

SUPREME COURT OF VERMONT

State v. Hinchliffe

987 A.2d 988 (Vt. 2009); 2009 VT 111 · No. No. 08-456 · Decided November 6, 2009

SUMMARY

The Vermont Supreme Court affirmed William J. Hinchliffe’s conviction for stalking under 13 V.S.A. § 1062. The court held that evidence of the complainant’s knowledge of Hinchliffe’s prior assaultive conduct was properly admitted to establish whether a reasonable person in her circumstances would fear bodily injury. The court also upheld the interpretation of Vermont’s stalking statute and rejected Hinchliffe’s sufficiency and procedural challenges.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Skoglund, J.; Reiber, C.J.; Dooley, J.; Johnson, J.; Burgess, J.
JURISDICTION	Vermont
DECIDED	November 6, 2009
DOCKET	No. 08-456
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed his stalking conviction, challenging the admission of evidence concerning his prior assaultive conduct and the trial court's interpretation of Vermont's stalking statute.
STANDARD OF REVIEW	For sufficiency of the evidence on a motion for acquittal, the court views the evidence in the light most favorable to the State and asks whether it fairly and reasonably tends to convince a reasonable trier of fact that the defendant is guilty beyond a reasonable doubt. The admission of prior-act evidence under Rules 404(b) and 403 is reviewed for abuse of discretion. Preservation of constitutional and jury-instruction objections is reviewed under the applicable preservation rules.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	William J. Hinchliffe v. State of Vermont

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support defendant's stalking conviction when defendant made no direct threat and the complainant did not consistently express fear of physical harm.
2. Whether the State provided adequate notice under Vermont Rule of Criminal Procedure 26(c) of its intent to introduce evidence concerning defendant's prior assaultive conduct.
3. Whether evidence of the complainant's knowledge of defendant's prior assault on a third party was admissible under Vermont Rule of Evidence 404(b) and not excludable under Rule 403.
4. Whether defendant preserved his constitutional challenges to the stalking statute and his challenge to the jury instructions.

HOLDINGS

1. A stalking conviction does not require proof of a direct verbal threat or proof that the victim actually feared bodily harm; the relevant statutory fear inquiry is objective and asks whether the defendant's conduct would cause a reasonable person in the victim's circumstances to fear bodily injury or death.
2. The State's notice, provided seven days before trial and identifying its intent to introduce the complainant's awareness of defendant's prior simple-assault conviction, sufficiently notified defendant of the proposed evidence under Rule 26(c).
3. Evidence that the complainant knew of defendant's prior assaultive conduct toward a former girlfriend was admissible under Rule 404(b) because it was relevant to whether a reasonable person in the complainant's circumstances would fear bodily injury, and the trial court did not abuse its discretion under Rule 403.
4. Defendant waived his constitutional challenges to the stalking statute and his challenge to the jury instructions by failing to raise them with specificity and clarity below and by failing to object to the instructions before the jury retired.

KEY QUOTATIONS

"The statutory elements of stalking do not require the State to prove that the defendant threatened the victim or that the victim actually feared bodily harm." (995)

"Although the statute requires the jury to view defendant's conduct from the perspective of a reasonable person, the victim's knowledge of defendant is relevant to the question of whether defendant's actions would have caused a reasonable person to fear bodily injury." (997)

FACTUAL BACKGROUND

After defendant's 1990 divorce from the complainant, the parties maintained regular contact concerning their two children. In 2007, defendant's contacts increased substantially and included repeated calls, text messages, and emails, as well as unannounced and confrontational visits to the complainant's home despite police instructions to limit contact. The complainant testified that defendant's conduct caused her to alter her behavior, take precautions, and fear him, and that she knew of defendant's prior assaultive conduct toward a former girlfriend.

PROCEDURAL HISTORY

The State charged defendant with stalking his ex-wife under 13 V.S.A. § 1062. The trial court denied defendant's motions to dismiss, for acquittal, and for a new trial, admitted testimony concerning the complainant's knowledge of defendant's prior assault on a former girlfriend, and entered judgment after a jury found defendant guilty. The Supreme Court of Vermont affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Fanger, 164 Vt. 48, 51, 665 A.2d 36, 37 (1995)
- State v. Prior, 174 Vt. 49, 53, 804 A.2d 770, 773 (2002)
- State v. Burnham, 145 Vt. 161, 166, 484 A.2d 918, 922 (1984)
- State v. Ellis, 2009 VT 74, ¶¶ 17, 24, 979 A.2d 1023
- State v. Norton, 134 Vt. 100, 103, 353 A.2d 324, 326 (1976)
- State v. Houle, 162 Vt. 41, 45, 642 A.2d 1178, 1181 (1994)
- State v. Sanders, 168 Vt. 60, 61-62, 716 A.2d 11, 13 (1998)
- State v. Bruyette, 158 Vt. 21, 27, 31, 604 A.2d 1270, 1272, 1274-75 (1992)
- State v. Forbes, 161 Vt. 327, 330, 332, 640 A.2d 13, 15-16 (1993)
- State v. McElreavy, 157 Vt. 18, 23, 595 A.2d 1332, 1334-35 (1991)
- State v. Hendricks, 173 Vt. 132, 139, 787 A.2d 1270, 1276 (2001)
- State v. Hoak, 147 Idaho 919, 216 P.3d 1291, 1294 (Ct. App. 2009)
- State v. Stanislaw, 153 Vt. 517, 528, 573 A.2d 286, 292 (1990)
- State v. Wool, 162 Vt. 342, 346, 648 A.2d 655, 658 (1994)
- State v. Ben-Mont Corp., 163 Vt. 53, 61, 652 A.2d 1004, 1009 (1994)
- State v. Wheelock, 158 Vt. 302, 306, 609 A.2d 972, 975 (1992)
- State v. Martin, 2007 VT 96, ¶ 42, 182 Vt. 377, 944 A.2d 867
- State v. Jackson, 2008 VT 71, ¶ 7, 184 Vt. 173, 956 A.2d 1126
- State v. Covino, 163 Vt. 378, 381, 658 A.2d 916, 918 (1994)
- Cooper v. Cooper, 144 P.3d 451, 456 (Alaska 2006)
- H.E.S. v. J.C.S., 175 N.J. 309, 815 A.2d 405, 417 (2003)

- State v. Ferebee, 137 N.C. App. 710, 529 S.E.2d 686, 690 (2000)
- Hayes v. State, 717 So. 2d 30, 36-37 (Ala. Crim. App. 1997)
- Kenison v. State, 107 P.3d 335, 344 (Alaska Ct. App. 2005)
- State v. Breen, 767 A.2d 50, 59 (R.I. 2001)
- People v. McClelland, 42 Cal. App. 4th 144, 49 Cal. Rptr. 2d 587, 593 (1996)
- Fly v. State, 229 Ga. App. 374, 494 S.E.2d 95, 98 (1997)

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