

SUPREME COURT OF VERMONT

State v. Synnott, 2005 VT 19

872 A.2d 874 (2005) · No. 03-113 · Decided February 4, 2005

SUMMARY

The Vermont Supreme Court affirmed Stephen Synnott’s convictions for lewd and lascivious behavior, second-degree unlawful restraint, and attempted sexual assault. The court held that evidence of Synnott’s post-arrest behavior was admissible, the unlawful-restraint conviction was independently supportable, and the evidence established attempted sexual assault. The court also rejected challenges to the jury instructions and declined to review an unrecorded supplemental-instruction claim.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Allen, C.J. (Ret.), Specially Assigned; Dooley, J.; Johnson, J.; Skoglund, J.; Gibson, J. (Ret.), Specially Assigned
JURISDICTION	Vermont
DECIDED	February 4, 2005
DOCKET	03-113
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed jury convictions for lewd and lascivious behavior, second-degree unlawful restraint, and attempted sexual assault.
STANDARD OF REVIEW	Evidentiary rulings under the Vermont Rule of Evidence 403 balancing test are reviewed for abuse of discretion. The denial of a motion for judgment of acquittal is reviewed by asking whether, viewing the evidence in the light most favorable to the State and excluding modifying evidence, the State produced evidence fairly and reasonably tending to show guilt beyond a reasonable doubt. The adequacy of jury instructions is reviewed by considering the entire charge, including supplemental instructions. Issues requiring reference to a transcript may not be reviewed when the appellant fails to provide an adequate record.
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion; precedential.
PARTIES	Stephen Synnott v. State of Vermont

TOPICS

evidence criminal procedure jury instructions appellate procedure standard of review

PRACTICE AREAS

criminal law criminal procedure evidence appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by admitting testimony and videotape concerning defendant's behavior in a police-station holding cell.
2. Whether defendant's unlawful-restraint conviction was impermissibly based on confinement incidental to the lewd-and-lascivious-behavior charge.
3. Whether the evidence was sufficient to support defendant's attempted sexual assault conviction.
4. Whether the jury instructions adequately conveyed the intent element of attempted sexual assault.
5. Whether the Supreme Court could review defendant's challenge to an alleged supplemental jury instruction when defendant failed to provide a record showing that the instruction was given.

HOLDINGS

1. The trial court abused its discretion by failing to preview the videotape before ruling on the motion in limine, but the error was not reversible because the court later viewed the tape, weighed its probative value against prejudice, and acted within its broad discretion in admitting the evidence.
2. The unlawful-restraint conviction may stand separately from the lewd-and-lascivious-behavior conviction because defendant's approximately one-and-one-half-hour confinement of the complainant was criminally significant in itself rather than merely incidental to the sexual conduct.
3. The evidence was sufficient to support the attempted sexual assault conviction, and defendant's alleged voluntary cessation of his advances did not negate guilt after he had committed the requisite overt acts.
4. The jury instructions adequately explained the intent element because, even if the original instructions were ambiguous, the supplemental instruction told the jury that the State had to prove defendant intended to have sexual intercourse without the complainant's consent and took steps toward accomplishing that end.
5. The court declined to review defendant's challenge to the alleged supplemental instruction because defendant failed to provide a record showing that the trial court gave the instruction he claimed was erroneous.

KEY QUOTATIONS

"An attempt requires intent to commit a particular crime and an overt act designed to carry out that intent." (881)

"The act must advance the actor's conduct beyond mere intent, and reach far enough toward accomplishing 'the desired result to amount to the commencement of the consummation.'" (881)

FACTUAL BACKGROUND

After meeting the complainant at a bar, defendant went with her to a hotel and then to her apartment. At the apartment, defendant repeatedly prevented the complainant from leaving, fondled and restrained her, removed clothing, and attempted to engage in nonconsensual sexual conduct. After the complainant called police, defendant was placed in a holding cell, where he engaged in bizarre behavior that was recorded on videotape.

PROCEDURAL HISTORY

The district court denied defendant's motion in limine seeking to exclude evidence of his behavior in a police-station holding cell. Following a three-day jury trial, defendant was convicted on all three charges and sentenced. The Supreme Court of Vermont affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Shippee, 2003 VT 106, ¶¶ 14-15, 176 Vt. 542, 839 A.2d 566 (mem.)
- State v. Goodhue, 2003 VT 85, ¶¶ 13, 16, 175 Vt. 457, 833 A.2d 861
- State v. Maunsell, 170 Vt. 543, 543, 743 A.2d 580, 581 (1999) (mem.)
- State v. Ovitt, 148 Vt. 398, 401, 535 A.2d 1272, 1274 (1987)
- State v. Purvis, 146 Vt. 441, 442, 505 A.2d 1205, 1206 (1985)
- State v. Carrasquillo, 173 Vt. 557, 561, 795 A.2d 1141, 1146 (2002) (mem.)
- State v. Lang, 164 Vt. 598, 599, 664 A.2d 267, 268 (1995) (mem.)
- State v. McGee, 163 Vt. 162, 165, 655 A.2d 729, 732 (1995)
- State v. Boutin, 133 Vt. 531, 533, 346 A.2d 531, 532 (1975)
- Wiley v. State, 237 Md. 560, 207 A.2d 478, 480 (1965)
- State v. Miller, 344 N.C. 658, 477 S.E.2d 915, 922 (1996)
- State v. Jennings, 216 Conn. 647, 583 A.2d 915, 925 (1990)
- State v. Gadreault, 171 Vt. 534, 538, 758 A.2d 781, 786 (2000) (mem.)
- Appliance Acceptance Co. v. Stevens, 121 Vt. 484, 488, 160 A.2d 888, 891 (1960)
- United States v. Boyd, 610 F.2d 521, 526-27 (8th Cir. 1979)
- State v. Manning, 74 Ohio App. 3d 19, 598 N.E.2d 25, 29 (1991)
- State v. Jackson, 62 Wash. App. 53, 813 P.2d 156, 158-59 (1991)
- State v. Gatalski, 40 Wash. App. 601, 699 P.2d 804, 806, 811 (1985)