(Continued)

Lee Johnson had called the police for the purpose of having them help him recover a gun that was within the house. . . . When the officers . . . arrived, Johnson was standing in front of the house. He told them that he had lived in the house with his former girlfriend, Glenda Pankey, and that he had left a gun with her, which she was refusing to return. The officers, accompanied by Johnson, proceeded onto the front porch and Officer Born then knocked on the door. Pankey eventually answered, and let Born in the house. When inside, he noticed that there were another woman and several children present. While Born was inside, Johnson could be heard speaking loudly on the front porch to Officer Osenga. Johnson was upset, repeating that he wanted his gun and that it was in the house. Osenga at the time requested to see Johnson's owner "I.D." card, which he produced, along with a receipt for the gun. The officer then told Johnson that they could not search the house for the gun. The defendant responded, "If I don't get this gun back, I will burn this m-----f---ing house down."

Officer Born came out of the house several minutes later, telling Johnson that Pankey claimed not to have the gun, but also offered to bring it to the police station when she did. With this, Johnson became even more upset and again threatened to burn the house. Born went back into the house, only to return again with another of Pankey's denials. Johnson became further agitated and continued to spout his threats. . . . [A]fter the warning, Johnson left the house, and he walked . . . to his own residence, about a half a block away. The two police officers, meanwhile, pulled into a lot, a block away . . . Within minutes, they observed Johnson . . . carrying a gasoline can. He walked to the . . . service station . . . put some gas in the can, paid for it and then headed back down Rosewood [to] Pankey's house. Osenga saw Johnson take two or three steps on the south side of the house while pouring gasoline. Johnson was about a foot away from the house, which had a 1 1/2- to 2-foot concrete foundation, and Osenga could not tell if the gas was hitting the ground or the house. The ground was snow-covered grass and earth. It was a cold and damp day.

When Johnson noticed Officer Osenga, he stopped pouring the gasoline and started to walk away from the house, still carrying the can. . . . Osenga, after subduing Johnson with the help of another officer who arrived at the scene, then retrieved the gas can, which was half full. The other officer then went to Glenda Pankey's residence, where he was given the defendant's rifle by a woman there. Pankey informed the officer at that time that the gun had been there, as Johnson had indicated, since the previous night. At the police station, a search of Johnson revealed that he had no matches, no lighter, and nothing else which could serve as an ignition source.

In the instant case, we find that the evidence is sufficient to establish that the defendant had performed acts which brought him in dangerous proximity to success in committing aggravated arson. He had threatened to burn the house down. He had purchased gasoline, carried it to the house and began pouring it beside the foundation of the wood frame structure. He ceased his activities only when the police officer drove up in front of the house. The only remaining step to be taken to complete the arson was the igniting of the gasoline. It is not necessary to prove that the defendant took the last step immediately preceding that which would render the substantive crime complete. Under the circumstances, we find that the evidence was sufficient for the jury to conclude that the defendant had taken a substantial step toward committing aggravated arson. Each case must be decided on its own facts. That he was later found to be without an ignition source does not alter our conclusion. The record does not indicate, nor will we presume, that Johnson knew that he was without an ignition source. It is as consistent with the evidence to conclude that he mistakenly believed that he did have an ignition source. We would note that it is no defense to an attempt charge that because of a misapprehension of circumstances it would have been impossible for him to commit the substantive offense.

As for a criminal intent, there is no indication that he knew he was without matches or a lighter and the evidence is as consistent with a mistaken belief conclusion. However, despite the evidence indicating intent, there is other evidence supporting a conclusion that he did not have the intent. It was he who called the police to the dispute in the first place. While he made threats to burn the house, he did so in the presence of the officers and in a loud enough voice so that Pankey would hear him. Though it was mid-afternoon, he marched openly to his house, from there proceeding to the gas station, while the squad cars waited in the lot across the street from the service station. He then marched openly to Pankey's house and poured an amount of gasoline on the ground next to the house. The house, a wooden frame structure, had a concrete foundation. The ground was wet, covered with melting snow. Additionally, there was the fact that no ignition source was found on the defendant's person. Certainly, this evidence was consistent with the defense version of the incident, that the defendant's only intent was to frighten Pankey into returning his gun. It is consistent with the defense position that the defendant had no intent to start the fire that afternoon. Essentially, the record in this case presents a close factual question on the question of the defendant's intent. The evidence could support a jury's conclusion either way on that issue. While we may not have reached the same result, the jury's conclusion that the defendant possessed the requisite intent is supported in the evidence. The evidence, however close, was sufficient to uphold the jury's verdicts.