

Summary of SC94977, *State of Missouri v. Blaec James Lammers*

Appeal from the Polk County circuit court, Judge William J. Roberts

Argued and submitted October 28, 2015; opinion issued February 9, 2016

Attorneys: Lammers was represented by Donald R. Cooley, an attorney in Springfield, (417) 831-3139. The state was represented by Robert J. (Jeff) Bartholomew 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: A man appeals the judgment convicting him for attempted first-degree assault and armed criminal action. In a 6-1 decision written by Judge Mary R. Russell, the Supreme Court of Missouri affirmed the judgment. Evidence in the record is sufficient to support the trial court's decision to overrule the man's motion to suppress his statements to police, as there were no violations of the Fourth or Fifth Amendment. The man was not under arrest when he made his statements, either formally or "de facto," he was not "seized" and he was not subject to arrest-like restraints. There was sufficient evidence for a reasonable finder of fact to determine that the man had the necessary purpose to complete the crime of attempted first-degree assault and that he took reasonable steps toward completion of that offense. His own statements offer direct evidence of his intent to kill or cause serious physical injury to another person. His conduct in buying assault rifles and practicing shooting them was strongly corroborative of the firmness of his intent, and his temporary relinquishment of the rifles to his girlfriend's father has no impact on his guilt.

Judge Richard B. Teitelman dissents. He would reverse the judgment and vacate the conviction for attempted first-degree assault. He would find that, while the man's thoughts are cause for grave concern, he never engaged in conduct constituting a substantial step toward committing the offense. The man took no steps that only would be undertaken as a precursor to completing the intended crime. The author believes the man should be receiving treatment for his mental illness rather than serving time in prison for a crime he did not commit.

Facts: Blaec James Lammers – who had a history of psychiatric problems and was prescribed medication for depression – legally purchased two assault rifles and ammunition from the Bolivar Walmart. No mental health background check is required under Missouri law. Lammers and his girlfriend took the guns to a mutual friend because Lammers never before had shot a gun. The friend showed Lammers how to sight and load the guns, and the two practiced shooting. Lammers did not want to take the guns home because he knew his mother would not approve of him possessing guns. Lammers left the guns with the friend that day but later moved them to the home of his girlfriend's father, who hesitantly agreed to store the guns. The girlfriend's father told Lammers he would store them securely but that he would check into the guns and hand them over to authorities if there were any issues. The girlfriend's father then contacted Lammers' mother. While doing laundry, she found a Walmart receipt in Lammers' pants pocket confirming he had purchased the assault rifles. The next day, she drove to the sheriff's office to show officers the receipts and voice concern about Lammers' mental illness and that he might get access to the guns and harm himself. The sheriff's office contacted the Bolivar police department, whose officers conducted a "well-being" check on Lammers. They found him at a local Sonic with his girlfriend, told him his mother was concerned about him, and asked about his medication and the weapons. He agreed to go to the police station and

rode there, unrestrained, in the front seat of the unmarked police vehicle. At the station, Lammers was not handcuffed, he was allowed to keep his possessions and, although he was not under arrest, he was read his rights before giving a video-recorded interview. Lammers first said he intended to use the rifles for hunting but said he abandoned this idea when he learned he would have to take a gun safety class and obtain a hunting license. He also admitted he never had been hunting. He then said he thought guns were cool and just wanted to have one. He said his mother might worry he would become a mass shooter, said he had watched a movie about the shootings in Columbine, Colorado, and agreed there were similarities between him and other mass shooters. He also said that, before purchasing the rifles, he had envisioned committing a mass shooting at the Bolivar Walmart because it was sure to have many people there and he could reload if he ran out of ammunition. At the conclusion of the interview, the detective arrested Lammers. The state charged him with attempted first-degree assault, armed criminal action and making a terroristic threat. After a court-ordered mental examination, Lammers was found competent to stand trial. He waived his right to a jury trial and was tried by the court, which acquitted him of making a terroristic threat but found him guilty of attempted first-degree assault and armed criminal action. The court sentenced Lammers to two concurrent terms of 15 years in prison. Lammers appeals.

AFFIRMED.

Court en banc holds: (1) Evidence in the record is sufficient to support the trial court’s decision to overrule Lammers’ motion to suppress his statements to police. The United States Supreme Court has made clear that, for the purposes of the Fourth Amendment, a seizure does not occur simply because a police officer questions an individual – if a reasonable person would feel free to disregard police, the encounter is consensual and the Fourth Amendment is not triggered. This Court also has held that a person who voluntarily accompanies officers to a police station for questioning is not subject to arrest-like restraints and is not “seized.” Because Lammers was not formally arrested, seized or subject to arrest-like restraints, no Fourth Amendment violation occurred. For the same reasons, there was no violation of the Fifth Amendment. Because Lammers was not under arrest when he made his statements to police, either formally or “de facto,” he was not subject to arrest-like restraints, and *Miranda v. Arizona* did not apply.

(2) There was sufficient evidence for a reasonable finder of fact to determine that Lammers had the necessary purpose to complete the crime of attempted first-degree assault and that he took reasonable steps toward completion of that offense.

(a) Lammers’ own statements offer direct evidence of his intent to kill or cause serious physical injury to another person. His idea of emulating the Columbine shooters occurred well before he bought the rifles, learned how to operate them and practiced shooting them. He did not tell his parents about his purchase, and repeatedly told others he bought the guns for hunting, even though he never had hunted before and had no license to do so. When questioned by police, he described in some detail how he planned to act, from walking in the door of Walmart and shooting people at random until police arrived, and that he could break the glass to obtain more ammunition if he ran out. His conduct and subterfuge are probative of criminal intent.

(b) Lammers’ conduct in buying the assault rifles and practicing shooting them was strongly corroborative of the firmness of his intent to complete first-degree assault and,

therefore, constitutes a substantial step toward commission of the offense. To constitute a substantial step, the statute does not require the conduct be illegal. Unlike in this case, however, the defendant's conduct in this Court's 2015 decision in *State v. Ess* was not strongly corroborative of a purpose to commit the charged offense as that offense was defined. The defendant's conduct in *Ess* was a completed act, albeit one that was not illegal under the statute as written. As a result, *Ess* is not helpful here.

(c) Lammers' relinquishment of the rifles to his girlfriend's father did not constitute abandonment. The evidence showed that the father did not believe Lammers permanently was giving him the guns and that Lammers was storing the guns at the father's home because he did not want his mother to find out he had purchased them. As such, the relinquishment has no impact on Lammers' guilt.

(d) To the extent this Court's 2006 decision in *State ex rel. Verweire v. Moore* and its progeny hold that threats with a deadly weapon with the ability to carry them out cannot constitute attempt unless the defendant pulls the trigger, the police intervene or the defendant causes only minor injury, those cases no longer should be followed.

Dissenting opinion by Judge Teitelman: The author would reverse the judgment and vacate the conviction for attempted first-degree assault. The line between thought and the crime of intent is crossed only after one takes a substantial step toward commission of the offense. The author would find Lammers admitted to homicidal thoughts that are cause for grave concern, but he never engaged in conduct that, beyond a reasonable doubt, strongly corroborated a firm plan to act on those thoughts so as to become criminal. While the statutory comment's list of actions constituting a substantial step is not exhaustive, each example identifies conduct that most likely would be undertaken only as a precursor to completing the intended criminal offense; Lammers did not. The author further would hold this Court's prior decision in *State v. Ess* requires evidence that the defendant has engaged in conduct that clearly and unequivocally is aimed at completing the intended criminal offense. The author would require more than Lammers' conduct in going target shooting and then relinquishing the guns to the girlfriend's father to constitute criminal attempt.