

SUPREME COURT OF VERMONT

State v. Roy H. Kuhlmann

2021 VT 52 · No. 2019-237 · Decided July 16, 2021

SUMMARY

The Vermont Supreme Court reviewed Roy H. Kuhlmann’s convictions for unlawful trespass, obstruction of justice, and unlawful restraint. The court reversed the trespass and obstruction convictions for insufficient evidence, holding that the record did not establish that Kuhlmann knowingly entered without permission or made a threatening communication. It affirmed the unlawful-restraint conviction because holding the complainant down for five minutes was sufficiently independent from the accompanying assault.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Eaton, J.; Reiber, C.J.; Robinson, J.; Carroll, J.; Cohen, J.
JURISDICTION	Vermont
DECIDED	July 16, 2021
DOCKET	2019-237
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendant appealed jury convictions for unlawful trespass of an occupied dwelling, obstruction of justice, and unlawful restraint. The Supreme Court reviewed the denial of defendant's motions for judgment of acquittal and his unpreserved challenge to the jury instructions.
STANDARD OF REVIEW	Denial of a motion for judgment of acquittal is reviewed by asking whether the evidence, viewed in the light most favorable to the State and excluding modifying evidence, fairly and reasonably tends to convince a reasonable factfinder of guilt beyond a reasonable doubt. Unpreserved claims concerning the unlawful-restraint conviction and jury instructions are reviewed for plain error. A court should sua sponte enter acquittal only when the evidence is so tenuous that conviction would be unconscionable.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Roy H. Kuhlmann v. State of Vermont

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the evidence was sufficient to prove beyond a reasonable doubt that defendant entered the complainant's dwelling knowing that he was not licensed or privileged to do so under 13 V.S.A. § 3705(d).
2. Whether defendant's statements asking the complainant to tell police that nothing was wrong constituted a threatening communication sufficient to support an obstruction-of-justice conviction under 13 V.S.A. § 3015.
3. Whether defendant's five-minute restraint of the complainant was sufficiently independent from the preceding assault to support a separate unlawful-restraint conviction.
4. Whether the trial court plainly erred by failing to instruct the jury to determine whether the restraint was merely incidental to the assault.

HOLDINGS

1. The evidence was insufficient to prove that defendant subjectively knew, at the time he entered the dwelling, that he lacked permission to enter. Because 13 V.S.A. § 3705(d) criminalizes knowing unauthorized entry, not merely remaining in a dwelling without permission, the unlawful-trespass conviction was reversed.
2. Defendant's statements asking the complainant to tell police that nothing was wrong did not constitute a threatening communication under 13 V.S.A. § 3015 because they expressed no explicit or implicit intent to inflict harm. The obstruction-of-justice conviction was reversed.
3. The five-minute restraint was sufficiently significant and independent from the preceding assault to warrant separate prosecution and conviction for unlawful restraint.
4. The trial court did not plainly err by failing to instruct the jury that it had to decide whether the restraint was incidental to the assault because independent significance is not an element of unlawful restraint and is a threshold legal determination for the court.

KEY QUOTATIONS

“the knowledge requirement in § 3705(d) is a subjective standard that “excludes from criminal liability both the inadvertent trespasser and the trespasser who believes that he has received express or implied permission to enter or remain on the premises.”” (¶ 12)

“These definitions make clear that while the allegedly threatening communication does not have to involve physical force, it must express, either explicitly or implicitly, an intent to inflict harm.” (¶ 24)

“whether the confinement, movement, or detention was merely incidental to the accompanying felony or whether it was significant enough, in and of itself, to warrant independent prosecution.” (¶ 29)

FACTUAL BACKGROUND

Defendant had been in a romantic relationship with the complainant and had stayed repeatedly at her Vermont home, including while she was at work, with access to a spare key. On February 22, 2018, after the complainant dropped defendant at a store expecting him to return to her house, defendant entered the house, hid under her bed, and emerged after she made telephone calls. He later asked her to tell responding troopers that nothing was wrong. In an earlier incident, defendant pushed the complainant onto a bed and held her there for approximately five minutes, causing bruises.

PROCEDURAL HISTORY

A jury convicted defendant of unlawful trespass, obstruction of justice, unlawful restraint, and two domestic-assault charges, while acquitting him of one domestic-assault charge. The trial court imposed consecutive groups of concurrent sentences totaling five to eight years to serve. On appeal, the Supreme Court reversed the trespass and obstruction convictions and affirmed the unlawful-restraint conviction; it did not remand for resentencing.

DISPOSITION

reversed

REMAND INSTRUCTIONS

No resentencing remand. The unlawful-trespass and obstruction-of-justice convictions and sentences are reversed; the judgment is otherwise affirmed.

CASES CITED

- State v. Delisle, 162 Vt. 293, 648 A.2d 632 (1994)
- State v. Cameron, 2016 VT 134, 204 Vt. 52, 163 A.3d 545
- State v. Fanger, 164 Vt. 48, 665 A.2d 36 (1995)
- State v. Ashley, 161 Vt. 65, 632 A.2d 1368 (1993)
- United States v. Jackson, 974 F.2d 104 (9th Cir. 1992)
- State v. Blake, 2017 VT 68, 205 Vt. 265, 174 A.3d 126
- State v. Wiley, 2007 VT 13, 181 Vt. 300, 917 A.2d 501
- United States v. Bagdasarian, 652 F.3d 1113 (9th Cir. 2011)
- State v. Fucci, 2015 VT 39, 198 Vt. 482, 117 A.3d 419
- State v. Pelican, 160 Vt. 536, 632 A.2d 24 (1993)
- State v. Yoh, 2006 VT 49A, 180 Vt. 317, 910 A.2d 853
- State v. Erwin, 2011 VT 41, 189 Vt. 502, 26 A.3d 1
- State v. Synnott, 2005 VT 19, 178 Vt. 66, 872 A.2d 874

- State v. Goodhue, 2003 VT 85, 175 Vt. 457, 833 A.2d 861
- People v. Miles, 245 N.E.2d 688 (N.Y. 1969)
- State v. French, 139 Vt. 320, 428 A.2d 1087 (1981)
- State v. Gates, 2020 VT 21, 230 A.3d 595
- State v. Carter, 2017 VT 32, 204 Vt. 383, 169 A.3d 225
- State v. Streich, 163 Vt. 331, 658 A.2d 38 (1995)
- State v. Pike, 143 Vt. 283, 465 A.2d 1348 (1983)
- State v. Buckley, 2016 VT 59, 202 Vt. 371, 149 A.3d 928
- State v. Simpson, 160 Vt. 220, 627 A.2d 346 (1993)

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