

# SUPREME COURT OF LOUISIANA

*No. 95-K-1409*

STATE OF LOUISIANA

Versus

BILLY CAMPBELL AND WILSON CAMPBELL

LEMMON, J., Dissenting

I dissent from the appellate court's reversing the conviction of attempted jury tampering.

The error on which the reversal was based was the listing of a non-existent crime as a responsive verdict. As the majority notes, the verdict of guilty of attempted jury tampering is not the conviction of a non-crime. Defendant's conduct is defined as a crime by the statute he was charged with violating. Attempted jury tampering is the crime of jury tampering, and every element of the charged crime was proved beyond a reasonable doubt.

Significantly, the defense did not object to the inclusion of attempt as a responsive verdict. Defendant had a strategic reason for not objecting. The responsive verdict accorded a substantial benefit to defendant by allowing for partial jury nullification and permitting the jury to return a verdict with only one-half of the maximum sentence of the crime of jury tampering.

Under these circumstances, the resolution of this case can be analogized from the decision in State ex rel. Elaire v. Blackburn, 424 So. 2d 246 (La. 1982). The Elaire decision held that when the defendant fails to object to a legislatively authorized responsive verdict in time for the judge to consider the error of including that verdict

in the list of responsive verdicts, this court will not reverse the conviction if the jury returns such a verdict, whether or not that verdict is supported by the evidence, as long as the evidence is sufficient to support the charged crime. The Elaire decision recognized the legitimacy of a compromise responsive verdict and the necessity of objecting timely to the listing of an improper responsive verdict, allowing the conviction of the responsive verdict to stand as long as the evidence supported a conviction of the charged crime.

The present case does not involve a legislatively authorized responsive verdict, but does involve a responsive verdict that constitutes a crime defined by the Legislature. Defendant failed to object in time for the trial judge to correct the error in listing attempt as a responsive verdict. Defendant benefitted by his failure to object since the jury returned a verdict with a lesser penalty than the charged crime. Since the evidence clearly supports the charged crime, there is no constitutional or statutory basis for reversing the conviction of the crime defined by the Legislature, as long as the maximum punishment is limited to one-half of that prescribed in La. Rev. Stat. 14:129.