

ASSAULT: Mere words or solicitation not sufficient to constitute assault with intent to rape.

- February 8, 1938

29

FILED  
35

Hon. Joseph L. Gutting  
Prosecuting Attorney  
Clark County  
Kahoka, Missouri

Dear Sir:

We have your request of February 5, 1938, for an opinion which reads in part as follows:

"I would like to have your opinion as to whether or not the facts stated in said affidavit constitute the crime of attempted rape. The statements set out in the affidavit constitute in full everything that was said or done."

The affidavit attached to the request sets out a conversation wherein the defendant by solicitation attempted to have sexual intercourse with the prosecuting witness.

An examination of the authorities reveals the following rules of law applicable herein:

"Mere indecent advances, solicitations or importunities do not amount to an attempt."

52 C.J. p. 1030, Section 41.

In State vs. Harney, 101 Mo. 470, l. c. 472, the Supreme Court in a case similar to the present one made this statement:

"The only charge that can be evolved from the verbose reiterations of this indictment is, that the defendant, by verbal solicitations, tried to obtain the consent of a child under the age of twelve years to have sexual intercourse with him, and failed. However despicable and deserving of punishment such conduct may be, it falls short of the criminal offense attempted to be charged, to constitute which there must be an actual attempt to have intercourse with such child. So long as the evil purpose dwells in contemplation only it is beyond the grasp of these provisions of the law."

Other cases supporting the statement found in Corpus Juris supra, are State vs. Remley, 237 S.W. 489; State vs. Riseling, 186 Mo. 521; State vs. Pierce, 243 Mo. 524; 52 C.J. 1034, Note 17.

CONCLUSION

It is therefore the opinion of this office that the facts stated in the affidavit are not sufficient to constitute the crime of assault with intent to commit rape.

Respectfully submitted,

FRANKLIN E. REAGAN,  
Assistant Attorney General

APPROVED:

---

J. E. TAYLOR  
(Acting) Attorney General

FER:MM