

SUPREME COURT OF RHODE ISLAND

State v. Lomba

37 A.3d 615 (R.I. 2012) · Decided February 13, 2012

SUMMARY

The Rhode Island Supreme Court affirmed John Lomba’s conviction for simple assault arising from a confrontation involving Joseph and Susan Rocheleau at the Little Rhody Beagle Club. The court held that sufficient evidence supported a finding of malice or wantonness and that the trial justice properly exercised discretion in limiting cumulative or hearsay evidence and cross-examination. The court also concluded that Lomba received the jury instruction and in-camera review of records that he had requested.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| COURT                 | Supreme Court of Rhode Island                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| WRITING FOR THE COURT | Justice Flaherty; Flaherty; Goldberg; Indeglia; Robinson; Suttell                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| JURISDICTION          | Rhode Island                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| DECIDED               | February 13, 2012                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| PROCEDURAL POSTURE    | Defendant appealed his conviction for simple assault after a jury trial in Kent County Superior Court, challenging the denial of his motion for judgment of acquittal and several evidentiary rulings.                                                                                                                                                                                                                                                                                                                                      |
| STANDARD OF REVIEW    | The denial of a motion for judgment of acquittal is reviewed under the same standard applied by the trial justice: the evidence is viewed in the light most favorable to the State, without weighing evidence or assessing witness credibility, and the motion must be denied if reasonable inferences would permit a finding of guilt beyond a reasonable doubt. Evidentiary rulings are reviewed for clear abuse of discretion, and limitations on cross-examination are reversible only upon clear abuse constituting prejudicial error. |
| PRECEDENTIAL VALUE    | Published opinion; precedential                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| PARTIES               | John Lomba v. State of Rhode Island                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

TOPICS

- criminal procedure
- evidence
- self defense
- hearsay
- appellate procedure

## PRACTICE AREAS

criminal law

criminal procedure

evidence

appellate practice

## QUESTIONS PRESENTED

1. Whether the evidence was sufficient to establish the malice or wantonness necessary for simple assault, such that the trial justice properly denied Lomba's motion for judgment of acquittal.
2. Whether the trial justice's limitations on cross-examination and exclusion of evidence concerning the Rocheleaus' conduct, Lomba's prior alleged hate-crime victimization, mutual restraining orders, and Department of Elderly Affairs records deprived Lomba of his constitutional right to present a full and fair defense.
3. Whether the trial justice erred by excluding Lomba's out-of-court statements explaining the cause of his physical disability and fear of the Rocheleaus as inadmissible hearsay.
4. Whether the trial justice erred in instructing the jury concerning the mutual restraining orders.

## HOLDINGS

1. The evidence, viewed in the light most favorable to the State, permitted a reasonable juror to find beyond a reasonable doubt that Lomba acted with malice or wantonness when he struck Susan Rocheleau. The trial justice therefore properly denied the motion for judgment of acquittal.
2. The trial justice did not abuse his discretion or deny Lomba a full and fair defense by limiting cumulative or irrelevant cross-examination, excluding hearsay statements offered to explain his state of mind, instructing the jury regarding the mutual restraining order as requested by the defense, or conducting the requested in-camera review of Department of Elderly Affairs records.

## KEY QUOTATIONS

*"We have defined simple assault as an "unlawful attempt or offer, with force or violence, to do a corporal hurt to another, whether from malice or wantonness." (620)*

*"It is beyond question that a defendant may, but need not, introduce evidence that the victim was the initial aggressor in order to further a claim of self-defense." (622)*

*"As was his absolute right, defendant chose not to take the stand at trial, but after having made that decision, "[h]e may not testify by other means, including by way of the unsworn statements made to police." (623)*

## FACTUAL BACKGROUND

John Lomba became involved in an ongoing dispute with Joseph and Susan Rocheleau concerning a gray Chrysler Pacifica belonging to Leonard Rocheleau. Joseph and Susan went to the Little Rhody Beagle Club to investigate and attempt to remove the vehicle's license plate, after which Lomba confronted them and a physical altercation followed. Lomba struck Susan and cut Joseph's arm with a utility knife; he then fled and was found hiding near the scene. The jury acquitted Lomba of three counts of assault with a dangerous weapon but convicted him of simple assault.

## PROCEDURAL HISTORY

The State charged Lomba with three counts of assault with a dangerous weapon and one count of simple assault. A jury acquitted him of the three felony counts but convicted him of simple assault. The Superior Court sentenced him to one year at the Adult Correctional Institutions, with ninety days to serve and nine months suspended with probation, and entered no-contact orders. The Rhode Island Supreme Court affirmed the judgment of conviction and remanded the papers to the Superior Court.

## DISPOSITION

affirmed

## REMAND INSTRUCTIONS

The papers in the case were remanded to the Superior Court.

## CASES CITED

- State v. Brown, 9 A.3d 1232, 1237 (R.I. 2010)
- State v. Caba, 887 A.2d 370, 372 (R.I. 2005)
- State v. Henshaw, 557 A.2d 1204, 1206 (R.I. 1989)
- State v. Hornoff, 760 A.2d 927, 932 (R.I. 2000)
- State v. Johnson, 13 A.3d 1064, 1065-66 (R.I. 2011)
- State v. McManus, 990 A.2d 1229, 1234 (R.I. 2010)
- State v. Reyes, 984 A.2d 606, 614-15 (R.I. 2009)
- Ferrell v. Wall, 889 A.2d 177, 188 (R.I. 2005)
- State v. Pope, 414 A.2d 781, 788 (R.I. 1980)
- State v. Baker, 20 R.I. 275, 277, 38 A. 653, 654 (1897)
- In re Michael, 423 A.2d 1180, 1183 (R.I. 1981)
- State v. Gilligan, 23 R.I. 400, 408, 50 A. 844, 847 (1901)
- State v. Blood, 70 R.I. 85, 108-09, 37 A.2d 452, 463 (1944)
- State v. Patriarca, 112 R.I. 14, 37-38, 308 A.2d 300, 315 (1973)
- State v. Scurry, 636 A.2d 719, 725 (R.I. 1994)
- State v. Leonardo, 119 R.I. 7, 11, 375 A.2d 1388, 1390 (1977)
- State v. Doctor, 690 A.2d 321, 327 (R.I. 1997)
- State v. Veluzat, 578 A.2d 93, 94 (R.I. 1990)
- State v. Warner, 626 A.2d 205, 209 (R.I. 1993)
- State v. Vento, 533 A.2d 1161 (R.I. 1987)
- State v. Waite, 484 A.2d 887 (R.I. 1984)
- State v. Cianci, 430 A.2d 756 (R.I. 1981)
- State v. Wright, 817 A.2d 600, 610 (R.I. 2003)

- State v. Ventre, 811 A.2d 1178, 1182 (R.I. 2002)
- State v. Soto, 477 A.2d 945, 949 (R.I. 1984)
- State v. Tribble, 428 A.2d 1079, 1085 (R.I. 1981)
- State v. Lynch, 854 A.2d 1022, 1032 (R.I. 2004)
- State v. Bustamante, 756 A.2d 758, 763-64 (R.I. 2000)
- United States v. Cohen, 631 F.2d 1223, 1225 (5th Cir. 1980)
- State v. Harnois, 638 A.2d 532, 535-36 (R.I. 1994)
- State v. Germano, 559 A.2d 1031, 1036-37 (R.I. 1989)
- State v. Reyes, 705 A.2d 1375, 1376-77 (R.I. 1998)
- State v. Cooke, 479 A.2d 727, 732-33 (R.I. 1984)