

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-182

MARCH TERM, 2002

State of Vermont	}	APPEALED FROM:
	}	
v.	}	District Court of Vermont,
	}	
Patrick Robinson	}	Unit No. 2, Chittenden Circuit
	}	
	}	DOCKET NO. 4404-7-00 Cncr
	}	
	}	Trial Judge: Ben W. Joseph
	}	

In the above-entitled cause, the Clerk will enter:

Defendant appeals his conviction for domestic assault, claiming the court committed plain error in its jury instructions. We affirm.

Burlington Police Officer Jonathan Young, the single witness at defendant's one-day trial, testified that he was dispatched to Murray Street in Burlington on July 15, 2000 after a call to 911. When he reached the Murray Street address, he found the victim standing in the kitchen crying and bleeding profusely from both nostrils. He also observed a chip in the victim's front left tooth. Officer Young asked the victim what happened, and she told him that defendant, her boyfriend, punched her in the face during an argument at defendant's house. Officer Young called an ambulance because the victim was bleeding heavily, and she was taken to the hospital for treatment.

After he left Murray Street, Officer Young went directly to defendant's house. Defendant, who had obviously been drinking alcohol, let Officer Young in and spoke freely with him. He told Officer Young that the victim had been at his house just moments earlier, but he "put her out" of the house because she was about to use drugs contrary to his wishes. Officer Young then confronted defendant about the victim's injuries. Defendant explained that she must have fallen from the steps when he put her outside. After defendant cross examined Officer Young, he rested his case.

The court instructed the jury on, among other things, the elements of domestic assault:

The following are the elements to the offense. One, the defendant must be identified as the person who committed the alleged offense. Two, that the defendant acted recklessly when he punched [the victim] in the face and that he caused bodily injury to [the victim] when he hit her. That [the victim] and the defendant were household members at the time of the alleged assault and that this incident took place in the City of Burlington, Chittenden County, Vermont, on or about July 15, 2000. . . .

. . . You must find that each one of these elements has been proved beyond a reasonable doubt before you can find that the defendant is guilty of this offense.

Defendant did not object to the charge. The jury returned a guilty verdict, and defendant appealed.

Defendant's challenge to the jury instructions must be reviewed for plain error only because defendant did not object to

the charge prior to the jury's deliberations. State v. Noyes, 147 Vt. 426, 429 (1986). Plain error exists where the error implicates a defendant's constitutional rights or adversely affects the administration of justice. Id. We review jury instructions to see if the instructions as a whole reflect the true spirit of the law. Id. at 428. If no "fair ground" exists to say that the instructions misled the jury, the defendant's conviction should stand. Id.

Defendant contends that the court's instructions violated his due process right to have the State prove the elements of the offense beyond a reasonable doubt. He argues that the instructions' wording removed from the jury's consideration whether defendant punched the victim in the face. "Whether an instruction impermissibly relieves the State of its burden of proof on an issue 'hinges on the way in which a reasonable juror could have interpreted it.' " Id. (quoting State v. Dusablon, 142 Vt. 95, 98 (1982)). Taking the instructions in this case as a whole, we believe the court appropriately informed the jury that it would have to find, beyond a reasonable doubt, that defendant (1) recklessly (2) punched the victim in the face (3) causing her bodily injury. Whether defendant punched the victim was an issue at trial because Officer Young testified that defendant suggested the victim's injuries were caused by a fall down some steps. Under the circumstances, the jury was unlikely to interpret the court's instructions in the manner defendant alleges on appeal even though the court did not enumerate the elements separately in the manner we do here.

Even if we could construe the instructions as erroneous, any error does not rise to the level of plain error requiring reversal. The instructions informed the jury that it had to find that defendant caused bodily injury to the victim. Defendant does not challenge the correctness of that instruction. Therefore, the jury would necessarily have to find that defendant hit the victim if it concluded that he caused her bodily injury. No plain error occurred, and defendant's conviction must therefore stand.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice