

SUPREME COURT OF VERMONT

State v. Devoid, 2010 VT 86

8 A.3d 1076 (2010) · No. No. 09-208 · Decided September 17, 2010

SUMMARY

The Vermont Supreme Court reversed Carl Devoid, Jr.'s conviction for attempted voyeurism because the evidence did not establish an overt act likely to result in viewing the complainant's intimate areas or the requisite criminal intent. The court held that merely looking at a second-floor bathroom window from a position where viewing the protected areas was impossible was insufficient to constitute attempted voyeurism. A concurrence additionally criticized the trial court's decision to instruct the deliberating jury on a new attempt charge after the jury had begun deliberations.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Dooley, J.; Reiber, C.J.; Johnson, J.; Skoglund, J.; Burgess, J.
JURISDICTION	Vermont
DECIDED	September 17, 2010
DOCKET	No. 09-208
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendant appealed his jury conviction for attempted voyeurism and the denial of his renewed motion for judgment of acquittal.
STANDARD OF REVIEW	On review of a denial of a motion for judgment of acquittal, the court views the evidence in the light most favorable to the prosecution and determines whether the State's evidence sufficiently and fairly supports a finding of guilt beyond a reasonable doubt.
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion; precedential.
PARTIES	Carl Devoid, Jr. v. State of Vermont

TOPICS

criminal procedure jury instructions evidence appellate procedure standard of review

PRACTICE AREAS

criminal law criminal procedure appellate law evidence

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support a conviction for attempted voyeurism when defendant looked at a second-floor bathroom window from a location where he could not see the complainant's statutorily defined intimate areas.
2. Whether defendant's conduct constituted the overt act and demonstrated the intent required for attempted voyeurism.
3. Whether the trial court erred by instructing the jury during deliberations on attempted voyeurism, a crime not originally charged.

HOLDINGS

1. The evidence was insufficient to support defendant's conviction for attempted voyeurism because defendant's conduct of standing on the ground and looking at the second-floor bathroom window was not likely to result in viewing the complainant's intimate areas.
2. The evidence did not sufficiently establish that defendant intended to commit voyeurism, rather than merely desiring to watch the upper body of a woman he believed to be naked.
3. The court did not adopt impossibility as a general defense to attempt; instead, it distinguished this case from factual-mistake attempt cases because defendant's conduct was equivocal and there was no mistake about the circumstances preventing completion.

KEY QUOTATIONS

“An overt act must advance beyond mere intent and “reach far enough toward accomplishing the desired result to amount to the commencement of the consummation.” (8 A.3d at 1080)

“The act of merely looking at complainant's window from a place where no view of her intimate areas was possible, however, is insufficient for the jury to find defendant guilty of attempted voyeurism.” (8 A.3d at 1081)

“Here, there was no mistake; defendant necessarily knew that he could not complete the crime, and thus his conduct was equivocal.” (8 A.3d at 1082)

FACTUAL BACKGROUND

The complainant lived in a second-floor apartment with a bathroom window overlooking a parking lot. On two occasions, she saw defendant, her first-floor neighbor, looking up at the bathroom window while she was showering; on the second occasion he looked for approximately three minutes while holding a hand near his crotch. The window's height and the evidence, including a photograph, showed that defendant could not see the intimate areas protected by Vermont's voyeurism statute from his position on the ground.

PROCEDURAL HISTORY

The State charged defendant with voyeurism under 13 V.S.A. § 2605(b)(1). During jury deliberations, over defendant's objection, the trial court instructed the jury on attempted voyeurism, a crime not originally charged. The jury convicted defendant of attempted voyeurism, and the trial court denied his renewed motion for

judgment of acquittal. The Supreme Court of Vermont reversed based on insufficient evidence and did not reach defendant's other appellate arguments.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The conviction was reversed because the motion for judgment of acquittal should have been granted. The opinion does not state additional remand instructions.

CASES CITED

- State v. Lemay, 2006 VT 76, 180 Vt. 133, 908 A.2d 430
- State v. Synnott, 2005 VT 19, 178 Vt. 66, 872 A.2d 874
- State v. McGee, 163 Vt. 162, 655 A.2d 729 (1995)
- State v. Hurley, 79 Vt. 28, 64 A. 78 (1906)
- State v. Boutin, 133 Vt. 531, 346 A.2d 531 (1975)
- State v. Woodmansee, 124 Vt. 387, 205 A.2d 407 (1964)
- State v. Curtis, 157 Vt. 629, 603 A.2d 356 (1991)
- State v. Brown, 153 Vt. 263, 571 A.2d 643 (1989)
- State v. West, 151 Vt. 140, 557 A.2d 873 (1988)
- State v. Day, 150 Vt. 119, 549 A.2d 1061 (1988)
- State v. Rideout, 2007 VT 59A, 182 Vt. 113, 933 A.2d 706
- State v. Keiser, 174 Vt. 87, 807 A.2d 378 (2002)
- State v. Young, 139 Vt. 535, 433 A.2d 254 (1981)
- Cruz v. State, 407 Md. 202, 963 A.2d 1184 (2009)
- United States v. Welbeck, 145 F.3d 493 (2d Cir. 1998)
- Rush v. State, 239 Ark. 878, 395 S.W.2d 3 (1965)
- People v. Stouter, 142 Cal. 146, 75 P. 780 (1904)
- State v. Jones, 214 N.J. Super. 68, 518 A.2d 496 (App. Div. 1986)
- Herring v. New York, 422 U.S. 853, 95 S. Ct. 2550, 45 L. Ed. 2d 593 (1975)
- United States v. Horton, 921 F.2d 540 (4th Cir. 1990)
- People v. Millsap, 189 Ill. 2d 155, 244 Ill. Dec. 54, 724 N.E.2d 942 (2000)
- People v. Clark, 453 Mich. 572, 556 N.W.2d 820 (1996)
- State v. Amos, 553 S.W.2d 700 (Mo. 1977)