



STATE OF VERMONT

MEMORANDUM

To: Erik Fitzpatrick
From: Jason Steele and Amelia Singh, Interns
Date: February 3, 2017
Subject: Lewd and Lascivious Conduct: Case Law

Overview: Please find below case law on lewd and lascivious conduct

VERMONT:

- *Jury Instructions*: The Vermont model jury instructions provide that “lewd conduct must be ‘open’ to at least one person who does not consent to the conduct. The offense of lewdness does not include lasciviousness. The two words, ‘lewdness’ and ‘lasciviousness,’ though similar, have different meanings. Lewdness is defined as ‘gross and wanton indecency in sexual relations.’ Nudity alone is not sufficient to prove lewdness. The State must have proven lewdness beyond a reasonable doubt. The State need not prove that Defendant’s behavior was also lascivious.” VT Criminal Jury Instructions § 27-031.
- *State v. Penn*, 176 Vt. 565 (2003) (approving a jury instruction that lewd and lascivious behavior means “behavior that is sexual in nature, lustful, or indecent, that which offends the common social sense of the community, as well as its sense of decency and morality,” and finding evidence sufficient for two separate lewd and lascivious conduct convictions where defendant licked victim’s toes and tried to get inside her shorts, and proceeded to unbutton and unzip another victim’s pants in full view of that victim’s ten-year-old daughter).
- *State v. Hammond*, 192 Vt. 48 (2012) (holding that evidence that the defendant had touched the victim’s vagina and inserted a finger into her vagina up to a second-knuckle was sufficient to sustain a conviction of both a lewd and lascivious act under 13 V.S.A. § 2601 and sexual assault under 13 V.S.A. § 3252).

- *State v. Vargas*, 185 Vt. 629 (2009) (holding that the defendant's rubbing of his erect penis against the victim constituted a lewd and lascivious act with 13 V.S.A. § 2601).
- *In re Allen Rheaume*, 2016 WL 6562431 (holding petitioner is guilty of open and gross lewdness and lascivious behavior when he tried to touch minor on the neck and breast, and then sat on the couch rubbing his exposed penis while he grabbed two minors in a private home).
- *State v. Gabert*, 152 Vt. 83 (1998) (holding that the defendant's grabbing of the victim's vaginal area and breasts and attempting to climb on top of the victim constitutes lewd and lascivious conduct under 13 V.S.A. § 2601).
- *State v. Beaudoin*, 185 Vt. 164 (2008) (holding that the defendant's touching of her vagina on one occasion and touching of her vagina over her clothing on a previous occasion constituted lewd or lascivious conduct with a child under 13 V.S.A. § 2602).
- *State v. Ovitt*, 148 Vt. 398 (1987) (holding defendant is guilty of lewd and lascivious conduct under 13 V.S.A. § 2601 when defendant masturbated while standing by his mother's barn located across the road from the witness's residence).

OTHER STATES:

- California: "lewd or lascivious act can occur through the victim's clothing and can involve "any part" of the victim's body." *People v. Martinez*, 11 Cal. 4th 444, 434 (1995).
- California: "Defendant's rubbing of victim's vagina over her clothes constituted 'substantial sexual conduct' for purpose of statute extending statute of limitations for child sex offense to one year after victim's report to law enforcement agency; masturbation is commonly understood to occur either under or over clothing, and more restrictive interpretation would defeat statute's purpose of preventing child molesters from escaping prosecution." *People v. Terry* (App. 6 Dist. 2005) 26 Cal. Rptr.3d 71, 127 Cal. App. 4th 750.
- Utah: statute prohibiting gross lewdness to, on, or in presence of another applied to touching of 14-year-old girl's clothed pelvic area. *State v. Perry*, 871 P.2d 576 (Utah 1994).