

1986

# State of Utah Utah v. Anthony Speer : Supplemental Submission

Utah Supreme Court

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COURT OF APPEALS

860112

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Mr. Tim Shea  
Clerk of the Court  
Court of Appeals  
230 South 500 East  
Salt Lake City, Utah 84102

Re: State v. Speer  
Case No. 860112

Dear Mr. Shea:

I wish to cite to the Court one additional authority in support of an argument presented in the State's brief in State v. Speer. Coleman v. State, 621 P.2d 869, 877 (Ala. 1980), cert. denied 454 U.S. 1090 (1981) supports the argument contained in Point III (brief of respondent at p. 22-27) that brandishing a loaded firearm unaccompanied by threatening words is sufficient to constitute aggravated assault, and that defendant was not entitled to a jury instruction on simple assault.

The following passage is relevant:

It is true that in this jurisdiction some physical gesture of force reflecting an immediate ability to inflict injury is required to constitute an assault. However, any "conduct" with a dangerous weapon sufficiently threatening to create "a reasonable apprehension of receiving bodily harm" satisfies this requirement. Merely pointing a loaded, but uncocked, gun at another within range is sufficient, even if unaccompanied by threatening words. See Jackson v. United States, 102 F. 473, 484 (9th Cir. 1900); Hobbs v. State, 363 P.2d 357, 359



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Mr. Geoffrey J. Butler  
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(Alaska 1961); State v. Godfrey, 20 P. 625, 627-28 (Or. 1889). Most recently, this court approved a jury instruction defining assault with a dangerous weapon to include merely threatening another person with the weapon in a menacing manner, in a case holding that an intent to cause fear was sufficient to provide the requisite mens rea in an assault. Silas v. State, 595 P.2d 651 (Alaska 1979).

621 P.2d at 876-77. This supplemental authority is submitted pursuant to Utah R. App. P. 24(j) (1986).

Very truly yours,



KIMBERLY K. HORNAK  
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KKH:dc

cc: Jerome H. Mooney