

SUPREME COURT OF RHODE ISLAND

State v. Kelly

20 A.3d 655 (R.I. 2011) · No. 2009-247-C.A. · Decided June 10, 2011

SUMMARY

The Rhode Island Supreme Court affirmed Shianna Kelly's conviction for entering a dwelling with intent to commit larceny. The court held that the trial justice properly denied Kelly's motion for a new trial, including challenges to witness credibility, authentication and admission of surveillance evidence, discovery violations, and preservation of objections.

CASE DETAILS

COURT	Supreme Court of Rhode Island
WRITING FOR THE COURT	Chief Justice Suttell; Suttell, C.J.; Goldberg, J.; Flaherty, J.; Robinson, J.; Indeglia, J.
JURISDICTION	Rhode Island
DECIDED	June 10, 2011
DOCKET	2009-247-C.A.
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed her conviction for entering a dwelling with intent to commit larceny and the denial of her Rule 33 motion for a new trial.
STANDARD OF REVIEW	Review of the denial of a motion for a new trial is deferential. The trial justice's decision receives great weight and will not be overturned unless the justice overlooked or misconceived material evidence or was otherwise clearly wrong.
PRECEDENTIAL VALUE	Published opinion; precedential Rhode Island Supreme Court decision.
PARTIES	Shianna Kelly v. State of Rhode Island

TOPICS

- criminal procedure
- evidence
- appellate procedure
- standard of review
- preservation of error

PRACTICE AREAS

- criminal law
- criminal procedure
- appellate practice

QUESTIONS PRESENTED

1. Whether the trial justice properly denied Kelly's motion for a new trial after independently evaluating the credibility of witnesses and weight of the evidence.
2. Whether the trial justice erred by allowing a late-disclosed witness to testify for authentication purposes after finding the discovery violation inadvertent and granting a continuance.
3. Whether admission of the surveillance DVD and photographs, and the victim's identification testimony, warranted a new trial despite the authentication and clarity challenges.

HOLDINGS

1. The denial of Kelly's motion for a new trial was proper because the trial justice applied the correct thirteenth-juror standard, independently assessed the evidence and witness credibility, and adequately explained why the evidence supported the verdict.
2. The trial justice did not err in allowing Waite to testify for authentication after finding the State's nondisclosure inadvertent and granting Kelly a continuance to prepare for cross-examination.
3. The challenges to admission of the surveillance DVD and photographs and to Thimes's identification testimony were not preserved for appellate review because Kelly made no objection when the evidence and identification testimony were admitted.

KEY QUOTATIONS

“The fact that defendant disagrees with these credibility determinations is not a sufficient basis to warrant the granting of a motion for a new trial.” (660)

“According to our well settled ‘raise or waive’ rule, if an issue was not preserved by specific objection at trial, then it may not be considered on appeal.” (660-661)

FACTUAL BACKGROUND

The State alleged that Kelly entered Raymond Thimes's Providence apartment on June 24, 2007, and removed property after leaving a birthday party. When Thimes returned home, the apartment was ransacked, a window was broken, and numerous items were missing. Surveillance recordings and photographs depicted two women carrying items from the apartment, and Thimes identified Kelly as one of them. The trial justice permitted admission of the surveillance materials after authentication by the property owner and granted Kelly a one-day continuance to prepare for cross-examination concerning the State's late disclosure of that witness.

PROCEDURAL HISTORY

Kelly was tried before a jury in the Rhode Island Superior Court in October 2008. The jury found her guilty of entering a dwelling with intent to commit larceny and not guilty of larceny over \$500. The trial justice denied her motion for a new trial, sentenced her to seven years with two years to serve and five years suspended with probation, and Kelly appealed. The Supreme Court of Rhode Island affirmed.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The record was remanded to the Rhode Island Superior Court.

CASES CITED

- State v. Prout, 996 A.2d 641, 645-46 (R.I. 2010)
- State v. Bergevine, 942 A.2d 974, 981 (R.I. 2008)
- State v. Gomez, 848 A.2d 221, 234 (R.I. 2004)
- State v. Rivera, 987 A.2d 887, 903 (R.I. 2010)
- State v. McManus, 990 A.2d 1229, 1237 (R.I. 2010)
- Otero v. State, 996 A.2d 667, 670 & n. 3 (R.I. 2010)
- State v. Sylvia, 871 A.2d 954, 957 & n. 2 (R.I. 2005)