

SUPREME COURT OF RHODE ISLAND

State v. Tillery

922 A.2d 102 (R.I. 2007) · No. No. 2005-304-C.A. · Decided May 16, 2007

SUMMARY

The Rhode Island Supreme Court affirmed Henry Tillery’s convictions for three counts of assault with a dangerous weapon. The court held that the evidence, including eyewitness testimony that Tillery possessed and clicked a gun and threatened to shoot, was sufficient for a jury to infer that the weapon was an operable firearm and that he had the present ability to carry out the threatened injury. The court declined to review the jury-instruction challenge because the trial justice gave a supplemental instruction and defense counsel made no further objection.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Rhode Island                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| WRITING FOR THE COURT | Justice Robinson; Williams, C.J.; Goldberg, J.; Flaherty, J.; Suttell, J.; Robinson, J.                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| JURISDICTION          | Rhode Island                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| DECIDED               | May 16, 2007                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| DOCKET                | No. 2005-304-C.A.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| PROCEDURAL POSTURE    | Defendant appealed from convictions in the Rhode Island Superior Court for three counts of assault with a dangerous weapon, challenging the denial of his motion for judgment of acquittal and the jury instruction concerning assault with a dangerous weapon.                                                                                                                                                                                                                                                                                   |
| STANDARD OF REVIEW    | The Supreme Court applies the same standard as the trial justice when reviewing denial of a motion for judgment of acquittal: it views the evidence in the light most favorable to the prosecution, gives full credibility to prosecution witnesses, and draws all reasonable inferences consistent with guilt. The denial is upheld if the evidence was sufficient to sustain a guilty verdict beyond a reasonable doubt. Jury-instruction issues are not reviewed absent an adverse ruling and a timely objection preserved at the trial level. |
| PRECEDENTIAL VALUE    | Published Rhode Island Supreme Court opinion; precedential.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| PARTIES               | Henry Tillery v. State of Rhode Island                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

## TOPICS

criminal procedure

appellate procedure

standard of review

preservation of error

jury instructions

## PRACTICE AREAS

Criminal law

Criminal procedure

Appellate procedure

## QUESTIONS PRESENTED

1. Whether the evidence was sufficient to prove that Tillery possessed an operable gun and therefore had the present ability to execute an offer of corporal injury for purposes of assault with a dangerous weapon.
2. Whether the Supreme Court could review Tillery's challenge to the jury instruction regarding the dangerous-weapon element when the trial justice gave a supplemental instruction after the objection and defense counsel made no further objection.

## HOLDINGS

1. The evidence was sufficient for a rational jury to infer that Tillery possessed an operable gun and therefore had the present ability to execute an offer of corporal injury. The trial justice properly denied the motion for judgment of acquittal.
2. The Court would not review the challenge to the dangerous-weapon jury instruction because there was no adverse ruling after the trial justice gave a supplemental instruction, and defense counsel made no further objection.

## KEY QUOTATIONS

“Nor is the prosecution required to prove that the gun was loaded.” (108)

“As we examine the record before us, it is clear that there is no adverse ruling for this Court to review.” (110)

## FACTUAL BACKGROUND

On March 20, 2004, four women were at Rhonda Sanders's Newport apartment when Henry Tillery entered and later returned upstairs during an argument. Three witnesses testified that Tillery possessed a small silver gun; two testified that they heard it click, and one testified that he said he would shoot someone. The gun was not recovered, and the witnesses differed concerning whether Tillery had permission to enter the apartment and whether the object was definitively a firearm. Police responded to reports that a man was brandishing a gun and threatening women.

## PROCEDURAL HISTORY

A jury found Tillery guilty of three counts of assault with a dangerous weapon and not guilty of one domestic-violence assault count and one breaking-and-entering count. The Superior Court denied his motion for judgment of acquittal and later denied his motion for a new trial, then sentenced him to twelve years imprisonment, with four years to serve and eight years suspended, and issued three no-contact orders. Tillery filed a timely appeal,

which the Supreme Court decided summarily after the parties were ordered to show cause why the appeal should not be decided without further briefing or argument.

## DISPOSITION

affirmed

## REMAND INSTRUCTIONS

The record may be remanded to the Superior Court.

## CASES CITED

- State v. Caba, 887 A.2d 370 (R.I. 2005)
- State v. Clifton, 777 A.2d 1272 (R.I. 2001)
- State v. Jackson, 752 A.2d 5 (R.I. 2000)
- State v. Andrade, 657 A.2d 538 (R.I. 1995)
- State v. Boillard, 789 A.2d 881 (R.I. 2002)
- State v. Jeremiah, 546 A.2d 183 (R.I. 1988)
- State v. Arroyo, 844 A.2d 163 (R.I. 2004)
- State v. Ruggiero, 93 R.I. 241, 174 A.2d 555 (1961)
- State v. Ambrosino, 114 R.I. 99, 329 A.2d 398 (1974)
- McLaughlin v. United States, 476 U.S. 16, 17-18 (1986)

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