Criminal Justice Division
Vermont Attorney General's Office

Vermont Criminal Law Month

February - March 2011

Vermont Supreme Court Slip Opinions: Full Court Rulings

Includes three justice bail appeals

SCREECHING TIRES JUSTIFIED MV STOP REGARDLESS OF OFFICER'S TRUE MOTIVE

State v. Rutter, 2011 VT 13. MOTOR VEHICLE STOP: SCREECHING TIRES; OFFICER'S SUBJECTIVE MOTIVE.

Full court published entry order. DUI, second offense, affirmed. 1) The motor vehicle stop, which led to evidence of operation while intoxicated, was warranted by a reasonable and articulable suspicion of illegal activity where the officer testified credibly that the defendant screeched his tires and revved his engine as he proceeded from a stop and turned the corner. The road was dry and clear of snow, and the officer could conclude that the squealing was intentional and it was reasonable for him to suspect that the defendant did not have reasonable control of his vehicle, in violation of 23 V.S.A. § 1063. This is not a bright line rule that a transient squeal by itself always provides reasonable suspicion to stop a car. 2) The defendant's argument that Article 11 of the Vermont Constitution prohibits subjectively unsupported stops of vehicles for trivial violations of the motor vehicle code, as a pretext for randomly stopping motor vehicles to check for DUI, is rejected. Even where the officer's motivation is suspect, the Vermont Constitution does not prohibit motor vehicle stops where there is an objectively reasonable suspicion that a motor vehicle violation has occurred. Doc. 2010-092, January 31, 2011.

IDENTICAL STATUTES WITH DIFFERENT PENALTIES DO NOT VIOLATE EQUAL PROTECTION

*State v. Rooney, 2011 VT 14. BRADY: EVIDENCE KNOWN TO THE DEFENSE. IDENTICAL STATUTES WITH DIFFERENT PENALTIES: EQUAL PROTECTION.

Aggravated murder affirmed. 1) The State did not violate Brady by failing to disclose DNA validation studies of the Vermont Forensic Laboratory, because the defense was well aware of the existence of those studies, but made no effort to obtain them. 2) The defendant's equal protection rights

were not violated when he was charged with aggravated murder, which carries a mandatory life without parole sentence, at the same time that the elements of the crime were identical with first degree murder, under which he could have received a minimum sentence of as low as thirty-five years. The existence of identical statutes with different penalties does not violate equal protection. Skoglund, concurring: would find that first degree murder was impliedly repealed by the enactment of aggravated murder. Johnson, with Dooley, dissenting: would find that the application of aggravated murder where the elements are identical to first degree murder violates equal protection, and would remand for resentencing under the first degree murder statute. Doc. 2008-470, February 4, 2011.

SEX OFFENDER REGISTRY EXEMPTION FOR CONDUCT WHICH IS CRIMINAL ONLY BECAUSE OF AGE APPLIES BASED ON STATUTORY ELEMENTS REGARDLESS OF UNDERLYING FACTS

*State v. Stamper, 2011 VT 18. SEX OFFENDER REGISTRY – EXEMPTION FOR CONDUCT CRIMINAL ONLY BECAUSE OF VICTIM'S AGE.

Full court published entry order. Denial of motion to dismiss charge of failure to comply with the sex offender registry statute reversed. The defendant was not required to register because the sex offender registry statute contains an exemption for persons convicted of offenses which are criminal solely because of the age of the victim, and where the defendant was under the age of 18 and the victim was at least 12. The fact that the underlying evidence in this matter showed that the conduct was not consensual did not remove it from this exemption – the issue is whether the crime for which the defendant was convicted prohibits the conduct only because of the victim's age, not what the underlying facts were. Doc. 2009-391, February 7, 2011.

APPEAL FROM EXPUNGED CONVICTION DISMISSED AS MOOT

In re Unnamed Defendant, 2011 VT 25. APPEAL FROM EXPUNGED CONVICTION: MOOTNESS.

Full court published entry order. Challenge to conviction for resisting arrest on the grounds that the police did not have probable cause to arrest him is not addressed as it is moot. The defendant received a six-month deferred sentence on the conviction, which he completed, and accordingly the trial court struck the adjudication of guilt and discharged the defendant. All records were expunged. The defendant argued that the negative collateral consequences doctrine permits review because the conviction may still show up on this criminal record as an arrest and dismissal. But the plain terms of the deferral statute demonstrate that this will not be the case. He also argues that the underlying situation is capable of repetition yet evades review. This exception to the mootness doctrine requires that there be a reasonable expectation that the same complaining party would be subjected to the same action again. The defendant failed to meet his burden of showing that this applies to him. February 9, 2011.

SENTENCE WHICH RELIED UPON CONDUCT UNDERLYING A PREVIOUS ACQUITTAL, WITHOUT PRIOR NOTICE, WAS ERROR.

*State v. Koons, 2011 VT 22. SENTENCING: RELIANCE UPON UNNOTICED CONDUCT.

Full court opinion. Sentence of six to twenty-five years for sexual assault on a minor and lewd and lascivious conduct with a child reversed. The sentencing court improperly relied on conduct underlying a prior acquittal without providing notice and an opportunity to respond. The trial court committed plain error at sentencing when, relying upon its memory of a trial it had presided over which resulted in an acquittal, it found that the defendant had had sex with a young girl in the past. The defendant had no prior notice, such as in the PSI, that the State intended to rely on the conduct underlying this previous charge at the sentencing hearing. Therefore the matter must be remanded for sentencing before a different judge. The court leaves for another day the propriety of relying upon conduct for which the defendant has been acquitted. Doc. 2010-079, February 10, 2011.

COMPLAINANT'S USE OF COCAINE ON OTHER OCCASIONS, OFFERED TO PROVE HER MOTIVE TO TRADE SEX FOR DRUGS, SHOULD HAVE BEEN ADMITTED.

*State v. Memoli, 2011 VT 15. EXCLUSION OF COMPLAINANT'S DRUG USE AS MOTIVE TO CONSENT TO SEX. LEWDNESS AS A LESSER INCLUDED OFFENSE.

Full court opinion. Aggravated sexual assault reversed. 1) The trial court erred when it excluded evidence that the victim had used cocaine on two occasions, one a month before the assault, and the other a month afterwards, proffered in support of the defendant's theory that the victim had voluntarily engaged in sexual conduct in exchange for cocaine. This claim of error was not waived on appeal by the defendant's failure to make this claim at trial, because his evidence supporting the claim had been excluded. The rape shield statute did not apply to this conduct because it was not evidence of the victim's prior sexual conduct. The complainant's drug use was relevant to the defense, especially in light of the fact that the State highlighted the victim's lack of any reason to fabricate her allegations, or to consent to sex with the defendant. Nor was this character evidence – it was evidence of motive. Her drug use was also relevant to impeach her testimony that she did not voluntarily inhale drugs on the night of the incident and that she felt nauseous after being allegedly forced to inhale, thereby implying that she was unfamiliar with the drug. 2) The trial court did not err in declining to instruct the jury on the prohibited act of engaging in lewdness as a lesser-included offense. The open and gross element of that offense is not found in the charge of lewd and lascivious conduct; nor is a sexual assault committed with assistance of a third party an "open and gross" act. Reiber and Burgess dissent: the defendant waived the claim of error when he failed to make this argument based upon the evidence in the case that would have supported it (that the victim inhaled the cocaine voluntarily, was familiar with the drug and with the drug culture, had used and bought marijuana that evening, suspected the defendant was an undercover police officer, and immediately recognized the white power as crack and was "wowed" by the amount). Doc. 2009-349, February 10, 2011.

MERE ANGER OR FORCEFULNESS IN SPEAKING IS NOT THREATENING BEHAVIOR

State v. Albarelli, 2011 VT 24. DISORDERLY CONDUCT: SUFFICIENCY OF THE EVIDENCE; FIRST AMENDMENT; OBJECTIVE STANDARD FOR THREATENING BEHAVIOR. MOTION FOR JUDGMENT OF ACQUITTAL: FAILURE TO FILE AT CLOSE OF CASE.

Conviction for disorderly conduct reversed for insufficient evidence. The defendant was charged with engaging in violent, tumultuous, or threatening behavior, by yelling aggressively (at a table set up in the Church Street Mall in Burlington to register voters and to promote Barack Obama's candidacy). 1) The trial court limited the charge to threatening behavior after finding that there was no evidence of violent or tumultuous behavior. The court's instruction was unclear whether the standard of threatening behavior was objective or subjective. It should have been objective, because a subjective standard that judges whether the defendant is engaged in threatening behavior based on the reaction of particular persons can interfere with First Amendment protections. The standard should turn on how a reasonable person would view the defendant's behavior. 2) The defendant's failure to move for judgment of acquittal prior to the submission of the case to the jury did not waive the claim where he filed the motion within ten days of the discharge of the jury. Although the State argued that the post-trial motion was not really a Rule 29 motion because it argued solely issues of law, the defendant in that motion argued that the evidence was insufficient under the First Amendment where his conduct was solely oral communications with his hands in his pocket. This was sufficient to preserve the issue of the sufficiency of the evidence. 3) The evidence was insufficient to show that the defendant engaging in threatening behavior, that is, that his actions conveyed the intent to do harm to another person. Although the two volunteers manning the table testified to feeling threatened by the defendant, the defendant's conduct must be judged from the perspective of a reasonable person in the circumstances of the witnesses. Mere anger or forcefulness is insufficient. Here, the defendant did not direct threats against anyone, did not physically touch them, attempt to touch them, or threatened to touch them. He did not convey any intent to harm another person. He did not use profanity or abusive language. The duration was "only" twenty minutes. Much of his conduct was not directed at anyone in particular, and his speech, although occasionally incoherent, was entirely political in nature. Doc. 2009-191, February 18, 2001.

VICTIM'S TESTIMONY ABOUT PRIOR ABUSE ADMISSIBLE IN DOMESTIC ASSAULT CASE TO EXPLAIN HER RELUCTANCE TO END THE RELATIONSHIP.

*State v. Connor, 2011 VT 23. PRIOR BAD ACTS: ADMISSIBILITY IN DOMESTIC ASSAULT CASES. 403 BALANCING.

Full court published entry order. Domestic assault and unlawful restraint affirmed. The defendant argued that the trial court erred by permitting the State to introduce evidence from multiple witnesses of his uncharged prior bad acts, that a disproportionate part of the State's case

was directed at prior bad acts rather than the charged incident, and that the trial court failed to perform its gate-keeping function and employ the requisite balancing test in Rule 403 to assure that the prior bad act evidence was not unduly prejudicial. 1) There was no error in the admission of this evidence. The testimony concerning the history of the defendant's abusive conduct toward the complainant, as well as her tolerance and delayed reporting of that abuse was, if believed, consistent with the expert testimony about Battered Women's Syndrome. The prior bad act evidence allowed the jury to reconcile the claimed assault with the complainant's reluctance to end the abusive relationship. The defendant's trial strategy was aimed precisely at establishing an incongruity between the complainant's allegations and her actions before and after the assault. The prior bad act evidence did not dominate the trial. The only detailed testimony concerning these prior assaults came from the complainant herself; there was only brief testimony from the defendant's best friend, a nurse practitioner, and a police officer regarding prior assaults. Presenting witnesses other than the complainant to testify about prior bad acts, particularly when those witnesses testify only about prior bad acts, raises concerns as to whether the defendant would be unduly prejudiced by the trial losing its focus on the charged acts, but the record here does not compel reversal on these grounds. 2) The trial court did conduct a Rule 403 balancing, albeit only briefly. It would have been helpful for the court to express in some detail its rationale for determining that the probative value of the evidence outweighed its prejudicial impact, but there was no error in the court's ruling. 3) Despite the outcome here, the Court repeats its recent admonition that evidence of prior bad acts is not automatically admissible in domestic-assault cases. Dooley, with Skoglund, concurring. The defendant waived his claim because he failed to object to the testimony of the witnesses who testified to prior incidents of abuse. Although Dooley seriously questions whether any of the testimony from the third-party witnesses would have been admitted, given a lesser need for context evidence than in other cases, the absence of an objection precluded the court from making its discretionary determination. Doc. 2009-269, February 22, 2011.

INDETERMINATE SENTENCING DECISION REAFFIRMED ON MOTION FOR REARGUMENT

*State v. Delaoz, on motion for reargument. 2010 VT 65. INDETERMINATE SENTENCING: GAP MUST BE ENOUGH TO ALLOW FOR PAROLE.

The Court affirms its decision that the sentence imposed violates the indeterminate sentencing statute. Considering together the indeterminate sentence statute and the parole statute, the Court reaffirms its decision that the gap between the minimum and the maximum statute must permit the offender at least the chance to take advantage of the possibility of parole. The dissenters maintain their positions as well. Doc. 2009-001, denial of motion to reconsider dated 3/18/11.

THREATENING TO BURN DOWN A TRAILER IS NOT THREATENING BEHAVIOR

State v. Sanville, 2011 VT 34. VIOLATION OF PROBATION: THREATING TO BURN DOWN TRAILER IS NOT "THREATENING

BEHAVIOR."

Full court entry order. Violation of probation reversed. When the defendant threatened to kick someone's butt, and to burn down the rented trailer that he was living in, he did not engage in "threatening behavior," but instead "did no more than argue with his landlord," and "did nothing beyond expressing his displeasure at a perceived injustice." A condition of probation that required him to refrain from violent and threatening behavior did not fairly inform him that such statements would be prohibited. The court also noted, without deciding, that were the condition to prohibit the defendant's use of what for him may be standard vocabulary, it would be difficult to find it reasonably related to his rehabilitation or necessary to reduce risk to public safety. Doc. 2009-360, March 29, 2011.

FAILURE OF WITNESS TO IDENTIFY DEFENDANT IN COURT WAS NOT FATAL TO CASE

*State v. Erwin, 2011 VT 41. SUFFICIENCY OF THE EVIDENCE: FAILURE TO IDENTIFY DEFENDANT IN COURT; POSSESSION OF NARCOTIC – POSTIVE URINALYSIS. POSSESSION OF REGULATED DRUG BY DECEIT: DEFINITION OF DECEIT; SUFFICIENCY OF THE EVIDENCE OF DECEIT. CONFRONTATION CLAUSE: TESTIMONIAL EVIDENCE, REPORTS PREPARED IN THE ORDINARY COURSE OF BUSINESS.

Obtaining a regulated drug by deceit, and possession of a narcotic, affirmed. The defendant was a nurse who was convicted of taking Fentanyl off of a drug cart in an operating room. Another nurse saw him remove something from the drug cart and put it in his pocket. A specially marked syringe containing Fentanyl later disappeared and in its place was a syringe not containing Fentanyl. The defendant volunteered to give a urine sample, which tested positive for Fentanyl. 1) The fact that the nurse who saw the defendant put something from the drug cart in his pocket was unable to identify the defendant in the courtroom, because she did not have her glasses with her, did not require a judgment of acquittal. Other evidence adequately identified the defendant as the person at issue. 2) There was no plain error in the trial court's failure to enter a judgment of acquittal on the charge of obtaining a regulated drug by deceit, on the grounds that the deceit and the acquisition of the drug were not causally linked. The evidence showed that the defendant surreptitiously removed a syringe from the anesthesia cart and hid it in his chest pocket. He used the drug, refilled the syringe with water, and placed the syringe back on the cart. His actions were the very essence of deceptiveness. 3) There was no plain error in the court's definition of deceit in the jury instructions. In fact, the definition, "intentionally giving a false impression," is consistent with the ordinary understanding of the word. 4) There was no plain error in the trial court's failure to enter a judgment of acquittal on the charge of possession of a regulated drug, where the evidence included the results of the urinalysis, as well as evidence that the defendant intentionally removed the drug form the drug cart and returned an imposter syringe. 5) There was no violation of the confrontation clause in the use of testimony by laboratory supervisors who testified to the results of drug testing on the syringe and on the urine sample, conducted in the ordinary course of business. These analyses were not "testimonial" for purposes of the confrontation clause, where the reports were prepared at the instigation of the defendant and his hospital employer

almost a year before the filing of criminal charges; the police had no involvement whatsoever in procuring these tests; and there is no suggestion that the tests were requested, or that the analysts prepared their reports, in anticipation of a criminal prosecution. Doc. 2009-309, April 7, 2011.

Vermont Supreme Court Slip Opinions: 3 Justice Panel Rulings

Note: The precedential value of decisions of three-justice panels of the Vermont Supreme Court is governed by V.R.A.P. 33.1(c), which states that such decisions "may be cited as persuasive authority but shall not be considered as controlling precedent." Such decisions are controlling "with respect to issues of claim preclusion, issue preclusion, law of the case, and similar issues involving the parties or facts of the case in which the decision was issued."

HEARSAY STATEMENT OF CHILD UNDER 804a SUFFICIENT TO SUPPORT A CONVICTION.

State v. McGivern, three-justice entry order. SEXUAL ASSAULT, LEWD AND LASCIVIOUS CONDUCT: SUFFICIENCY OF THE EVIDENCE – PRESERVATION; RELIANCE UPON ADMISSIBLE HEARSAY.

Sexual assault and lewd and lascivious conduct with a child affirmed. 1) The defendant's failure to renew his motion for judgment of acquittal at the close of the evidence, or to file a post-trial motion, waived any argument on appeal regarding the sufficiency of the evidence. 2) The court was not required to grant a motion of acquittal on its own motion. The standard for such a ruling is whether the evidence is so thin that a conviction would be unconscionable. The complainant's statements were admitted pursuant to Rule 804a and the defendant did not challenge this ruling on appeal. The defendant argues that the State's case was insufficient because it relied on the complainant's hearsay statements rather than direct evidence. However, the State is not required to produce additional evidence of the defendant's acts to corroborate a child victim's hearsay statements. The complainant's description of the defendant's abuse relayed through his mother, his aunt, and the police interview, was more than adequate to support the verdict. Doc. 2010-208, March Term, 2011.

INDICIA OF INTOXICATION PERMITTED EXIT ORDER DESPITE ALLEGED ILLEGAL ENTRY INTO TRUCK

State v. Harrington, three-justice entry order. MOTOR VEHICLE STOP AND EXIT ORDER: REASONABLE BASIS FOR STOP AND EXIT ORDER.

Civil suspension of driving license and DUI affirmed. The court did not err in denying the defendant's motion to suppress. The troopers had reasonable cause to order the defendant from the vehicle based on observed indicia of intoxication: he crossed the center line twice, delayed in stopping his truck, stopped on the roadway at a T-intersection, attempted to get out of the truck before he was ordered to do so,

smelled of alcohol,had confused speech, and eventually acknowledged alcohol consumption. Even assuming, as the defendant claims, that the police illegally entered his truck in order to seize his rifles, there was no causal nexus between this alleged illegal seizure and either the exit order or any of the evidence that resulted in the DUI prosecution and conviction. The defendant's claims of error with regard to the trial court's findings of fact are either incorrect or irrelevant, or both. Doc. 2010-248, March 2011.

SENTENCE ON REVOCATION OF PROBATION WAS NOT DISPROPORTIONATE

State v. Brown, three-justice entry order. SENTENCE RECONSIDERATION.

Denial of motion for sentence reconsideration affirmed, following sentence, pursuant to a plea agreement, to two to five years, all suspended, for embezzlement, and a revocation of probation resulting in eighteen months to eighteen months and one day to serve. 1) The defendant did not appeal the revocation of probation, so his arguments on appeal concerning this issue are not considered. 2) The defendant argues that his sentence was disproportionate to what he terms technical violations. The defendant failed to report to his probation officer on numerous occasions and to complete the 200 hours of community service that was required under the original sentence. These were not technical violations. The trial court acted within its wide discretion. Doc. 2010-365, March Term, 2011.

Vermont Supreme Court Slip Opinions: Single Justice Rulings

LEWD AND LASCIVIOUS CONDUCT WITH A CHILD IS NOT A VIOLENT OFFENSE FOR PURPOSES OF THE NO-BAIL STATUTE.

State v. Madigan, single justice bail appeal. BAIL: DENIAL OF BAIL FOR VIOLENT OFFENSES – LEWD AND LASCIVIOUS CONDUCT WITH A CHILD.

Refusal to hold without bail affirmed. The defendant was charged with three counts of lewd or lascivious conduct with a child, and was released on $20,000 bail. The state appealed from the court's refusal to hold the defendant without bail pursuant to 13 V.S.A. § 7553a, which requires a felony with an element of violence. The trial court held that lewd and lascivious conduct with a child does not contain a statutory element of violence against a person. The Legislature intended to use "violence" in the context of this statute to refer to physical violence, not abusive or unjust uses of power. Further, this crime does not require touching or contact, let alone a touching that could be characterized as physically forceful. Nor does the fact that the allegations underlying the charge in this case involve unwanted touching affect the outcome, as Section 7553a permits only consideration of the statutory elements of the felony charged, not the facts alleged. Doc. 2011-103, March Term, 2011.

United States Supreme Court Case Of Interest

Thanks to NAAG for this summary

Michigan v. Bryant, 09-150. By a 6-2 vote, the Court held that a shooting victim's statements in response to police questioning concerning the perpetrator and the circumstances of the incident were not testimonial within the meaning of *Crawford v. Washington*, 541 U.S. 36 (2004), and thus their admission at respondent Richard Bryant's trial for murder and firearm-related charges did not offend the Sixth Amendment's Confrontation Clause. At issue were statements made by Anthony Covington to Detroit, Michigan police officers who found him wounded in a gas station parking lot. The officers had discovered Covington there when responding to an early morning radio dispatch that a man had been shot. Covington lay on the ground next to his car in the lot. He had a gunshot wound to his abdomen, appeared to be in great pain, and spoke with difficulty. The officers asked him "what had happened, who had shot him, and where the shooting had occurred." Covington told them that "Rick" shot him at around 3:00 a.m. He also said that, just before the shooting, he had a conversation with Bryant, whom he recognized based on his voice, through the back door of Bryant's house. According to Covington, he was shot through the door as he turned to leave, and then he drove to the gas station. Covington's conversation with the police lasted five to ten minutes, ending when emergency medical services arrived and took him to the hospital. Within hours, Covington died. The police left the gas station after speaking with Covington and went to Bryant's house. They didn't find Bryant there but did find blood and a bullet on the back porch and an apparent bullet hole in the back door. The officers also found Covington's wallet and identification outside the house. After hearing the officers' accounts of these statements, the jury convicted Bryant of second-degree murder and related offenses.

The Court reaffirmed that the Confrontation Clause applies only to "testimonial" hearsay, and reemphasized the distinction the Court had drawn in *Davis* and *Hammon* between nontestimonial statements made in response to police interrogation in the context of an ongoing emergency (*Davis*) and testimonial statements made in response to police interrogation that is part of an investigation into possibly criminal past conduct (*Hammon*). The Court then clarified the mechanics of the "primary purpose" analysis: "the relevant inquiry is not the subjective or actual purpose of the individuals involved in a particular encounter, but rather the purpose that reasonable participants would have had, as ascertained from the individuals' statements and actions and the circumstances in which the encounter occurred." Clarifying confusion created by its *Davis* opinion, the Court stated that the primary purpose inquiry takes into account the perspective of both the declarant and the interrogator. This approach helps courts deal with the problem that arises when one party to the questioning had mixed motives, and ensures that *all* relevant circumstances are taken into account.

Of most significance here were the following circumstances: (1) when he

made the statements, Covington's physical condition was such that it could not be said that a person in his situation "would have had a 'primary purpose' 'to establish or prove past events potentially relevant to later criminal prosecution'"; (2) the officers posed to Covington "the exact type of questions necessary to allow the police to 'assess the situation, the threat to their own safety, and possible danger to the potential victim' and to the public"; (3) nothing in Covington's responses to police questioning indicated that there was no emergency or that a prior emergency had ended; and (4) the situation and interrogation were informal — "more similar, though not identical, to the informal, harried 911 call in *Davis* than to the structured, station-house interview in *Crawford*." Covington's statements therefore were nontestimonial hearsay whose admission was not barred by the Confrontation Clause at Bryant's trial.

Justice Scalia filed a heated dissent, concluding that Covington's statements were inadmissible testimonial hearsay. According to him, the majority's "tale — a story of five officers conducting successive examinations of a dying man with the primary purpose, not of obtaining and preserving his testimony regarding his killer, but of protecting him, them, and others from a murderer somewhere on the loose — is so transparently false that professing to believe it demeans this institution." Justice Scalia complained that "[i]n its vain attempt to make the incredible plausible . . . — or perhaps as an intended second goal — today's opinion distorts our Confrontation Clause jurisprudence and leaves it in a shambles. Instead of clarifying the law, the Court makes itself the obfuscator of last resort." Justice Scalia particularly objected to the majority's dual-perspective approach in applying the primary-purpose test, arguing that the declarant's intent is all that counts. He concluded that the majority's "distorted view creates an expansive exception to the Confrontation Clause for violent crimes," which, in his view, amounts to "a gross distortion of the law — a revisionist narrative in which reliability continues to guide our Confrontation Clause jurisprudence, at least where emergencies and faux emergencies are concerned."

Cases marked with an asterisk were handled by the AGO.

Vermont Criminal Law Month is published bi-monthly by the Vermont Attorney General's Office, Criminal Justice Division. Computer-searchable databases are available for Vermont Supreme Court slip opinions back to 1985, and for other information contained in this newsletter. For information contact David Tartter at (802) 828-5515 or dtartter@atg.state.vt.us.