

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

STATE OF MISSOURI, RESPONDENT,

v.

FREDDIE LEONARD OWENS, APPELLANT.

DOCKET NUMBER WD68830

DATE: December 16, 2008

Appeal From:

BOONE COUNTY CIRCUIT COURT

THE HONORABLE KEVIN MICAJAH JOSEPH CRANE, JUDGE

Appellate Judges:

Thomas H. Newton, C.J., Victor C. Howard and Alok Ahuja, JJ.

Attorneys:

Craig Allan Johnston, Esq., Columbia, MO., **for appellant.**

Shaun Mackelprang, Esq. and Jayne T. Woods, Esq., Jefferson City, MO., **for respondent.**

MISSOURI APPELLATE COURT OPINION SUMMARY
COURT OF APPEALS – WESTERN DISTRICT

STATE OF MISSOURI,

RESPONDENT,

V.

FREDDIE LEONARD OWENS,

APPELLANT.

WD68830

Boone County

Before Division Four Judges: Thomas H. Newton, C.J., Victor C. Howard and Alok Ahuja, JJ.

Appellant Freddie Owens was accused by his girlfriend's sixteen-year-old daughter, M.D., of having sexually assaulted her on the night of January 10-11, 2007. Owens was arrested based on M.D.'s accusations. In late January 2007, while incarcerated in the Boone County Jail awaiting trial, Owens made several telephone calls to his girlfriend, C.H. (who was also the mother of the complaining witness, M.D.). During the calls, which were recorded, Owens attempted to persuade C.H. to have M.D. sign a notarized statement indicating that she would not participate in Owens' prosecution, and thereby "stop[] these whole proceedings."

On February 5, 2007, following these recorded conversations, M.D. provided a one-sentence, notarized letter to the Boone County prosecutor's office, stating that she "would like to drop the charges filed against [Owens] on January 11, 2007."

Owens was tried in the Circuit Court of Boone County on three charges: Count I, for statutory sodomy in the second degree under § 566.064, RSMo, based on alleged improper physical contact with M.D.; Count III, for attempted statutory sodomy in the second degree, §§ 564.011 and 566.064, based on his alleged invitation to M.D. to engage in further sexual acts; and Count II, for victim tampering under §575.270.2, which prohibits a person from "prevent[ing] or dissuad[ing] any person who has been a victim of any crime" from assisting in the investigation or prosecution of the offense.

At trial, M.D. testified that Owens had not sexually assaulted her, and that she had made up the allegations due to a dispute with her mother. M.D. denied that either her mother or Owens had talked to her about dropping the charges against Owens; instead, M.D. insisted that it was her decision to inform the prosecutor's office that she had lied in making her accusations.

After the close of the State's evidence at trial, the trial court directed a verdict of not guilty on Count III, the attempted statutory sodomy charge. The trial court also granted the prosecution's unopposed oral motion to amend Count II from victim tampering to attempted victim tampering.

Ultimately, the jury acquitted Owens of Count I, the charge of statutory sodomy in the second degree; however, the jury found Owens guilty of Count II, attempted victim tampering. The trial court accepted the verdict and dismissed the jury. The court sentenced Owens to five years incarceration without possibility of parole.

On appeal, Owens argues that his conviction for attempted victim tampering should be vacated because the jury "found [Owens] not guilty of sodomy, and [his] victim tampering conviction is dependent upon the jury finding that M.D. was the victim of statutory sodomy."

REVERSED AND CONVICTION VACATED

Division Four holds:

Section 575.270.2 makes express and unambiguous that one of the elements of the crime of victim tampering is that the individual prevented or dissuaded from assisting in a prosecution be "a[] person who has been a victim of any crime." Given the language of § 575.270.2, as well as prior judicial decisions and the Missouri Approved Jury Instruction interpreting it, a jury must find that the object of the tampering is "a victim of any crime" before an accused can be found guilty under the statute.

Here, Owens was convicted of attempted victim tampering, but was acquitted of the underlying crime of statutory sodomy. The jury's acquittal of Owens on Count I (statutory sodomy) is patently inconsistent with the finding required to convict on Count II (attempted victim tampering): namely, that M.D. was in fact the victim of statutory sodomy. The jury's acquittal of Owens on Count I requires the vacation of Owens' victim tampering conviction (Count II).

Because the trial court accepted the jury's verdict acquitting Owens of statutory sodomy, he cannot now be retried on that offense, or on the attempted victim tampering charge which depended on that offense. The circuit court's judgment is accordingly reversed, and Owens' conviction of attempted victim tampering vacated.

Opinion by: Alok Ahuja, Judge

December 16, 2008

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