investigated threats of a mass shooting at Fair Haven Union High School and found that Sawyer had purchased a shotgun and ammunition, possessed books and a journal concerning school shootings, communicated threats or plans on Facebook, and described a future shooting plan to police. Sawyer had not conducted planned surveillance of the school, acquired all intended weapons or materials, or begun carrying out the shooting. The trial court relied on this evidence in holding him without bail.

## PROCEDURAL HISTORY

Sawyer was arraigned on four attempted-crime charges and held without bail pending a weight-of-the-evidence hearing. After a two-day hearing, the trial court ordered him held without bail. The Vermont Supreme Court reviewed the order and reversed, remanding for further proceedings.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Remanded for further proceedings consistent with the decision; the trial court's hold-without-bail order was reversed.

## CASES CITED

- State v. Blackmer, 160 Vt. 451, 631 A.2d 1134 (1993)
- State v. Duff, 151 Vt. 433, 563 A.2d 258 (1989)
- State v. Hardy, 2008 VT 119, 184 Vt. 618, 965 A.2d 478 (mem.)
- State v. Avgoustov, 2006 VT 90, 180 Vt. 595, 907 A.2d 1185 (mem.)
- State v. Therrien, 2011 VT 120, 191 Vt. 24, 38 A.3d 1129
- State v. Hurley, 79 Vt. 28, 64 A. 78 (1906)
- People v. Murray, 14 Cal. 159 (1859)
- State v. Boutin, 133 Vt. 531, 346 A.2d 531 (1975)
- State v. Woodmansee, 124 Vt. 387, 205 A.2d 407 (1964)
- State v. Morse, 130 Vt. 92, 286 A.2d 286 (1971)
- State v. Harrington, 128 Vt. 242, 260 A.2d 692 (1969)
- State v. Devoid, 2010 VT 86, 188 Vt. 445, 8 A.3d 1076
- State v. Synnott, 2005 VT 19, 178 Vt. 66, 872 A.2d 874
- State v. Curtis, 157 Vt. 629, 603 A.2d 356 (1991)
- State v. Stewart, 643 N.W.2d 281 (Minn. 2002)
- Owens v. State, 929 N.E.2d 754 (Ind. 2010)
- Yates v. United States, 354 U.S. 298 (1957)
- Burks v. United States, 437 U.S. 1 (1978)
- Wiley v. State, 207 A.2d 478 (Md. 1965)