Summary of SC98844, *State of Missouri v. Christopher L. Lehman*
Appeal from the Barry County circuit court, Judge Jack A.L. Goodman
Argued and submitted January 20, 2021; opinion issued March 8, 2021

Attorneys: Lehman was represented by Ellen H. Flottman of the public defender's office in Columbia, (573) 777-9977. The state was represented by Evan J. Buchheim of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It is provided by 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 defendant appeals from the judgment convicting him of loitering within 500 feet of a public park. In a decision written by Judge Laura Denvir Stith and joined by four judges, the Supreme Court of Missouri reverses the circuit court's judgment and enters a judgment of acquittal. The state failed to adduce sufficient evidence from which a reasonable factfinder could have found the defendant loitered within 500 feet of a public park.

Judge Zel M. Fischer dissents in an opinion joined by one judge. He would hold that, viewing the entire record of evidence in the light most favorable to the state, there was sufficient evidence from which the circuit court reasonably could infer the defendant loitered within 500 feet of a public park.

Facts: In 2018, Christopher Lehman, a convicted sex offender, was charged with loitering within 500 feet of a public park after a police officer observed Lehman watching the town's Fourth of July parade from a parking lot near the city park. The case proceeded to a bench trial (before a judge rather than a jury) at which the state introduced, by stipulation, three pieces of evidence – Lehman's criminal history record showing his incest conviction from Arkansas, the police report, and video surveillance of the parking lot and a local community building on the day of the parade. The evidence showed Lehman arrived in the parking lot before the parade started, went into the community building located on the same lot as the city park and hall, and then came back out to watch the parade from the parking lot. The circuit court found Lehman guilty, sentenced him to four years in prison, suspended execution of his sentence and placed him on probation for five years. Lehman appeals.

REVERSED AND ACQUITTED.

Court en banc holds: (1) The state failed to introduce evidence from which a factfinder reasonably could conclude that Lehman loitered within 500 feet of a public park. The police report noted only that the parking lot was "near" the park and stated (incorrectly) that Lehman was not allowed within 500 feet of a park. And while the surveillance video shows grassy areas, some with trees, there is nothing in the record to establish such areas were part of the park. Such circumstantial evidence gives rise only to speculative inferences as to the distance from the parking lot to the park that are insufficient to support a finding, beyond a reasonable doubt, that Lehman was loitering within 500 feet of a public park.

(2) The double jeopardy clause forbids a second trial for the purpose of affording the state another opportunity to prove Lehman was within 500 feet of a public park. Accordingly, this Court enters a judgment of acquittal pursuant to Rule 84.14.

Dissenting opinion by Judge Fischer: The author disagrees with the principal opinion's conclusion that the state presented insufficient evidence from which the circuit court could have found Lehman loitered within 500 feet of any real property comprising any public park with playground equipment. He would hold that, viewing the evidence in the light most favorable to the state, the police report's statements that the community building is on the same lot as the city park, that Lehman was leaning on his van in a parking spot "near" the park, and that Lehman was actually in the city park parking lot permitted the circuit court to infer reasonably that the grassy area in the surveillance footage was the city park and, therefore, that Lehman was loitering within 500 feet of a public park.