

Summary of SC99211, *State of Missouri v. Joshua Steven Collins*

Appeal from the Greene County circuit court, Judge Thomas E. Mountjoy

Argued and submitted December 8, 2021; opinion issued May 17, 2022, and modified on the Court's own motion August 30, 2022

Attorneys: Collins was represented by Christian E. Lehmberg of the public defender's office in Columbia, (573) 777-9977. The state was represented by Garrick Aplin 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 man appeals from a judgment of conviction after a jury found him guilty of tampering with a judicial officer and second-degree harassment for leaving social media and voicemail messages for his probation officer regarding the probation officer's children. In a unanimous decision written by Judge George W. Draper III, the Supreme Court of Missouri affirms the judgment. The statutory offense of second-degree harassment is not overbroad; therefore, there was sufficient evidence to support the man's harassment conviction. Furthermore, sentencing the man for both tampering with a judicial officer and second-degree harassment did not violate his right to be free from double jeopardy because it is possible to commit tampering with a judicial official without also committing second-degree harassment.

Facts: In 2019, probation officer A.G. began supervising Joshua Collins. As part of her duties, A.G. monitored Collins' romantic status. Collins was also required to wear a monitor that alerted A.G. when he consumed alcohol. In May 2019, A.G. received an alert that Collins was drinking alcohol. When A.G. called him, Collins became angry, mentioned A.G.'s Facebook account, and indicated he left her a voicemail message at the office. A.G. checked her Facebook account and discovered Collins had sent her a friend request and several messages, which accused A.G.'s children of illicit or sexual acts. The voicemail message was of a similar nature. A.G. contacted the police. The state charged Collins with tampering with a judicial officer and first-degree harassment. Collins moved to dismiss the charges, asserting the statutory offenses were overly broad and being charged with both offenses violated his right to be free from double jeopardy. The circuit court overruled his motions. A jury found Collins guilty of tampering with a judicial officer and second-degree harassment. Collins appeals.

AFFIRMED.

Court en banc holds: (1) The second-degree harassment statute, section 565.091, RSMo, is not overbroad. The overbreadth doctrine restricts statutes that prohibit not only unprotected behavior but also constitutionally protected behavior. Section 565.091 applies to both conduct and communication; however, this construction does not render section 565.091 overbroad so long as the statute applies to a limited core of unprotected conduct and communication. Because a defendant is required to act without good cause and with a purpose to cause emotional distress, section 565.091 is limited to conduct wholly outside of the First Amendment's protection. Accordingly, Collins' facial challenge to section 565.091 fails.

(2) There was sufficient evidence to support Collins' second-degree harassment conviction. Collins does not contest he acted without good cause and with the purpose to cause A.G. emotional distress; rather, his argument presumed this Court would construe section 565.091 to require fighting words, of which he argued there was insufficient evidence. Acts such as Collins', committed without good cause and with the purpose to cause emotional distress, by their very occurrence, inflict injury or tend to incite an immediate breach of the peace; therefore, Collins' sufficiency claim fails.

(3) Punishing Collins for both tampering with a judicial officer and second-degree harassment does not violate his right to be free from double jeopardy. The double jeopardy clause protects a defendant from successive prosecution for the same offense as well as multiple punishments for the same offense. For multiple punishments, double jeopardy analysis is limited to determining whether the legislature intended cumulative punishments. Because the convictions here involve two distinct statutory provisions, the test to determine whether there are two offenses or only one is whether each provision requires proof of a fact the other does not. If each crime requires proof of a fact the other does not, and the defendant is convicted of both crimes, double jeopardy is not violated. Under the elements of proof required for each crimes, it is possible to commit tampering with a judicial official without also committing second-degree harassment. Collins, therefore, committed separate crimes when he tampered with a judicial officer and engaged in second-degree harassment.