

SUPREME COURT OF RHODE ISLAND

State v. Ricardo Florez

138 A.3d 789 (R.I. 2016) · No. 2014-280-C.A. (P2/11-86A) · Decided May 27, 2016

SUMMARY

The Rhode Island Supreme Court affirmed Ricardo Florez’s conviction for second-degree child molestation sexual assault and his sentence of twenty years’ imprisonment, with eight years to serve and the remainder suspended with probation. The court held that Florez’s motion for a new trial was untimely, that his challenges concerning duplicity and jury instructions were waived, and that the trial justice properly permitted impeachment with a prior inconsistent witness statement. The excerpt also addresses the exclusion and use of portions of a witness statement.

CASE DETAILS

COURT	Supreme Court of Rhode Island
WRITING FOR THE COURT	Associate Justice Gilbert V. Indeglia; Chief Justice Suttell; Justice Goldberg; Justice Flaherty; Justice Robinson; Associate Justice Indeglia
JURISDICTION	Rhode Island
DECIDED	May 27, 2016
DOCKET	2014-280-C.A. (P2/11-86A)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a Providence County Superior Court judgment entered after a jury convicted him of second-degree child molestation sexual assault.
STANDARD OF REVIEW	The denial of a motion for a new trial is reviewed with great deference and will not be overturned absent overlooked or misconceived material evidence or clear error. Jury instructions and verdict forms are reviewed de novo for constitutional or legal adequacy, and reversal requires a showing that the jury could have been misled to the complaining party's prejudice. Evidentiary rulings are reviewed for abuse of discretion and will not be reversed absent prejudice.
PRECEDENTIAL VALUE	Published Rhode Island Supreme Court opinion; precedential
PARTIES	Ricardo Florez v. State of Rhode Island

TOPICS

criminal procedure

preservation of error

appellate procedure

evidence

hearsay

PRACTICE AREAS

criminal law

criminal procedure

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether the Superior Court properly denied defendant's motion for a new trial despite the motion being filed outside the jurisdictional period in Rule 33 of the Superior Court Rules of Criminal Procedure.
2. Whether defendant's challenge to the alleged duplicity of the charging instrument and to the unanimity of the jury verdict was preserved for appellate review.
3. Whether the State properly used Joshua's prior inconsistent witness statement after Joshua denied that a second touching occurred.
4. Whether the trial justice properly limited defendant's use of Glenn's witness statement.

HOLDINGS

1. A motion for a new trial under Rule 33, when based on grounds other than newly discovered evidence, must be filed within the prescribed ten-day period or within additional time fixed by the trial justice during that period; the deadline is jurisdictional and cannot be waived. Defendant's motion was untimely and was not properly before the trial justice or the Supreme Court.
2. A claim that a charging instrument is duplicitous must be raised by a motion under Rule 12(b)(2) or (3); a defendant who fails to raise the claim below cannot recast it as an unpreserved challenge to the jury instructions or verdict form on appeal.
3. A witness's prior inconsistent statement may be admitted under Rule 801(d)(1)(A) when the witness testifies and is subject to cross-examination concerning the statement; the statement need not have been made under oath in a trial, hearing, deposition, or other proceeding. The trial justice did not abuse his discretion by allowing the State to use Joshua's prior statement.
4. The Supreme Court found no reversible error in the handling of Glenn's witness statement because the record did not show that the trial justice barred the proposed cross-examination, and defendant failed to preserve or adequately brief the alternative argument that the statement was admissible as a prior inconsistent statement.

KEY QUOTATIONS

"The time limit set forth in Rule 33 is jurisdictional and cannot be waived." (at 5)

"The term 'duplicity' refers to the joining of two or more offenses, however numerous, in a single count of an indictment." (at 7)

"a litigant cannot raise an objection or advance a new theory on appeal if it was not raised before the trial court." (at 8)

“the inconsistent statement need not have been made while under oath subject to penalty of perjury at a trial, hearing, deposition or other proceeding.” (at 11)

FACTUAL BACKGROUND

On August 1, 2010, Ricardo Florez encountered Joshua, a fourteen-year-old-or-younger child, in the bathroom of a McDonald's restaurant in Pawtucket, Rhode Island. Joshua testified that Florez grabbed his penis over his clothing; a police statement also described Florez grabbing Joshua's hand and making Joshua touch Florez's exposed penis. Joshua reported the incident to his father, who contacted police, and later identified Florez from a photographic array. A jury convicted Florez of second-degree child molestation sexual assault.

PROCEDURAL HISTORY

A jury found defendant guilty on March 31, 2014. The Superior Court sentenced him on July 29, 2014, to twenty years' imprisonment, with eight years to serve and the remainder suspended with probation. Defendant appealed, challenging the denial of his motion for a new trial, the jury instructions and verdict sheet, the use of a witness statement, and the exclusion of portions of another witness statement. The Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Kizekai, 19 A.3d 583, 589 (R.I. 2011)
- State v. Guerra, 12 A.3d 759, 766 (R.I. 2011)
- State v. Bunnell, 47 A.3d 220, 233 (R.I. 2012)
- State v. Cipriano, 21 A.3d 408, 429 (R.I. 2011)
- State v. Imbruglia, 913 A.2d 1022, 1031 (R.I. 2007)
- State v. Burnham, 58 A.3d 889, 897 (R.I. 2013)
- State v. Lynch, 19 A.3d 51, 58 (R.I. 2011)
- State v. Pitts, 990 A.2d 185, 189-90 (R.I. 2010)
- State v. Pompey, 934 A.2d 210, 215 (R.I. 2007)
- State v. Champion, 873 A.2d 92, 94 (R.I. 2005)
- State v. Rodriguez, 742 A.2d 728, 733 (R.I. 1999)
- State v. Whitaker, 79 A.3d 795, 804 (R.I. 2013)
- State v. Rosario, 35 A.3d 938, 948 (R.I. 2012)
- King v. Huntress, Inc., 94 A.3d 467, 495 (R.I. 2014)
- Russian v. Lipet, 103 R.I. 461, 464, 238 A.2d 369, 371 (1968)
- State v. Saluter, 715 A.2d 1250, 1253-55 (R.I. 1998)
- State v. LaPlante, 122 R.I. 446, 449, 409 A.2d 130, 131 (1979)
- State v. Roberts, 420 A.2d 837, 840 (R.I. 1980)

- State v. Bido, 941 A.2d 822, 828-29 (R.I. 2008)
- State v. Gomez, 848 A.2d 221, 237 (R.I. 2004)
- Cronan ex rel. State v. Cronan, 774 A.2d 866, 878 (R.I. 2001)
- State v. Donato, 592 A.2d 140, 142 (R.I. 1991)
- State v. Davis, 877 A.2d 642, 649 (R.I. 2005)
- State v. DaSilva, 742 A.2d 721, 727 (R.I. 1999)
- State v. Dennis, 893 A.2d 250, 263-64 (R.I. 2006)
- United States v. Krynicki, 689 F.2d 289 (1st Cir. 1982)
- State v. Paola, 59 A.3d 99, 106 (R.I. 2013)
- State v. Jaiman, 850 A.2d 984, 988 (R.I. 2004)
- State v. Bettencourt, 723 A.2d 1101, 1111 (R.I. 1999)
- Bucci v. Hurd Buick Pontiac GMC Truck, LLC, 85 A.3d 1160, 1170 (R.I. 2014)
- State v. Chase, 9 A.3d 1248, 1256 (R.I. 2010)
- United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990)
- Rivera-Gomez v. de Castro, 843 F.2d 631, 635 (1st Cir. 1988)
- State v. Giordano, 413 A.2d 93, 94 (R.I. 1980)