

SUPREME COURT OF VERMONT

State v. Jackowski

181 Vt. 73 (2006) · No. 2004-455 · Decided November 22, 2006

SUMMARY

The Vermont Supreme Court held that the trial court improperly instructed the jury that it could find the defendant acted with intent to cause public inconvenience or annoyance if she was practically certain those consequences would result. Because intent was the only contested issue, the instructional error was not harmless beyond a reasonable doubt, requiring reversal and remand. The court also addressed the admissibility and use during deliberations of the defendant’s anti-war protest sign, directing the trial court to reconsider those issues on retrial.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                      |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Vermont                                                                                                                                                                                                                                                                                                                             |
| WRITING FOR THE COURT | Johnson, J.; Reiber, C.J.; Dooley, J.; Skoglund, J.; Burgess, J.                                                                                                                                                                                                                                                                                     |
| JURISDICTION          | Vermont                                                                                                                                                                                                                                                                                                                                              |
| DECIDED               | November 22, 2006                                                                                                                                                                                                                                                                                                                                    |
| DOCKET                | 2004-455                                                                                                                                                                                                                                                                                                                                             |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                                                |
| PROCEDURAL POSTURE    | Defendant appealed her jury conviction for disorderly conduct after the trial court instructed the jury that intent could be established by practical certainty, or knowing conduct, and excluded her protest sign from evidence and the jury room.                                                                                                  |
| STANDARD OF REVIEW    | Jury instructions are reviewed as a whole to determine whether they were misleading or inadequate and whether they undermined confidence in the verdict. Harmlessness requires the court to determine beyond a reasonable doubt that the error did not contribute to the verdict. Rule 403 evidentiary rulings are reviewed for abuse of discretion. |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                                                                                                                       |
| PARTIES               | Rose Marie Jackowski v. State of Vermont                                                                                                                                                                                                                                                                                                             |

TOPICS

jury instructions

mens rea

harmless error

evidence

appellate procedure

## PRACTICE AREAS

criminal law

criminal procedure

evidence

appellate practice

## QUESTIONS PRESENTED

1. Whether the trial court improperly instructed the jury that Jackowski could be found to have the required intent if she was practically certain her conduct would cause public inconvenience or annoyance, even though the charge alleged purposeful conduct.
2. Whether the instructional error was harmless beyond a reasonable doubt.
3. Whether the trial court erred under Vermont Rule of Evidence 403 by refusing to admit Jackowski's protest sign into evidence and by excluding it from the jury room.

## HOLDINGS

1. When disorderly conduct is charged as occurring 'with intent' to cause public inconvenience or annoyance, the required mental state is purposeful conduct, not merely knowing conduct. The trial court therefore erred by instructing the jury that it could find the required intent if Jackowski was practically certain that her conduct would cause inconvenience or annoyance.
2. The instructional error was not harmless beyond a reasonable doubt and required reversal because intent was the only contested issue, the instruction permitted the jury to convict based solely on knowledge, and it effectively removed the purposeful-intent issue from the jury's consideration.
3. The trial court's decisions concerning admission of the sign into evidence and its availability to the jury during deliberations were separate decisions requiring separate analyses. On retrial, the court must determine the sign's probative value and prejudicial effect for courtroom use and, if admitted, separately determine whether any additional prejudice warrants excluding it from the jury room.

## KEY QUOTATIONS

*"The Code does not differentiate between "with intent" and "purposely"; instead, it uses the two terms interchangeably, explaining in its definitions that " 'intentionally' or 'with intent' means purposely." (¶ 6)*

*"The law makes a distinction between intentional and knowing acts, however, and defendant was entitled to have a jury decide whether causing public annoyance or inconvenience was her conscious object." (¶ 10)*

*"Where, as here, intent is the central-and only-issue, and the defendant presents minimally sufficient evidence rebutting intent, we cannot say that an erroneous jury instruction on that issue amounts to harmless error." (¶ 12)*

*"On retrial, the trial court should first determine the sign's probative value and prejudicial effect for purposes of its admissibility into evidence and use in the courtroom." (¶ 15)*

## FACTUAL BACKGROUND

Jackowski participated in an anti-war demonstration at the intersection of Routes 7 and 9 in Bennington, where protesters blocked traffic for approximately fifteen minutes. She stood in the intersection praying and holding a sign containing anti-war materials and a photograph of a wounded Iraqi child. Police repeatedly asked her to leave, but she refused and was arrested. At trial, she admitted blocking traffic but testified that her purpose was to protest and educate the public, not to cause public inconvenience or annoyance.

## PROCEDURAL HISTORY

Jackowski was charged with disorderly conduct under 13 V.S.A. § 1026(5) for intentionally obstructing vehicular traffic during an anti-war demonstration. After a one-day jury trial in the Bennington Circuit of the Vermont District Court, the jury convicted her. The Vermont Supreme Court reversed and remanded, holding that the mens rea instruction improperly permitted conviction based on knowing rather than purposeful conduct and that the error was not harmless because intent was the only contested issue.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

On retrial, the trial court must give a mens rea instruction distinguishing purposeful conduct from knowing conduct. It must separately determine the protest sign's probative value and prejudicial effect for admission into evidence and, if the sign is admitted, separately consider whether additional prejudice warrants excluding it from the jury room.

## CASES CITED

- State v. Shabazz, 169 Vt. 448, 739 A.2d 666 (1999)
- Harris v. Carbonneau, 165 Vt. 433, 685 A.2d 296 (1996)
- State v. Trombley, 174 Vt. 459, 807 A.2d 400 (2002) (mem.)
- State v. Read, 165 Vt. 141, 687 A.2d 944 (1996)
- State v. LaClair, 161 Vt. 585, 635 A.2d 1202 (1993) (mem.)
- State v. Patch, 145 Vt. 344, 488 A.2d 755 (1985)
- State v. Pratt, 147 Vt. 116, 513 A.2d 606 (1986)
- State v. Blakeney, 137 Vt. 495, 408 A.2d 636 (1979)
- State v. Carter, 164 Vt. 545, 674 A.2d 1258 (1996)
- State v. Boise, 146 Vt. 46, 498 A.2d 495 (1985)
- State v. Martell, 143 Vt. 275, 465 A.2d 1346 (1983)
- Connecticut v. Johnson, 460 U.S. 73 (1983)
- United States v. Hayward, 420 F.2d 142 (D.C. Cir. 1970)
- Neder v. United States, 527 U.S. 1 (1999)
- State v. Sargent, 156 Vt. 463, 594 A.2d 401 (1991)

- State v. Gibney, 2003 VT 26, 175 Vt. 180, 825 A.2d 32
- State v. Buckley, 149 Vt. 663, 546 A.2d 798 (1988) (mem.)
- State v. Kinney, 171 Vt. 239, 762 A.2d 833 (2000)
- State v. Hamlin, 146 Vt. 97, 499 A.2d 45 (1985)
- Rose v. Clark, 478 U.S. 570 (1986)
- Carella v. California, 491 U.S. 263 (1989)
- Pope v. Illinois, 481 U.S. 497 (1987)
- California v. Roy, 519 U.S. 2 (1996)

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